

THE LEGAL LANDSCAPE IN FLUX

CHANGES TO THE LEGAL PROFESSION TRAINING

RACHEL LEOW

Legal education and training are set to change, as key recommendations made by a select committee have recently been approved. These proposals include the introduction of a Vocational Training Course (VTC) to replace the current Practical Law Course (PLC), replacement of the pupillage programme with a training contract and compulsory Continuing Legal Education (CLE) for all lawyers. An Institute of Legal Education (ILE) will also be established to chart the development of post-university legal education, including the new initiatives of CLE and the VTC, taking over the present Board of Legal Education. These recommendations are aimed at restructuring the legal education system as well as adjusting the current requirements for entry to the legal profession to further enhance Singapore's position as a legal hub.

The Committee, helmed by Judge of Appeal V K Rajah...

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Background Photo: NASA (Public Domain)

FROM THE CHIEF EDITOR

Jerome Kerviel, Zulkifli Amin, David Rasif. It is unsurprising if these names ring a bell. With all the amplified commotion, one would think that honesty and integrity were suddenly values lost. Coping with this problem would require a multi-faceted approach far beyond implementing new regulations (which history has proven can be circumvented) or setting up a compulsory course in law school. The notion of honour must be imbibed from a far younger age, before stark rationality and plain greed set in. Only then can the evils be countervailed.

This issue of *Juris* grapples with this and more. The opening of the legal year has seen many proposals for change, not least an opening up of the legal sector to foreign firms and changes to the current pupillage training system. We have also found it fit to include a short note on a High Court case concerning a kleptomaniac – one that exemplifies the flexibility and light-handedness of the court. Also featured is our sponsoring firm, **Colin Ng & Partners**, in view of the impending Law Careers Fair.

Last but not least, we include vital information on the **SLR International Writing Symposium**, a writing competition-cum-symposium that is open to all undergraduate law students, this time including students from around the world as well. Take part and stand a chance to win the top prize of US\$3000!

Have a great month ahead! ☺

Jeth Lee
CHIEF EDITOR

COMMENTS ON THE PROPOSED LIBERALISATION OF THE LEGAL SECTOR

SEOW ZHIXIANG

In September 2007, the Committee to Develop the Singapore Legal Sector, headed by Judge of Appeal Justice V K Rajah, released its Final Report. The Final Report addressed a wide range of issues affecting the legal sector and made a number of progressive recommendations in relation to legal education and access to justice, among other things. Of particular note are the Committee's favourable opinions on class actions and contingency fees. Careful study of the Final Report, it is suggested, will dispel any misconception about the conservatism of the Bench and the Bar.

A key recommendation by the Committee is the liberalisation of the domestic legal market. As part of the liberalisation process, a limited number of foreign law firms will be able to practise in Singapore on their own without having to tie-up with local firms in joint law ventures.

The entry of foreign law firms and the resulting increase in competition will no doubt raise the quality of legal services here. Local practitioners will also become, through interaction with foreign lawyers, more aware of international standards of practice. The presence of foreign law firms will also intensify competition for legally trained persons – law students' lingering suspicions, no doubt untrue, that their starting salaries are ruthlessly depressed by shadowy cartels, will be finally dispelled.

However, there is a discordant note in the liberalisation process – the Final Report recommended that “the practice of criminal law, retail conveyancing, family law, and administrative law as well as all aspects of criminal and commercial litigation be ring-fenced”. (Interestingly, constitutional law was left out of the “ring-fence”.)

The reason for such “ring-fencing” is not easy to fathom, especially in light of the Committee's observations about the acute shortage of litigators (pp. 26-7). The Committee itself blandly stated that “there is no reason to allow [foreign law firms] to engage in any aspect of litigation, at least certainly not in the initial phase of liberalisation” (para. 7.54).

If foreign lawyers are less sensitive to local conditions, this will naturally disadvantage them when they interact with the Courts and their clients, without the need for formal barriers. Moreover, in the case of litigation, the introduction of foreign perspectives may be positively beneficial. The Courts regularly and naturally refer to foreign laws in developing all aspects of Singaporean jurisprudence (even, it should be noted, constitutional jurisprudence), exhibiting a keen awareness that independence does not mean insularism. The presence of foreign lawyers may therefore sharpen the Courts' appreciation of these foreign legal developments.

If the concern is the discipline and regulation of foreign lawyers, appropriate reforms can be introduced to bring these lawyers under the aegis of the Law Society, with refinements to reflect the fact that errant foreign lawyers may be more mobile than local lawyers. The Law Societies of Hong Kong and England and Wales, for example, supervise the foreign lawyers practicing in those jurisdictions was a fact which was noted by the Singapore Law Society in its response to the Final Report. Moreover, disciplinary and regulatory concerns are not particularly convincing reasons for the ring-fencing, since such concerns obtain with equal force in the sectors that have been liberalised.

It seems then that what underlies the ring-fencing is a protectionist policy, motivated perhaps by similar closed-door policies in other countries (noted by the Committee at para. 7.55). However, while ring-fencing may be justifiable under present circumstances, the countervailing arguments must not be forgotten. Protected sectors will be unable to reap the benefits of international competition. Local competition is likely to be more limited, given the small size of domestic practice. This might result in the protected sectors being regarded as the poorer cousins of liberalised sectors, aggravating phenomena such as the shortage of litigators and the commoditisation of conveyancing.

The interaction between these considerations depends of course on the precise circumstances, which may change over time. As policymakers continue to find the balance, it may be instructive to recall Lord Justice Denning's admonition: “[If] the law stands still while the world moves on, that will be bad for both.” So too for the practice of law. ☛

Zhixiang is a third year law student. He is now on exchange to New York University.

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The Committee, helmed by Judge of Appeal V K Rajah, envisaged the VTC as retaining the traditional role of the PLC in ensuring that law graduates had the requisite competency in core subject areas, while simultaneously allowing students the freedom of choosing their own areas of specialisation. It was also recommended that the current Diploma in Singapore Law be fused with the VTC for a more streamlined legal education system.

The proposed replacement of the current pupillage programme with a training contract is aimed at obliging law firms to engage their pupils in a structured learning programme. This would benefit pupils by providing them with better guidance while adapting to the rigors of practice. It also gives law firms a greater stake in the success of their pupils, benefiting both pupils and firms.

Furthermore, the introduction of CLE for lawyers would benefit the profession by ensuring that all lawyers remain up-to-date with the latest developments in the law. The ILE would take over the current roles and responsibilities of the Board of Legal Education, while charting the developments of post-university education and simultaneously coordinating the curricula of our law faculties.

Overall, the recommendations for improving legal education and legal professional training are welcome changes as the demands of the legal profession have changed significantly over the years. The proposed initiatives will ensure that the professional training of lawyers continues past a university education, encouraging specialisation and promoting higher standards of legal education for all lawyers and ultimately enabling lawyers to better serve the needs of society. ☛

Rachel is a first year law student and an associate editor with SLR.

VTC, TC, CLE — STUDENTS' RESPONSES

I do not see the change from pupillage to training contract providing much difference beyond a paper name-change. The call for a 'structured learning programme' will in truth still come from within the firms themselves with increased benchmarks. I need to see the greater framework of how the 'training contract' will be formulated to give my comments in that regard.

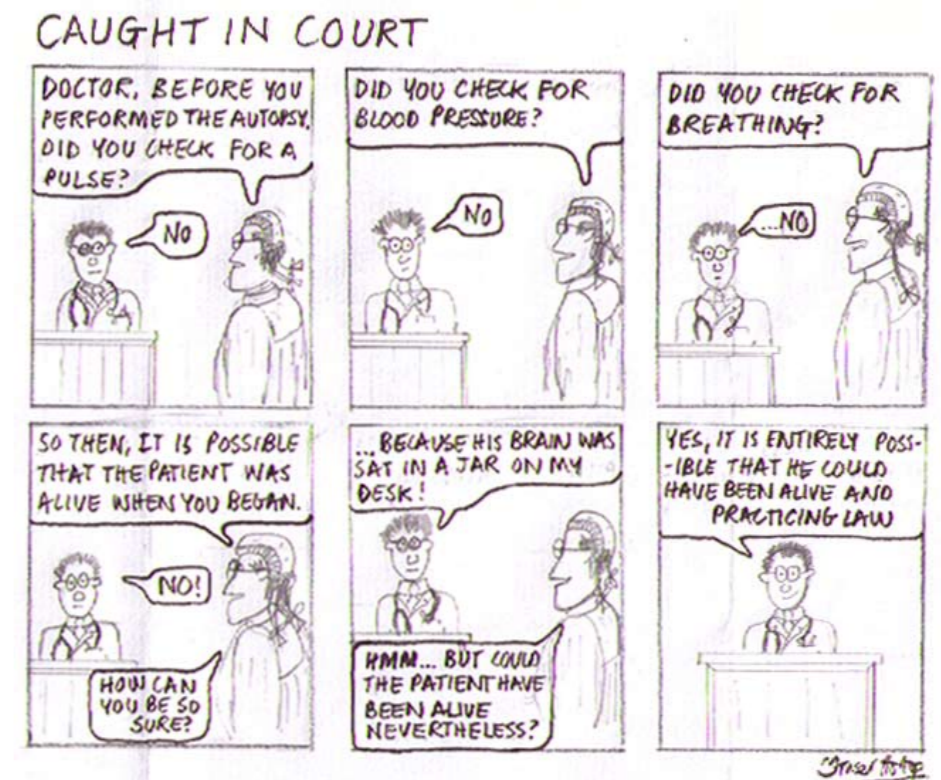
– Daniel Wong, University College London Year 2

I feel the changes are unlikely to change the current course system significantly unless the Vocational Training Course (VTC) allows for a significantly different emphasis, like the commercial or corporate focused versions of the Legal Practice Course (LPC) in London. It might give rise to the contrary – more paperwork and not necessarily greater specialisation. Shortening the length of study for law school in Singapore also does not seem really necessary at this stage and also cancels out the opportunity or incentive to do an additional year abroad which can be a very good learning experience for many NUS students.

– Claire Wan, Manchester University Year 3

Overall the proposals seem to move towards the UK legal model, particularly in the call for increased specialisation in the training process, and continuing legal training. The former seems very much a renaming of the previous process and though with a longer period attached to the 'training contract', much of the training is likely to remain firm-specific. The structuring of groups within Singaporean firms also means that a broad spread of experience and training across various core commercial areas is also useful, and specialisation might be too early at training stage. In Britain it seems the inevitable method as there is a high degree of specialisation in practice areas even in the smaller firms and the 'four-department training contract' is a common practice in some of the top Magic Circle and other stellar City firms. However, some of the firms in Singapore might consider tailor-made schemes, or early exposure schemes which have worked well for firms like Allen & Overy and Clifford Chance in London. A CLE programme is also a good idea, if well-formulated and structured to take into account the current ongoing training already available in firms and also to offer access to training opportunities for exchange in the region.

– Grace Chong, University College London Year 2



Fraser Hortop is a student from the University of Nottingham on a year's exchange to the NUS law faculty. He believes that at the end of the day, law students need to laugh :)



INTERVIEW WITH PROF JEFFREY PINSLER

JUSTIN YEO and ZHONG ZEWEI

Professor Jeffrey Pinsler, S.C., is one of six new Senior Counsels to be appointed in Legal Year 2008. A leading expert in the field of civil and criminal evidence, procedure and dispute resolution, he most recently published *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (“*Ethics: A Code*”), widely viewed as a groundbreaking work. Prof Pinsler is a member of the regional panel of the Singapore International Arbitration Centre, a principal mediator of the Singapore Mediation Centre, and sits on various professional committees. He is also an ad hoc District Judge of the Subordinate Courts.

“If a person doesn’t care about integrity and lacks a social consciousness – there’s not much you can do. But I think that such people form a very small category. The vast majority of people have a moral sense, which can be developed, and for that, ethics education certainly has a role.”

Q: You recently published *Ethics: A Code*. In writing this acclaimed book, what did you hope to achieve?

The Chief Justice asked me to write this book for younger lawyers who need to get to grips with the whole infrastructure of legal ethics. Presently, the regulatory regime in Singapore is interspersed among a variety of sources, including statutes, case law, and practice directions. What I tried to do was to show how these ethical rules relate to more fundamental principles, by presenting these rules in a systematic and cohesive framework.

I developed an *overarching principle*, from which one can extract six *core principles*, including the lawyer’s duty to the Court, the lawyer’s duty to the client, lawyers’ duties to each other and the lawyer’s duty to the public. These core principles each occupy one Part in the book, and can themselves be subdivided into more specific principles – the *chapter principles*. At the lowest level, I organized under each chapter principle the most specific rules (the *sub-principles*).

Hence, the Code has four levels of inter-linking principles. My purpose was to demonstrate how even the most specific rule can be linked to more fundamental principles. To my knowledge the ap-

proach is novel. The idea is to make legal ethics more understandable, so that the lawyer in practice is not just saying: “This is what I must do here”, but rather, understands the rationale of the rule. Every sub-principle has its root in the overarching principle.

Q: Unscrupulous lawyers have hogged news headlines of late. Are the professional ethics of Singapore lawyers in a state of decline?

No, I don’t believe that lawyers are generally less moral than they used to be. Certainly, in the last year or so, there have been more disciplinary cases. I’ve looked at the history of such cases since 2001, which I referred to in my book.

But I think this trend is not because more lawyers are behaving badly, but because we’re taking ethics more seriously now than ever before. There have been some glaring, terrible cases, especially the David Rasif case, which have helped raise public consciousness. We also have a new Chief Justice, one of whose major concerns is to implement a more effective ethical system and to enhance the profession’s consciousness of ethics.

So it is a positive sign, to the extent that there is now greater awareness about legal ethics, and tighter enforcement. Of

course, this means that there may be more disciplinary cases than in the past.

Q: Are there any reforms you especially hope to see in the rules governing the legal profession?

It is particularly important that the statutory rules governing clients’ accounts are effective enough to prevent breaches of trust. This is a current priority of the authorities.

I also think that the *Legal Profession (Professional Conduct) Rules* can be improved. Some rules are quite vague. The whole approach in Singapore can be more systematic and detailed, if you compare it with codes in countries like Australia, England and New Zealand. That is one reason why I formulated the Code. Of course, the Code is not perfect, but perhaps the authorities could look at it and extrapolate, if they do amend the existing legislation.

Q: Can, and should, legal ethics be taught – say, as a compulsory module in the law school curriculum?

I think whether legal ethics can be taught depends very much on the person’s moral perspective. If a person doesn’t care about integrity and lacks a social consciousness – there’s not much you can do. But I think that such people form a very small

category. The vast majority of people have a moral sense, which can be developed, and for that, ethics education certainly has a role.

You can’t just teach rules dogmatically, however – which might pose problems for having a compulsory module in NUS. The obvious advantage of a compulsory course is that all students would be exposed to ethics.

However, student participation (through presentations and projects) is an important feature in ethics education. We have about 250 students each year, so we would need to have a lot of staff teaching to give personal attention to the students. You could do it with lectures and tutorials, of course, but that will not be as effective.

Q: Tell us a little about your diverse professional experiences, and which ones you enjoyed most. Why not litigation?

I teach and/or carry out research every day in NUS law school. I also enjoy my role as a District Judge as my subjects are essentially practice-related. Judicial work is also appealing because you don’t take sides – you just apply the law objectively.

I have also been involved in arbitration, and appeared in court as *amicus curiae* (“friend of the court”). An *amicus curiae* has the freedom of expressing his views

on the law unaffected by parties’ interests. It is a weighty responsibility, though, because the court expects a lot from you.

Ultimately, I think, “to each his own”. Some lawyers love conveyancing. Others thrive on corporate work or as legal counsel. Excitement to some is aggravation to others. As far as litigation is concerned, many lawyers don’t like it – too much pressure.

Obviously, some lawyers thrive on the pressure, and have established a reputation for themselves in court. Anything else would bore them. But I would say the majority don’t enjoy that aspect of litigation.

Q: Recently, controversy arose over how Senior Counsels (“SC”) are selected. Should SCs be required to put in a minimum amount of court work?

My concern is an ethical one, from the public perspective. The assumption is that once you’re an SC, you’ll be getting work from a lot of people since you’re considered a top litigator. When a member of the public approaches an SC to handle a case, he or she must have the confidence that the SC has the experience to perform the work to the standard required of an SC. SCs generally command higher fees for which they must give due considera-

tion.

If an SC is out of court for a long time and decides he wants to go back to litigation, he should inform the client that he has not been in court for some time, and perhaps charge less than other SCs might charge. It would not be fair to the client if the SC still holds himself out as a “litigation SC”, because the SC may have lost some of his quality in the meantime.

As for myself, I was not appointed on the basis of court work but on my publications (which are primarily concerned with court work) and other contributions to the Legal Profession.

In general, SCs, if appointed on the basis of their court work, must perpetuate that standing by continuing to put in court work. It may not be possible to compel SCs to meet a specific minimum requirement, because cases may not always come along. But there should perhaps be an understanding that, for a period of time after an SC is appointed, he or she should do his or her utmost to conduct court work on a regular basis.

Q: Any gems of advice for aspiring SCs?

Integrity, hard work and a passion to contribute to the process of law in Singapore. ☛

Justin and Zewei are associate editors of the SLR.

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LAW CAREERS FAIR FEATURE

COLIN NG & PARTNERS SIZE DOES NOT ALWAYS MATTER

**COLIN NG
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Established in 1988, Colin Ng & Partners (CNP) is consistently identified as being among the top full-service law firms in Singapore by leading legal publications such as the Legal 500. The firm prides itself in its consultative approach, which has helped to cultivate a unique firm culture that is conducive for every member's development.

QUEK LI FEI, PARTNER

Q: *What are the firm's expectations of pupils?*

We like our pupils to feel that they are part of our Firm from the start of their pupillage. This means that we hope they will not only be hardworking, conscientious and diligent during their pupillage in relation to their work, but also that they are able to articulate their thoughts, concerns and talk with us so that we can listen and understand their needs and concerns, address these effectively and in the process, continue to improve our pupillage program. An agile mind, enthusiasm and keen willingness to learn and pick up new skills to meet emerging challenges in the legal services landscape are very useful attributes in working with CNP.

Our pupils are invited to take part in the various activities and initiatives of the Firm, including attending our regular CLE classes, training classes on efficient use of our IT systems and research facilities, in-house sporting, holistic and personal development activities, including weekly Yoga sessions, weekly Pilates sessions, CNP Recreation Club, CNP Green, wine appreciation sessions, all held in our Penthouse.



Left to right: Quek Li Fei, Luo Ling Ling, Claudine Orzal Montenegro, Wong Shyen Sook and Bill Jamieson

BILL JAMIESON SENIOR FOREIGN LEGAL ADVISOR (CORPORATE/COMMERCIAL)

I used to work in an offshore firm. I find that the corporate work I handle in Colin Ng & Partners is no different from that in an international firm. The strength here is that we are able to offer services attuned to the local conditions of financial capital markets.

LUO LING LING, PUPIL

CNP appreciates the pupil's flexibility in customising his or her work profile while encouraging the pupil to also work within different practice groups. The firm has shown respect in acceding to individual preferences and allows a lot of freedom for a pupil to choose which partner to work with. This would not have been possible if I were doing pupillage in a larger law firm, which would dictate specialisation prematurely in my legal career.

On a personal note, I was worried when I found out that I was expecting my second child earlier than originally planned. However, CNP was very supportive on hearing the good news. It is definitely a place where I would want to stay, beyond pupillage."

Continued overleaf...

KLEPTOMANIAC ESCAPES HARSHER JAIL TERM

MOHAN GOPALAN

In May 2007, 26-year-old Goh Lee Yin was sentenced by a District Court to one day's imprisonment and fined \$8,000 for theft. Goh, a kleptomaniac who had been shoplifting since she was nine, had taken handbags worth \$2,335 off the shelves of Coach and Louis Vuitton. Dissatisfied with the sentence, the prosecution appealed, arguing that a harsher sentence was appropriate since Goh had committed the present offences while on probation for similar shoplifting offences she had committed in 2005. However, VK Rajah JA declined to increase the sentence.

In coming to his conclusion, His Honour considered the general principles of sentencing and their relationship to the special characteristics of kleptomania. Rehabilitation, was the most important sentencing consideration in cases of this nature while deterrence and incapacitation were comparatively less significant. Probation would thus usually be the weapon of choice. However, His Honour left open the possibility that incarceration might be appropriate where the offender has demonstrated a deliberate disregard for treatment. This would also be the case if the offender cannot observe a proper course of treatment for want of family support or where he does not respond well to treatment.

His Honour was quick to limit his emphasis on rehabilitation to cases involving low-key offences such as those committed by kleptomaniacs. The principle was not one that could be applied in all cases of offences committed owing to a psychiatric disease. The offences committed by kleptomaniacs were special as they "do not seriously affect or inconvenience [the] public," he noted, especially since the number of kleptomaniac offenders in Singapore was small. "[I]n cases involving serious offences, incapacita-

tion would usually form the focus of the sentencing process," he added.

Is this case a sign of the courts going "soft" on shoplifters? Rajah JA was careful to assert that it was not. His Honour declared unequivocally that the law would continue to come down hard on run-of-the-mill shoplifters, and that kleptomania will only be considered in the sentencing process if it has been "rigorously diagnosed by a competent independent psychiatrist".

At the same time, Rajah JA urged the prosecution to be more discerning in bringing cases involving kleptomaniacs to the courts. He concurred with Yong Pung How CJ (as he then was), who in an earlier case had expressed the opinion that the courts are ill-equipped to deal with these cases as they are forced to choose between imprisonment and probation, neither of which is an entirely satisfactory option. The hands of judges are tied in this way because kleptomaniacs often know exactly what they are doing and that their actions are contrary to law. They are therefore unable to plead the 'unsound mind' defence, which would ordinarily enable the courts to acquit the offender and commit him to a mental hospital or other safe custody. Bemoaning the lack of suitable judicial options, Rajah JA reiterated Yong CJ's point that it was better to keep cases involving kleptomaniacs away from the courts and refer them instead to the appropriate Ministry or government agency, where better solutions could be devised...

Mohan Gopalan is a second year student and an associate editor with SLR. Read the full article online at <http://www.singaporelawreview.org/2008/02/kleptomaniac-escapes-harsher-jail-term/>

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CLAUDINE ORZAL MONTENEGRO

FOREIGN LEGAL ADVISOR (CORPORATE/COMMERCIAL)

Being accepted as one of CNP's foreign legal advisors from the Philippines is an honour for me and my family. As part of the firm now for more than three months, I came to realise that CNP has, indeed, a wide breadth of capabilities in all areas of law practice. CNP's capabilities are enhanced by the expertise, experience and diversity of the Partners and fellow lawyers in all practice groups and areas.

Q: *How is Practice here different?*

Practising law in CNP is very different compared to practising in the Philippines. As a practising lawyer in the Philippines, I dealt mostly with local companies and individual clients applying mainly Philippine laws and procedures. I handled pro bono cases and represented various local clients, such as Filipina women, in local courts. If time allows, I plan to continue involving myself in pro bono legal services in Singapore.

CNP, with its regional and international capabilities, has introduced me to legal transactions applying not only Singa-

WONG SHYEN SOOK ASSOCIATE (LITIGATION)

"It should not matter whether it is a small, medium or big law firm, what is most important is to find the best fit for yourself and to join a firm which recognises your potential; a firm which is willing to nurture and develop a young aspiring lawyer such as yourself and to accelerate your progress beyond what you think you are capable of."

pore laws and procedures but also laws and procedures from other jurisdictions as well. ☺

LAWYERS AND MY MONEY

GEORGE ICHITAGAN

The Good Book is right – the love of money is the root of all evil. Since June 2006, three high profile cases of lawyers absconding with clients' money have made the headlines and the second case was *after* Chief Justice Chan Sek Keong suggested imposing stricter rules on how small firms handle their clients' money.

As the President of the Law Society, Michael Hwang SC opined, "Whatever system you have, you can't stop outright, deliberate, malicious embezzlement. All you can do is try and make it more difficult."

So what is the best way out of this conundrum? I think the key lies in the words 'whatever system'. Suppose you get rid of the system. Huh?

One way is to ask if 'business as usual' can go on without lawyers having to act as middle-men where large sums of money is concerned.

Think about it – do we really need to deposit cash with lawyers so that they can deposit it in their 'segregated' accounts and earn all that interest while your deal takes its time to go through the process? Instead of giving cash, give a collateral-backed instrument, e.g. a bank guarantee (BG). Deposit this BG with the lawyer instead of cash and you have taken away the temptation that the weak-kneed lawyer will succumb to.

Sure, there is bound to be objections, but once the onion is peeled, you will see that there is really no reason why the BG is not acceptable. BGs are usually collateralised by cash or credit-worthy assets and backed by the bank issuing them. It is cheaper than giving cash as your collateral (cash or other assets) is sitting somewhere earning you interest or rent (if you use a property as collateral) or it could be even more productively lubricating your business machinery in the form of cash-flow.

When it comes to earnest money, the big guys are using paper rather than cash. Most people doing regular transactions do not realise though that they could just as easily go to a bank, pay about 0.5%-2% fee (of the face value of the BG) and the bank will issue a piece of paper just as 'earnest-able' as cash. Lawyers do not encourage it because they say it is too slow or cumbersome – but hey, it is not too slow, it just takes a trip to the bank but you know that you have peace of mind and you get to keep all that interest you earn. For those of you who have private bankers, all you need is a phone call. Some banks will even earmark (i.e. freeze or set aside the stated amount so you can't withdraw/ or consider it as available cash) the amount already maintained as balance in your account.

Some lawyers are proposing a form of independent body to hold or administer the money. This may seem the most obvious solution but this would impose bureaucracy and add to the cost of legal services – which is already prohibitive. When people do a transaction, they don't want hassle and red tape. They want a safe and simple way and we already have a mechanism in place in the form of banks and financial institutions, which are insured and (usually) well capitalised.

Since we started with root causes, it would be remiss not to end with root causes. One innovation many business schools implemented in the late eighties and early nineties in response to the corporate excesses and lapses in ethical judgment was to introduce courses in ethics and character building. Perhaps law schools in Singapore should study the effects of these implementations to see if it was effective. After all, the Good Book did exhort us to teach a child in the way he should go, so that when he is grown, he will not depart from the path that he has been taught. Some sage once said that we get our name from our ancestors, but from our virtues come our honour. How true! ☺

George is a first year law student who has chosen to write under a pen name.

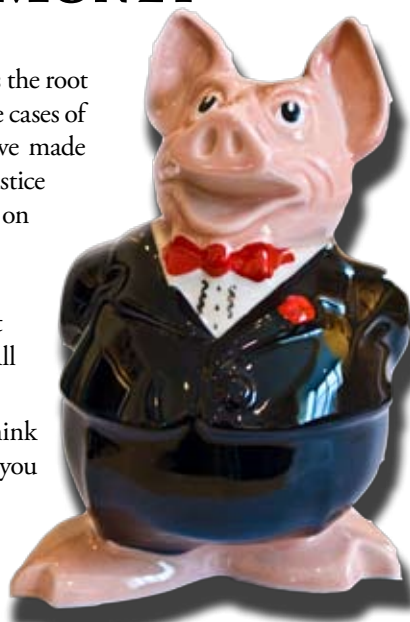


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