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THE INFLUENCE OF THE FRENCH JUDICIAL MODEL ON THE SEYCHELLES

By Mr Andre Sauzier

Translated from the original French text into English by Mrs Nichole Tirant-Gherardi

The Seychelles is made up of a group of islands in the South West Indian Ocean, north of Madagascar. The main island of Mahé is situated 4° South of the Equator. The population is approximately 68,000 inhabitants, the bulk of which live on the islands of Mahé, Praslin and La Digue.

The French took possession of Seychelles, which was at the time uninhabited, in 1756. The first French colonisers arrived in the islands in 1770. They came from the island known then as Ile de France (known today as Mauritius). From the start of the colonisation, the Seychelles became a dependency of Mauritius and was governed from the central administration of Mauritius

During the Napoleonic Wars, the Seychelles suffered the same fate as Mauritius and was occupied by the British and finally ceded to the Crown of Great Britain through the Treaty of Paris signed on 13th May 1814. Seychelles was occupied by the British as early as 1794, much earlier than Mauritius which was only occupied in December 1810. Throughout that period the Seychelles continued to be administered from Ile de France, to such an extent that all the laws passed in Ile de France were applicable to its dependencies and also applied to the Seychelles.

It was in this way that the three major Napoleonic Codes, passed by order of General Decaen, Governor General and Administrator of Ile de France and its dependencies, including the Seychelles, were made directly applicable to the Seychelles. These were: 1. The French Civil Code, better known as the Napoleonic Code by order of Decaen, N° 168 of 21st April 1808, 2. the Code of Civil Procedure by order of Decaen N° 177 of 20th July 1808, and 3. the Commercial Code by order of Decaen N° 208 of 14th July 1809.

The three Codes were made applicable with amendments to take into account the specific and special conditions of the time, in particular the status of slaves who were at the time considered as chattels. No other substantial changes were made.

After the Treaty of Paris, the British Governor of Ile de France, which had by then become the Island of Mauritius, published a Proclamation in April 1815 declaring that all the laws passed under the previous administration and which applied to Ile de France and by extension to the Seychelles, would remain in force, with the

exception of the laws relating to the slave trade. In this way, the three laws referred to above were retained as law in Seychelles. All the amendments made in Mauritius up to 1903, the year in which the Seychelles became a separate British Colony in its own right, continued to apply to Seychelles whether by implication or through special legislation.

After 1903 amendments were made less often as, in practice, there was not as much pressure for change in Seychelles as there was in Mauritius. What remained of French law in Seychelles over the years had fallen into a state of torpor and remained static with no evolution whatsoever until 1971 with the opening of the Seychelles International Airport. This event had the same effect as the kiss of Prince Charming on Sleeping Beauty. Seychelles opened up to the world and experienced an immediate economic boom. This change required an updating of the law, especially the Civil and Commercial Codes, in order to bring them in line with the economic reality of Seychelles.

When the revision of the Civil and Commercial Codes began in 1973 and 1974, Seychelles was still a British colony. This was not favourable to the French judicial model. The codes, which had until that time, been written in the French language were re-written and passed in English with the specific provision that the new English text would be treated as the original and for the purposes of interpretation would not be considered as a translation. Fortunately, this provision was partly cancelled in as far as the Civil Code was concerned by an amendment of the code which stipulated that rules established by jurisprudence and which were not contrary to the actual text of the Code would continue to apply. It is as a result of this amendment that judges could continue to refer to French jurisprudence whilst taking into account legal doctrine in order to interpret the laws and give them wider application and meaning. Despite this, the translation has resulted in some cases in a complete betrayal: sometimes even a total change of the ambit and application of the original text. For example, the word "titre" was translated by the expression "instrument of title" which effectively means a written document whereas we do know that in French Law the expression "titre" carries with it a much wider meaning.

A simple method of restoring the flow of French judicial influence in this sclerosis and this without having to re-translate the Code back into French, would be to introduce the original French expression in brackets after the English translation wherever the English word could lead to ambiguity or restrict its meaning. We have in our laws a provision which gives precedence to the French legal expression over the English meaning (See section 19 of Act 22 of 1976). In this case it would suffice to extend the application of this legal provision to the Seychelles Civil Code.

The new Civil Code which became law in 1975 is for the greater part based on the 1973 edition of the French Civil Code. Details of articles of the French Civil Code which have no equivalence in the context of the new Civil Code of Seychelles' are set out in the appendix. Since 1920, the Code of Civil Procedure has been replaced almost entirely by new provisions based on English Civil procedure. The following articles of the French Civil Procedure Code continue to have the force of law and apply. Articles 173 to 187, 193 to 213, 302 to 323, 352 to 362, 626 to 672, 806 to 825, 839 to 854, 865 to 870, 898 to 906, 907 to 952, 966 to 968, 976 to 985, 986, 989 to 996, 998 to 1002.

It is interesting to note that the procedure for examination on personal answers ("examen sur faits et articles") in relation to civil cases has been retained. This procedure is unknown in English Law. It is essentially to restore the balance of justice as the Seychelles law has retained the Law of Evidence in relation to written documents as set out in civil matters only. In criminal matters these rules no longer apply and evidence of witnesses is allowed in all cases.

The Commercial Code has very few articles based on French law. These articles relate to the books that should be kept by traders, to testimonial proof in commercial cases and in commercial entities (partnerships). The other articles have nothing to do with the original texts of the French Code. The provisions of the Commercial Code on limited liability companies, letters of credit and maritime trade are now based on English Law. I have set out in the appendix a list of the articles of the French Code which have no equivalence in the present Seychelles Code.

The Penal Code and the Criminal Procedure Code are based on Codes which have their origin in English law dating back to the 1950's. They were passed in 1955. Prior to this, the Penal Code was based, for a large part, on the French Penal Code which was itself very similar to the Mauritian Penal Code. The Criminal Procedure Code had since the beginning of the 19th Century been based on the English Criminal Procedure Code.

In 1903 when Seychelles became a separate Crown Colony from Mauritius, an order of the Crown Council of the United Kingdom granted the new Crown Colony a legal system separate and apart from that of Mauritius. The judges of the Supreme Court have the same powers as those of the High Court of England. They also have the power to administer justice in all equity in cases in which the law does not provide remedies. This power was not often invoked but it did give the judges the power to design and determine the course of the law in areas where the legislator is afraid to legislate, for example, to ensure that justice is done in cases where cohabitation between concubines comes to an end.

This same Order in Council introduced the English Law of Evidence in all cases where the law does not stipulate the contrary. Naturally, any articles of the Civil Code stipulating the contrary would fall into this special class.

To summarise what has been said above, it is in the context of the Civil Code of Seychelles that the principles of French Civil Law continue to apply in Seychelles.

By what means does it continue to apply?

It has been established by the Supreme Court of Seychelles as a principle of jurisprudence that a text based on French Law must be interpreted or applied in accordance with the norms of French jurisprudence or doctrine. The only derogation to this principle is where the solution offered by French jurisprudence or doctrine specifically contradicts the actual wording of the law.

This principle is not cast in stone but depends a lot on the judges who sit in the Supreme Court or in the Court of Appeal. The tendency, especially for Mauritian and Seychellois judges, has been to apply the principle. The tendency of lawyers appearing before the courts has been to argue in favour of application of the principle.

The following are certain examples of where the principle has been applied.

Attorney General v/s Olia 1964 SLR 141

In this case, the issue to be resolved was what registration fee would apply to a limited liability company that had been set up to hold the assets and liabilities of another company. The assets comprised immovable property. The issue was whether the transfer of the immovable property to the new company should draw the payment of transfer duty as . The Court found that it was liable and that payment of transfer duty was due basing its findings on French jurisprudence and doctrine as the law relating to registration had been established in acts passed on 12th December 1798 and the 8th December 1803 (Translator's Note: 6 Frimaire Year 12 is taken from the French Republican calendar applicable at the time).

Desaubin v/s United Concrete Products of Seychelles 1977 SLR 164

In this case, the Plaintiff lived on a property adjacent to that of the defendant and was suffering from the adverse effects of rock dust from the rock breaking activity of his neighbour. The court applied the principles of French jurisprudence relating to damages which exceed the ordinary obligations of a neighbour towards another. Article 1382 of the new Civil Code, by seeking to define the concept of "faute" by limiting it, had actually made room for a wider application of the principle of abuse of power.

Mangroo v/s Dahal 1937 MR 43

This is a case which came before the Supreme Court of Mauritius. The principle established in this judgment was also adopted by the Supreme Court of Seychelles. This principle may be set out briefly as follows: In motor vehicle accidents, where the accident is caused by the mechanical failure of the vehicle without human intervention, article 1384.1 will apply. Where there is human intervention, - as in the case of negligence or carelessness of the driver - then article 1382 or 1383 will apply. The fault must be proven. The theory of risk in this case was not accepted. The reason being that the French jurisprudential and doctrinal notion went contrary to the text of the law. Article 1384-1, on the facts, could not be extended to a case where the accident had been caused by human intervention, that is to say, by manipulating the thing in a negligent or imprudent manner. This interpretation of the Civil Code came from the fact that the Mauritian and Seychellois judges had been trained in the English legal tradition.

It is interesting to note that in the new Civil Code of Seychelles passed in 1975, a new article 1383-2 was inserted to create the presumption of "faute" in the case of motor vehicle accidents. This article has created some difficulties of application and interpretation but has done away with the principle established in Mangroo v. Dahal.

To summarise, French Civil Law as well as other codes and laws having their origin in French Law continue to thrive in Seychelles through the judgments of the civil courts basing their judgments on principles of French doctrine and jurisprudence. Numerous elements will continue to favour this momentum and evolution in the future.

The countries of the South West Indian Ocean, namely, Seychelles Mauritius La Réunion, Madagascar and the Comoros have formed a regional cooperation grouping called the Indian Ocean Commission. Following on from this initiative, the judges of the region have set up an Association of Judges of the Indian Ocean. This association meets once a year by roster in one of the member states. The common language of the Association is French and the common law, on certain aspects is French Law. La Réunion and Mauritius play the role of catalyst. There is no doubt that this association will play a very important role in influencing the continued flow of the French legal model as a solution to the legal problems common to the countries of the region.

Another point of discussion is that of training of Seychellois lawyers. The tendency in the future will be to send students to study law at the University of Mauritius. The Law Faculty of this university has professors and lecturers who either come from the University of La Réunion, which is itself affiliated to the University of Aix-Marseille or are financed under French cooperation agreements.

To conclude, some reflection is called for. A determining factor in anchoring the French legal system in Seychelles Law was the simplification of Land Law in France as compared to the complex subject in English Law. The English colonisers had always hesitated to introduce the Common Law in its entirety into Seychelles because of this. Consequently, it had been necessary to retain the Law of Contract and with it, the principles of the French Civil Code on Contract. As a direct result of this, a mixed legal environment was created in which the mixing continues to do very well.

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*Translated from the original French text into English by Nichole Tirant-Ghérardi,
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APPENDIX

1. Articles of the French Civil Code which have no equivalence in the new Civil Code of Seychelles

Book I: Articles 361, 362, 363, 364, 365, 366, 367, 368, 370, 377, 378, 379, 380, 381, 382, 393, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 423, 424, 425, 426, 431, 432, 438, 440, 441, 446, 449, 455, 458, 465, 466, 467, 483, 484, 485, 486 and 515;

Book II: Articles 542, 561, 642, 643, 710;

Book III: Articles 721, 722, 747, 751, 768, 806, 836, 837, 838, 839, 840, 841, 842,

874, 875, 876, 897, 899, 993, 996, 1004, 1005, 1006, 1008, 1030, 1031, 1054, 1263,

1429, 1430, 1648, 1668, 1669, 1670, 1671, 1672, 1685, 1982, 2059, 2159, 2193, 2194,

2195, 2203, 2205, 2246, 2266, 2273, 2276 and 2277.

2. Articles of the French Commercial Code which have no equivalence in the new Commercial Code of Seychelles.

Book I: 3, 5, 6, 7, 18 to 46, 49, 58 to 63, 65 to 70, 71 to 90, 97, 98, 151 to 189;

Book II: 191 to 436;

Book III: 437 to 614;

Book IV: 615 to 648.

3. Section 19 of Act 22 of 1976

French expressions in Acts

(1) Where in an Act, terms or expressions of French Law are used, they shall be interpreted in accordance with French Law.

(2) When in an Act, English words are followed by terms or expressions of French Law in parenthesis, subsection (1) applies to those terms and expressions and the English words shall be treated as being the equivalent of those terms and expressions