IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 20

Civil Appeal No 166 of 2018

Between

Li Shengwu

… *Appellant*

And

The Attorney-General

… *Respondent*

In the matter of Originating Summons No 893 of 2017
(Summons No 5843 of 2017)

Between

The Attorney-General

… *Applicant*

And

Li Shengwu

… *Respondent*

JUDGMENT

[Civil Procedure] — [Service] — [Service out of jurisdiction]

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v
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Sundaresh Menon CJ, Tay Yong Kwang JA and Steven Chong JA
18 January 2019

1 April 2019 Judgment reserved.

Steven Chong JA (delivering the judgment of the court):

Introduction

1 Is the basis for exercising jurisdiction over a contemnor founded on the court's civil or criminal jurisdiction? This question in turn entails an examination as to whether there is any difference between civil and criminal contempt in the first place to warrant a different treatment of their juridical bases. These are some of the essential questions which have emerged from this appeal to determine a related question: whether and how the High Court can exercise substantive and personal jurisdiction over a *foreign* contemnor.

2 For the purposes of this appeal, we speak of a foreign contemnor in the sense that such a contemnor was not within jurisdiction when the committal papers *were served* and not that he was outside jurisdiction at the time when the allegedly contemptuous statement *was published*. Leave of court was obtained

for service outside jurisdiction on the appellant. Although the Attorney-General ("AG") has argued that the appellant was in Singapore at the time of the publication of the allegedly contemptuous statement, the appellant himself does not take any factual position as to his whereabouts at the relevant time. His position is that this issue simply did not arise before the High Court Judge ("the Judge") who heard the proceedings below.

3 The appellant's application to set aside the service was dismissed by the Judge. He found that the High Court's jurisdiction for contempt, whether civil or criminal, is based on s 7 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"). He also found that service was strictly not required to establish jurisdiction under s 7, but since it was common ground between the parties that compliance with O 11 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") was required, he held that the service was nonetheless within O 11 r 1(*n*) and (*s*) of the ROC.

4 The appellant maintains the same position that he took in the court below *ie*, that service of committal papers under O 11 r 1 was not permissible. The net effect of the appellant's position is that under the ROC as it stood at the time of the allegedly contemptuous statement, it was not possible to serve committal papers on a foreign contemnor *even if* the statement was made when he was within jurisdiction. It should be highlighted that this is not the first case where committal papers have been served on an alleged foreign contemnor. However, this is the first occasion where service outside jurisdiction has been actively challenged. As such, the previous cases only go so far as to *illustrate* the point that service outside jurisdiction has been done before. They do not explicate the considered basis or reasons justifying the service. Nonetheless, the impact of the appellant's challenge should be examined in light of previous decisions

where service of committal papers outside jurisdiction was either held to be permissible or went unchallenged.

5 We should emphasise at the outset that this judgment does not decide the substantive merits of the AG's application for an order of committal against the appellant. Instead, this case concerns the High Court's jurisdiction over the alleged contempt committed by the appellant, in particular, whether leave to serve the committal papers on the appellant out of jurisdiction under O 11 r 1 was correctly given. References to "court" should be read to mean the High Court, save where the context requires otherwise.

Background Facts

6 The facts giving rise to the appeal may be stated briefly. On 15 July 2017, the appellant published a post on his Facebook page. The material part of that post stated that "the Singapore government is very litigious and has a pliant court system. This constrains what the international media can usually report". The appellant later clarified in a subsequent Facebook post on 17 July 2017 that his earlier post was shared on the "Friends only" privacy setting, and indicated his surprise that his post appeared to have attracted interest from various media outlets and the Attorney-General's Chambers ("AGC").

7 On 21 July 2017, the AG wrote to inform the appellant that he considered the appellant's 15 July post to have been made in contempt of court. The AG asked the appellant to purge his contempt by (a) deleting and removing the contemptuous material from his Facebook page and other social media accounts; (b) making a written apology and undertaking not to republish the contemptuous material, or similarly contemptuous material; and (c) issuing the

signed written apology and undertakings prominently on his Facebook page. The AG requested the appellant to comply by 5.00pm on 28 July 2017.

8 On 27 July 2017, one day before the expiry of the deadline, the appellant requested an extension of time until 5.00pm on 4 August 2017 to respond to the AG's letter. The AG agreed to this extension of time.

9 On 4 August 2017, as the appellant had not complied with the AG's request, the AG commenced proceedings in Originating Summons No 893 of 2017 ("OS 893") for leave to apply for an order of committal against the appellant. On the same day, the appellant wrote to the AG stating that the allegedly contemptuous material had been interpreted out of context. When read in context, the material was not contemptuous, and in any event the appellant had already amended the material to avoid misunderstandings. In a separate letter dated the same day, the appellant also requested the AG not to correspond with him at his parents' address in Singapore, but instead to write to his address in Cambridge, Massachusetts in the United States of America.

10 On 8 August 2017, the AG wrote to notify the appellant that the AGC had filed OS 893 because of the appellant's failure to comply with his request. The AG also informed the appellant that he was prepared to discontinue OS 893 if the appellant published the apology and undertaking as requested.

11 On 10 August 2017, the appellant replied to the AG acknowledging receipt of his letter of 8 August 2017 at his US address.

12 On 16 August 2017, the AG wrote to the appellant notifying him that a hearing date for OS 893 had been fixed for 21 August 2017, at 3.30pm. The AG also notified the appellant that if he did not publish his apology and undertaking

before 3.30pm on 21 August 2017, the offer to discontinue OS 893 would be deemed to have been withdrawn.

13 On 21 August 2017, the High Court granted leave to the AG to apply for an order of committal against the appellant. The offer to withdraw OS 893 also lapsed with the appellant's decision not to comply with the AG's request.

Procedural history

14 On 27 September 2017, the AG applied for leave to serve the committal papers on the appellant out of jurisdiction. Leave was granted and the papers were duly served personally on the appellant on 17 October 2017, at his US address.

15 On 22 December 2017, the appellant applied to set aside the service of the committal papers in Summons 5843 of 2017 ("Summons 5843"). The Judge dismissed this application on 26 March 2018. It is this decision which is the subject of the appeal, and we elaborate on the Judge's decision in greater detail below at [18] to [23].

16 The appellant was dissatisfied with the Judge's decision in refusing to set aside the service of the committal papers. By Summons 1646 of 2018 ("Summons 1646"), the appellant applied for leave to appeal against the Judge's decision. It was heard and dismissed by the Judge on 28 May 2018.

17 The appellant then sought leave from this court to appeal against the Judge's decision in Summons 5843. We heard this application, Court of Appeal Originating Summons No 22 of 2018 ("CA/OS 22"), on 3 September 2018 and granted the appellant leave to appeal. At the hearing, we formulated two questions for the parties to address us in the appeal:

Question 1:

(a) Was there any statutory basis for the court to exercise substantive jurisdiction over a foreign contemnor at the time of the commencement of proceedings?

(b) If so, identify the statutory basis.

Question 2:

If the answer to Question 1(a) is yes and if O 11 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) is necessary to confer jurisdiction, does O 11 r 1(*t*) apply retroactively or is there any other limb in O 11 r 1 that could apply in order to confer jurisdiction by enabling service to be effected under that provision?

Decision below

18 In Summons 5843, the Judge faced essentially the same two questions which are before us now. The Judge did not issue full written grounds for his decision, but engrossed his oral grounds of decision.

19 The Judge answered the first question by agreeing with the AG that s 7 of the SCJA was the proper basis for the court's jurisdiction. He stated that "s 7 of the SCJA is the provision that both confers the power as well as the *jurisdiction* to commit for contempt".

20 The Judge also rejected the appellant's submission below that it was s 16 of the SCJA that formed the basis of the court's jurisdiction over a foreign contemnor. He explained that it was "difficult to understand" how s 16, "which concerns the civil jurisdiction of the High Court, can be regarded as being applicable to contempt proceedings which are quasi-criminal in nature".

21 As to the second question, the Judge was of the view that service was not required to found jurisdiction under s 7. That said, he noted that it was the parties' agreed position that compliance with O 11 r 1 was necessary to serve

the committal papers out of jurisdiction, although he also stated that he harboured "some doubt" as to the AG having made that concession. He indicated that he found himself driven to decide the question whether either O11 r 1(*n*) or (*s*), the two limbs relied upon by the AG, were satisfied. He held that they were. Limb (*n*) requires a claim under written law, and the Judge held that the relevant written law was s 7(1) of the SCJA. Similarly, limb (*s*) concerns an enforcement of the same written law, *ie*, s 7(1) of the SCJA.

22 The Judge noted, however, that it was not service in accordance with either limb that conferred jurisdiction. Rather, service merely played the role of giving notice to the appellant that contempt proceedings had been taken out against him. The court's jurisdiction had already been established under s 7.

23 The Judge also concluded with a final observation that the entire exercise of requiring service under either limbs (*n*) or (*s*) was rendered somewhat moot by the introduction of the new limb in (*t*). The Judge observed that there was no reason to "depart from the general rule that procedural law applies retrospectively such that service on the [appellant] can now be effected under O 11 r 1(*t*)". The Judge made a note that the AG accepted this proposition, and also made a note of the appellant's counsel expressing the "tentative view that O 11 r 1(*t*) would be applicable" in support of a *fresh* application.

The parties' cases

The appellant's case

24 The appellant's case in this appeal is consistent with the case it mounted before the Judge. The appellant's core contention is that the court has subject-matter jurisdiction over contempt cases by virtue of its inherent jurisdiction to hear and try such cases, arising from its position as a superior court. In addition,

the statutory basis for the court's *personal* jurisdiction over a foreign contemnor is to be found in s 16 of the SCJA, which establishes the High Court's civil jurisdiction. Section 16 requires proper service to be effected under one of the limbs in O 11 r 1 in order to found personal jurisdiction over the appellant, but none of the limbs apply here. Specifically, O 11 r 1(*t*) does not apply retroactively, and the requirements of both limbs (*n*) and (*s*), which the AG relied on below, are not applicable.

The AG's position has shifted in the appeal

25 The AG's case, on the other hand, is not consistent. In fact, the AG's case on appeal is a marked departure from his case below. We outline the positions the AG has taken in this litigation to show how his position has shifted from what it was before.

26 When the AG appeared before the Judge in Summons 5843, his position was that s 7 conferred jurisdiction on the court to hear the contempt. The Judge agreed with the AG: see [19] above. Further, the AG expressly and unequivocally disavowed s 15 as being the relevant statutory provision which formed the basis of the court's jurisdiction to hear contempt cases. In fact, in response to the appellant's arguments that the Mutual Assistance in Criminal Matters Act (Cap 190A, 2001 Rev Ed) ("MACMA") could apply, the AG submitted that an application for an order of committal for scandalising contempt was neither a criminal proceeding nor a criminal matter, and thus MACMA did not apply. The AG also disagreed with the appellant's submissions that s 16 was the applicable jurisdictional basis.

27 When the appellant's application for leave to appeal in Summons 1646 was heard by the Judge, the AG reaffirmed his position that the court's jurisdiction over the appellant's contempt was based on s 7. So far as service

under O 11 was concerned, the AG also explicitly clarified that it was never his position that service of the committal papers could be retrospectively justified by O 11 r 1(*t*), which was introduced only after service had been effected on the appellant.

28 When the parties appeared before us in CA/OS 22, there was again nothing to suggest that the AG had departed from the positions he had taken earlier. In particular, there was no suggestion that the AG would be relying on s 15 of the SCJA as establishing the High Court's jurisdiction to hear contempt proceedings.

29 For the appeal proper, the AG now takes the position that the High Court's jurisdiction to hear contempt proceedings is premised on s 15 of the SCJA, a conspicuous departure from his position below and throughout both leave to appeal applications that jurisdiction is instead based on s 7. The AG's revised submission is that a scandalising contempt is a criminal contempt and therefore falls within the court's criminal jurisdiction, which is established by s 15. Moreover, in addition to relying on limbs (*n*) and (*s*) of O 11, the AG now also seeks to rely on limb (*t*), which he had indicated to the Judge he would not be relying on, and also limb (*p*), which is mentioned for the first time in this appeal.

30 The strikingly different case the AG has adopted in this appeal has understandably attracted significant criticism from the appellant. The appellant argues that the AG should not be allowed to rely on s 15 as establishing the court's contempt jurisdiction, the AG not having obtained leave to raise new points on appeal. The appellant also notes that the AG has committed an "about-turn" by relying on O 11 r 1(*t*), which he had expressly renounced before the

Judge. Further, the AG's "last-ditch attempt" to rely on O 11 r 1 (*p*) is without merit.

31 Before we explain why we permitted the parties to make submissions on s 15 and limbs (*p*) and (*t*) of O 11 at the oral hearing before us, we wish to make a few observations about the AG's evolving positions in this litigation.

32 First, there is no question that the AG has significantly departed from his case below. This Court has consistently held that the AG is the guardian of the public interest: see *ARW v Comptroller of Income Tax and another and another appeal* [2018] SGCA 85 at [18]–[21]; *Deepak Sharma v Law Society of Singapore* [2017] 2 SLR 672 at [35] and *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [35]. In the specific context of contempt cases, we have held that the AG is entitled to intervene even in private prosecutions for criminal contempt precisely because of his "unique and integral role as guardian of the public interest *vis-à-vis* the institution and conduct of *all* criminal proceedings": *Aurol Anthony Sabastian v Sembcorp Marine Ltd* [2013] 2 SLR 246 ("*Aurol*") at [53]. Although those comments were directed at criminal contempt, the common principle underlying civil contempt *and* criminal contempt is the prohibition of actions or omissions that thwart the proper administration of justice, as we explain below at [63]. It is also self-evident that the proper administration of justice serves the interests of the public at large, and not just the interests of any private litigant, even in a private prosecution for contempt. In discharging his responsibility of safeguarding the public interest, the AG should adopt a clear and consistent position as to the foundation of the court's jurisdiction for contempt cases.

33 Second, the AG's position on appeal has unwittingly created difficulties of his own doing. If contempt is based on the court's criminal jurisdiction, then

it is incumbent on the AG to adduce sufficient evidence to demonstrate that the appellant was in the jurisdiction at the time he committed the offence. This is because the Singapore courts' criminal jurisdiction does not have extra-territorial reach save for some exceptions which do not apply here. However, the *only* basis on which the AG alleges that the appellant was in Singapore is an article published by Reuters. This is clearly inadequate.

34 Third, the utility of the AG's new approach in relying on s 15 is somewhat suspect given his position that proper service under one of the limbs of O 11 is still necessary. This means that s 15 does not really advance his case in any way but instead creates unnecessary confusion and difficulties as we will elaborate below.

Issues to be determined

35 There are three issues to be decided in this appeal:

(a) First, the preliminary issue whether the AG is entitled to rely on s 15 of the SCJA as the relevant provision establishing the court's jurisdiction to hear contempt;

(b) Second, what is the correct statutory basis for the court's jurisdiction over a foreign contemnor; and

(c) Third, if service is required, whether any of the limbs of O 11 identified by the AG to support service out of jurisdiction is satisfied.

Preliminary issue: O 57 r 9A

36 The AG relies on O 57 r 9A(5) to affirm the Judge's decision in Summons 5843 on the additional ground based on s 15 of the SCJA.

Order 57 r 9A(5) allows a respondent who has not appealed to contend on appeal that the decision below should be affirmed "on grounds other than those relied upon by that Court". The appellant, in contrast, asserts that the AG has essentially introduced a new point on appeal and thus must obtain leave from this Court pursuant to O 57 r 9A(4)(*b*) before he can advance this new point. We set out both provisions here for convenience:

> **Preparation of Cases (O. 57, r. 9A)**
>
> …
>
> (4) If a party –
>
> (*a*) is abandoning any point taken in the Court below; or
>
> (*b*) intends to apply in the course of the hearing for leave to introduce a new point not taken in the court below,
>
> this should be stated clearly in the Case, and if the new point referred to in sub-paragraph (*b*) involves the introduction of fresh evidence, this should also be stated clearly in the Case and an application for leave must be made under Rule 16 to adduce the fresh evidence.
>
> (5) A respondent who, not having appealed from the decision of the Court below, desires to contend on the appeal that the decision of that Court should be varied in the event of an appeal being allowed in whole or in part, or that the decision of that Court should be affirmed on grounds other than those relied upon by that Court, must state so in his Case, specifying the grounds of that contention.

37 The material difference in the two positions is that leave is required under O 57 r 9A(4)(*b*) but not under O 57 r 9A(5). However, both parties did not devote much attention as to whether the governing provision was O 57 r 9A(4)(*b*), *or* O 57 r 9A(5).

38 In our view, neither provision applies to permit the AG to advance the new point. We will discuss each provision in turn.

***O 57 r 9A(4)(*b)**

39 This court recently considered the scope and ambit of O 57 r 9A(4)(*b*) in *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2018] 1 SLR 76 ("*Grace Electrical*"). There, we observed that whether a party will be granted leave under O 57 r 9A(4)(*b*) to pursue a new point on appeal will be the subject of careful consideration in each case, having due regard to factors including (a) the nature of the parties' arguments below; (b) whether the court below had considered and provided any findings and reasoning in relation to the new point; (c) whether further submissions, evidence or findings would have been necessitated had the new points been raised below; and (d) any prejudice that might result to the counterparty in the appeal if leave were to be granted: at [38]. On the facts of *Grace Electrical* itself, we granted leave to the appellant to raise new arguments before us because those arguments neither required an amendment of the pleadings, nor necessitated fresh evidence to be adduced: at [37]. This principle was recently cited with approval by this Court in *Abhilash s/o Kunchian Krishnan v Yeo Hock Huat and another* [2019] SGCA 14.

40 Applying the above principles to the present case, we are of the view that leave to introduce the point that s 15 of the SCJA forms the proper basis for the High Court's contempt jurisdiction in this case would not have been granted under O 57 r 9A(4)(*b*). We say this for four reasons.

41 First, s 15 is an entirely new basis for jurisdiction which neither the parties nor this Court could reasonably have contemplated would be raised at this very late stage. The AG only raised this point in his Respondent's Case, which was filed *after* the appellant had filed his Case in the appeal. The AG submitted during the oral hearing before us that he believed that the new point fell within the scope of the first question we posed to the parties (see above

at [17]). We disagree. The leave to appeal hearing before us proceeded on the footing that it was only ss 7 and 16 of the SCJA which were in dispute. There was no mention whatsoever of s 15. It was on that premise that the questions were formulated for the parties. We did not, by framing those questions, give parties *carte blanche* to advance such strikingly different points as would involve the abandonment and reformulation of such a substantial part of their cases below, and indeed, their cases before us in the leave to appeal hearing.

42 Second, leave would also not have been granted because this was a point that had been expressly disavowed by the AG before the Judge: see [26] above. Although we permitted the appellant in *Grace Electrical* to raise new arguments on appeal that contradicted its pleadings, the present case is quite different. The present case is more akin to a party introducing an unpleaded point on appeal as opposed to raising a new point which merely contradicted its own pleadings. This is an important distinction. Where the point has at least been pleaded, the Court is entitled to expect that the other side would have had notice of the point, and would have made the necessary preparations both in terms of obtaining the relevant evidence and researching the relevant law. In other words, the other party would not have been caught entirely by surprise. But that cannot be said of a party who is faced with a point that was not only *not* advanced below, but was *renounced* by the other side altogether.

43 Third, we consider that the appellant would suffer prejudice if leave were granted, because the question whether the appellant was within the jurisdiction when he committed the alleged contempt simply did not arise in the court below. This question would be germane if the jurisdictional basis is premised on s 15. As a result, the evidence on record as to the appellant's whereabouts at the material time rests on a single Reuters article. At the oral hearing, we probed Mr Vergis as to the appellant's whereabouts at the material

time, but he quite candidly and fairly stated that he did not have evidence on the matter. As this question was not an issue in the dispute below, we do not think that Mr Vergis can be criticised for not having addressed his mind to the question at hand, or for not wishing to give evidence from the Bar. The point remains that for the AG to make good his submission on s 15, it was incumbent on him to place more robust evidence before us to establish the appellant's whereabouts at the time he committed the alleged contempt. We cannot rule out the possibility that the appellant would then have adduced evidence on this point. Therefore, the s 15 argument cannot be raised without the need to adduce fresh evidence as to the appellant's whereabouts, which is a factor that militates against the grant of leave.

44 Fourth, given the state of the evidence and the AG's case below, it was hardly surprising that the AG did not rely on s 15 before the Judge. It follows that we do not have the benefit of the Judge's findings or reasons on this new argument. In *Grace Electrical*, we expressed the view that the efficiency and authority of an appellate court is increased and strengthened by the findings of judges who have considered the matter below: at [36]. We now find ourselves effectively in the position of a court of first instance on the applicability of s 15 (which is premised on a factual finding), which is at odds with the exercise of appellate jurisdiction. This reason, too, tends against the grant of leave.

O 57 r 9A(5)

45 We turn then to analyse O 57 r 9A(5). The AG relies on this particular provision, which has the advantage of not requiring leave of court for new arguments to be made on appeal. Instead, the provision speaks of a respondent affirming the decision on "grounds other than those relied upon" by the court below.

46 As we noted above, we did not have the advantage of the parties' arguments as to the distinction between the "grounds" referred to in O 57 r 9A(5) and a "new point" referred to in O 57 r 9A(4)(*b*). Although this court in *L Capital Jones and another v Maniach Pte Ltd* [2017] 1 SLR 312 ("*Maniach*") had occasion to consider the scope of O 57 r 9A(5), our examination was limited to the question whether a successful respondent is entitled to rely on O 57 r 9A(5) to mount a case to affirm the judge's ultimate decision by raising other arguments which did not find favour with the court below, without needing to file a cross-appeal. In holding that this was possible, we departed from our earlier decision in *Lim Eng Hock Peter v Lin Jian Wei* [2010] 4 SLR 331. We observed at [60] that a more generous reading of O 57 r 9A(5) would allow "a successful respondent to indicate in its respondent's case that it intends to contend at the appeal that the judge's decision in its favour should additionally or alternatively be affirmed *on other grounds that were not relied upon by the judge*" [emphasis added]. It appears to us that the difference between these two provisions cannot be so drastic that reliance on other "grounds" under O 57 r 9A(5) can extend to permitting reliance on unpleaded points or points which require fresh evidence to be adduced. In our view, the purpose and scope of O 57 r 9A(5) is to permit a *respondent* to argue that the decision on appeal should be affirmed on grounds other than those relied upon by the court below without having to file a cross-appeal *provided* that the new grounds arise from the pleadings *and* neither party needs to adduce fresh evidence to address the new grounds. We therefore take the view that for the same four reasons espoused above in respect of O 57 r 9A(4)(*b*), the AG would likewise not have been granted leave under O 57 r 9A(5).

47 We ultimately allowed the parties to address us on s 15 at the hearing because of the novelty of the new point, and more importantly because

Mr Vergis commendably indicated to us that he was prepared to address this question.

Issue 1: The High Court's jurisdiction to hear contempt proceedings

The parties' arguments

48 We come now to consider the first substantive issue, which concerns the statutory basis for the High Court to exercise substantive jurisdiction over a foreign contemnor at the time of the commencement of proceedings. The appellant's case draws a distinction between the High Court's *subject-matter* jurisdiction, and the High Court having *personal* jurisdiction over the foreign contemnor.

49 The appellant's case is that the High Court has subject-matter jurisdiction because of its status as a superior court, in particular, because Article 93 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") provides that "the judicial power of Singapore shall be vested in a Supreme Court …". There is therefore no question that the High Court, which together with the Court of Appeal forms the Supreme Court, can hear a contempt, whether one classifies it as a civil or criminal contempt.

50 That said, the High Court would still need to have personal jurisdiction over the foreign contemnor. Jurisdiction would be established by s 16 of the SCJA, which sets out the High Court's original civil jurisdiction, and which founds jurisdiction on service of the committal papers in accordance with O 11 of the ROC. The appellant highlights that the practice and procedures for contempt proceedings are set out in O 52 of the ROC which provides that contempt proceedings shall be initiated by way of originating summons, or by

summons in existing proceedings. Section 16(1) of the SCJA in turn provides that the High Court has jurisdiction to hear and try any action *in personam* where the defendant is served with a writ of summons or any other originating process in the circumstances authorised by the ROC.

51 The AG's case, on the other hand, relies on the court's original criminal jurisdiction which is established under s 15 of the SCJA. According to the AG, scandalising contempt is categorised as a criminal contempt, not a civil contempt, and a criminal contempt necessarily involves and historically has always involved the criminal jurisdiction of the court. Service in accordance with one of the limbs of O 11, however, is still required in order to give the appellant notice that contempt proceedings have issued against him. Service therefore does not establish jurisdiction.

52 We pause to note that the Judge disagreed with both these bases. He instead found jurisdiction under s 7 of the SCJA: see above at [19].

Analysis

Difficulties with founding jurisdiction under s 15 of the SCJA

53 In our view, there are at least three difficulties with the AG's case based on s 15 of the SCJA.

(1) There is no real distinction in principle between civil and criminal contempt

54 The first has to do with a matter of principle. The AG's case depends on a distinction being drawn between civil and criminal contempt, but we consider that there is no real substantive difference between the two *in principle*.

55 In his written Case, the AG's position is that criminal contempt necessarily attracts the High Court's criminal jurisdiction. The AG also accepted in oral arguments before us that the proper statutory basis for civil contempt lies in the civil jurisdiction of the Court. This being so, one would expect there to be real and important differences in the way in which each category of contempt is treated by the courts, particularly in terms of the standard of proof, evidentiary rules, and consequences that follow upon liability being established, if the distinction between civil and criminal contempt is to have any meaningful effect.

56 A perusal of the established jurisprudence shows, however, that civil contempt and criminal contempt are far more alike than they are different. This Court has held that both civil and criminal contempt proceedings are "*quasi-criminal*" in nature. In *Shadrake Alan v Attorney-General* [2011] 3 SLR 778 ("*Shadrake*"), we considered a case of scandalising contempt much like the present case, and held that "scandalising contempt is *quasi-criminal* in nature" at [80]. A scandalising contempt is, as the AG argues, a form of *criminal* contempt.

57 This court similarly examined the nature of *civil* contempt in our decision in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*"). That case concerned a husband's failure to comply with a monetary judgment in favour of the wife in matrimonial proceedings. In commenting on the procedural rules in the context of civil contempt, we observed that those rules were "put in place to ensure that the liberty of the alleged contemnor is not, in any way, compromised due to the summary and *quasi-criminal nature of the court's jurisdiction in civil contempt*" [emphasis added]: at [57]. We repeated this observation in the same decision in stating that the prohibition on curing defects in an O 52 statement was premised on the need, "given the *quasi-*

criminal nature of committal proceedings" [emphasis added] to ensure that the information relied upon by the applicant is within the four corners of the O 52 statement itself: at [66]. This Court then cited *Mok Kah Hong* for this proposition in our decision in *Tay Kar Oon v Tahir* [2017] 2 SLR 342 at [29].

58 The attribution of the label "quasi-criminal" to both civil and criminal contempt arises out of substantive similarities in how both categories of contempt are treated. These similarities apply at each stage of the proceedings in either category of contempt. We need cite only three important common features.

59 Let us first consider the process by which committal proceedings for both categories of contempt are *initiated*. The procedure is a unitary one, and is set out in O 52 of the ROC. Order 52 requires an application to court for leave to apply for an order of committal, without distinction as to whether it is a civil or criminal contempt. Order 52 r 2 requires the leave application to be made by way of *ex parte* originating summons, unless there are already pending proceedings in which the contempt is made, in which case the leave application is taken out by a summons in the proceedings. O 52 r 3(4) of the ROC requires the *personal service* of committal papers, including in particular the *ex parte* originating summons if there are no pending proceedings, on an alleged contemnor. We appreciate that service of the papers being specified in this way suggests a parallel to civil proceedings, and might intuitively suggest that it is the civil jurisdiction of the courts which is involved in cases of contempt. But we have also stated that the O 52 statement is akin to a charge that is brought in criminal proceedings: *Mok Kah Hong* at [61], relying in this regard on the observations of Yong Pung How CJ in *Summit Holdings Ltd and another v Business Software Alliance* [1999] 2 SLR(R) 592 at [14]–[17]. In discussing the significance of an O 52 statement in *Mok Kah Hong*, we noted that it is a

fundamental rule of justice that a person being called upon to answer a charge must first know the precise case that he has to meet, and should be accorded ample opportunity to refute the allegations: at [61]. The O 52 statement performs precisely that function, by setting out the boundaries of the applicant's case such as to prevent the applicant from relying on grounds omitted from the statement: at [61]. It would hence be inaccurate to say that the procedure specified in O 52 naturally bears the features of either civil or criminal proceedings alone; rather a unitary process is adopted that borrows from both.

60 These similarities between the two broad classes of contempt carry over into the standard of proof that we require an applicant to discharge in contempt proceedings. We have consistently held that the applicable standard of proof in both civil and criminal contempt is the *same*, *ie*, that of the *criminal* standard of proof beyond reasonable doubt: *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 ("*Pertamina*") at [31], and *Mok Kah Hong* at [85].

61 Further, *penal* consequences also apply to cases of civil contempt, and are not confined only to cases of criminal contempt. *Mok Kah Hong* itself is a case in point. This was a case of civil contempt, but we were satisfied that the husband's contempt of court warranted a stiff imprisonment term of eight months.

62 It should be apparent from the above discussion that the substantive law and procedural rules of contempt proceedings straddle the divide between ordinary civil proceedings and conventional criminal offences. Contempt borrows concepts, procedures, and practices from both civil and criminal processes. Moreover, the rules and procedure are *substantially the same*, whether one speaks of civil or criminal contempt.

63 This similarity in substance and procedure is readily comprehensible, and indeed, intuitive, once we consider that both categories of contempt are, at their hearts, directed towards the same goal: preserving the proper administration of justice. The common theme that runs through contempt cases is that the law of contempt is aimed at protecting the proper administration of justice. In *Shadrake*, a case involving *criminal* contempt, we said this:

> 21 Finally, an important point should be emphasised. It is not new but is nevertheless of vital importance because it undergirds the law relating to contempt in general and scandalising contempt in particular. This relates to the very *raison d'être* of the law of contempt. It is trite that the law relating to contempt of court is *not* intended to protect the dignity of judges. As Lord Atkin put it in the Privy Council decision of *Ambard v Attorney-General for Trinidad and Tobago* [1936] AC 322 at 335, "justice is not a cloistered virtue" but a public one. **An act of scandalising contempt is a public injury rather than a private tort, in so far as it involves undermining public confidence in the administration of justice.** …
>
> 22 Put simply, the **fundamental purpose underlying the law relating to contempt of court in general and scandalising contempt in particular is *to ensure that public confidence in the administration of justice is not undermined.*** Indeed, this fundamental purpose – which finds acceptance across all Commonwealth jurisdictions – has been reiterated time and again in the Singapore context (see, *eg*, *Pertamina Energy Trading*…); as well as the Singapore High Court decisions of *AG v Wong Hong Toy* [1983–1984] SLR(R) 34 at [26]; *AG v Zimmerman Fred and others* [1985–1986] SLR(R) 476 … at [9]; *AG v Hertzberg Daniel* [2009] 1 SLR(R) 1103 … at [20]; and *AG v Tan Liang Joo John* [2009] 1 SLR(R) 1132 … at [11].
>
> [emphasis added in bold]

64 Those observations echoed our earlier statements in the case of *Pertamina*, which was a case of *civil* contempt:

> 22 It is imperative to note … that the doctrine of contempt of court is not intended, in any manner or fashion whatsoever, to protect the dignity of the judges as such; its purpose is more objective and is (more importantly) rooted in the public interest. As Lord Morris of Borth-y-Gest put it in the House of Lords

decision of *Attorney-General v Times Newspapers Ltd* [1974] AC 273 (at 302) ('*Times Newspapers*'):

> In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. **When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted and their authority wanes and is supplanted.**
>
> …

23 And, in the English decision of *Sport Newspapers* … Bingham LJ acknowledged (at 1206) that the law of contempt "exists to vindicate and protect the rights of litigants, not the rights of courts or judges save in so far as their task is to vindicate and protect the rights of litigants". Indeed, counsel for the applicant in this particular case had also observed (correctly, in our view) that **"[t]he courts' power to punish for contempt exists *not to vindicate the dignity of the court or the self-esteem of judges but to safeguard the integrity of legal proceedings for the benefit of those using the courts and so indirectly for the benefit of the public* whose interest it is that legal proceedings, civil or criminal, should be fairly tried and justly determined"** …

24 Although the doctrine of contempt of court is traditionally divided into the criminal and the civil spheres, the line between them is not often clear (and see the criticisms and consequent suggestion that this distinction be abolished in John Laws, "Current Problems in the Law of Contempt" (1990) 43 CLP 99 at 100–105). **Suffice it to state that, in so far as the latter is concerned, there will always be an element of the public interest as well.** As Salmon LJ put it in the oft-cited English Court of Appeal decision of *Jennison v Baker* [1972] 2 QB 52 (at 64):

> Of course an injunction is granted and enforced for the protection of the plaintiff. The defendant who breaches it is sent to prison for contempt with the object of vindicating (a) the rights of plaintiffs (especially the plaintiff in the action) and (b) the authority of the court. The two objects are, in my view, inextricably intermixed.

> [emphasis added in bold]

65 Our recent decision in *Tay Kar Oon* puts it beyond doubt that there is a dimension of public interest even for cases of civil contempt; and that underlying these cases is the common concern with criminal contempt that the proper administration of justice not be undermined. *Tay Kar Oon* was a case where a private litigant sought to withdraw committal proceedings it had commenced against the other party. Notwithstanding that, the Judge exercised his jurisdiction to commit the offending party on his own motion. We agreed that the Judge was justified in doing so, and observed thus at [38], reaffirming our observations in *Pertamina*:

> In our view, the Respondent's withdrawal of the committal proceedings was not a bar to the Judge's exercise of his jurisdiction over the matter or to his power to make an order of committal. **As has been often observed, the law of civil contempt, like criminal contempt, exists also to vindicate the court's authority and protect the administration of justice. In *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC* [2007] 2 SLR(R) 518 … we emphasised that there will always be an element of public interest in the context of civil contempt (at [24]).** Therefore, the court should have the power in both criminal and civil contempt to act against the contemnor irrespective of any withdrawal or settlement of the proceedings. In this connection, O 52 r 4 of the Rules of Court expressly provides that the High Court and the Court of Appeal have the power to make an order of committal on its own motion. [emphasis added in bold]

66 The fact that the public interest is implicated in all contempt cases is further buttressed by our decision in *Aurol*, where we held that even private litigants who seek to initiate private prosecutions for criminal contempt should consult the AG before doing so. As we have explained above, the AG is the guardian of the public interest, and the public interest also features even in a private prosecution (at [50]):

> … But given that the **end result of a private prosecution for criminal contempt is the imposition of penal sanctions on**

> **the contemnor for acting to the detriment of the public interest**, the observations of Justice Brennan in *Young* about the desirability of a disinterested prosecutor are apposite here. [emphasis added in bold]

67 The common thread that runs through our local jurisprudence is therefore that civil contempt and criminal contempt share the same purpose: to protect the proper administration of justice. In our view, this unity of objective – as concretised and manifested in the similarities of procedure employed in both categories of contempt – shows that there is no reason *in principle* to give the distinction between the categories of contempt such significance that criminal contempt should be found to rest on the High Court's criminal jurisdiction, and civil contempt on the High Court's civil jurisdiction.

(2) Criminal contempt cases are not treated in the same way as criminal offences

68 We turn then to examine the second difficulty we have with the AG's approach. The AG relies on the history of the law of contempt to make the point that criminal contempt has always been classified as a criminal matter. According to the AG, it follows from "the historical nature of criminal contempt being part of the criminal law and a criminal offence", and the recognition by the English courts that criminal contempt proceedings were a "criminal cause or matter", that the courts' jurisdiction to try criminal contempt has always been based on its criminal jurisdiction.

69 We find, however, that even on the AG's historical analysis it is highly doubtful that criminal contempt was treated the same way as ordinary criminal offences such that they necessarily fell within the criminal jurisdiction of the courts. We will take the AG's submission in parts.

70 First, the AG relies on Singapore jurisprudence that has consistently referred to cases of criminal contempt in the language of criminal law. In particular, the AG emphasises that several cases dealing with scandalising contempt have consistently termed such contempt as an "offence" – see *Attorney-General v Pang Cheng Lian and others* [1974–1976] SLR(R) 271, *Attorney-General v Wong Hong Toy* [1983–1984] SLR(R) 34, *Attorney-General v Chee Soon Juan* [2006] 2 SLR(R) 650, and *Attorney-General v Hertzberg Daniel and others* [2009] 1 SLR(R) 1103 ("*Hertzberg*").

71 We do not find this argument persuasive. The question of jurisdiction was not before the courts in those decisions, and we do not think that mere adoption of the language of criminal law imbues criminal contempt with the same character as ordinary criminal offences. In any event, as a matter of authority, although this Court termed scandalising contempt as an "offence" in *Shadrake*, it *also* observed that "scandalising contempt is *quasi-criminal* in nature": at [80]. Similarly, this Court in *Aurol* also noted that the nature of criminal contempt was "*sui generis*" and unlike ordinary criminal proceedings, because an action for criminal contempt may even arise out of civil proceedings either through a contumelious breach of a court order or the intentional subversion of its purpose: at [51]. Indeed, the AG himself relied on *Aurol* to make precisely this point that contempt proceedings are *sui generis* and differ from the trial of an ordinary criminal offence before the Judge.

72 Second, the AG's submission appears to rest essentially on the slender authority of one textbook, Gordon Borrie & Nigel Lowe, *The Law of Contempt* (Butterworths, 1973) ("*Borrie & Lowe*"), where it is stated in the introductory chapter of the book that "[t]he rules [of criminal contempt] form part of the criminal law". The AG has, however, quite fairly also drawn our attention to an extract from a separate chapter from the same book which raises doubts as to

the correctness of this classification. The authors say in Chapter 9 "Procedure and Powers of the Courts in respect of Criminal Contempts", the following:

> Although criminal contempt has some of the characteristics of any criminal offence, particularly since the offender can be punished by imprisonment or fine, **it is best to regard it as an offence which is *sui generis*.** As Davies LJ said in *Morris v Crown Office*: "the procedure, if that is the apt expression, is entirely different in cases of criminal contempt from that which applies in ordinary criminal cases". As in the case of any other offence, it must be proved beyond all reasonable doubt but, unlike other offences, in the case of a criminal contempt, there is no prosecution, no summons or warrant for arrest, nor is there a right to trial by jury. Moreover, such contempts can be tried at first instance by the Divisional Court or even by the Court of Appeal, **and the appeals that lie to the Court of Appeal lie to the Civil Division of that court and not to the Criminal Division.** … [internal citations omitted]

73 This extract illustrates that a criminal contempt cannot be said to be just like any other criminal offence, which would fall to be tried in the court's criminal jurisdiction under s 15 of the SCJA. Indeed, the last part of the extract is telling in suggesting that it was the Civil Division of the English Court of Appeal that had jurisdiction to hear an appeal from a *criminal* contempt, but not the Criminal Division of the same court.

74 Other academic textbooks indicate the same difficulty in simply saying that a criminal contempt is like any other criminal offence. C J Miller, *Contempt of Court* (Elek Books, 1976), essentially repeats (at p 3) the observations in *Borrie & Lowe*:

> Although criminal contempt of court is a criminal offence punishable by an unlimited fine or period of imprisonment, **it has many characteristics which distinguish it from ordinary crimes. Indeed, these characteristics are so marked that criminal contempt may be said to be an offence *sui generis*. … Moreover, any appeal will be heard by the *Civil* Division of the Court of Appeal.** [emphasis added in bold; internal citations omitted]

75 Third, we are also unable to derive much assistance from the AG's reliance on the historical split of the court's civil and criminal jurisdictions as early as the Courts Ordinance of 1907 (SS Ord No 30 of 1907) ("1907 Ordinance") to argue that "criminal contempt" is just as much a "criminal matter" as any other criminal offence, and thus historically fell within the court's criminal jurisdiction.

76 The 1907 Ordinance split the Supreme Court of the Straits Settlements' jurisdiction into its original civil jurisdiction, under s 9, and its original criminal jurisdiction, under s 10. The material part of s 10 of the 1907 Ordinance provides that the Supreme Court should have the jurisdiction "within the Colony held and exercised in England in *Criminal matters* by His Majesty's High Court of Justice and the several Judges thereof" [emphasis added]. The question that follows is what is a "criminal matter".

77 The AG attempts to construct a bridge between "criminal contempts" to "criminal matters" by his reference to the cases of *O'Shea v O'Shea and Parnell* (1890) 15 PD 59 ("*O'Shea*"), and *R v Barnardo* (1889) 23 QB 305 ("*Barnardo*"). These cases help illuminate the distinction between criminal contempt and civil contempt, and are commonly cited for this purpose despite their considerable vintage. Those cases were decided at a time when classification as a criminal or civil matter had an important and material impact on the parties' rights. Before the Administration of Justice Act 1960 (c 65) (UK) ("Administration of Justice Act 1960") was passed, s 47 of the Supreme Court of Judicature Act 1873 (36 & 37 Vict c 66) (UK) ("1873 Judicature Act") provided that there was no right of appeal from any criminal cause or matter.

78 *O'Shea* was a case involving a criminal contempt, because the offender there had published an article calculated to prejudice the petitioner in a divorce

suit in the eyes of the public, which the English Court of Appeal found was done "to prevent the course of justice by preventing the divorce suit from being properly tried": see 63. Conversely, *Barnardo* was a case involving a civil contempt. A writ of attachment had been taken out against the defendant, who had been given custody of a child by the child's mother, but had wrongfully parted with custody of the child to another person who took the child out of the jurisdiction, such that the child could not be produced in response to a writ of *habeas corpus*. The English Court of Appeal considered that the order for *habeas corpus* originated in civil proceedings to secure the return of the child, and hence the matter was appealable: see 308–309.

79 In reliance on *O'Shea*, the AG submits that it was the criminal nature of the offender's actions there that "formed the basis on which the Court could try and punish the act *independently of the underlying divorce case*". Further, because it involved a criminal matter, it could not be appealed. It is therefore implied that what the Court did in trying and punishing the criminal contempt was to consider it as a criminal cause or matter, and by extension that must have been founded on its criminal jurisdiction, as opposed to the civil jurisdiction which governed the underlying divorce suit.

80 In our view, although the Court of Appeal in *O'Shea* was certainly alive to the distinction between criminal and civil contempt, nothing suggests that it directed its mind to the question whether it was the High Court's civil or criminal jurisdiction that was called upon in that case. Indeed, it is clear to us that the Court of Appeal in *O'Shea* simply could not have addressed the issue of jurisdiction because at that time the civil and criminal jurisdiction of the High Court was fused pursuant to s 16 of the 1873 Judicature Act. The appellant is correct that the High Court of Justice's original civil and criminal jurisdiction was *then* not split and therefore it was unlikely that the court in *O'Shea* was

alive to the significance of the divide between the court's civil or criminal jurisdiction. The most that can fairly be said is that the Court of Appeal was certainly aware of the dichotomy in s 47 of the 1873 Judicature Act that made criminal matters non-appealable, and civil matters appealable. But that appears to be a matter of appellate jurisdiction, and not the High Court's original civil or criminal jurisdiction.

81 Even if it could be inferred from the English Court of Appeal's classification of criminal contempt as a non-appealable criminal matter that the contempt was therefore a "criminal cause or matter" for the purposes of the *High Court's original* criminal jurisdiction as set out in the 1907 Ordinance, we would have doubts as to whether this means of distinguishing between criminal and civil matters is a principled one. The academic commentary on the approach of the courts at that time suggests that the English Court of Appeal strained to find that a civil contempt had been committed in order to engage its appellate jurisdiction. Thus, paras 1-74 and 1-75 of Patricia Londono (editor-in-chief), *Arlidge, Eady and Smith on Contempt* (Sweet & Maxwell, 5th ed, 2017) state:

> **VI. Other Nineteenth Century Developments**
>
> **A. The appellate jurisdiction**
>
> Prior to 1875 the law of contempt had developed piecemeal in the different common law courts and in the Court of Chancery. The Judicature Acts of that year unified the structure of the courts and provided for appeals in cases other than in any criminal cause or matter to the Court of Appeal. This court could therefore consider decisions made by judges of the High Court on an application for leave to issue an attachment or committal, including in some cases which would nowadays be classified as concerning criminal contempt. This jurisdiction afforded the court an opportunity to soften the rigour of some of the older contempt cases. However, the tentative manner in which the court sought to discriminate between them led to a confusing distinction between technical and real contempts, which long bedevilled the definition of the actus reus of contempt.

> **One of the other main sources of confusion over the next century was that the Court of Appeal strained the definition of civil contempt to a considerable extent in order to ensure that they had jurisdiction to hear a case.** Since 1960 when the Administration of Justice Act gave a right of appeal in criminal cases also, such strained constructions are no longer necessary. In the result, the courts began to stress the quasi-criminal nature of most civil contempts to the point where the distinction between the two kinds of contempt has sometimes been said to have disappeared.
>
> [emphasis added in bold; internal citations omitted]

82 This commentary suggests that the distinction drawn between civil and criminal contempt may not always have been based on principle. Or if it was, it was based on a principle that even English law by 1960 considered to be outdated, because the Administration of Justice Act 1960 allowed both civil and criminal contempt to be appealed. In our view, there is no utility to be had from reviving this outdated distinction and giving it such importance in the analysis. Indeed, the differences between the two categories of contempt have considerably narrowed to the point that they are virtually indistinguishable in the three material aspects we identified above at [59] to [61]. The *modern* law of contempt, therefore, does not purport to attach such weight to the classification of civil and criminal contempt as would justify their different juridical treatment.

(3) It is incongruous to require service of committal papers in compliance with O 11 if service does not establish jurisdiction

83 Further, if the AG is correct that criminal contempt cases are founded on the court's criminal jurisdiction, we have difficulty accepting the AG's explanations as to why service in accordance with O 11 is still required. It is the AG's position that the ROC still governs the procedure for criminal contempt, and that service of originating process, as mandated by O 52 of the ROC, is still required. Service does not, however, have the function of conferring jurisdiction

on the courts, but merely notifies the alleged contemnor of the commencement of committal proceedings against him.

84 The AG traces the use of the ROC in cases of criminal contempt to the pre-independence decision of *Re Abdul Aziz's Application* (1962) 28 MLJ 64. In that case, two originating motions were filed against two alleged contemnors to show cause why writs of attachment should not issue against them. The alleged contemnors applied to set aside the notices of motion on account of various procedural defects. The motions were set aside by Rose CJ on the ground that applications for attachment for contempt could not be made without leave, but such leave had not been granted (at 66D).

85 The relevant procedural rules at the time were the Civil Procedure Rules of the Supreme Court 1934 (GN No S 2941/1934) ("RSC 1934"). Rose CJ considered that the contemnors were accused of criminal contempt, but this was no bar to the RSC 1934 applying, even though the heading of the rules stated that they were the "Civil Procedure Rules", thus implying they did not govern criminal matters. Even in England, the procedural rules for contempt were the Rules of the Supreme Court (at 66G). That said, the fact that the contempt alleged was criminal contempt meant that Order XLII Rule 1 of the RSC 1934, which was analogous to Order 44 Rule 2 of the English Rules of the Supreme Court 1883 (SI 1883 No 5009) (UK) ("English RSC 1883") did not apply (at 66I). Instead, Rose CJ relied on a savings clause, Preliminary Rule 2, which permitted reference to the English RSC 1883 where the RSC 1934 was silent, to conclude that O 59 r 26 of the English RSC 1883 applied instead. Order 59 r 26 of the English RSC 1883 required that leave be obtained. The failure to obtain leave was thus fatal and the motions were accordingly set aside: at 67B.

86 The AG relies on *Re Abdul Aziz* to argue that the reason why civil procedure rules govern applications for criminal contempt in Singapore today is because of the judicial pronouncement in *Re Abdul Aziz*; and not because the jurisdictional basis to try criminal contempt is to be found in s 16(1) of the SCJA or any of its legislative precursors.

87 In our view, *Re Abdul Aziz* does not support the AG's submission. There was no discussion in *Re Abdul Aziz* whether Rose CJ in setting aside the motions did so because the failure to obtain leave was a failure to give proper notice of proceedings for attachment for contempt, as the AG suggests; or a more fundamental failure – that without proper service the court had no jurisdiction whatsoever, as the appellant would suggest. *Re Abdul Aziz* itself does not answer this question. Both explanations are equally plausible. The AG therefore cannot derive any assistance from *Re Abdul Aziz*.

88 The AG also refers to the decision in *R v The Council of the Metropolitan Borough of Poplar* [1922] 1 KB 95 which involved a failure to serve the rule *nisi* for attachment on a number of individuals. The Court of Appeal considered that this was a flaw in the proceedings, because "it is common justice that, where individuals are to be charged with contempt and threatened with attachment, they should have the opportunity of exculpating themselves": at 108. That said, the Court of Appeal considered that this irregularity could be waived, and indeed it was waived by the individuals choosing to appear in the proceedings: at 108.

89 The AG suggests that the very fact of a waiver means that service only had the function of notice. But this conclusion also does not follow. It could equally mean that although personal jurisdiction had not been properly established because of the failure to serve the rule *nisi*, nevertheless jurisdiction

was established because the individuals submitted to the jurisdiction of the court by appearing before the court and addressing the court.

90 Quite apart from the absence of authority to support the point that service merely has the function of notice, we also consider it incongruous with the general body of criminal procedure that committal papers for criminal contempt, which on the AG's case ought to be considered a form of criminal process, are required to be served in accordance with O 11 of the ROC.

91 First, there is the incongruity that arises from the fact that the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") governs the procedure for criminal proceedings in respect of the general body of criminal offences, whereas on the AG's case, criminal contempt stands apart from the general body and its procedure falls to be administered under the civil procedure rules set out in the ROC. Indeed, as the appellant rightly points out, O 1 r 2 of the ROC expressly excludes the application of the Rules to "criminal proceedings", which fall within the purview of the CPC instead. There has been no satisfactory explanation as to why criminal contempt, if it is truly to be considered part of the general body of criminal law, makes use of *civil* procedure instead.

92 Second, on the AG's case that criminal contempt is premised on the court's criminal jurisdiction, it should not be overlooked that in the present case, we are concerned with service of the committal papers *outside* jurisdiction. As the jurisdiction to try criminal offences is territorial in nature (subject to some limited exceptions which do not apply here), service of criminal process is likewise territorial in nature and governed by the CPC. Indeed, if service of criminal process was not territorial in nature and criminal process could always be served extraterritorially, then s 15 of MACMA would never have had to be enacted. Section 15 provides thus:

> **Assistance in service of process**
>
> 15. The Attorney-General may request the appropriate authority of a foreign country to assist in effecting service of any process where the Attorney-General is satisfied that, for the purposes of, or in connection with, any criminal matter in Singapore, it is necessary or desirable to serve that process on a person or authority in that country.

93 The AG's case, however, requires us to accept that service of process for criminal contempts stands as an exception to the territorial limits of service of criminal process, because O 52 empowers the AG to serve process for criminal contempts out of the jurisdiction if any of the scenarios in O 11 is satisfied. But this does not logically follow from the premise of his case, which is that criminal contempts are like other criminal offences, for which criminal process cannot be served outside the jurisdiction. This, too, is an incongruity that has not been adequately explained.

94 Third, on the AG's case, it is curious that it is still necessary to satisfy the requirements in O 11 for service out, even for the limited purpose of notification. This submission ignores the purpose behind the clearly demarcated scenarios in O 11 which this Court explained in *Burgundy Global Exploration Corp v Transocean Offshore International Ventures Ltd and another appeal* [2014] 3 SLR 381 ("*Burgundy*"). There, we observed that the effect of service in compliance with O 11 is that the Singapore court takes jurisdiction over a person outside Singapore's territory. This is considered to be an exorbitant jurisdiction as the foundation for a court's jurisdiction is primarily territorial. Considerations of international comity therefore enter the picture and require that the scenarios in O 11 be carefully delimited and defined. We observed the following (at [93]):

> Indeed, in our judgment, *service* is the crucial act that engages the court's jurisdiction over a foreign person. As a matter of Singapore law, personal jurisdiction may be found when the

> putative defendant is physically within the jurisdiction at the time the writ is served on him … or when the requirements stipulated in O 11 of the ROC have been met and leave has been given for a writ to be served on a defendant not physically within the confines of Singapore. Further, as Lord Diplock said in *Amin Rasheed Shipping Corporation v Kuwait Insurance Co* [1984] AC 50 (at 65–66):
>
> > My Lords, the jurisdiction exercised by an English court over a foreign corporation which has no place of business in this country, as a result of granting leave under R.S.C. Ord. 11, r 1(1)(f) for service out of the jurisdiction of a writ on that corporation, is an **exorbitant jurisdiction**, *i.e.*, it is one which, under general English conflict rules, an English court would not recognise as possessed by any foreign court in the absence of some treaty providing for such recognition. **Comity thus dictates that the judicial discretion to grant leave under this paragraph of R.S.C., Ord 11, r. 1(1) should be exercised with circumspection in cases where there exists an alternative forum** …
>
> [emphasis added in bold]

95 On the AG's suggested approach, the court already has jurisdiction by virtue of the fact that the alleged offence was committed in Singapore. As it is not assuming jurisdiction over a person located outside its territory, there should thus be no concern of impinging upon the sovereignty and authority of another State, which considerations of international comity would require be carefully circumscribed by the defined scenarios set out in the various limbs of O 11 r 1. The mere giving of notice ought not to offend a foreign sovereign; there is no exercise of authority involved in giving notice. The situation stands entirely outside the conflict rules concerning the court's jurisdiction which undergird the existence of O 11 itself, as the extract from *Burgundy* above makes clear. Thus compliance with O 11 of the ROC should be entirely unnecessary on the AG's case.

The statutory basis for the High Court's jurisdiction to hear a contempt

96 Having considered the significant difficulties posed by the AG's approach, we turn now to consider the appellant's argument that personal jurisdiction over a contemnor is established under s 16 of the SCJA.

97 We state at the outset that we prefer the appellant's approach that the substantive *subject-matter* jurisdiction to hear and try contempt is based on the court's *inherent* jurisdiction, while *personal* jurisdiction over a foreign contemnor falls to be established under the procedures specified in s 16 of the SCJA read with O 11 of the ROC.

(1) Subject-matter jurisdiction: the inherent jurisdiction of the High Court to hear contempt

98 In *Aurol*, we discussed the Supreme Court's jurisdiction to punish for contempt. We stated that this jurisdiction was an *inherent* one, and that s 7(1) of the SCJA, which statutorily expresses the High Court's and the Court of Appeal's power to punish for contempt of court, merely preserved that inherent jurisdiction to protect the court's own process and authority by proceeding on its own motion in cases where its authority is threatened or undermined: at [59]. We noted that the judicial power of Singapore is vested in Singapore by virtue of Art 93 of the Constitution, which reads:

> The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force.

99 And we considered that it was a necessary corollary of the judicial power being vested in the court that the court is able to act within its inherent jurisdiction and on its own authority in the administration of justice by exercising its powers to punish for contempt: *Aurol* at [64].

100 We acknowledge that our decision in *Aurol* was given before our later decision in *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 ("*Re Zero Nalpon*"), where we drew a distinction between the courts' inherent jurisdiction and inherent powers. But we do not think that our decision in *Re Zero Nalpon* alters the substance of our decision in *Aurol* that the substantive subject-matter jurisdiction of the court to hear and punish for contempt lies within our *inherent jurisdiction*.

101 In *Re Zero Nalpon*, we clarified the conceptual difference between the "jurisdiction" of a court, and the "power of a court", and stated that the jurisdiction of a court is "its authority, however derived, to hear and determine a dispute that is brought before it", whereas the "powers" of a court "constitute its capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute": *Re Zero Nalpon* at [31], citing *Muhd Munir v Noor Hidah* [1990] 2 SLR(R) 348. We considered that this distinction was reflected in the structure of the SCJA itself – ss 16 and 17 of the SCJA set out the circumstances in which the High Court is seized of *jurisdiction* in relation to civil matters, whereas s 18 SCJA sets out what the High Court is *empowered* to order to give effect to its determination: *Re Zero Nalpon* at [32].

102 We then considered the "inherent jurisdiction" of the court and described it in the following terms:

> 33 Given that the "jurisdiction" and "power" of the courts are two different and distinct concepts, what then is the difference between the "inherent jurisdiction" and "inherent powers" of the courts? The term "inherent" simply refers to the *source* of the jurisdiction and power (this source being the fact that the High Court and Court of Appeal in their very nature being superior courts of law), and should make no difference as to their conceptual distinctiveness. As such, in Goh Yihan, "The Inherent Jurisdiction and Inherent Powers of the Singapore Courts: Rethinking the Limits of their Exercise" [2011] SJLS 178, the author quite rightly states that the terms "inherent

> jurisdiction" and "inherent powers" should mean different things, the former being the court's inherent authority to hear a matter, while the latter being its inherent capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute.
>
> 34 While this conceptual difference may apply to the "actual" jurisdiction and power of the courts, we find that they do not apply to the "inherent" jurisdiction and power of the courts. In our view, the so-called inherent jurisdiction of the court is in fact no more than the exercise by the court of its fund of powers conferred on it by virtue of its institutional role to dispense justice, rather than an inherent "authority" to hear and determine a matter …

103 In our view, the conceptual framework we set out in *Re Zero Nalpon* as regards the distinction between a court's "jurisdiction" and "power" is correct. That having been said, it is necessary for us to explain why this distinction does not impact on our decision in this case.

104 In our view, it is appropriate to say that the High Court and the Court of Appeal possess an *inherent jurisdiction* – and *not only* inherent *powers* – to hear and punish cases of contempt. This is because the High Court and the Court of Appeal have an inherent *authority*, derived from their status as superior courts of law, to hear cases of contempt of court. In *Re Zero Nalpon*, this court questioned the use of the expression "inherent jurisdiction" in cases where the court was *already seized* of jurisdiction to hear a dispute, and was merely exercising powers to make certain orders or grant certain reliefs in the action: *Re Zero Nalpon* at [36]–[40]. Under those circumstances, we held that "it would be inaccurate to state that the court had to invoke an inherent 'jurisdiction' to give the authority to determine the dispute": at [36]. We do not question the correctness of those observations. But the jurisdiction to try cases of contempt stands apart from those cases.

105 In our judgment, it is clear that certain categories of contempt do not depend on the existence of pending proceedings before the court can make a finding of contempt. The present category, scandalising contempt, is a case in point. A scandalising contempt can be committed by a stranger to any proceedings before the courts, and can be directed not at any particular court or judge hearing a pending dispute, but at the institution of the judiciary in general. Thus, when a court punishes such a contempt, it is not merely exercising a power to punish, which is correctly termed a "power", but is also acting on its inherent authority to hear and decide such a matter. Not having been seized of jurisdiction in respect of this contemnor, the court can only exercise its *powers* to punish such a contemnor if it has *authority* over the conduct complained of as well as the individual who made that contemptuous statement. It is right to say that the court has the authority to hear the contempt: the power to punish in such a scenario is not directed towards ensuring compliance by a party with its orders in a pending or decided matter and thus does not emerge out of proceedings in which the court is *already seized* of jurisdiction, but rather is premised on the court's interest in ensuring that the proper administration of justice is protected, which in turn lies within the particular province of the courts as the institution in which the State's judicial power is vested.

106 The question that follows is whether those categories of contempt that arise out of pending proceedings before the courts, for example, disobedience of court orders in pending litigation, also fall within the court's inherent jurisdiction. We consider that they do as well, because the categories of contempt, whether civil or criminal, share the same unitary aim of protecting the proper administration of justice, and it is to assist the judiciary in discharging its primary duty of maintaining a fair and effective administration of justice that the law of contempt as a whole exists.

107 Similar observations have also been expressed in the case law. In *R v Lefroy* (1873) LR 134 (QB), the Court of Queen's Bench observed thus (at 137):

> The power to commit for contempt is fully gone into by Blackstone and Hawkins; but though this power is recognised in the superior courts, it is nowhere said that an inferior court of record has any power to proceed for contempt out of court; and there is an obvious distinction between the superior courts and other courts of record. **In the case of the superior courts at Westminster, which represent the one supreme court of the land, this power was coeval with their original constitution, and has always been exercised by them.** These courts were originally carved out of the one supreme court, and are all divisions of the *aula regis*, where it is said the king in person dispensed justice, and their power of committing for contempt was an emanation of royal authority, for any contempt of the court would be a contempt of the sovereign. [emphasis added in bold]

108 Similarly, in *Seaward v Paterson* [1897] 1 Ch 545, which the Court in *Aurol* considered, the English Court of Appeal made clear that it was acting on the basis of its own inherent right to punish conduct that obstructs the course of justice in finding that a stranger to the litigation who had aided and abetted a breach of an injunction was in contempt of court. Rigby LJ observed at 559–560:

> … I entirely dissent from the suggestion that when once the Court is seised of the matter any party to the action can exercise any influence whatever. **The Court acts upon its own jurisdiction and upon its own authority, though doubtless it would have due regard to the wishes and feelings of the person who has brought the matter before it** …. [emphasis added in bold]

109 More recent pronouncements of the law share the same view. In *Gilbert Ahnee and others v Director of Public Prosecutions* [1999] 2 AC 294 ("*Ahnee*"), the question that came before the Judicial Committee of the Privy Council was whether the Supreme Court of Mauritius had an inherent power to punish for contempt, when the Constitution of Mauritius contemplated the enactment of a

law conferring such power on the Supreme Court, but no such law had been enacted by the legislature. The Board concluded that there was such an inherent power, stating the following (at 303D):

> … **in order to enable the judiciary to discharge its primary duty to maintain a fair and effective administration of justice, it follows that the judiciary must as an integral part of its constitutional function have the power and the duty to enforce its orders and to protect the administration of justice against contempts which are calculated to undermine it**. A similar point was well expressed by the majority of the Canadian Supreme Court in *MacMillan Bloedel Ltd. v. Simpson* [1995] 4 S.C.R. 725. The context was the constitutionality of the power to punish for contempt. Speaking for the majority Lamer C.J. observed, at p. 754:
>
> > "**The core jurisdiction of the provincial superior courts comprises those powers which are essential to the administration of justice and the maintenance of the rule of law. It is unnecessary in this case to enumerate the precise powers which compose inherent jurisdiction**, as the power to punish for contempt ex facie is obviously within that jurisdiction. The power to punish for all forms of contempt is one of the defining features of superior courts. The in facie contempt power is not more vital to the court's authority than the ex facie contempt power.
>
> [emphasis added in bold]

Although the Board in *Ahnee* spoke of an inherent "power", it is clear to us that it was actually referring to the inherent jurisdiction of the court; the distinction between jurisdiction and power has not always been recognised or appreciated, and it was not material to the decision in *Ahnee*. In fact, the decision of the Canadian Supreme Court cited by the Board makes specific reference to an "inherent jurisdiction". It seems to us that the terms were used interchangeably in *Ahnee*.

110 Similar pronouncements have been expressed by other leading common law courts – see the decision of the High Court of Australia in *Re Colina and*

another, ex parte Torney [1999] 200 CLR 386 (at 395) and the decision of the Indian Supreme Court in *E M Sankaran Namboodripad v T Narayanan Nambiar* (1970) 2 SCC 325 (at [6]).

111 The weight of judicial authority is thus clearly to the effect that the authority of the High Court and Court of Appeal to hear contempt cases is *inherent* to their very existence as the institutions in which the judicial power of the State is vested, and the institutions charged with safeguarding and superintending the proper administration of justice.

112 We recognise that s 7 of the SCJA sets out the power of the High Court and the Court of Appeal to punish for contempt, and thus places that power on a statutory footing. But, as we have held in *Aurol*, s 7 merely *preserves* the inherent jurisdiction. In our view, the inherent jurisdiction remains, and s 7 is merely an additional and sufficient basis for the power to punish for contempt. Section 7 of the SCJA *confers* jurisdiction on the High Court and the Court of Appeal to hear and punish for contempt, but it does not *create* the jurisdiction, which has always existed. Indeed, we note that the Privy Council in *Ahnee* essentially arrived at the same view when it observed that the superior courts of Mauritius had an inherent power to punish contempt, but that s 15 of the Courts Act (Law of Mauritius, 1996 rev, vol 2), which also sets out a power to punish for contempt, was an "additional and sufficient basis" to punish for contempt: at 305B.

113 Further, although the Court in *Re Zero Nalpon* stated that the jurisdiction of the courts is purely statutory (at [20]), we think that it follows from our analysis above that the law of contempt stands as an exception to that general rule. It is an exception because the courts' jurisdiction to hear and punish for contempt is, as the above authorities make clear, a natural and immutable

consequence of its existence as the institution charged with the role of administering and dispensing justice, and thus the jurisdiction came into existence upon courts themselves being created, at least so far as the High Court and the Court of Appeal as superior courts of law are concerned.

(2) Personal jurisdiction over the individual contemnor: s 16 SCJA

114 Having established that the High Court's *subject-matter* jurisdiction to hear and punish for contempt is an *inherent* one that also finds expression in s 7 of the SCJA, we turn now to consider the question how the court assumes *personal* jurisdiction over a foreign contemnor.

115 In our judgment, it is proper service that establishes jurisdiction over a foreign contemnor. Thus, jurisdiction over a foreign contemnor is established where service has been made in accordance with s 16 of the SCJA read with O 11 of the ROC. There are several reasons for this determination.

116 First, it is apparent to us that civil procedure and processes have always been relied on to establish jurisdiction over any contemnor, whether the contempt complained of is civil contempt or criminal contempt. The current iteration of the ROC, the 2014 Revised Edition, sets out the procedure in respect of contempt in O 52, which requires that in all cases of contempt, the *ex parte* originating summons or, if there are pending proceedings, a summons, and other documents set out therein must be "served personally on the person sought to be committed". As a matter of plain statutory language, O 52 makes no distinction between civil and criminal contempt. Service of originating process is an integral mode of commencing *civil* proceedings and, with limited statutory exceptions, forms the foundation of the court's civil jurisdiction. It therefore

follows that it is the civil jurisdiction of the court that is engaged where personal jurisdiction is sought to be established over the contemnor by such service.

117 The AG argues that it has not always been the case that originating process had to be personally served on the contemnor, and thus service of originating process cannot establish personal jurisdiction over the contemnor, thereby calling into question whether it is truly the court's civil jurisdiction that is engaged. In this regard, the AG points out that pursuant to O 52 r 3(3) of the Rules of the Supreme Court 1970 (GN No S 274/1970) ("RSC 1970"), only the committal application, statement and supporting affidavit had to be served, but not the leave application. It was only in the Singapore Rules of Court 1996 (GN No S 71/1996) that O 52 r 3(4) required that the leave application also be personally served, and it was only in 2005 that the leave application came to be made by *ex parte* originating summons.

118 We do not think that this argument takes the AG very far. The AG is incorrect that originating process did not have to be served in the past. Order 52 r 3(1) of the RSC 1970 required that the application for an order of committal be made by motion to the Court. Order 52 r 3(3) in turn required that the notice of this motion be served personally on the alleged contemnor. Unless the contempt is committed against the backdrop of pending proceedings, the notice would be of an *originating* motion, and thus service of such notice of motion amounts, in our view, to service of a type of originating process: see O 5 r 1 and O 8 r 2 of the RSC 1970. Indeed, IH Jacob *et al*, *The Supreme Court Practice 1970* (Sweet & Maxwell, 1969), in commenting on the English Rules of the Supreme Court 1965 (SI 1965 No 1776) (UK), on which our RSC 1970 was modelled, observed that an application for an order of committal for contempt of court where there are no pending proceedings was a type of case "in which the use of an originating motion is compulsory" (at pp 56–57). This is similarly

reflected in the predecessor provision to O 52 r 3(3) as well, because O 59 r 26 of the English Rules of the Supreme Court 1962 (SI 1962 No 2145) (UK) also required personal service of a "notice of motion", and that notice of motion was described as an "*originating* notice of motion" [emphasis added]: see IH Jacob *et al*, *The Annual Practice 1965* (Sweet & Maxwell, 1964) at pp 81–82. The sum result, therefore, is that originating process has always had to be served, contrary to the AG's submissions. There has only been a change in *nomenclature*, but no change in *substance*.

119 Further and in any event, it is the case that service of originating process *is now required*, as even the AG himself accepts, because the leave application that is required to be served pursuant to O 52 r 3(4) of the ROC is made by way of *ex parte originating summons*. The parties also confirmed before us in the oral hearing that all the necessary documents had been served on the appellant. Thus, whatever might have been the position in the past, the present requirement is certainly one that requires service of originating process and is aligned with the procedure for establishing the court's civil jurisdiction.

120 Second, it appears to us that founding jurisdiction on service is a better explanation for the AG's own position that service in accordance with O 11 is required. As we noted above at [91], we find it difficult to see why service is required merely to give notice when no such procedure is used in respect of other criminal offences. Conversely, it is easy to understand why compliance with O 11 is required if the appellant's case that service establishes jurisdiction is accepted. Taking jurisdiction over a person outside the territorial boundaries of a state is considered an "exorbitant" one, and considerations of international comity have to be taken into account, which requires the limbs of O 11 to be carefully delimited and defined: see the extract from *Burgundy* we cited above

at [94]. Thus, compliance with O 11 serves that purpose of supporting comity between Singapore and other countries.

121 Third, we consider that adopting a unified procedure for establishing jurisdiction over a foreign contemnor *via* s 16(1) of the SCJA read with O 11 of the ROC for both civil and criminal contempt reflects our view that there is no real reason in principle to distinguish between civil and criminal contempt; both are quasi-criminal in nature, and the law of contempt properly rests on a *sui generis* jurisdiction. Once it is accepted that civil and criminal contempt are in fact more alike than not, then it makes eminent sense both in principle and in practice for the same statutory basis and procedure to be adopted to establish personal jurisdiction.

122 We would also observe that the approach we have just set out coheres, in any event, with the law as it is now structured under the Administration of Justice (Protection) Act 2016 (No 19 of 2016) ("AOJPA"). This Act is not before us, but we would briefly observe that the AOJPA dispenses with the labels of "civil" and "criminal" contempt, which is consistent with our analysis that they do not have substantive significance. Instead, as the Explanatory Statement to the Bill introducing the AOJPA makes clear (the Administration of Justice (Protection) Bill 2016 (No 23 of 2016)), the intention was to adopt a "*sui generis* approach to classification of contempt proceedings". Further, the *jurisdiction* of the High Court and Court of Appeal to hear and punish for contempt, and not just the *powers* to do so, are now placed on a statutory footing in the Act, although we would also parenthetically note that this does not mean the courts' inherent jurisdiction to hear these cases is thereby rendered nugatory. The Explanatory Statement also acknowledged this, in stating that the presence of the expression "have jurisdiction to try" in cl 10 of the Bill – now s 10 of the

Act – "*recognises*" the existing state of affairs that the courts of record have jurisdiction to try and power to punish for contempt.

123 To be clear, we do not by this judgment *abolish* the labels of "civil" and "criminal" contempt that have formed an established part of the common law; the labels may still be useful for taxonomical purposes. Further, insofar as there may be distinctions between these two areas of law, we do not exclude the possibility that there may well be material differences relevant to the determination of a future case, although it seems reasonable to expect their use in actual litigation to decline inasmuch as future proceedings commenced under the AOJPA will not adopt this classification. So far as the present case is concerned, however, we consider that the jurisdictional basis for the law of contempt is *sui generis*, and does not cleave cleanly into either the civil or criminal jurisdiction of the High Court.

Issue 2: service in accordance with O 11 of the ROC

124 We turn then to consider whether service on the appellant was properly effected under one of the limbs set out in O 11 of the ROC. Before we do so, it should be pointed out that there are at least four reported decisions where the courts have tried cases of contempt and imposed penalties on foreign contemnors – see *Attorney-General v Zimmerman Fred and others* [1985–1986] SLR(R) 476 ("*Zimmerman*"), *Attorney-General v Wain Barry J and others* [1991] 1 SLR(R) 85 ("*Wain Barry*"), *Attorney-General v Lingle and others* [1995] 1 SLR(R) 199 ("*Lingle*") and *Hertzberg*. However, the question whether leave to serve outside jurisdiction was correctly granted was not challenged in *Zimmerman*, *Wain Barry* or *Lingle.* As such, there was no discussion in these three cases whether and which limb of O 11 was engaged for such service. It was only in *Hertzberg* that the AG sought leave to serve the committal papers

on the foreign contemnors under O 11 r 1(*n*) and (*p*). Leave was granted only under limb (*n*). As leave was granted on an *ex parte* basis, no detailed grounds were provided to explain why limb (*n*) was satisfied. Notably, service in *Hertzberg* was subsequently challenged by two of the defendants not on the basis that limb (*n*) was not applicable but rather because they claimed that they were not responsible for the publication of the contemptuous article. In the circumstances, the validity of service out on foreign contemnors like the appellant will be explored in this judgment with fresh eyes.

125 The AG relies on four limbs. We will consider each of them in turn.

O 11 r 1 (t)

126 We consider limb (*t*) first. We state at the outset that this limb plainly does *not* apply.

127 For convenience, we set O 11 r 1(*t*) out in full:

> **Order 11**
>
> **SERVICE PROCESS OUT OF SINGAPORE**
>
> **Cases in which service out of Singapore is permissible (O. 11, r. 1)**
>
> **1.** Provided that the originating process does not contain any claim mentioned in Order 70, Rule 3(1), service of an originating process out of Singapore is permissible with the leave of the Court if in the action –
>
> …
>
> (*t*) the claim is for an order of committal under Order 52 (whether or not, apart from this paragraph, an originating summons containing such a claim can be served out of Singapore under this Rule).

128 Order 11 r 1(*t*) only came into effect from 1 October 2017, after the appellant allegedly committed the contempt on 15 July 2017.

129 The AG's case is that limb (*t*) has retrospective effect. It is only a procedural rule, and the general rule at law is that procedural enactments can apply retrospectively to pending and future enactments, on the authority of this Court's decision in *ABU v Comptroller of Income Tax* [2015] 2 SLR 420 ("*ABU*"). Although it is true that legislation resulting in unfairness is presumed not to apply retrospectively, no unfairness is caused to the appellant because allowing limb (*t*) to apply retrospectively will not "remove or impair vested rights", nor "create new obligations and duties in respect of past transactions".

130 The appellant, for his part, argues that the AG has no right to rely on limb (*t*) at all before this Court, because the AG expressly disavowed it below. In any event, the appellant disagrees that limb (*t*) only has the character of a procedural rule; it instead has substantive effects in the sense that it expands this court's jurisdiction extraterritorially where previously there was no such jurisdiction.

131 The relevant principles governing the retrospective application of legislation were set out in our decision in *ABU*. There are broadly two steps. First, the purposive approach to statutory interpretation is applied to determine the temporal application of the legislation: *ABU* at [76]. This entails a "single overarching inquiry" as to parliamentary intent, which is to be found in the words of the law, its context, and the relevant extrinsic aids to statutory interpretation. Second, it is only if ambiguity still persists that recourse may be had to the various presumptions. So far as presumptions in relation to retrospectivity are concerned, this Court endorsed Lord Mustill's observations in *L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd* [1994] 1 AC 486, where his Lordship noted that the basis for the presumption against retrospectivity was "simple fairness": *ABU* at [73] and [76]. Fairness, in turn, would depend on an assessment of several factors including the degree of

retrospective effect (at 526A), the purpose of the legislation, and the hardship of the result, amongst others (at 527D–E).

132 On the first step, it appears likely that limb (*t*) was intended to have only prospective application. The appellant's case is that this must be so since limb (*t*) was enacted by way of the Rules of Court (Amendment No 3) Rules 2017 (GN No S 543/2017) ("*ROC Amendment 543/2017*"), to supplement the newly-enacted AOJPA. In this regard, it is telling that the amendments took effect on 1 October 2017, the same day the AOJPA also came into force. It is no coincidence that s 35(1) of the AOJPA specifically provides that "This Act does not apply to any act of contempt of court committed before the appointed day".

133 Further, assuming there is any ambiguity, we turn to examine the question of fairness under the second step. In our judgment, it would be unfair for limb (*t*) to apply retrospectively. Following from our determination on Issue 1 concerning jurisdiction above, proper service in accordance with some limb in O 11 r 1 of which for present purposes the material limb is (*t*), is necessary to establish jurisdiction over the appellant. The corollary to this is that if (*t*) was not in force at the time the appellant committed the alleged contempt, then the court would not have jurisdiction over the appellant by virtue of service pursuant to that limb. To find that limb (*t*) applies retrospectively would be to open the appellant to a liability for which he was not previously liable. We consider that this constitutes unfairness, particularly in light of the *penal* consequences that may follow upon a finding of contempt.

134 We do not think that it was ever contemplated that a person's liberty could be placed at stake through a mere procedural enactment by way of an amendment to the ROC. No material has been put before this Court to suggest that this specific outcome was intended, nor even contemplated as a possibility.

In these circumstances, the high degree of unfairness caused if limb (*t*) were to apply retrospectively, and the apparent casualness with which (*t*) was introduced, suggests that limb (*t*) was never intended to have that effect.

135 The conclusion is the same whether limb (*t*) is classified as being either "procedural" or "substantive" in nature. The AG says that the appellant's vested rights are unaffected by (*t*) applying retrospectively. Thus, it only has procedural character. That may be true if "rights" are read narrowly. But an enactment expanding one's liability is something which has a more substantive character: this Court in *ABU* observed at [65] that "procedural statutes regulate the pursuit of remedies while substantive statutes are those which define the rights and *liabilities* of parties that give rise to those remedies". So, viewed from the perspective of the appellant's *liabilities*, limb (*t*) would have the effect of conferring jurisdiction over an alleged contemnor – and opening him to liability for contempt – if this was not previously possible under any other limb.

O 11 r 1(p)

136 We turn then to consider O 11 r 1(*p*). In our view, this limb is a non-starter. O 11 r 1(*p*) reads:

> (*p*) the claim is founded on a cause of action arising in Singapore

137 The appellant's essential point is that an application to commit for contempt is not a "cause of action". We agree. In *Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd* [2016] 2 SLR 1, we stated that a "cause of action" is the essential factual material that supports a claim: at [34]. In that same decision, we charted the history of this definition and noted its use in a variety of civil cases: see [34]–[36].

138 The AG's submission ignores the fact that a cause of action is generally used to describe a claim brought in *civil* proceedings. As our examination above demonstrates, an application for committal is quite unlike civil proceedings, but rather is quasi-criminal in nature. An O 52 statement is akin to a charge; the standard of proof is not the civil standard on the balance of probabilities, but the criminal standard of proof beyond a reasonable doubt; and the court in punishing a contempt is empowered to order the contemnor's imprisonment or fine, both of which are *penal* orders and not civil reliefs or remedies: see above at [59]–[61]. Indeed, the AG was unable to cite to us an authority where "cause of action" has been used in a criminal or more pertinently, *quasi*-criminal setting. O 11 r 1(*p*) is clearly not applicable.

O 11 r 1(s)

139 The AG also suggests that O 11 r 1(*s*) might serve as a separate basis to serve out. That limb reads:

> (*s*) the claim concerns the construction, effect, or enforcement of any written law

140 The AG relies on s 7(1) of the SCJA as the relevant "written law" which we set out below:

> **Contempt**
>
> **7.**—(1) The High Court and the Court of Appeal shall have power to punish for contempt of court.

141 The AG's view is that "enforcement" of a written law simply means the "application of a written law to a set of facts". Here, s 7 will be applied when the sanctions of either imprisonment or a fine are ordered in respect of a person guilty of contempt. To put it another way, the sanctions are imposed *via* a committal order. The committal order is governed by O 52 which provides that

the "power of the Court … to punish for contempt of Court may be exercised by an order of committal in Form 109". Thus, a committal application is a claim which "concerns the … enforcement" of s 7.

142 We do not accept the AG's arguments. In our view, it is incongruous to speak of the enforcement of a *power-conferring* provision. As noted in *Civil Procedure 2018: Volume I* (Foo Chee Hock, gen ed) (Sweet & Maxwell, 2018) at para 11/1/43, limb (*s*) is based on Australian provisions. The appellant also notes the similarity between limb (*s*) here, and O 8 r 2(13) of the Australian Federal Court Rules 1979 (Cth) ("the Federal Court Rules 1979"), which permits service out where the proceeding is "in relation to the construction, effect, or enforcement of an Act, regulations or any other instrument having, or purporting to have, effect under an Act". As the provision is essentially in *pari materia*, the Australian cases will be helpful in interpreting limb (*s*) here.

143 The appellant cites three Australian cases where leave to serve out was granted under the Australian equivalent of limb (*s*). The appellant is correct that all three cases show that a claim concerns the enforcement of a written law only where (a) the legislation in question specifically prescribes that a particular claim or application may be made thereunder; or (b) the claim is brought on the basis of a contravention of particular provisions in that legislation.

144 The first case is *Amrad Operations Pty Ltd v Genelabs Technologies Inc* [1999] FCA 633. The claim was made under s 133(1) of the Australian Patents Act 1990 (Cth) ("the Patents Act"), which specifically provides that "[a] person may apply to [the Federal Court], after the end of the prescribed period, for an order requiring the patentee to grant the applicant a licence to work the patented invention" (at [8]). Leave was therefore granted to serve out as the proceeding concerned "the construction, effect or enforcement of an Act" (at [17]).

Although the court did not specifically state that the application involved an *enforcement* of the Patents Act, it appears to us that this was what the court meant. There was a specific application for an order to compel a patentee to grant the applicant a licence under the Act.

145 The next case is *Australian Competition and Consumer Commission v Prysmian Cavi E Sistemi Energia SRL (No 4)* [2012] FCA 1323 where the applicant sought declarations, injunctions, pecuniary penalties and other orders pursuant to ss 76 and 80 of the Trade Practices Act 1974 (Cth) ("TPA"), and various provincial Competition Codes, for the alleged contraventions of the TPA and the Competition Codes: at [1]. Various foreign companies had allegedly formed a cartel with respect to the supply of land cables and submarine cables: at [12]. The Federal Court ruled that O 8 r 2(13) of the Federal Court Rules 1979 applied. The court held that the "relief sought by the applicant, being injunctions and pecuniary penalties, is for the enforcement of an Act, being the TPA": at [62].

146 The third and final case is *Australian Competition and Consumer Commission v April International Marketing Services Australia Pty Ltd* [2009] FCA 735. This was also another case where the respondents were accused of price-fixing in contravention of the TPA. The Commission sought to "enforce the [TPA] by seeking declarations pursuant to s 21 of the Federal Court Act, injunctions under s 80(1) of the [TPA] and pecuniary penalties pursuant to s 76 of the [TPA] arising from alleged contraventions of s 45(2)(*a*)(ii) and s 45(2)(*b*)(ii) of the [TPA]": at [12]. Leave to serve out was granted on the basis of O 8 r 2(13): at [14].

147 These three cases support the appellant's point that a claim concerning the "enforcement" of any written law requires there to be a specific provision

under the relevant statute that gives the party itself a right to pursue a particular claim or application, or which prescribes a certain consequence upon the Act itself being contravened. Section 80 of the TPA, which refers to an "application for an injunction" is an example of the former; while s 76 TPA, which provides that the court may "order the person to pay … pecuniary penalty" upon a contravention of the provisions of the TPA, is an example of the latter. Section 7 of the SCJA, on the other hand, is nothing like either provision. It confers powers, not rights. And the powers are conferred on the court; not on the private litigant who claims the enforcement of them, unlike the rights given to a private litigant by the legislation which that litigant can rightly claim to enforce, as the Australian cases illustrate. We therefore do not consider s 7 of the SCJA to be the relevant "written law" for the purposes of limb (*s*).

148 In any event, there is another aspect of limb (*s*) that ought to be considered. The limb applies where the claim "concerns … the enforcement of any written law". The AG frames the claim as one for a committal order to punish the contemnor for contempt. In our view, even if s 7(1) might be construed to be the relevant written law, punishment for contempt – which is essentially what the AG claims – is not for the purpose of enforcing or compelling compliance with any written law. In the context of civil contempt, the punishment is to regulate the court's own processes to ensure compliance with its orders and directions, but those orders and directions are not "written law". And more fundamentally, whether one speaks of civil contempt or criminal contempt, the purpose of punishing for contempt is to protect the proper administration of justice, and to vindicate the courts' authority: see *Pertamina* at [23]; *Aurol* at [65]. These are interests that underlie the entire system of the administration of justice as a whole, and were not particular to nor

expressed in any written law prior to the AOJPA coming into force. This is an additional reason why we consider that limb (*s*) is not applicable.

O 11 r 1(n)

149 Finally, we turn to consider O 11 r 1(*n*) which is set out below for convenience:

> (*n*) the claim is made under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), the Terrorism (Suppression of Financing) Act (Cap. 325) or any other written law;

150 In our view, the AG's case is strongest on this ground. The AG again submits that the relevant written law for the purpose of limb (*n*) is s 7(1) of the SCJA. In oral submissions before us, the AG clarified that the practice of the AGC is to frame applications for committal as applications brought under O 52 of the ROC read with s 7(1). Thus presented, it appears to us that the claim is one brought under written law. The mere fact that the claim can be brought without invoking s 7(1) of the SCJA does not detract from the fact that the AG in this case, as with his practice in contempt cases generally, elected to frame his case under s 7(1) of the SCJA or its precursor. The relevant inquiry is therefore whether the AG is entitled to frame his case under s 7. If the answer is in the affirmative, then limb (*n*) would be satisfied.

151 Mr Vergis' first objection to this argument is that the law of contempt is not set out under written law to begin with, hence a claim under the court's power to punish for contempt fails at the first hurdle. In this regard, he cites this Court's decision in *Aurol*, where we observed at [31] that "Singapore's contempt of court law 'is based on common law and is an anomaly in our criminal justice system, as all our criminal laws are statute-based'"; and also

at [39] that the offence of criminal contempt is "a unique and anomalous one rooted in the common law".

152 In our view, this argument cannot succeed given that s 7(1) expressly sets out not only the power to punish for contempt, but moreover preserves the court's inherent jurisdiction to hear and punish contempt. Although the vast part of the law of contempt is set out in common law – and this is certainly true so far as the elements to make out a contempt are concerned, which this Court in *Aurol* was referring to – the power to punish for contempt, which is exactly what the AG claims under in his case, is set out in written law in s 7(1) of the SCJA.

153 Mr Vergis next makes an intuitively appealing point that the relevant written law should itself be the statutory provision setting out or creating the legal basis for the claim, or setting out the relevant elements for a claim. But limb (*n*), on its face, does not require such a narrow reading.

154 The point is that it is up to the applicant or the plaintiff, in this case the AG, how he wants to frame his claim. In our view, it is right to say that the AG's claim is brought under written law because the claim is for punishment which the written law, in this case s 7 of the SCJA, expressly empowers the court to order. This is not a case where a provision having no or only a very tangential relation to the claim is being relied upon as the relevant written law; in other words, the framing of the claim is not merely a matter of presentation with a peripheral reference to some written law. Section 7 of the SCJA is the relevant written law that expressly governs the scenario contemplated here – someone having committed a contempt – by providing for the power to punish the act; and it is that power that the AG makes a claim under.

155 Further, although it is true that the power to punish is vested in the courts, we note that this is *not* a case where the AG is claiming the power for himself. He is not arrogating to himself this power, which lies exclusively within the judicial province, because he is only making a claim *under* the written law. This is a distinction with a difference: the AG does not claim to exercise the power himself, but rather claims *under* the power that is to be exercised by the courts.

156 Mr Vergis then makes the separate point that permitting a claim under a *power-conferring* provision such as s 7 of the SCJA may lead to absurd results. In this regard, he points out that s 18(1) of the SCJA, which is another much broader power-conferring provision, provides that "the High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore". If a claimant may now claim under the court's ultimate power to order the remedy or relief, instead of establishing the constituent elements of his cause of action, then there will be no incentive for the claimant even to attempt to corral his facts and evidence to satisfy the constituent elements of the cause of action. It will be far easier instead to short-circuit the inquiry and simply claim under the court's power to order the relevant relief, whether it be damages, injunctions, specific performance, and so on.

157 We recognise that service out can be justified on any of the limbs in O 11. It is, after all, well-established that the limbs of O 11 are disjunctive, and if any one of the limbs is satisfied then O 11 applies and leave to serve out can properly be granted: *Tassell v Hallen* [1892] 1 QB 321 at 324–325. We can therefore appreciate the danger in permitting a claimant to claim under the court's power to order relief pursuant to O 11 r 1(*n*), instead of making out the constituent elements of his causes of action under one of the other limbs of O 11,

as the threshold for the former would, at face value, appear to be much lower than for the latter.

158 We consider, however, that the concerns raised by the appellant may be overstated. We first set out s 18 of the SCJA in full:

> **Powers of High Court**
>
> **18.**—(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.
>
> (2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.
>
> (3) The powers referred to in subsection (2) shall be exercised in accordance with any written law, Rules of Court or Family Justice Rules relating to them.

159 So far as the powers in s 18(1) are concerned, we first note that there are already limits on the High Court's powers because the High Court has to be vested with those powers by any "written law". Statutes that form the relevant "written law", in turn, will likely set out the requirements before those powers may be invoked by the party and exercised by the court. That in and of itself imposes a restriction on *when* the powers may be invoked and thus properly "claimed under".

160 We see similar restrictions built into the powers set out in the First Schedule to the SCJA, which is referenced in s 18(2). For example, paragraph 2 of the First Schedule provides for the High Court's power to order the partition of land, and to direct a sale instead of partition. It is self-evident that this is a power that can apply only in the limited context where there is land to be partitioned. Similarly, paragraph 16 of the First Schedule provides for the power to order provisional damages for personal injuries; it is again self-evident when that power can be exercised. These powers are clearly intended to apply only in

fairly limited factual scenarios, and therefore cannot be invoked by a claimant as justifying leave to serve out except where the necessary factual substratum is already made out.

161 We acknowledge, however, that not all the powers set out in the First Schedule are so circumscribed. In this regard, we recognise that paragraph 14, for example, is framed quite broadly, in providing the High Court with the power to "grant all reliefs and remedies at law and in equity, including damages in addition to, or in substitution for, an injunction or specific performance". But in our view, as we will elaborate below, the law already contains sufficient measures to prevent the claimant from bypassing the requirement to establish the constituent elements of his cause of action and simply claiming the ultimate relief which he seeks in order to obtain leave for service outside jurisdiction.

162 It must be borne in mind that the purpose of the various limbs under O 11 is to define the limited circumstances in which leave to serve out of jurisdiction may properly be granted. But a claimant framing his claim as one falling within one of the heads of claim in O 11 is *not* by itself enough. In *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 ("*Zoom*"), this Court held that the requirements for valid service out of jurisdiction are well established, namely (at [26]):

(a) the plaintiff's claim must come within one of the heads of claim in O 11 r 1 of the ROC;

(b) the plaintiff's claim must have a sufficient degree of merit; and

(c) Singapore must be the proper forum for the trial of the action.

163 The standard to which the plaintiff must discharge the burden that one of the heads of claim in O 11 is made out is that of a "good arguable case": *Bradley Lomas Electrolok Ltd and another v Colt Ventilation East Asia Pte Ltd and others* [1999] 3 SLR(R) 1156 ("*Bradley Lomas*") at [14]. In *Bradley Lomas* at [15], we explained that a "good arguable case" involves the following:

> It indicates that though the court will not at this stage require proof to its satisfaction, it will require something better than a mere prima facie case. The practice, where questions of fact are concerned, is to look primarily at the plaintiff's case and not to attempt to try disputes of fact on affidavit; it is of course open to the defendant to show that the evidence of the plaintiff is incomplete or plainly wrong. On questions of law, however, the court may go fully into the issues and will refuse leave if it considers that the plaintiff's case is bound to fail.

164 We also explained in *Bradley Lomas* that it was possible for the inquiry into sufficient merits under the second limb to be subsumed within the inquiry that there be a good arguable case on the first limb: at [18]–[20]. We observed that if a plaintiff was able to satisfy the higher standard of proof required to establish jurisdiction, he would also have satisfied the lower standard of proof required on the merits (at [18]) given that the standard at which the court assesses the merit of a claim is no more than that the evidence should disclose that there is a serious issue to be tried: at [14]. Once we take the standard of proof into account, it becomes apparent that the spectre raised by the appellant – that a plaintiff may conveniently bypass the need to establish the constituent elements of a cause of action, and instead jump straight to claim under the court's power to order the ultimate relief – falls away. A plaintiff who seeks to claim under the general powers of the High Court under s 18, for example, a claim under the High Court's powers in paragraph 14 of the First Schedule to the SCJA, would need to make out a good arguable case that the facts of his case justified the exercise of those powers. As we observed in *Bradley Lomas* at [16], a "mere statement by a deponent that he believes there is a good cause

of action is insufficient"; similarly, a mere statement by the plaintiff that he is entitled to any such relief is clearly not enough. Relief is not granted, after all, unless the liability of the party claimed against is first made out.

165 In any event, s 18 and the First Schedule are concerned with *powers and reliefs* that the court may grant in a given case. They are not provisions that confer subject-matter jurisdiction whereas s 7 as we have explained at [112] above preserves the inherent jurisdiction of the High Court and the Court of Appeal to hear contempt cases *and* provides an additional and sufficient basis for the power to punish for contempt. Therein lies the critical difference between s 7 and s 18 of the SCJA.

166 We recognise that there are several limbs in O 11 which require some connection to Singapore, for example limbs (*d*), (*e*) and (*f*). We should make it clear that a claimant cannot bypass the need to satisfy the requisite connection with Singapore by choosing to frame his claim under s 18(1) of the SCJA read with limb (*n*), the very concern highlighted by Mr Vergis. As we have observed at [162] above, one of the requirements for valid service outside jurisdiction is that Singapore must be the proper forum for the trial of the action. As such, in those situations where a connection with Singapore is required but not satisfied, the service will in all likelihood be set aside on the basis of *forum non conveniens* in any event. Thus the risk of the expansive interpretation of s 18(1) of the SCJA read with O 11 is more illusory than real.

167 We apply this approach to the present case. The challenge the appellant makes in this appeal is that the claim does not come within one of the heads of claim in O 11 r 1 of the ROC. Where a defendant who has been served out of jurisdiction mounts a jurisdictional challenge and seeks to set aside the service, the burden remains on the plaintiff, as the party who obtained leave to serve out

in the first place, to justify that leave was properly granted: *Zoom* at [75]–[76]. The AG, as the party which first obtained leave to serve out, therefore continues to bear the burden of showing that leave was properly given. The requirement, therefore, is for the AG to satisfy us that he has a good arguable case that there is a claim under written law. Because the written law proposed is s 7(1) of the SCJA, the AG must satisfy us that he has a good arguable case to claim under the court's power to punish for contempt. This involves a consideration of the facts placed before us as to whether the claim in scandalising contempt, that would lead to the claimed-for remedy of punishment for contempt, amounts to more than a mere *prima facie* case. Without expressing any concluded view on the merits, it suffices to say that at this stage the AG appears to have made out a good arguable case against the appellant for contempt.

168 Finally, the appellant relies on the *ejusdem generis* canon of statutory construction to argue that limb (*n*) must be read narrowly. The appellant's case is that the scope of "written law" in limb (*n*) must be circumscribed by and take on the colour and flavour of the two examples of written law explicitly stated in the provision itself: the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"), and the Terrorism (Suppression of Financing) Act (Cap 325, 2003 Rev Ed) ("TSFA"). Thus, "written law" must refer to written law of a "similar confiscatory or international criminal nature". The AG's view, quite simply, is that the canon does not apply here.

169 We agree with the AG. There is no room for the application of the *ejusdem generis* principle unless there is an identifiable genus: *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 ("*Lam Leng Hung*") at [114]. Here, it is difficult for the two statutes, the CDSA and TSFA, to stand together as a generic string, because it is difficult to identify a common and

dominant feature between them that is necessary to formulate a generic string: *Lam Leng Hung* at [115]. The most that can be said is that they are statutes that deal with serious crimes.

170 Further and in any event, an additional factor that points away from the application of the *ejusdem generis* principle is the use of the word "any" in the residuary phrase "or any other written law". The plain and ordinary meaning of the word "any" suggests that any and all statutes fall to be captured by limb (*n*). In the absence of any indication as to the reasons and context in which the CDSA and TSFA were explicitly specified for inclusion in limb (*n*), we consider that limb (*n*) ought to be given a broad meaning, as the AG submits.

Conclusion

171 For the reasons above, we consider that the court's substantive subject-matter jurisdiction to hear contempt cases is founded on its inherent jurisdiction, but the court takes personal jurisdiction over a foreign contemnor in the exercise of its civil jurisdiction under s 16 of the SCJA, through proper service of the committal papers in compliance with O 11 of the ROC.

172 The court's subject-matter jurisdiction was not challenged in this case. Further, we consider that personal jurisdiction was also established over the appellant. Service out of the jurisdiction was properly effected on the appellant because the AG's claim for the court to exercise its power to punish for contempt was properly a claim made under written law, that written law being s 7(1) of the SCJA. The requirements under O 11 r 1(*n*) were therefore satisfied. The High Court has both subject-matter jurisdiction over the alleged contempt, and personal jurisdiction over the alleged contemnor, the appellant. Jurisdiction having been established in all material aspects, the appeal is therefore dismissed.

As the AG did not succeed on a number of points and raised several new but unnecessary points on appeal, we consider it fair to make no order as to costs for this appeal as well as for CA/OS 22.

173 Finally, we observe that the specific issue before us is unlikely to repeat itself for future cases involving foreign contemnors given that service outside jurisdiction is now firmly grounded under limb (*t*) of O 11 of the ROC. Nonetheless, this judgment serves to explain the proper source of the court's jurisdiction as well as the correct juridical basis for contempt cases.

Sundaresh Menon Chief Justice	Tay Yong Kwang Judge of Appeal	Steven Chong Judge of Appeal

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