Common law, equity and the reception of English law

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The civil lawyer's hardest adjustment is the idea that a large part of the applicable law has never been enacted. The Application of English Law Act 1993 settles the matter in two sentences. Section 3(1) provides that the common law of England, including the principles and rules of equity, so far as it was part of the law of Singapore immediately before 12 November 1993, continues to be part of the law of Singapore. Section 3(2) adds that the common law continues in force so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require.[1] Section 4 and the First Schedule then list the English statutes that continue to apply with modifications. Among them are the Misrepresentation Act 1967 and the Unfair Contract Terms Act 1977, both of which matter when a Singapore court reads the terms of service of a crypto exchange.[2]

Three consequences follow for digital assets. First, the question whether a crypto asset is property was never going to be answered by a statute. It was answered by judges applying the common law concept of a "thing in action" and the equitable concept of a trust. The line of cases runs from Quoine Pte Ltd v B2C2 Ltd [2020] SGCA(I) 02 through CLM v CLN [2022] SGHC 46 and Janesh s/o Rajkumar v

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Unknown Person [2022] SGHC 264 to ByBit Fintech Ltd v Ho Kai Xin [2023] SGHC 199, which Part J analyses in depth.[3] Second, the remedies that make Singapore attractive for asset recovery, the proprietary injunction, the worldwide freezing order, the Bankers Trust and Norwich Pharmacal disclosure orders and the constructive trust, are all creatures of equity and common law. They exist because English law was received. They develop because Singapore judges continue to read English, Australian and Hong Kong decisions as persuasive authority. Third, the Swiss concept of a Sache under Art. 641 ff. CC has no counterpart. There is no numerus clausus of property rights in the civil-law sense, so the courts have felt free to extend proprietary protection to an asset class the legislature never named.

The reception is not static. The phrase "so far as it is applicable to the circumstances of Singapore" has been used to depart from English authority where the Court of Appeal thought the English rule unsuitable. In contract law Singapore has kept a doctrine of unilateral mistake in equity that the English courts abandoned. That difference decided the Quoine case, and any algorithmic trading platform operating in Singapore must build it into its risk model.[4] A Swiss lawyer should therefore treat English textbooks as a map of Singapore law and never as the territory itself.

Notes

1. Application of English Law Act 1993 (2020 Rev Ed), s. 3(1) and (2), text as published on Singapore Statutes Online. ↩
2. Application of English Law Act 1993, s. 4(1)(a) and First Schedule (English enactments applying in Singapore to the extent specified in the fourth column). ↩
3. Quoine Pte Ltd v B2C2 Ltd, Court of Appeal, 24 February 2020, neutral citation 2020 SGCA(I) 02; CLM v CLN, General Division, 4 March 2022, 2022 SGHC 46; Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE"), 21 October 2022, 2022 SGHC 264; ByBit Fintech Ltd v Ho Kai Xin, 25 July 2023, 2023 SGHC 199. ↩

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4. Quoine Pte Ltd v B2C2 Ltd, 2020 SGCA(I) 02, at paras 78–131 on unilateral mistake at common law and in equity, applying Chwee Kin Keong v Digilandmall.com Pte Ltd, 2005 1 SLR(R) 502. ↩

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