

CONSTITUTIONAL LAW IN SINGAPORE

SECOND EDITION

KEVIN Y.L. TAN



Wolters Kluwer
Law & Business

Constitutional Law in Singapore

Second Edition

Kevin Y.L. Tan

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Constitutional Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editors: André Alen, David Haljan



Wolters Kluwer

Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

ISBN 978-90-411-5305-0

This title is available on www.kluwerlawonline.com

© 2014, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author



Prof. Dr Kevin Y.L. Tan was born and educated in Singapore. He graduated with LLB (Hons) from the Faculty of Law of the National University of Singapore in 1986 and joined the teaching staff of the same faculty that same year. Subsequently obtained his LLM (Master of Laws) and JSD (Doctor in the Science of Law) at Yale Law School. From 1986 to 2000, he taught at the Law Faculty, specializing in Constitutional and Administrative Law, Law and Government, Law

and Society and International Human Rights. He resigned in 2000 to start Equilibrium Consulting Pte Ltd.

He has also been active in many organizations, serving as National Programme Commissioner in the Singapore Scout Association (1992–1995); Council Member of the National Youth Achievement Award Council (since 1998); Singapore Red Cross Society (1999–2003); CSCAP (1998–2001); Board Member of the Preservation of Monuments Board (1998–2003); Singapore Academy of Law Legal Heritage Committee (since 1999); and Executive Director of the Society of International Law, Singapore (1998–2003); Treasurer and then President of the Roundtable, a non-partisan political discussion group (1999–2002); President of the Singapore Heritage Society (2001–2011); and Chairman of the Foundation for the Development of International Law in Asia (DILA) (2006–2012).

Kevin has published widely in the fields of constitutional law, human rights, legal history and the Singapore legal system. He currently holds adjunct professorships at the Faculty of Law, National University of Singapore as well as at the S Rajaratnam School of International Studies, Nanyang Technological University.

Table of Contents

The Author	3
List of Abbreviations	15
General Introduction	17
§1. AN OUTLINE OF SINGAPORE CONSTITUTIONAL HISTORY	17
I. The Straits Settlements Period (1819–1942)	17
II. The Japanese Occupation (1942–1945)	18
III. The Colony of Singapore (1946–1958)	19
IV. The Rendel Constitution (1955)	19
V. Constitutional Talks and Self-Government (1956–1958)	20
VI. Merger and Separation (1963–1965)	21
VII. Post-1965 Developments	22
A. The Aftermath of Independence	22
B. The Wee Chong Jin Commission	22
C. Changes to the Judiciary	24
D. Entrenching Singapore's Sovereignty	25
E. Changes to the Parliamentary System	26
F. The Elected President	27
G. Amendment to Citizenship Laws	28
VIII. Conclusion	28
§2. FORM OF GOVERNMENT	30
I. General	30
II. Separation of Powers	31
§3. STATE TERRITORY	31
§4. POPULATION	34
Part I. Sources of Constitutional Law	35
Chapter 1. Treaties	35
Chapter 2. The Constitution	38
	5

Table of Contents

§1. TYPIFICATION 38

§2. PROCEDURE FOR AMENDING THE CONSTITUTION 38

§3. HIERARCHY 39

Chapter 3. Legislation 40

Chapter 4. Case Law as Judicial Precedent 41

Chapter 5. Unwritten Law 42

§1. CUSTOM 42

§2. CUSTOMARY INTERNATIONAL LAW 42

Chapter 6. Administrative Regulations and Orders 43

Part II. Form of Government 45

Chapter 1. General 45

Chapter 2. Head of State 46

§1. INTRODUCTION 46

§2. SINGAPORE’S PRESIDENTIAL EXECUTIVE: A SHORT HISTORY 46

 I. Introduction 46

 II. The Elected President: The Proposals 47

 III. The Final Scheme 49

§3. PRESIDENTIAL ELECTIONS 50

§4. TERM OF OFFICE, POWERS AND IMMUNITIES 50

§5. REMOVAL OF THE PRESIDENT 51

§6. ENTRENCHMENT OF OFFICE 51

§7. SUBSEQUENT CHANGES 52

§8. THE INDONESIAN LOAN CONTROVERSY 53

§9. CONSTITUTIONAL REFERENCE NO. 1 OF 1995 54

§10. THE PRESIDENT EXERCISES HIS DISCRETION	54
§11. SOME UNIQUE ASPECTS OF THE PRESIDENCY	56
§12. THE HEAD OF STATE'S DISCRETION: SOME ISSUES	57
I. Appointment and Dismissal of the Prime Minister	58
II. Proroguing and Dissolving Parliament	60
III. Discretion During an Emergency	60
IV. Justiciability of the President's Discretion	61
§13. CONCLUSION	62
Chapter 3. The Legislature	64
§1. A HISTORICAL OUTLINE	64
§2. THE UNICAMERAL NATURE OF SINGAPORE'S PARLIAMENT	66
§3. QUALIFICATIONS OF MEMBERS	66
§4. DUTIES OF MEMBERS	67
§5. PARLIAMENTARY PRIVILEGE	68
§6. LIFE OF PARLIAMENT	69
§7. PRINCIPAL OFFICERS OF PARLIAMENT	69
I. The Speaker	69
II. The Clerk of Parliament	69
III. The Whip	70
IV. Leader of the House	71
§8. PARLIAMENT'S COMMITTEES	71
I. Committee of the Whole House	71
II. Select Committees	72
III. Sessional Committees	72
IV. Government Parliamentary Committees	73
Chapter 4. Making Law in Singapore	74
§1. INTRODUCTION	74
§2. RULE FORMULATION	74
I. Introduction of Bills in Parliament	75
II. The Second Reading	75
III. The Committee Stage	75

Table of Contents

IV. The Third Reading	76
V. The Presidential Council for Minority Rights and the Presidential Assent	76
§3. SUBSIDIARY LEGISLATION	77
§4. LEGISLATIVE POWERS IN AN EMERGENCY	78
§5. SOME SINGAPORE INNOVATIONS	78
I. The Town Councils and Team MPs	78
II. The Community Development Councils	82
§6. SOME CLOSING THOUGHTS	83
§7. REPRESENTING THE PEOPLE: ELECTIONS IN SINGAPORE	84
I. Constituencies and Constituents	84
II. Types of Membership	86
III. Qualifying to Stand	86
IV. Qualifying to Vote	87
§8. CONDUCT OF ELECTIONS	88
I. Nomination Day	89
II. Campaigning	89
III. Polling Day	89
§9. POLITICAL DONATIONS	90
§10. IS SINGAPORE’S ELECTORAL SYSTEM IN NEED OF REFORM?	90
§11. CONCLUSION	92
Chapter 5. The Executive	94
§1. INTRODUCTION	94
§2. SINGAPORE’S CABINET TODAY	94
§3. SINGAPORE’S PRIME MINISTER	95
§4. MINISTERS AND MINISTRIES	96
§5. POLICY FORMULATION, DECISION-MAKING AND COLLECTIVE RESPONSIBILITY	97
§6. CHOOSING THE PRIME MINISTER AND CABINET	99
§7. THE EXECUTIVE: AN ELECTED DICTATORSHIP?	100

Chapter 6. The Judiciary	102
§1. INTRODUCTION	102
§2. JUDICIAL POWER: MEANING, NATURE, CONTENT AND SCOPE	102
§3. JURISDICTION OF THE COURTS	104
I. General	104
II. Original and Appellate Jurisdiction	104
III. Inherent Jurisdiction	105
IV. Review Jurisdiction	105
V. Judicial Review Jurisdiction	106
VI. Supervisory Jurisdiction	106
VII. Revision Jurisdiction	107
§4. ESTABLISHING JURISDICTION AND <i>LOCUS STANDI</i>	107
§5. LIMITS ON JUDICIAL REVIEW	109
I. Political Questions	109
II. Legislative Prohibition	110
III. Laches	110
IV. Prerogative Powers	110
V. Judgments of Superior Courts	110
VI. Res Judicata	111
§6. PUBLIC LAW REMEDIES	111
§7. DOCTRINE OF PROSPECTIVE OVERRULING	111
§8. CONSTITUTION OF SINGAPORE'S JUDICIARY	112
I. The Court of Appeal	112
II. The High Court	112
III. The State Courts	113
IV. Coroner's Courts	115
V. Juvenile Courts	115
VI. The Family Court	115
VII. The Small Claims Tribunal	115
§9. THE SHARIAH COURT AND MAJLIS UGAMA ISLAM SINGAPURA	116
§10. JUDICIAL INDEPENDENCE	116
I. Appointment and Tenure of Judges	116
II. Security of Remuneration	117
III. Judicial Commissioners and Supernumerary Judges	117
IV. Contempt of Court	117
§11. CONCLUSION	119

Table of Contents

Chapter 7. Independent Non-political Bodies in the
Legislative or Executive Branch with an Advisory
or Supervisory Task 121

§1. PRESIDENTIAL ELECTIONS COMMITTEE 121

§2. COUNCIL OF PRESIDENTIAL ADVISERS 121

§3. PRESIDENTIAL COUNCIL FOR MINORITY RIGHTS 122

Part III. Citizenship and the Administration of Justice 125

Chapter 1. Rules Concerning Nationality and Relevance of
Nationality 125

§1. INTRODUCTION 125

§2. ACQUISITION OF CITIZENSHIP 126

 I. Citizenship by Birth 126

 II. Citizenship by Descent 127

 III. Citizenship by Registration or Enrolment 127

 IV. Citizenship by Naturalization 128

§3. PROOF OF CITIZENSHIP STATUS 128

§4. LOSS OF CITIZENSHIP 129

 I. Renunciation 129

 II. Cancellation 129

 III. Deprivation 130

Chapter 2. Fundamental Rights and Liberties 132

§1. THE PROTECTION OF HUMAN RIGHTS IN THE CONSTITUTION 132

§2. FUNDAMENTAL LIBERTIES UNDER SINGAPORE’S CONSTITUTION 133

§3. INTERPRETING FUNDAMENTAL LIBERTIES 134

§4. PROTECTION OF LIFE AND LIBERTY 134

 I. Meaning of ‘Life’ and ‘Personal Liberty’ 135

 II. Meaning of ‘In Accordance with Law’ 135

 III. Death Penalty and Life Imprisonment 137

§5. RIGHTS OF AN ACCUSED PERSON 138

 I. Writ of Habeas Corpus 138

Table of Contents

§6. THE RIGHTS OF ARRESTED PERSONS: ARTICLE 9(3)	139
I. The Right to Be Informed of the Grounds of Arrest	140
II. The Right to Consult Counsel	140
III. Ambit of the Right to Counsel	140
IV. Conclusion	141
§7. PROTECTION AGAINST SLAVERY AND FORCED LABOUR: ARTICLE 10	142
I. Slavery	142
II. Forced Labour	143
III. Prison Sentences	143
§8. PROTECTION AGAINST RETROSPECTIVE CRIMINAL LAWS: ARTICLE 11	143
I. Amending the Constitution Retrospectively	144
II. Retrospective Changes in Procedure	144
III. Removal of Sentencing Discretion	145
IV. Protection against Double Jeopardy	146
V. Meaning of 'Same Offence'	148
VI. Preventive Detention	149
VII. Common Law Doctrine of Autrefois Convict	150
§9. EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW: ARTICLE 12	151
I. Introduction	151
II. Meaning of Discrimination	152
III. The Problem of Classification	152
IV. Equality in Criminal Prosecutions	154
V. Non-discrimination against Citizens	155
VI. Positive Discrimination under the Constitution	155
§10. FREEDOM OF SPEECH AND EXPRESSION	157
I. Introduction	157
II. Constitutional Provisions and Qualifications	157
III. Regulating Speech through Licensing	158
IV. Freedom of the Press	159
V. Express Constitutional Grounds for Enacting Derogating Laws	161
VI. Sedition	161
VII. Free Speech in Parliament	161
VIII. Official Secrets	162
IX. Defamation	163
X. Contempt of Court	163
XI. Public Morality	164
§11. FREEDOM OF ASSEMBLY	165
§12. FREEDOM OF ASSOCIATION	166
§13. FREEDOM OF RELIGION	167

Table of Contents

I. Introduction	167
II. Historical Flashpoints in Race-Religion Relations	167
III. Constitutional Safeguards	168
IV. The Meaning of 'Religion'	169
V. The Protection of Minors	170
VI. Content and Extent of Religious Liberty	170
 Chapter 3. Judicial Control of Administrative Action	 173
§1. ADMINISTRATIVE LAW UNDER A WRITTEN CONSTITUTION	173
I. Controlling Delegated Legislation	174
II. Informal Rules or Guidelines	175
III. Judicial Review of Administrative Action	176
§2. PRECEDENT OR JURISDICTIONAL FACTS	176
§3. ERRORS OF LAW	177
I. The Control of Substantive Discretion	177
II. The Grounds of Judicial Review	178
§4. ILLEGALITY	178
§5. IRRATIONALITY	178
§6. PROCEDURAL IMPROPRIETY	179
§7. PROPORTIONALITY?	181
§8. LEGITIMATE EXPECTATIONS	181
I. Limits to Judicial Review	182
§9. CONSTITUTIONAL LIMITATION ON JUDICIAL REVIEW	182
§10. STATUTORY EXCLUSION OF JUDICIAL REVIEW: OUSTER CLAUSES	183
I. Subjective Powers	184
II. Conclusion	185
 Chapter 4. Emergency Law	 186
§1. SPECIAL POWERS AGAINST SUBVERSION AND EMERGENCY POWERS	186
I. The ISA: Constitutional Issues	186
§2. THE RECITAL	187
§3. INCONSISTENCY WITH OTHER PROVISIONS	187
I. Judicial Review of Executive Detention	188

Table of Contents

§4. RIGHTS ON INITIAL ARREST	188
§5. BAD FAITH OR <i>MALA FIDES</i>	189
§6. 'SATISFACTION': SUBJECTIVE OR OBJECTIVE TEST?	189
§7. PROCEDURAL GROUNDS OF CHALLENGE	191
Selected Bibliography	193
Index	201

Constitutional Law in Singapore

Second Edition

Kevin Y.L. Tan

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Constitutional Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editors: André Alen, David Haljan



Wolters Kluwer

Law & Business

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

ISBN 978-90-411-5305-0

This title is available on www.kluwerlawonline.com

© 2014, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author



Prof. Dr Kevin Y.L. Tan was born and educated in Singapore. He graduated with LLB (Hons) from the Faculty of Law of the National University of Singapore in 1986 and joined the teaching staff of the same faculty that same year. Subsequently obtained his LLM (Master of Laws) and JSD (Doctor in the Science of Law) at Yale Law School. From 1986 to 2000, he taught at the Law Faculty, specializing in Constitutional and Administrative Law, Law and Government, Law

and Society and International Human Rights. He resigned in 2000 to start Equilibrium Consulting Pte Ltd.

He has also been active in many organizations, serving as National Programme Commissioner in the Singapore Scout Association (1992–1995); Council Member of the National Youth Achievement Award Council (since 1998); Singapore Red Cross Society (1999–2003); CSCAP (1998–2001); Board Member of the Preservation of Monuments Board (1998–2003); Singapore Academy of Law Legal Heritage Committee (since 1999); and Executive Director of the Society of International Law, Singapore (1998–2003); Treasurer and then President of the Roundtable, a non-partisan political discussion group (1999–2002); President of the Singapore Heritage Society (2001–2011); and Chairman of the Foundation for the Development of International Law in Asia (DILA) (2006–2012).

Kevin has published widely in the fields of constitutional law, human rights, legal history and the Singapore legal system. He currently holds adjunct professorships at the Faculty of Law, National University of Singapore as well as at the S Rajaratnam School of International Studies, Nanyang Technological University.

