The Law Society of Singapore
Annual Continuing Professional Development (CPD) Day 2018

Keynote Address

Once upon a time, contracts were handwritten on paper. You could, as you might have been taught, even write a contract on the back of a cow. How many contracts are handwritten nowadays, let alone on the backs of cows? About the time I was admitted to the Bar in January 1980, the firm I worked in got its first IBM Selectric daisy-wheel typewriters. Everyone was astounded by the super modern typewriter. We glanced at the old ribbon typewriter with mild disdain, and were pleased that we had leapt from the propeller age to the rocket age. Months later, we were introduced to the Wang word-processor, and by the mid 1980's, we were using Word Perfect or XyWrite on personal computers to type our contracts and letters. In the 1990's came the email and Amazon. Yahoo followed in 1995, and Google in 1998.

The point I want to make is that the industrial revolution that followed the invention of the modern steam engine brought progress in all fields of human life, but it proceeded at a glacial pace compared to the revolution brought on by digital technology. Even then change comes in whispers, and if we do not pay attention, we will be stunned when we find that there are far too many changes than we can cope; but the marvel of technology is that it can make you the subject of change, and at the same time, hand to you the power to change.

In the next two days you will be listening to lectures on familiar subjects that include civil and criminal litigation, company law, restitution, tort, and contract, gathering, I am sure, useful and up-to-date summaries of the latest legal developments in those areas of law. When the course ends, I hope that you will reflect on the new knowledge from the speakers against the entire breadth and scope of legal practice, and more importantly, on how technology will change the law and the way it is practised in five to ten years' time. Some of you are so young that you may not have heard of the 'stenographer', let alone met one. The stenographer is probably extinct. The personal secretary survives for the time being, but that job is also endangered.

There was a time when process servers, probably another endangered species, had to swear an affidavit to verify that he had served process successfully. And the process itself, had changed. When I was admitted to the Bar, there was the Writ of Summons, the Petition, the Originating Summons (of which there are two versions – with and without a return date), and the Originating Motion. Court procedure, and thus, originating process, will continue to change. Swearing an affidavit verifying that a court document had been served may seem utterly quaint in time. We already have the technology to know exactly where a person is, and electronic service, verifiable by itself. I have not yet spoken about the young legal associate (who used to be called the 'legal assistant' in the last century – I was one of them). What does this young associate do? Research

the law? Check documents? Draft pleadings, affidavits, submissions? I don't know how to break this gently to you. That kind of associate is going the way of the stenographer. The computer can find the relevant cases faster than a human. It can pick out words of choice from thousands of pages of documents, and it can do so in less than a minute. The thought that the computer might draft better submissions than lawyers is no laughing matter.

The problems and balm that technology brings are complex. You will still have your job the day after CPD, but for how long, and how will you enjoy being a lawyer? If you are Lucien Wong or Davinder Singh, or Chelva Rajah, you will enjoy being a lawyer. Why? Because if you are good at what they do, you will naturally enjoy your work, but you know what Bob Dylan says about time – and that spells hope for all. Even in the midst of change, some areas of law and practice may not move as quickly as others, and good lawyers will still be needed to apply traditional skills and knowledge in the transition. In the long run, all lawyers must face the coming changes and adapt.

In the interim, between the old and the new, the lawyer today must hone old skills, learn new ones, and think ahead but not by abandoning history. This may be a serene interregnum although I do not know how long that may last. With the computer taking over much of the mundane work, lawyers ought to spend the time freed up for them to think more deeply about the law. The computer is not yet able to perform legal reasoning. It cannot yet analyse the basis of contract and develop fresh arguments for or against it. So, you, the lawyer of today, must understand that you are different from the lay public because you are expected to know how to draft a contract, you are expected to know how to right a wrong in court where you can plead the cause of your client. Do not go unarmed; do not be satisfied with the rudimentary knowledge that you learned in school and in the early years of practice. You must not be wary of change, but you must be aware of it, and realise that you can be instrumental in shaping the future of law and the way it is practised.

Just because you can easily attach terms and conditions into a contract by tapping a finger or two, it does not mean that you ought to do it; instead, you should be thinking more deeply and widely to see how contracts can be improved – even high-value banking contracts can be revamped. Lawyers accustomed to inserting templates from their databases might not be inclined to be innovative – and that is precisely the danger you should fear about not paying attention to storm warnings.

When a contractual relationship breaks down, you can almost always identify the point where it snaps. When lawyers focus on that point, they will find solutions to the problem faster. Focusing on the point of snap is one area in which lawyers should spend more time, but there are other noteworthy aspects, such as the basis of contract itself.

When you listen to the contract experts tomorrow, remember that Professor Charles Fried observed long ago that 'the distinction between promissory obligation and obligation based on reliance may seem too thin to notice, but indeed large theoretical and practical matters turn on that distinction. To enforce a promise as such is to make a defendant render a performance (or its money equivalent) just because he had promised the very thing. The reliance view, by contrast, focuses on an injury suffered by the plaintiff and asks if the defendant is somehow sufficiently responsible for that injury that he should be made to pay compensation.' There is, therefore, room for fresh thoughts on old ideas as much as there is room for new thoughts sprung from inspiration. In the area of tort law, for instance, causation remains topical and admits of fresh ideas in its jurisprudence.

Banks used to think that their competitors are rival banks until the day they woke up to the fact that their true competitors today are not other banks, but fintech companies. The challenge to the legal profession today is to appreciate the transformations in the practice of law brought about by technology; and to motivate those members who have little incentive to plan for the future – lawyers who are near retirement, for instance, or who are not willing to spend money on capital, convinced that they will not reap dividends from the investment. Some others may not be motivated simply because they freeze in the face of technology. Conversely, some may be overly excited by technology and clamour for change in every corner and at every turn. Perhaps, even the days of big firms might be ending; it may be every man for himself; and why not – if the force of technology is with him. This is not a speculation, or prediction, or hope. It is an invitation to think about new ways of practice. When a client consults a lawyer, does he really need the rest of the 100 other lawyers in that firm? Deny change at your peril, but keep your head when embracing new ideas. The computer may one day be wise and may also be able to make ethical decisions, but until then, you must not surrender the power of human judgment; you must control the pace of change so that you do not create chaos from unrestrained haste.

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