Introduction

When properly exercised, strike action is often an effective weapon employed by workers collectively in order to compel the employer to improve certain conditions of service, at the risk of the employer suffering a loss or interruption of production processes should the employer refuse to yield. The legal implications of strike action are far-reaching, posing doctrinal challenges to traditional contract law, and indeed also, the common law. The employee’s implied duty at common law of loyalty and fidelity to his employer is diametrically opposite and logically inconsistent with the employee’s intention to inflict financial hardship on his employer by disrupting production processes. The employer’s sacred right of control over his employee is threatened, and his authority challenged. The basis of the contract, that the employer agrees to employ the employee and the latter agrees to serve the employer, breaks down completely – at least during the period of the strike. Indeed, downing tools and walking out of the job amounts to a fundamental breach of the very obligation that the employee had undertaken in his contract of service. The obdurate employers’ response in such circumstances is to assert his authority by exercising his contractual right to end the contract, or dismissing the recalcitrant employee on disciplinary grounds of misconduct. The employee’s collective right to go on strike, therefore, is often made at the expense and sacrifice of his job. The law’s attempt to grapple with the legal implications of strike action, and yet maintain its allegiance to the pure milk of the contract gospel, has put in question its ability to resolve the problem altogether.

The purpose of this article is three-fold: first, an examination of the elementary questions of what constitutes a strike, the legality of strikes and the procedural requirements, and the peripheral matters connected with strike action – picketing, tort of interference with contractual obligations, and statutory immunities. Second, a discussion of the relationship between strike action and the personal contract of service, and the judicial pronouncements on this conflict. Third, a brief examination of a missed golden opportunity in Singapore presented by the Hydril strike of 1986.

Definition Of Strike
Let us begin with the common law definition of strike. The term finds its best expression in the words of Lord Denning in *Tramp Shipping v. Greenwich Marine* [1975]2. He says that a strike is:

[A] concerted stoppage of work by men done with a view to improving their wages or conditions or giving vent to a grievance or making a protest about something or other, or supporting or sympathising with other workmen in such endeavour.

One would have noted that the reasons for the strike could range from purely personal and selfish reasons (inadequate pay, and other conditions of service) to altruistic reasons (such as sympathy for a fellow worker). Yet, whatever the reasons, a strike exists where there has been a concerted stoppage of work by men. We will return to these two elements in a moment.

The statutory definition of strike in Singapore appears under the phraseology of "industrial action" in s. 2 of the Trade Disputes Act.3 This includes:

A strike, that is, the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of a number of persons who are, or who have been so employed to continue to work or to accept employment.

Although there are differences between the common law and the statutory definitions of strike, the common elements are first, the cessation of work and second, by a body or group of men. For a strike to exist, it is absolutely essential that the work of the employees concerned should cease altogether. If the work continues, albeit delayed or with reduced capacity, then, the law terms it a "go slow". But such actions do not constitute a strike.

**Substantive Legality**

The crippling consequences of a strike cannot be over-stated. Time and time again, we read in the press of the devastating effects of strikes to the people, the economy and the country. Sometimes, strikes are used by third parties with politically motivated reasons, to bring pressure to bear upon the Government of the day. It is not uncommon for Governments to be toppled by the force of the workers.

Because of the above consequences, strike action has to operate within certain constraints or limitations, which seek to provide certain safeguards by ensuring that the drastic step of strike action is properly controlled. Generally there are two basic constraints – substantive legality, and procedural legality.

The question of substantive legality is twofold. The first aspect outlaws strike action in certain sectors of the community, particularly those relating to essential services. The second aspect seeks to control strike action by requiring the organisers of the strike to
ensure that the objects and purposes of the strike are not illegal. We shall examine these two aspects in order.

**Essential Services**

The Criminal Law (Temporary Provisions) Act provides for the maintenance of public order by preventing strikes in essential services. Section 5 defines an *essential service* as "any service, business, trade, undertaking, manufacture or calling included in Part 1 of the 1st Schedule" of the Act. The list under 1st Schedule, Part I contains 16 essential services ranging from Air Traffic Control and Civil Aviation to broadcasting, transportation, and undertakings in certain statutory Boards such as Chartered Industries, Singapore Aerospace, etc. The key section is s. 6, which states that no workman employed in *water, gas and electricity* services shall go on strike. This is an absolute provision.

As for the other categories of essential services defined in Part 1 of Schedule 1, workmen who go on strike are compelled to comply with the procedural requirements spelt out under s. 6(2), (7) and (8). Generally the procedural requirements are three-fold: Firstly, before going on strike 14 days’ notice must be given to the employer of intention to strike. Secondly, the workmen are not allowed to go on strike until the expiry of the notice. Thirdly, the workmen are not allowed to go on strike when there is an avenue for resolution by way of proceedings. These proceedings might either be a claim through the Industrial Arbitration Court, Singapore (IAC), or a Board of Inquiry appointed by the Minister of Manpower. The sense of the third requirement is obvious enough. While the avenue of negotiation or dispute resolution is underway, parties should stay their hands in strike action during the pendency of such proceedings until the outcome of the matter has been properly and finally determined. The Act deals severely with parties who flout the provisions and imposes criminal sanctions against recalcitrant persons.

As for other services which do not fall under s. 6, s. 3 of the Trade Disputes Act provides that an industrial action (which includes strike) shall be illegal if –

(a) it has *any other object* than the furtherance of a trade dispute within the trade or industry in which the persons taking part in the industrial action are engaged;

(b) it is in furtherance of a trade dispute of which an Industrial Arbitration Court has cognisance; or

(c) it is designed or calculated to *coerce the Government* either directly or by inflicting hardship on the community.

The term "*trade dispute*" is defined under s. 2 of the Trade Disputes Act and means:

any dispute between employers and employees or between employees and employees, or between employers and employers which is *connected with*
the employment or non-employment, or the terms of employment or the conditions of labour, of any person.

As to the meaning of the phrase, ‘connected with the employment’ the Malaysian High Court case of National Union of Hotel, Bar & Restaurant Workers v. Hotel Malaya Sdn Bhd [1987] 6 MLJ 350 is instructive.

In that case, the union made a proposal to the Hotel for a new collective agreement and suggested that there should be a single collective agreement between the union, on the one hand, and the Hotel and the restaurant, on the other. The Hotel did not agree to a single collective agreement and refused to negotiate unless the union agreed to corporate negotiations on the basis of separate collective agreements as the Hotel denied that it was the employer of the workers in the restaurant.

The union felt that the parties had reached a deadlock and therefore decided to adopt strike action on 1 August 1979. On 9 August 1979, the Hotel wrote to its workers on strike terminating their services on the ground of illegal strike. An issue before the High Court was whether the strike was illegal.

Wan Hamzah SCJ in answering that question had to deal with the question of whether the dispute was a trade dispute as defined in s. 2 of the Malaysian Industrial Relations Act 1967, Wan Hamzah SCJ said:

I do not think that a dispute as to whether there should be a single collective agreement was a dispute ‘connected with employment’ although the collective agreement to be negotiated would be an agreement dealing with matters relating to employment. The connection between the dispute and employment was too remote. In my opinion the connection between a dispute and employment must be a direct connection in order to qualify the dispute as a trade dispute, because if this was not so workers would be able to take strike action in any dispute on the flimsy excuse that it was connected with employment, bearing in mind that workers are employed and therefore connected with employment. In this case, it would be right to say that the dispute leading to the strike was connected with collective agreement rather than with employment.

The judge hence held that when the strike action was commenced there was no trade dispute and therefore the strike action was illegal.

It is submitted that the learned judge was right in adopting a narrow and restrictive view of the meaning of the phrase ‘trade dispute’ as his ground for so doing as stated above was sound.

Another example of a trade dispute can be seen in the case of Re Application of Lower Perak Motor Service Co. Ltd [1968] 8 where the Malaysian court held that union recognition was a "trade dispute" within the definition of the Essential (Trade Disputes in
the Essential Services) Regulations 1965. Raja Azlan Shah J held that "the definition contemplates a dispute between the specified parties and must be connected with the specified subject-matter."

As to whether "union recognition" is "connected with" the specified subject matter of a trade dispute, the learned judge relied on Lord Denning’s judgment in the Court of Appeal in Stratford & Son v. Lindley [1964]10 where his Lordship said obiter:

It is not necessary that there should be a dispute between any individual workman and his employer. Suffice it that the union, on behalf of all its members, desires to be able to negotiate terms of employment and the employer refuses to recognise it. There is thereupon a dispute between employers and workmen which is connected with the terms of employment.

When the case went on appeal in the House of Lords, Lord Pearce said obiter:

Where a union makes a genuine claim on the employers for bargaining status with a view to regulating or improving the conditions or pay of their workmen and the employers reject the claim, a trade dispute is in contemplation …

**Procedural Legality**

Since most, if not all, strikes in Singapore are organised and commenced by trade unions, the jurisdiction of trade unions to engage in strike activity in Singapore needs careful examination. Section 27 of the Trade Unions Act empowers a registered trade union to engage in strike activity. The section states that:

A registered **trade union** shall not commence, promote, organise or finance any strike ... without obtaining the consent, by secret ballot, of the majority of the members so affected.

It is noteworthy that a union need not obtain the unanimous approval of the members affected, but merely the majority consensus. It is submitted that a simple majority of the members affected, and entitled to vote, will suffice. This is in the true spirit of democratic principles that the majority rules.

**Ancillary Matters**

There are other important matters that need consideration. On the one hand, members participating in a strike should be given the right to organise and promote the strike by taking steps to encourage their members to join in the strike. In order to do all these, they need the law to protect them from their actions, and free them from possible legal suits, whether under the civil law or criminal law. On the other, the law must guard against actions that flout public law and order, or the other laws of the country. The law has to
balance between allowing the organisers the right to picket, whilst at the same time, ensure that public law and order is maintained. In this segment, we shall examine how the law attempts to achieve this fine balancing act.

**Picketing**

A strike is only as successful as the support it receives from the workers participating in the strike. One of the most important considerations for any organiser of a strike is to encourage and enlist the support of as many workers as possible, and to gain the sympathy and support of the general public. This phenomenon is generally referred to as picketing.

The law relating to picketing in Singapore is enshrined in s. 10 of the Trade Disputes Act, which provides that:

> It shall not be unlawful for one or more persons acting on his or their own behalf or on behalf of a *trade union*...in contemplation of a trade dispute to attend *at or near a house or a place* where a person resides or works or carries on business or happens to be or the approach to any such house or place –

(a) merely for the purpose of peacefully obtaining or communicating information; or

(b) merely for the purpose of peacefully persuading or inducing any person to work or abstain from working:

Provided that if such person or persons so attends or attend in such numbers or otherwise in such manner as to be calculated -

(i) to *intimidate* any person in that house or place;

(ii) to *obstruct* the approach thereto or egress therefrom; or

(iii) to lead to a *breach of the peace*,

such attending shall be unlawful and shall be deemed to constitute an offence under s. 9 [Intimidation].

In *Gleneagles Hotel Ltd v. Wong Hue Whee & 38 Others* [1956], the High Court of Singapore held that ‘*at or near a house or a place*’ as provided in s. 5 of the *Trade Dispute Ordinance, 1941* could not mean ‘*in*’. Hence, that section did not confer the defendant a right to picket in the grounds of the plaintiff’s premises, that is, the section did not confer a right to picket within a house or place.

Section 9 of the Trade Disputes Act deals with Intimidation, and states that:
Every person who with a view to compelling any other person to abstain from doing or to do any act, which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority –

(a) uses violence to or intimidates such other person or his wife or children, or injures his property;

(b) persistently follows such other person about from place to place;

(c) hides any tool, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof;

(d) watches or besets the house or other place where such other person resides or works or carries on business or happens to be or the approach to such house or place; or

(e) follows such other person with two or more persons in a disorderly manner through any street or road,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 3 months or to both.

The phrase "intimidate", common in ss. 9 and 10 of the Trade Disputes Act20, is defined to mean:

... [T]o cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property.

The key word is apprehension. This means that there need not be any actual injury to person or damage to property; a reasonable fear that such a course of action would ensue would suffice to amount to intimidation. The test of what amounts to apprehension is that of the reasonable man. For example, an organiser who warned a worker thus "You’d better join in the strike or I’ll [break your leg] [harm your family] [burn your house]!" would clearly amount to intimidation.

**Unlawful Obstruction And Nuisance**

The picket must also be organised so as not to infringe public law and order provisions. The ambit of the relevant public law and order provisions fall within the realm of criminal law, and covers an exceedingly wide field of possible offences. It is beyond the scope of this article to examine all these possible offences.
Suffice to say, the more important public law and order provisions relate to unlawful obstruction and public nuisance. The case of Re Seah Tin Toon [1963]21 is instructive. The facts are briefly these: On 3 November 1962, 15 of the 32 employees of the famous Rendezvous Bar and Restaurant went on strike. The strikers put up posters, placards, flags, banners, tables, and chairs, benches and stools on the five-foot-way of this restaurant. The majority of the strikers ate their meals on that portion of the five-foot-way and slept there at night. Besides the strikers a few members of the union of whom the strikers were members also slept on the five-foot-way to keep company with the strikers. The articles placed by the strikers on the five-foot-way in front of the restaurant were still there when the petitioner filed a report and information on 1 December 1962. The petitioner alleged that there was in existence such an unlawful obstruction or nuisance within the meaning of s. 96 of the Criminal Procedure Code as to require the district court to make a conditional order under that section. The district judge conducted a locus in quo22, and found that the articles placed by the strikers on the five-foot-way did not completely obstruct it and that there was a clean passage for members of the public to pass and re-pass along it. The obstruction amounted to nothing more than a slight inconvenience of a temporary nature. There was no evidence of any serious injury or imminent danger to the general public. The District Judge thus held that the petitioner had failed to show that the obstruction was an unlawful obstruction or nuisance within s. 96. The petitioner appealed, but the High Court dismissed his appeal.

**Tort Of Interference With Contractual Obligations**

In general, a person who induces another to commit a breach of contract commits the tort of wrongful interference with contractual obligations. In order to persuade workers to participate in strike action, organisers of a strike would make it their job to induce people to participate in the strike. This amounts to a tort since the objective is to encourage the worker to breach his contract with his employer. The employer has the right to sue the organiser in the tort of wrongful interference with the employer’s contractual obligation with his employee.

The law, however, provides organisers of a registered trade union23 with a statutory immunity against a possible court action by the employer against them for committing the tort of wrongful interference with contractual obligations. Section 23(1) of the Trade Unions Act24 provides that:

> A suit against a registered trade union or against any members or officers thereof on behalf of themselves and all other members of a trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court.

The statutory immunity covers only tortious acts committed in "contemplation or furtherance of a trade dispute." Therefore, any action of the organisers of a trade union done in contemplation or furtherance of a trade dispute attracts the shield of protection under s. 23.
Doctrinal Problems Raised By Strike Action

At common law, it seems fairly clear that strike amounts to a breach of the contract of employment by those involved. As said earlier, striking amounts to a fundamental breach of the very obligation that the employee has undertaken in his contract of service.

However, Lord Denning M.R attempted to modify this uncompromising position in Morgan v. Fry [1968]25. He said26:

The truth is that neither employer nor workmen wish to take the drastic action of termination if it can be avoided. The men do not wish to leave their work forever. The employers do not wish to scatter their labour force to the four winds. Each side is, therefore content to accept a "strike notice" of proper length as lawful. It is an implication read into the contract by the modern law as to trade disputes. If a strike takes place, the contract of employment is not terminated. It is suspended during the strike and revives again when the strike is over.

Phillips J in Simmons v. Hoover Ltd [1977]27 held that refusal to work during a strike did not involve self-dismissal by the strikers. But he left the parties to the contract hoping that the strike would one day be settled, and the contract alive, unless and until the employer exercised his right to dismiss the employee. The court declined to follow Morgan v. Fry holding that while there is no doubt that Lord Denning MR had introduced into the law the concept of suspension, it is only in embryonic form with none of the consequences having been worked out.

The Donovan Royal Commission 1968 considered but rejected the concept that strikes suspend rather than terminate the contract.

The Commission said28:

The concept is not as simple as it sounds: and before any such new law could be formulated problems of some difficulty would have to be faced and solved. They include the following:

a) To what strikes would it apply? To unofficial and unconstitutional as well as to official strikes? How would strikes be defined for this purpose?

b) Would it also apply to other industrial action such as a ban on overtime in breach of contract or to a "go-slow"?

c) Would it apply to "lightning strikes" or only to strikes where at least some notice was given, though less than the notice required for termination of the contract? If so, what length of notice should be required?
d) Would the new law apply to the gas, water and electricity industries, which at present are subject to the special provisions of s. 4 of the Conspiracy and Protection of Property Act 1875? What also would be the position under s. 5 of the same Act?

e) Would the employer still be allowed instantly to dismiss an employee for grave misconduct during the course of the strike? If so, what kind of acts would constitute "grave misconduct"?

f) Would "contracting out" of the new law be permissible, e.g. in collective bargains, or in individual contracts of employment?

g) Would strikers be free to take up other employment while the contract was suspended? If so, would any obligations of secrecy in the suspended contract be suspended too?

h) If all efforts to end the strike failed, upon what event would the suspensions of the contract cease and be replaced by termination?

As Professor Keith Ewing remarked in his book:

These questions invite several responses. The first is that they appear from the vantage point of the 1990s to be hopelessly inflated concerns which by no stretch of the imagination are insuperable.

The first four questions concern policy issues relating to the forms of industrial action, which are to be legally protected. Having made that decision, we could either confine the doctrine of suspension to those disputes, or apply it to all disputes but create alternative sanctions applicable to those who exceed what is to be permitted. Statute could be used to reflect this.

The fifth question raises no serious obstacle as there seems no reason why an employer would not be free to terminate a suspended contract where the employee acts in a manner which, apart from the strike, could be a repudiation of a fundamental term of the contract. So violence directed towards the employer’s property would justify termination of a suspended contract, as would any breach of the duty of fidelity, though this would not necessarily be compromised by taking up alternative employment until the strike is concluded.

So far as the sixth question is concerned, it could be provided by statute that a no-strikes clause or a collective disputes procedure in a collective agreement is not to be incorporated into a contract of employment unless certain formalities are complied with. Presumably, the same exception, or something similar, could qualify a statutory provision suspending contracts of employment during a strike.
In practice most strikes do not end in dismissal. The employer and employee relationship survives during and after the strike, and in practice, if not in law, the contract of employment is in a state of suspension.

The main problem with the concept of suspension is that it may not deal with one of the most important yet most neglected consequences of industrial action, namely the absence of any protection against dismissal.

The effect of suspension must be to suspend the contract until it is lawfully terminated, but it would not prevent the contract from being terminated. The problem with the suspension concept is that it does not adequately confront one of the major consequences flowing from the fact that a strike is invariably a breach of contract at common law.

The problem can be solved by statutorily providing that the right to strike is a fundamental right of workmen in certain limited and specified circumstances.

**Strike Action v. Contract Of Service**

**Termination Of Contract**

Under the dismissal provisions under s. 13 of the Employment Act, a statutory employee in Singapore could be deemed in law to have broken his contract of service by reason of his continuous absence from work for more than two days. An employee would not be in breach of s. 13(2) if he were able to show:

1. that he had prior leave from his employer or that he had a reasonable excuse, eg, sick leave; or

2. that he had informed or at least attempted to inform his employer of the excuse for such absence.

In the case of an employee participating in strike action, his very absence from work is the essence of strike action. This raises the question whether his absence from work by reason of strike amounts to reasonable excuse, so as to avail the employee of a defence under s. 13(2). This interesting, but thorny, legal question has been judicially addressed in a series of cases both in Singapore as well as in Malaysia. We shall now examine these decisions and find out the extent in which the law considers strike action to be a reasonable excuse against a deemed breach of contract claim brought by the employer.

The earliest case is *Wong Mook v. Wong Yin & Ors* [1948], a Malaysian case before Willan CJ. In that case an employer engaged four tappers on a rubber estate. On 11 July 1947, the four employees went on strike for three days. The strike was instigated in protest against a wage cut in the wages of the rubber tappers. On 12 July, the employer ordered the strikers to return to work. The strikers ignored that order and did not report back to work until 14 July – that is, having been absent continuously for three days. When the strikers finally reported back to work, they found that the employer had
replaced them with other tappers. The employer refused to re-employ the strikers. The strikers complained to the Deputy Commissioner of Labour (DCL), Selangor and claimed compensation in lieu of notice on the grounds that they had been dismissed without notice. The DCL gave judgment for the strikers. The employer appealed.

Willan CJ held that the tappers had by their own volition absented themselves for the purpose of a strike and this cannot be held to be a reasonable excuse for their being absent from work without leave. Further, that by absenting themselves from work for three continuous days the strikers had broken their agreements under s. 53 (iv)(a) of the Labour Code. The employer did therefore not dismiss the strikers.

The case is interesting for three reasons.

First, the judge did not discuss the question whether four tappers who went on strike was a sufficiently large enough body or group of men to constitute a strike. Although this is essentially a factual question, it is doubtful if four tappers in a rubber estate would be large enough to constitute a sufficient body or group of men to form a strike.

Second, Willan CJ chided the DCL for applying the English labour statutes. In Willan CJ’s words,"The decision of the DCL is wrong, and the reason why he has come to that fallacious decision is, instead of applying [local laws] ... he has concentrated his attention on the provisions of [English statutes]." Willan CJ went on to say that he found much guidance in the local statutes. In one section, the phrase "...on the ground only that such act induces some other person to break a contract of employment..." contemplated that a person going on strike, even though the strike is not an illegal one, may break his contract of employment. The phrases, which provided much illumination to Willan CJ, is contained virtually in verbatim under s. 22 of our Trade Unions Act. Section 22 provides that:

No suit or other legal proceedings shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment...

In other words, the section seems to suggest that all strikes are, by their very nature, breaches of contracts of employment. Is this equation a non sequitur? Is the judge correct in transposing a section under the Trade Unions Act, which aims to immunise unionists from legal suits in certain circumstances, and applying it to determine the issue of contract termination by reason of strike action?

Third, it is not entirely clear from the report of the case whether Wong Mook was a union case or a non-union case. This distinction might seem relevant in the way a court approaches the question of whether a strike = breach of contract. In Willan CJ’s judgment, there seems to be a hint that a union may have been involved, thus
reinforcing the view that *Wong Mook* was a union case after all. But it seems strange that only four individuals were involved in the strike if one accepts the view that the union rallied behind these members.

The second case is *Gleneagles Hotel Ltd v. Wong Jue Whee & 38 Ors* [1956]35, a decision of the High Court of Singapore. The facts of the case, unlike *Wong Mook*, are straightforward. The plaintiff was a company in Singapore engaged in the hotel business. The defendants were employees employed by the plaintiff to work as hotel service staff. On 26 August 1955, the defendants went on strike and did not return to work. However, the strikers continued to occupy the staff quarters on the premises until the court ordered them to vacate the quarters. They also remained in the grounds of the hotel, and erected at the corner of a lawn in front of the hotel building, a tent that they occupied. They also erected and displayed "STRIKE" banners and posters inside the grounds of the hotel. The plaintiff claimed that the defendants had no right to remain on any portion of the grounds and premises of the hotel and contended that the defendants continuing to do so constituted acts of trespass. The defendants claimed that the statutes permitted them to do so.

Whitton J held that by going on strike and absenting themselves from work, the defendants broke their contract of employment. Once the contract of employment had ceased, the defendants had no rights to use the staff quarters since the staff quarters were only given to employees of the hotel. In regard the picketing issue, the words "at or near" a house or place in s. 5 of the Trade Disputes Act 194136, do not mean "in" and therefore that section does not confer a right to picket within a house or place. Lastly, the defendants were not entitled to picket in the grounds of the plaintiff’s after the termination of their contract. By doing so the defendants had trespassed.

Several points arise for comment.

First, the number of strikers was certainly more substantial than the four amorphous strikers in *Wong Mook*. Although the judge did not specifically consider whether there was a sufficient group or body of men to constitute a strike in law, I do not think that this question would have posed a legal problem in that case.

Second, the judge relied heavily on Willan CJ’s equation that a strike equals a breach of contract, and by so doing, entrenched the rule that a strike would always constitute a breach of contract, whatever the reason for the strike.

Third, the judge’s findings that picketing under the statute was permissible so long as the pickets were not in the premises of the employer. Although the judge’s reasoning for coming to this conclusion is not without doubt, the intention of the legislators must have been that too close a proximity between the strikers and the employer might inflame the situation and lead to breaches of the peace between the management and the strikers. It is perhaps just as well that pickets should only be set up *outside* the employer’s premises, but not within. In built-up areas in Singapore, this often means that strikers would have to set up picket lines along public or state properties. This then gives rise to other
considerations relating to public law and order, such as unlawful obstruction, nuisance, unlawful assemblies, breaches of the peace, etc.

The third case that we need concern ourselves is the Malaysian case of Non-Metallic Mineral Products Manufacturing Employees Union & Ors v. South East Asia Fire Bricks Sdn Bhd [1976]37. The case was an appeal to the Federal Court from the High Court of Malaysia, and thus represents high authority. The significance of Non-Metallic lies in the departure of the earlier colonial decisions which decided that strike action constituted a breach of contract.

First the facts of Non-Metallic: On 4 February 1974, 73 workers of the company stopped work. The stoppage ended on 16 February when the dispute was referred to the Industrial Court. The workers resolved to resume work on 16 February, but were locked-out. The apparent cause of the strike was that the management of the company had repeatedly ignored the requests for recognition of the union. And because of this refusal, negotiations for collective bargaining could not proceed. The strike ballot was taken on 3 February. On 4 and 5 February, the management issued two warning notices to the strikers informing them that the sudden stoppage of work was a sudden wildcat strike. It was illegal and constituted a break in service, and warned that unless the strikers returned to work within 48 hours, their services would be deemed to have terminated.

In a far reaching decision upholding the workers’ right of collective action, Raja Azlan Shah FJ examined the earlier decisions of Wong Mook, and chose to depart from that decision. Raja Azlan Shah delivered the deathblow to Wong Mook in these telling lines:

   My only comment is that the circumstances of that case are distinguished by one very important fact, that is, the strike was organised by an amorphous group of rubber tappers. In that context the learned Chief Justice was right when he took the view that the provisions of the Trade Union Enactment 1940 was not affected; hence his pronouncement of s. 20 of the Enactment that "a person going on strike even though the strike is not an illegal one, may break his contract of employment" is, with respect, quite unnecessary to the decision, and is considered obiter. No guidance is more misleading than an obiter dictum.

With Wong Mook out of the way, Raja Azlan Shah went on to find that the amendments to the Trade Union Ordinance, which prevented an employer from restricting the right of any labourer to participate in the activities of a registered trade union, had changed the old law. As he put it, "the law [since Wong Mook] has not been standing still since then." In Singapore the corresponding section is s. 17 of the Employment Act38:

   Subject to any other written law for the time being in force, nothing in any contract of service shall in any way restrict the right of any employee who is a party to such contract –

   (b) to participate in the activities of a registered trade union.
Because of the similarities in the wordings of these statutes, the decision in *Non-Metallic* is of high persuasive authority in Singapore. It is noteworthy that *Wong Mook* was not overruled in Malaysia, but it certainly has been distinguished out of significance.

Raja Azlan Shah went on to entrench the rights of the workers to strike.

Workers’ organisations cannot exist, if workers are not free to join them, to work for them and to remain in them. This is a fundamental right which is enshrined in our Constitution and which expresses the aspirations of workmen. It is declaratory of present day industrial relations that management should encourage workmen to join a union and to play an active part in its work, but this is restricted to the activities of a registered trade union, such a the freedom to strike. There can be no equilibrium in industrial relations today without the freedom to strike. If workers could not, in the last resort, collectively withhold their labour, they could not bargain collectively.

The learned judge went on to hold that strikers acting in concert under the instigation of a registered trade union did not break their contracts of services. Although he did not specifically refer to the "deemed breach of contract" provision, one can deduce that a strike under such circumstances amounted to reasonable excuse, and exonerated the employee from an action for deemed breach of contract. The legal position of an employee was that his contract of service was suspended during the currency of the strike. After the strike, the employee was entitled to be put in status quo, ie, a position that he would have been but for the strike; all former rights and privileges enjoyed by the employee would continue to be enjoyed by him, even after the strike. Raja Azlan Shah went on to repeat the view that:

[W]orkmen are entitled to withdraw their labour by concerted action for any lawful purpose connected with management. Workmen who down tool do not risk the loss of their employment. The contracts of service are suspended by the strike, they are not terminated, and the workmen are entitled to be put back to the status quo on the same terms and conditions.

The decision in *Non-Metallic* was clearly a resounding victory for the labour movement in Malaysia, and must surely have been greeted warmly by the Singapore labour movement. The million-dollar question in Singapore is whether *Non-Metallic* applies directly, or whether the legal position in Singapore is that of the *Wong Mook-Gleneagles* line of cases. There is no way of telling surely what the Singaporean position is. All that can be said is that the Singapore judiciary is evenly poised to accept or reject *Non-Metallic*.

**Hydril Strike 1986**

A golden opportunity presented itself in Singapore in the Hydril strike of 1986. The employer, Hydril, was an American company engaged in manufacturing oil equipment
and had a factory in Jurong. The employer engaged many workers in its Jurong plant. For some time before the strike, the industrial relations between management and union had been strained over several incidents that the union claimed showed that the management was anti-union. Management dismissed nine members of the union, including the Branch Chairman, Treasurer and Committee members. The last straw came when the Treasurer was dismissed on 10 December 1985. The branch union of SMMEU convened a secret ballot on 30 December, which ballot showed unanimously that the members were in favour of strike action. With the support of NTUC, about 60 Hydril employees went on strike at 6am on 2 January 1986. This was the first strike in Singapore since 1977. The workers picketed outside the gates of the Jurong factory, and wore armbands with the words: "We want justice." Other unions, whose members were at the gates to show their support, joined the picketing Hydril employees. All this was before the watchful eyes of Labour Ministry officials who were there to ensure that the picketing was lawful and peaceful. The strike was over in two days. The management agreed to take back the sacked treasurer and to compensate five other dismissed employees who declined to be reinstated.

Several interesting legal questions were posed by the Hydril strike. What would the position have been if management dismissed all 60 of the strikers on the grounds that they each breached their contracts of service under s. 13(2) of the Employment Act? If the matter went to court, the Singapore judiciary would need to grapple with the dichotomous approaches of Wong Mook- Gleneagles, on the one hand, and the modern approach represented in Non-Metallic, on the other.

It is submitted that one approach – which would leave the two approaches intact – would be to distinguish between union cases and non-union cases. Given the strict laws governing the constitution of union members, and other regulatory controls of union activities, it is felt that the court would be more sympathetic to the actions of a registered trade union than it would be with the actions of a group of mutinous workers. The general assumption is that unions are responsible, and would not do something that they did not believe was in the best interests of its members. If this view finds favour, then strikes that are instigated by non-unions would generally render the workers in breach of contract.

Hydril broke Singapore’s strike-free record of eight years39, and showed that industrial action by way of strike was a reality. The impact of Hydril, and the need to maintain good industrial relations cannot be overstated. The importance of the Hydril strike is:

1. Contrary to the general feeling, unions are not "paper tigers";

2. Industrial peace can never be taken for granted.

3. Dismissal cases should be treated with utmost caution, and should be exercised as a means of last resort, and certainly, after compliance with the rules of natural justice.
4. The solidarity of the unions is amply demonstrated by the support given by other unions (sympathetic reasons).

5. The incidence of strikes is greater when the economy is in recession. Management is required to exercise extra caution during this period. Workers should react objectively, and also exercise restraint.

6. Although all employees should be treated equally, management should be aware of union members, and exercise greater circumspection in their dealing with key union members.

**Conclusion**

The need for strike action, which can only be exercised collectively by workers, should be seen as a very effective weapon that an employee could use against an employer. At the heart of this important weapon of the employee lies the thorny question of whether a worker in Singapore has the unfettered right to strike. If the right to strike is given at the expense of a worker’s job, then the effectiveness of strike action in the arsenal of an employee becomes questionable. At the same time, the crippling effects of strike action to an employer, and the economy, should require that the law operates within certain perimeters that safeguard an employer from a capricious and irresponsible union, or group of workers threatening to ruin the employer’s business by strike action. Admittedly, it is a difficult balance to achieve between the right to strike on the one hand, and the employer’s right that his production process should not be interrupted. Perhaps the best balance for the law is to maintain the dichotomous approaches discussed. Adopt the approach according to the justice and equity of each particular case, rewarding appropriate strike action as a means of last resort, while chastising the irresponsible who turn to strike action as the first action when other avenues of resolution could be effectively adopted instead.

**Comparative Table Of Singaporean And Malaysian Statutory Provisions**

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End Notes:

1. The *Non-Metallic* case is a classic example of the doctrinal challenge to contract law. How can a contract be suspended *in vacuo*, only to restore the rights and obligations of the parties’ *status quo* once the strike is over?

2. [1975] 2 All ER 989.

3. Equivalent to s 2 of the *Industrial Relations Act 1967* (Act 177), Malaysia.

4. See s. 9(2) of the Criminal Law (Temporary Provisions) Act: Fine not exceeding $2,000 or jail not exceeding 12 months or to both.

5. Equivalent to ss. 44 and 45 respectively of the *Industrial Relations Act 1967* (Act 177), Malaysia.


7. Similar to s. 2 of the *Trade Disputes Act (Cap 331, 1985)*, Singapore.


9. Similar to *Trade Disputes Act (Cap 331, 1985)*, Singapore.


11. [1964] 3 All ER 102 at p. 113.

12. Equivalent to s. 25A of the *Trade Unions Act (Act 262)*, Malaysia.

13. 50.1% of the total number who is eligible to vote would suffice.
14. Equivalent to s. 40 of the Industrial Relations Act (Act 177), Malaysia.

15. This phrase probably requires the action to be intentional or deliberate.


17. Following the leading case of Larkin v. Belfast Harbour Commissioners [1908] 2 IR 214.

18. Predecessor of the Trade Disputes Act (Cap 331, 1985). Equivalent to s. 40 of the Industrial Relations Act 1967 (Act 177), Malaysia.

19. Equivalent to s. 39 of the Industrial Relations Act 1967 (Act 177), Malaysia.

20. Equivalent to s 39 of the Industrial Relations Act 1967 (Act 177), Malaysia.


22. A personal inspection of the premises to ascertain for himself the extent of obstruction and nuisance.

23. It is not clear whether organisers who do not belong to a registered trade union would be entitled to this statutory immunity. Probably not. If this view is correct, there is advantage in joining a registered trade union for which the member would enjoy the shield of protection of this immunity.

24. (Cap 333, 1985). Equivalent to s. 22 of the Trade Unions Act (Act 262), Malaysia.


26. Ibid at p. 728.


30. (Cap 91, 1996). Equivalent to s. 15 of the Employment Act (Act 265), Malaysia.

32. Section 53(iv)(a) of the Labour Code is essentially the same as Singapore’s 13(2). It provides that:

   An agreement shall be deemed to be broken -

   (a) By the labourer if he is continuously absent from work for more than one day ... without leave from the employer or without reasonable excuse.

33. Equivalent to s. 21 of the Trade Unions Act (Act 262), Malaysia.

34. At p. 42, second column of the Report.


36. This is the predecessor of the Trade Disputes Act (Cap 331, 1995). Equivalent to s. 46 of the Industrial Relations Act (Act 177), Malaysia.


38. Equivalent to s. 8 of the Employment Act (Act 265), Malaysia.

39. At the same time as the Hydril strike, there were two other incidents of strike action. 40 workers of Aerospace Industries Pte Ltd downed tools in protest over non-payment of salaries and CPF contributions. 60 employees of Galleries Lafayette department store walked out of their jobs to demand the reinstatement of eight dismissed colleagues.

40. A few notable press articles covering the strike include the Editorial, Straits Times, 4 January 1986, and Straits Times, 1 January 1986.