Whither, hither and thither, Res Gestae? A comparative analysis of its relevance and application

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Abstract
In Singapore, the common law doctrine of res gestae (‘RG’) risks becoming extinct given the statutory inclusions of hearsay evidence. Further, the test for RG is unsettled. This article thus argues that RG is still relevant but must be applied principally. It is relevant because first, it is unwise to uproot a doctrine existing since 1808. Second, comparative analysis of cases from United Kingdom, India, New Zealand and Australia evinces the residual need for RG. Third, a modified approach to applying it can in fact exclude inadmissible evidence. This article further proposes a three-strand test. First, as a preliminary requirement, objectively, there was no concoction involved. Second, the evidence must relate to a fact-forming part of the same transaction but was not contemplated in s. 32(1) of the Evidence Act. Third, the evidence must have sufficient probative value to outweigh its prejudicial effect.

In law especially, where until modern times conscious making of much that was new was quite unthinkable, nothing is made at once, as it were, out of whole cloth.

Roscoe Pound (1921)

Introduction
The first trace of res gestae (‘RG’) being applied in the law of evidence was in 1808, in America. RG is Latin, denoting ‘things done’ in connection with words and/or actions that occur in close time and substance to each other such that they form part of the same transaction (Morgan, 1937: 93). Since 1808, the common law doctrine has evolved. Yet today, the state of RG and its application in common law is

1. Bartlett v Delprat 4 Mass. 702 (1808); see also Barnes (1891: 3); Blair (2013: 349, footnote 4).
unsettled, with some calling to abolish it (Blair, 2013: 356). In Singapore, the state of the common law doctrine of RG—its relevance and application—is unclear for three reasons.

First, the amendments to s. 32(1) of the Evidence Act in 2012, intended to add flexibility to established statutory hearsay exceptions, meant that the relevance of RG became less clear. While the application of RG is disjunctive to s. 32(1) exceptions, the courts may opt to admit evidence under these exceptions instead of under RG. With a wide variety of statutory gateways under s. 32(1), the possibility of RG being invoked is lower. Second, s. 6 is arguably the statutory equivalent of RG, where facts of the same transaction are deemed admissible. This further impedes development of the common law doctrine of RG. Third, valid academic criticisms of the application of RG in case law, without subsequent cases addressing the same, have muddled the lines further. Therefore, this article, inter alia, examines:

(a) through historical analysis, the doctrinal roots of RG;
(b) modern-day application of RG in Singapore;
(c) the bases for and against retaining RG as a residual test by drawing on cases from jurisdictions including Singapore, United Kingdom, India, America, New Zealand and Australia;
(d) a proposed common law test to weed out uncertainty; and
(e) potential criticisms of the proposed common law test, before addressing them.

Each aspect will be examined seriatim in each of this article’s five parts.

**Historical development of RG**

Edmund Morgan, then Dean of Harvard Law School in 1937, started his article on RG by observing that ‘a multitude of cases creates chaos in this subject’. Looking further back, in 1891, Albert Sullard Barnes, in examining the origins of RG, commented in his introduction that while the fundamental basis of RG as a principle in Evidence Law is ‘uniformly agreed’ upon, its application is ‘so varied’, judgments ‘so conflicting’, that any attempt at synthesis seems ‘hopeless’ (Barnes, 1891: 1).

Evidently, synthesising both sources, it is clear that the basis for RG was never in issue, but its application was, and still is now. It is through this lens that we explore the early application of RG, for the purpose of demonstrating that it is the application of RG that has always been the issue, not its doctrinal underpinnings.

**Application of RG in the 18th to 20th century.** The first time the term RG was discovered was in an English trial for treason in 1794. The term was used in a legal discussion by the counsel representing the English government. It was used in relation to the admissibility of a letter which the defence claimed stated reasons for declining certain propositions why certain proposals made by one society was not accepted by the other. Indeed, in the 18th century, in America, RG was invoked to admit evidence that pertained to facts relating to the same transaction. As a preliminary point, Barnes observes that the lawyers did not stop to analyse closely how RG was applied (Barnes, 1891: 5). It is thus ironic that an observation made in 1891 is still apposite today—that the application of RG is not receiving the judicial scrutiny and attention it deserves.

2. Columbia Asia Health Care Sdn Bhd v Hong Hin Kit Edward [2016] 5 SLR 735 at [14]; see also Siyuan (2013: 265); Chin (2014: para. 3).
3. Section 6, Evidence Act (ch. 185).
4. Morgan (1937: 91); see also Bolen (1903: 187); Catterall (1935: 725); Indiana Law Journal (1930: 527)—‘it has been said that each case involving the question of res gestae must be determined in light of its own facts, because varying conditions alter the application of the rule so materially.’
5. 25 Howells State Trials, 444 (1794); see also Barnes (1891: 2).
6. 25 Howells State Trials, 444 (1794).
In Scotland, in the 19th century, *Gray v Maitland* applied RG. The Court of Session (Outer House) held that the *res gestae* pertained to one occurrence and not two issues which was pleaded. Evidently, the application of RG as one entire transaction of events was not difficult when it related to what RG entails. However, the complexity, drilled down, is really how broadly scoped ‘one transaction’ of events should be. This is arguably what causes confusion because different cases throw up different factual scenarios, and this was so even in the 18th and 19th century, where whether evidence is deemed admissible and falling within the remit of ‘one transaction’ can be a subjective view with no one universal answer.

Indeed, Professor James Thayer illuminates that the term *res gestae*, which first caught on in 1794, could also mean a business, (Thayer, 1881: 10) and this term was ‘*a little vague*’ because people ‘*could not, in the stress of business, stop to analyse minutely*’ (Thayer, 1881: 10). In fact, even Stephen, the author of the Digest of Evidence, which the Indian Evidence Act and subsequently the Singapore Evidence Act based the statutes on, observed that the phrase ‘*res gestae*’ seems to have ‘*come into use on account of its convenient obscurity*’.10

Thus, it is evident that historical cases can be categorised in two groups. The first is when the question of whether it is one transaction is obvious. The latter is where it is not immediately clear whether the evidence falls into ‘one transaction’. We deal first with examples of the former.

*Where whether the evidence forms part of the transaction is clear and obvious.* For example, in *Binnie v Black*,11 a personal injury case where one David Binnie, a motorcycle agent, sued one William Black and his daughter for injuries sustained by him in a vehicular accident. RG was raised in relation to one cross-examination question directed at Michael Gordon Black, who was in the defendants’ vehicle sitting beside the second defendant. The question was whether Michael, in his conversation with David Binnie’s father the day after the accident, said that if he had been driving the car, no accident would have occurred. The Defendants objected to this question on the ground that it was not part of the *res gestae*. Yet this objection was repelled by the Commissioner without any justifiﬁcation.13 This ﬁnding was overturned by Lord Morrison, who agreed that the interviews between Michael Gordon Black and the father of David Binnie were not part of the *res gestae* of the collision and were evidence only of conversations, and in particular these conversations were not evidence proving that the brakes of the car were defective.14 Here it is clear that conversations with Michael Black were obviously not part of the collision, or the defects in the brakes, which the claim for damages was premised on.

*Where it is not immediately clear whether evidence falls within ‘one transaction’.* This category of cases goes to the scope of RG and what it entails. Professor James B. Thayer in deﬁning the obscure ‘one transaction’ term gave seven categories of such evidence (Thayer, 1881: 10–11):

(a) Evidence pertaining to the ultimate facts of the case or to a fact in issue;

(b) Evidence of a single, fact, event or transaction which a declaration may be partially *res gestae* or contain details which constitute one transaction;

7. *Gray v Maitland* (1896) 4 SLT 38.
8. Ibid.
9. Indeed, one such academic even went so far as to profess the view that ‘in every case, however, the attitude of the Court will determine whether the rule of res gestae shall be applied strictly or whether the principles underlying that rule shall render its application more liberal, and perhaps more realistic.’ Harper (1927: 7); see also Blair (2013: 356). Blair argues that the Court of Criminal Appeals should ‘abandon the use of the phrase res gestae and simply analyse any contemporaneously committed conduct the same as evidence of any other crime, wrong or act.’ This is because the Court already utilised the ‘proper method of analysis envisioned by the Evidence Code’.
10. Stephen, The Digest of Evidence, Note V. See also Thayer (1881: 4).
11. *Binnie v Black* (1923) S.L.T. 98.
12. Ibid. at 100.
13. Ibid. at 100.
14. Ibid. at 101.
(c) Evidence of several distinct facts, events, transactions, constituting a larger whole;
(d) Evidence of one composite whole version of the events;
(e) Evidence of surrounding circumstances;
(f) Evidence of a total whole ‘embodying the central fact with its entire bulk of circumstances’; and
(g) Evidence of a central fact and some of its surroundings, those which are relevant or material to the
given inquiry.

It is through this lens that we discuss the case of R v Bedingfield. In R v Bedingfield, the victim’s reference to the accused who had cut her throat was deemed inadmissible. This was because that reference was not in Cockburn CJ’s view, part of anything done, or something said while something was being done, but something said after something done. The tenor of such reasoning was consistent with R v Gibson, which held that words spoken by an onlooker after an assault did not constitute RG. Respectfully, the reasoning of both decisions were suspect because for Bedingfield, the reference to the accused could arguably form the same transaction because the reference could have shed light on:

(a) Who the assailant was—proof of the assailant’s identity;
(b) The surrounding circumstances;
(c) The assault actually happening; and/or
(d) Intention to assault.

The same could have been said about Gibson. Yet, this illustrates that the application of RG is problematic and, even more, accentuates the need for a holistic, universal test to avoid applying RG too broadly to include evidence which should have been excluded, or narrowly, to exclude evidence which should have been included. Fortunately, in Ratten, Lord Reid formulated the common law test of concoction for RG. If there was no possibility of concoction or fabrication, then the evidence should be admissible under RG. Indubitably, this was a welcome shift in the law from Bedingfield, which was confirmed in R v Andrews, per Lord Ackner, with whom the House agreed. In Andrews, the House of Lords refined the concoction test further, with the salient passage set out verbatim:

The primary question which the judge must ask himself is—can the possibility of concoction or distortion be disregarded?

To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy himself that the event was so unusual or startling or dramatic as to dominate the

15. R v Bedingfield [1879] 14 Cox CC 341.
16. R v Gibson (1887) 18 QBD 537.
17. Ratten v The Queen [1972] AC 378 at 389.
18. Ibid. at 387. In Ratten, the accused was charged with shooting his wife to death. The telephone operator testified that she received a call three minutes before the shooting and on the line was a female voice. The voice was hysterical and sobbing, asking her to ‘get me the police please’. However, it was never clearly established caller was the wife. The Privy Council held that in the circumstances, the statement indicated wife was in fear. The call also rebutted accused’s claim that no call had been made from the home and that he had accidentally shot her).
19. Professor Pinsler argues that ‘The common law “transaction” principle was superseded by the more flexible test of ascertaining whether the possibility of concoction could be disregarded’ and in this light, ‘old cases such as Bedingfield and Mohamed Allapitchay would be decided differently in the context of this common law development’ (Pinsler, 2002: para. 26); Ratten was also cited with approval in two criminal cases in Canada: in R v Mulligan (1973), 23 CRNS 1 and R v Garlow (1977), 31 CCC (2d) 163 (Ont. H.C.). Birch had referred to this doctrine as a ‘laughable doctrine’ in commenting on how it was applied in Bedingfield; see Birch (1987: 489); see also Laird (2020: 4).
20. R v Andrews (Donald Joseph) [1987] AC 281 at 301.
21. Ibid. at 300–301.
thoughts of the victim, so that his utterance was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection. In such a situation the judge would be entitled to conclude that the involvement or the pressure of the event would exclude the possibility of concoction or distortion, providing that the statement was made in conditions of approximate but not exact contemporaneity. In order for the statement to be sufficiently ‘spontaneous’ it must be so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event.

Thus, the focus shifted from a narrow application of the same transaction approach to one which excludes evidence only if there was reason to believe it was concocted. In this connection, it is submitted that R v Andrews had threefold significance.

First, it revamped the law doctrinally—the concoction test was now applied universally in deciding if evidence was admitted via RG. Second, it allowed more evidence that would have been precluded by the narrow Bedingfield approach to be admitted. Accordingly, a third significance would be that the judge would have greater access to legally relevant evidence to adjudicate the proceedings, to form a more robust view (Figure 1).

From Figure 1, the concoction test when applied, would not run into the difficulty of Category 2 type cases. This is because once there was no possibility of concoction, the evidence became admissible under RG. However, one drawback with the concoction test is that it may gloss over the analysis of whether the evidence actually forms part of the same transaction. For example, if legally irrelevant evidence is tendered but there was no concoction, it may still be admitted under RG by virtue of passing the common law requirement. There may not be real engagement with whether the evidence tendered forms part of the same transaction as the crime or event that occurred. Although it may be argued that legal relevance of admitted evidence is a preliminary consideration, before RG is invoked, the reality is that once evidence is hearsay, the test in RG is applied. For example, in Walton,22 ‘Hello daddy’ was considered by the majority to be hearsay but it was admitted because the possibility of fabrication was low.

**Modern-day application of RG in Singapore**

This section will primarily be focused on the modern-day application of RG in the context of Singapore courts. In applying RG, the first port of call is s. 6 of the Evidence Act,23 which stipulates one category of

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22. Walton v The Queen (1989) 166 CLR 283.
23. Evidence Act (ch. 97), s. 6, Singapore.
admissible evidence pertaining to relevant facts which, though not in issue, form ‘part of the same transaction’.24 This is regardless of whether they occurred at the same time and place or at different times and places.25 On its face, it is arguable that s. 6 embodies RG. Indeed, it may be further inferred that any facts forming part of the same transaction arguably includes Professor Thayler’s seven categories. This is because first the Evidence Act itself is an inclusionary evidential scheme. Second, if s. 6 did not contemplate a broad scope, the statute itself would have defined what constitutes facts which form ‘part of the same transaction’. As a corollary, the illustrations to s. 6 are broad too. Illustration (b) allows for evidence of an accused waging war against the Government even though said accused may not have been present at all events potentially incriminating him.26 Illustration (c) seems to mirror the factual scenario stated above in the Howells State Trial in 1794—letters between the parties relating to libel, even if they do not contain the libel itself, are relevant facts, and thus admissible.27 Section 32(1) is also relevant—usually courts admit evidence through the 11 statutory gateways here,28 before looking at whether it is admissible via RG. RG and the hearsay exceptions in s. 32(1) are disjunctive.

The common law doctrine of RG is also applied in Singapore. It must be noted that the broad doctrine has been applied in common law. The purpose of the common law RG doctrine is ‘to allow the admission of evidence of what persons who were not called as witnesses said in reaction to an event or thing as it presented itself to them in circumstances which excluded the opportunity of reasoned reflection and possibility of concoction and distortion’.29 In Court of Appeal decision, Chi Tin Hui v PP,30 the Court of Appeal held that oral statements of an accused to a CNB officer in response to questions immediately after his arrest can form part of the same transaction. However, Professor Pinsler critiques that first, it is a controversial holding if viewed in the strict context of S6 EA (Pinsler, 2017: para. 6.086) since the transportation of drugs ended as soon as the accused was arrested and handcuffed. Second, it is not entirely clear that the common law test of no concoction was satisfied here as there was no absolute guarantee against falsehood or embellishment of evidence in the interest of securing conviction notwithstanding the police’s repute (Pinsler, 2002: para. 28). Unfortunately, recent Court of Appeal authority did not pronounce definitively on both the relevance of the common law RG and its application. In Micheal Anak Garing,31 the Court of Appeal admitted evidence regarding the three earlier attacks because not doing so resulted in a truncated version of events and the attacks happened within a short time span.32 Arguably the other three attacks in the Court of Appeal’s view formed part of the same transaction—to say removing them would result in a truncated version of events is essentially saying all four attacks formed part of the same transaction. However, the Court of Appeal in Micheal Anak Garing did not mention or apply the common law test for RG set out in Ratten, or its application in Chi Tin Hui v PP. This means the common law doctrine of RG set out in Ratten is still good law since it has not been explicitly overruled. In this connection, it would have been opportune for the Court of Appeal to be clearer about how RG should be applied and whether it was applied correctly in Chi Tin Hui v PP. This was after all a case which directly invoked the common law doctrine of RG. If the Court of Appeal meant to admit the evidence under S6, it should also have said so. This leaves the law concerning RG in its modern-day application unsettled on three fronts.

24. Ibid.
25. Ibid.
26. Illustration (b), s. 6, Evidence Act (ch. 97).
27. Illustration (c), s. 6, Evidence Act (ch. 97).
28. Section 32(1)(a)–(k), Evidence Act (ch. 97).
29. Saga Foodstuffs Manufacturing v Best Food Pte Ltd [1994] SGHC 281 at [19].
30. Chi Tin Hui v PP [1994] 1 SLR 778 at 785.
31. Micheal Anak Garing v PP [2017] SGCA 07.
32. Ibid. at [8] and [10].
First, does the common law doctrine of RG exist pari passu to s. 6 of the Evidence Act? Second, assuming the common law doctrine of RG exists, what is the applicable test and how should it be applied—was it applied correctly in Chi Tin Hui? In this connection, the difficulties in applying RG as a common law doctrine have remained the same since the 18th and 19th century insofar as cases concern where it is not immediately clear whether evidence admitted forms part of the same transaction. Specifically, the application of RG in Chi Tin Hui which has been validly critiqued by Professor Pinsler but not addressed in Micheal Anak Garing symbolises the same ‘multitude of cases’ which ‘creates chaos’, as Dean Edmund Morgan observed. Third, assuming both statutory and common law option exist, how and on what basis will the Singapore courts navigate between the two?

Taking a step back, from a practical perspective, it is submitted that the primary reason why RG and the common law doctrine of RG is so underdeveloped, is because usually courts do not have to venture beyond hearsay exceptions established in the 11 gateways which cover a comprehensive scope of factual scenarios and evidence which are usually admitted.

Nevertheless, certainty in the law is needed where the common law doctrine of RG is concerned. In this connection, it may be argued that to allow certainty, s. 6 of the Evidence Act can replace the common law doctrine of RG. This prevents having both a statutory option and a common law option, which potentially causes uncertainty in the law.

This segues into our discussion of whether RG should be retained as a common law doctrine.

**Reasons why the common law doctrine of RG should continue to be applied**

As a preliminary point, while s. 6 on its face seems to embody the common law doctrine of RG, they are in fact conceptually distinct. Professor Pinsler adroitly notes that the former relates to a transaction without the element of ‘spontaneity’, unlike the latter (Pinsler, 2002: para. 29). Further, s. 6 treats RG as original evidence which can be admitted once it falls within the category stipulated therein without the need to consider exclusionary rules, such as hearsay (Pinsler, 2002). This is underlined by the fact that s. 6 is placed in the early sections of the Evidence Act governing original evidence, not with s. 32(1), which governs statutory hearsay exceptions (Pinsler, 2002).

Indeed, Professor Pinsler perspicaciously observed that the Singapore courts have ‘yet to analyse and acknowledge the different conceptual bases for res gestae in the Act and at common law’ (Pinsler, 2002). In this connection, as alluded to by Professor Pinsler, the common law doctrine of RG should be retained because it affords scope for exclusion and is conceptually distinct from how s. 6 operates.

If s. 6 is the sole gateway for admitting evidence through RG, then there is considerable risk that once evidence falls within the literal description of s. 6, it becomes ipso facto admissible as original evidence, without any further exclusionary considerations (Pinsler, 2002). Thus, in my view, instead of construing s. 6 and RG equivocally with regard to admissibility of evidence, they should be construed as two different prongs to the same fork—both stab at whether that particular hearsay evidence should be admitted.

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33. Evidence which is usually admitted implicates s. 32(1)(b), s. 32(1)(c) and s. 32(1)(j). For example, for s. 32(1)(b), emails written in the ordinary course of business will come within the ‘business record’ exception provided for at s. 32(1)(b)(iv) of the Evidence Act (Brian Ihaea Toki v Betty Lena Rewi [2021] SGCA 37 at [14]). See also Kiri Industries v Senda international Capital [2021] 3 SLR 215 at [101]; Columbia Asia Healthcare at [14]. In Press Automation Technology Pte Ltd v Translink Exhibition Forwarding Pte Ltd [2003] 1 SLR(R) 712, the verbal inspection report of the damage was admissible; further, the defendant waived its right to object to admissibility by agreeing that it should be part of the Agreed Bundle without making any reservations (Press Automation at [21]–[22]). The Court of Appeal considered hearsay evidence under multiple statutory gateways including s. 32(1)(b) and s. 32(1)(j) in Gimpex Ltd v Unity Holdings [2015] SGCA 8 at [90], [95], [97]–[101].

34. 25 Howells State Trials, 444 (1794); see also Barnes (1891: 2).
This article further sets out below, three reasons why the common law doctrine of RG should be retained:

(a) It is unwise to categorically banish a useful common law doctrine that has existed since 1808, simply because of uncertainty in application (the ‘categorically unwise’ reason);

(b) As a corollary, to simply banish the RG doctrine would be to take the easy way out of the chaos. The solution should be to clarify what the common law test is and tweak it accordingly to ensure certainty in application (the ‘proper solution’ reason); and

(c) There is empirical proof of the continued relevance of the common law doctrine of RG in the jurisdictions of United Kingdom, Australia, New Zealand, Hong Kong and India (the ‘empirical proof’ reason).

The categorically unwise reason. In this section, we consider the nub of the counterarguments militating against retaining a common law doctrine of RG. Given that RG has been in existence since 1808, arguments will be derived from sources past and present. Professor Chris Blair mounts a three-pronged attack on the common law doctrine of RG. First, he argues that the doctrine is ‘useless’ because the concepts embodied by RG can be explained with reference to other more refined principles of evidence law.35 Second, it is harmful because it confuses evidentiary principles and deters principled analysis of evidence law.36 Third, the concept of RG has ‘evolved’ into established statutory hearsay exceptions.37 We address each counter-argument seriatim.

Regarding the concept of RG being ‘useless’ because it can be explained by other evidential principles, this argument is flawed. Just because RG can be explained in relation to other evidential principles does not mean it is inherently without merit. For instance, the doctrine of RG will indubitably implicate the Court’s general discretion to admit evidence. In Singapore, the Court generally has an inherent discretion to exclude otherwise admissible evidence,38 which includes evidence which would otherwise be admissible by virtue of RG.39 However, this does not necessarily mean RG is inherently ‘useless’. In fact, it will truly be ‘useless’ to simply banish the doctrine of RG without appreciating its merits. In this connection, the doctrine of RG should, in my view, be seen as part of the jigsaw of evidential principles, which when pieced together with other pieces, form a conjoined, complete jigsaw puzzle.

Regarding the ‘harmful’ argument, it has two sub-prongs—(a) it confuses evidentiary principles and (b) it deters principled analysis of evidence law.

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35. Blair (2013: 352). In People v Sceravino, 598 N.Y.S.2d 296 at 297 (App. Div. 1993), the court observed that in America, courts in general have reduced the term ‘res gestae’ to a useless and misleading shibboleth by embracing within it two separate and distinct categories of verbal statements… When the utterance of certain words constitutes or is part of the details of an act, occurrence or transaction which in itself is relevant and provable, the utterance may be proved as a verbal act, just as may be a visual observation of an event. See also Professor John Henry Wigmore’s comment that ‘the phrase res gestae is in the present state of the law, not entirely useless but even positively harmful. It is useless because every rule of evidence to which it has ever been applied exists as a part of some other well-established principle and can be explained in the terms of that principle. It is harmful, because by its ambiguity it invites the confusion of one rule with another and thus creates uncertainty as to the limitations of both. It ought therefore wholly to be repudiated as a vicious element in our legal phraseology. It should never be mentioned. No rule of evidence can be created or applied by the mere muttering of a shibboleth’, Catterall (1935: 726); Professor Edmund Morgan himself argues that this ‘troublesome expression’ only exists and persists because of ‘an inclination of judges and lawyers to avoid the toilsome exertion of exact analysis and precise thinking’, Morgan (1922: 229); Odgers (1989: 262).

36. Blair (2013: 352).

37. Ibid.

38. Muhammad bin Kadar and another v Public Prosecutor [2011] 3 SLR 1205 at [55].

39. In Kadar, the Court of Appeal at [55], held the discretion to exclude evidence arises where ‘the prejudicial effect of the evidence exceeds its probative value’. This arguably includes evidence sought to be admitted via RG but of which prejudicial effect exceeds its probative value.
For the first prong, it is not clear exactly how it confuses principles. On its own, the doctrine of RG is clear—evidence pertaining to facts forming part of the same transaction, should be admissible (if there is no concoction). In fact, as established above, what is unclear is its application in cases where it is not immediately clear and obvious that evidence constitutes RG. This has been the trend since the application of RG in the 18th century. Thus, to say it confuses principles, conflates principal foundations with the application of RG. In any event, the confused application of RG does not also mean that it is absolutely ‘harmful’. This is because at the crux of this confusion, is the lack of a rigorous universal test which holds courts accountable to spelling out exactly why the evidence constitutes RG. It is submitted this can be remedied by the test set out in this article below.

Regarding the evolution of RG being incorporated into established statutory options, this argument is possibly the most logical of the three. This, on its face, makes for logical fodder, because having both a common law and statutory equivalent of RG may be confusing.

However, as elaborated above, in the context of Singapore, the conceptual roots in s. 6 of the Evidence Act and the common law doctrine of RG are distinct. In this connection, it is submitted that having a clearly defined test for RG can be beneficial.

Section 6 relates to the preliminary consideration in the admissibility inquiry—whether evidence forms part of the same transaction that renders it legally relevant to be admitted as original evidence. As it is only a prima facie consideration, there are no further exclusionary considerations. Whereas for RG, if the adopted test of having no possibility of concoction is applied, this test functions as an exclusionary consideration that further strengthens the evidential regime in admitting evidence through RG. This means s. 6 and RG can potentially become separate questions in the same inquiry, threaded through the evidence in deciding its admissibility. This inquiry, contextualised in the context of the admissibility of evidence via RG, is set out in Figure 2.40

In this light, the doctrine of RG has not evolved, but our application of RG has. That is what should be acknowledged, not the banishment of RG as a common law doctrine. In fact, the use of RG in this inquiry, streamlines the use of evidence admitted via s. 6 and safeguards against concocted evidence. This kills three birds with one stone—s. 6 is applied, the risk of concocted evidence is prevented and the use of RG as a common law doctrine is regulated. In this connection, the common law doctrine of RG is neither ‘harmful’ nor ‘useless’ once one gets around to utilising RG by tweaking it, instead of simply throwing the baby out of the bathwater.

The proper solution reason. Thus, as alluded to above, the proper solution is fixing the application of RG is by formulating a rigorous and universal test. If the solutions to all existing lacunae in the law are to banish age-old common law doctrines, important cornerstones of legal history and their intended purposes and doctrinal roots would vanish indefinitely. Further, one criticism levelled against the use of RG has been ‘an inclination of judges and lawyers to avoid the toilsome exertion of exact analysis and precise thinking’ (Morgan, 1922: 229). Is this really the case? Ironically, the same inclination to avoid ‘precise thinking’ and ‘exact analysis’ is one which argues for the banishment of a common law doctrine without analysing and solving the crux of the issue, and simply concluding that it has been subsumed in statutes. Indeed, this flies against the spirit of the common law which instead of causing uncertainty, is meant to engender form and consistency when applied cautiously. In this connection, Dean Roscoe Pound’s wizened words regarding the spirit of the common law, of which RG is an integral part of, ring true and should be appreciated verbatim, set out as follows (Pound, 1921: 1 and 212):

Although it is essentially a mode of judicial and juristic thinking…it succeeds everywhere in molding rules, whatever their origin, into accord with its principles and in maintaining those principles in the face of formidable attempts to

40. Weight, while an important consideration, is distinct from the concept of admissibility.
overthrow or to supersede them. In the United States it survives the huge mass of legislation that is placed annually upon our statute books and gives to it form and consistency… In the past century we studied law from within. The jurists of today are studying it from without. The past century sought to develop completely and harmoniously the fundamental principles which jurists discovered by metaphysics or by history. The jurists of today seek to enable and to compel lawmaking and also the interpretation and application of legal rules, to take more account and more intelligent account, of the social facts upon which law must proceed and to which it is to be applied.

Thus, it is opportune to hark back and study RG from ‘within’ again, and not ‘without’ its history, simply fitting all common law doctrines into statutes. On this note, we analyse how RG remains relevant for many jurisdictions.

The empirical proof reason. This reason relates to the continued application of the common law doctrine, RG in the jurisdictions of United Kingdom, Australia, New Zealand, Hong Kong and India, which demonstrate its relevance. The section below sets out:

(a) The law in that particular jurisdiction on RG;
(b) A breakdown of the number of cases invoking or considering RG as a common law doctrine in that jurisdiction for the last 21 years (2000 to 2020);41
(c) A breakdown of the number of cases successfully admitting evidence through RG as a common law doctrine;42

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41. Data is correct as at 13 May 2021.
42. Data is correct as at 13 May 2021.
(d) A breakdown of the number of cases unsuccessfully admitting evidence through RG as a common law doctrine; and
(e) A summary of the breakdown of the number of cases for (b), (c) and (d) for all of the above-mentioned jurisdictions for the last 21 years (2000–2020).

The empirical study has been scoped from the year 2000 to 2020 because the purpose of the study is to illustrate the current relevance of RG as a common law doctrine. Thus, any number of years too small will be insignificant and too wide a study would risk unreliability.

Comparative analysis is important because the doctrine of RG cannot be analysed in isolation. The above common law jurisdictions are also often referred to by the Singapore courts in appellate judgments or judgments implicating novel issues of law.

**United Kingdom.** In the United Kingdom, the common law doctrine of RG is expressly codified in s. 118(4) of the Criminal Justice Act 2003, which states that a statement is admissible as evidence if:

(a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded;
(b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement; or
(c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

The same position applies in Northern Ireland. Article 22(4) of the Criminal Justice Order 2004 preserves common law rules, including the common law doctrine of RG, with the same three disjunctive requirements set out above. In England, s. 78(1) of the Police and Criminal Evidence Act 1984 nevertheless allows the court to exclude evidence if it ‘appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.’

This essentially preserves the common law doctrine of RG within the statute, which is different from the position in Singapore. Most evidently, even the test of concoction has been subsumed. Indeed, in recent Court of Appeal case *R v Nico Brown*, in discussing s. 118(4), reference is still made to cases pre-dating the statute and which applied the common law doctrine of RG (Laird, 2020: 4). Thus, a consideration of applying s. 118(4) of the Criminal Justice Act would necessarily be equivalent to applying the common law doctrine of RG.

In Scotland, RG remains as a common law doctrine. It is defined as evidence relating to the whole event that happened—things said or done at the time by those concerned are part of RG. Accounts of those at any time after the event happened is only an account and do not constitute RG.

Twenty-three cases in total invoked or considered the use of the common law doctrine of RG from 2000 to 2021. The breakdown is as follows:

(a) In the United Kingdom Supreme Court, there were no cases which considered or invoked res gestae between 2000 to 2020.
The breakdown for the number of cases which successfully or failed to admit evidence through RG is as follows:

(a) In the Court of Appeal (England and Wales), 7 cases succeeded in admitting evidence through *res gestae*.55 No case failed to admit evidence through *res gestae*.56

(b) In the Court of Appeal (Northern Ireland), 2 cases succeeded in admitting evidence through *res gestae*.57 No case failed to admit evidence through *res gestae*.

(c) In the English High Court, 3 cases succeeded in admitting evidence through *res gestae*.58 No case failed to admit evidence through *res gestae*.

(d) In the Scottish High Court of Justiciary (Appeal), 2 cases succeeded in admitting evidence through *res gestae*.59 No case failed to admit evidence through *res gestae*.

(e) In the Northern Ireland High Court, 1 case succeeded to admit evidence through *res gestae*.60 No case failed to admit evidence through *res gestae*.

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50. *S v Regina* [2016] EWCA Crim 1908 at [29]; *James Joe Saunders v The Queen* [2012] EWCA Civ 1185 at [12]; *Donnette Lowe v Regina* [2007] EWCA Civ 3047 at [18]; *Regina v Ben Kelly* [2005] EWCA Crim 730 at [14]; *Regina v Bhovinder Singh* [2005] EWCA Crim 96 at [16]; *R v Andrew Philip Greenwood* [2004] EWCA Crim 1388 at [35]; *Regina v John Jamison, Stephen McDonough* [2003] EWCA Crim 3755 at [30]; *Regina v Nico Brown* [2019] EWCA Crim 1143 at [17]; *Regina v Anmaid (Driss)* [2018] EWCA Crim 1338 at [10]; *R v Layden (Stuart James)* [2017] EWCA Crim 216 at [9]; *Regina v Muna (Ngethe)* [2018] EWCA Crim 1343 at [11].

51. *McGuinness v Northern Ireland Prosecution Service* [2017] NICA 30 at [12] applying *R v Andrews* [1987] 1 AC 281; *The Queen v QD* [2019] NICA 7 at [26].

52. *Wills v Crown Prosecution Service* [2016] EWHC 3779 (Admin) at [6]; *Martin Edward Morgan v Director of Public Prosecutions* [2016] EWHC 3414 (Admin) at [1]; *The Queen on the Application of Ibrahim v Crown Prosecution Service* [2016] EWHC 1750 (Admin) at [20]; *Terry Higgins v Crown Prosecution Service* [2015] EWHC 4129 (Admin) at [9]; *Lee Stewart Barnaby v The Director of Public Prosecutions* [2015] EWCH 232 at [16].

53. *Christopher O’Shea v Her Majesty’s Advocate* [2014] HCJAC 137 at [24]; *Sean Lees v Her Majesty’s Advocate* [2016] HCJAC 16 at [3]; *Scott McGaw, Eric Peter Reid v Her Majesty’s Advocate* [2019] HCJAC 78 at [36]; *Zak Bennett, Ian David Moyes v Her Majesty’s Advocate* [2020] HCJAC 12 at [13].

54. *Re JA’s application for Judicial Review* [2007] NIQB 64 at [7].

55. *Regina v Ben Kelly* [2005] EWCA Crim 730 at [19]; *Regina v Bhovinder Singh* [2005] EWCA Crim 96 at [18]; *Regina v John Jamison, Stephen McDonough* [2003] EWCA Crim 3755 at [37]; *Regina v Nico Brown* [2019] EWCA Crim 1143 at [35]; *Regina v Anmaid (Driss)* [2018] EWCA Crim 1338 at [13]; *R v Layden (Stuart James)* [2017] EWCA Crim 216 at [16]; *Regina v Muna (Ngethe)* [2018] EWCA Crim 1343 at [14].

56. There is a difference in the numbers of total number of cases which successfully and failed to invoke RG and the total number of cases that considered or invoked RG because some cases only considered RG but did not invoke RG or RG was not the issue on appeal.

57. *The Queen v QD* [2019] NICA 7 at [49]; *McGuinness v Northern Ireland Prosecution Service* [2017] NICA 30 at [49]; *Lee Stewart Barnaby v The Director of Public Prosecutions* [2015] EWHC 232 at [32].

58. *Martin Edward Morgan v Director of Public Prosecutions* [2016] EWHC 3414 (Admin) at [30]; *Terry Higgins v Crown Prosecution Service* [2015] EWHC 4129 (Admin) at [12].

59. *Christopher O’Shea v Her Majesty’s Advocate* [2014] HCJAC 137 at [42]; *Scott McGaw, Eric Peter Reid v Her Majesty’s Advocate* [2019] HCJAC 78 at [36].

60. *Re JA’s application for Judicial Review* [2007] NIQB 64 at [22].
Evidently, in the United Kingdom, the common law doctrine of RG is still very much alive because it has been imported wholesale into statutes, except for Scotland. Even so, in Scotland, the fact that the common law doctrine has still been invoked or considered 4 times in the last 21 years speaks for itself. The approach of England and Wales and Northern Ireland to subsume the common law doctrine wholesale into their statutes may, however, not be entirely wise. This means judicial discretion is entirely limited to the statutes. Yet the spirit of the common law transcends mere words. While doing so conduces for certainty, it comes at the expense of principled expansion where the facts of the case require warrant as such.

Nevertheless, s. 118(4) of the Criminal Justice Act 2003 is merely a label, in considering whether the evidence formed part of the RG, English courts have the tendency to consult the common law cases pre-dating the statute. For example, in *R v Nico Brown*, the Court of Appeal in applying the res gestae rule harked back to *R v Andrews* and considered Lord Ackner’s approach, set out verbatim:

> when faced with an application to admit a statement under the res gestae doctrine, *the primary question which the judge must ask is whether the possibility of concoction or distortion can be disregarded*. To answer that question, the judge must consider the circumstances in which the statement was made and whether ‘the event was so unusual or startling or dramatic as to dominate the thoughts’ of the person who made it; whether the statement was sufficiently close to the event in time that ‘it can fairly be stated that the mind of the [maker] was still dominated by the event’; and whether the person who made the statement had any motive to fabricate or concoct. On the other hand, the possibility of error in the facts stated, if ‘only the ordinary fallibility of human recollection is relied upon’ and there are no special features that give rise to such a possibility, is a matter that goes to the weight to be attached to the statement and not to its admissibility, and ‘is therefore a matter for the jury’.

Similarly, in *R v Muna (Ngethe)*, the Court of Appeal considered the seminal case of *R v Andrews* in coming to its decision. In this connection, the common law doctrine of RG does not just live but it is alive and kicking hard in the statutes of England, Wales and Northern Ireland.

**Australia.** In Australia, while s. 65(2)(b) of the Evidence Act 1995 is construed as the statutory codification of RG, the common law doctrine of RG is still relevant. In *HML v The Queen*, the High Court of Australia, the highest Court of Australia, recognised that upon closer examination, some cases do admit evidence through the common law doctrine of RG. In this connection, that the common law doctrine of RG exists and is distinct from its statutory equivalent was clearly stated in *Conway v The Queen*, set out as follows:

> The primary objective which underlies the requirement in s 65(2)(b) of the Act that the representation be made ‘when’ or ‘shortly after’ the asserted fact occurred seems to be to ensure that the matters conveyed are either strictly contemporaneous or, if narrative of a past event, still fresh in the mind of the person recounting that narrative. The expression ‘shortly after’ makes it clear that there need not be anything like the strict contemporaneity required at common law to render the evidence admissible as res gestae.

Indeed, 21 cases in total invoked or considered the use of the common law doctrine of RG from 2000 to 2021. The High Court of Australia, Federal Court of Australia (Full Court) and the Federal Court of Australia were surveyed. The breakdown for the number of cases invoking RG across the different courts surveyed is as follows:

61. *R v Nico Brown* [2019] EWCA Crim 1143 at [18].
62. *R v Muna (Ngethe)* [2018] EWCA 1343 (Crim) at [14].
63. Section 65(2)(b), Evidence Act 1995 (Australia) states that the hearsay rule does not apply to evidence which was ‘made when or shortly after the asserted fact occurred and in circumstances that make it unlikely that the representation is a fabrication’; see also *Williams v The Queen* [2000] FCA 1868 at [46].
64. *HML v The Queen* [2008] HCA 16 at [496].
65. *Conway v The Queen* [2000] FCA 461 at [133].
(a) In the High Court of Australia, the highest court of the land, 8 cases invoked or considered the use of common law RG from 2000 to 2020.66

(b) In the Federal Court of Australia (full court), 4 cases invoked or considered the use of common law RG from 2000 to 2020.67

(c) In the Federal Court of Australia, 9 cases invoked or considered the use of common law RG from 2000 to 2020.68

The breakdown for the number of cases which successfully or failed to admit evidence through common law RG is as follows69:

(a) In the High Court of Australia, the highest court of the land, 2 cases successfully admitted evidence through common law RG.70 2 cases failed to admit evidence through common law RG.71

(b) In the Federal Court of Australia (Full Court), 1 case successfully admitted evidence through common law RG.72 No case failed to admit evidence through common law RG but this was because the cases did not invoke common law RG as a gateway to admit the evidence.

(c) In the Federal Court of Australia, no case successfully admitted evidence through common law RG. 2 cases failed to admit evidence through common law RG.73

As a preliminary point, an even split of cases admitting and failing to admit evidence through RG in the High Court of Australia, clearly shows the common law doctrine of RG is alive and kicking to the point that it is contemplated seriously by Australian courts. This coheres with the High Court of Australia’s observation in *HML v The Queen* set out above.

While the common law doctrine of RG has been consigned to the fringes, as evidenced by the extremely low numbers which actually invoked it successfully, this does not mean it has been banished, but simply that the courts have not considered alternative gateways once the evidence has been admitted via s. 65(2)(b) or other statutory exceptions. In this connection, it is apposite to remember that the admissibility of evidence is only one aspect of the case—the crux of the courts’ attention is still the pleaded

66. Bull v R [2000] HCA 24 at [11]; *HML v The Queen* [2008] HCA 16 at [495]–[496]; Dasreef Pty Ltd v Hawchar [2011] HCA 21 at [78]; Roach v The Queen [2011] HCA 12 at [30]; Baker v The Queen [2012] HCA 27 at [117]; Patel v The Queen [2012] HCA 29 at [183]; Pipikos v Trayans [2018] HCA 39 at [62] and [95]; Commonwealth of Australia v Helicopter Resources Pty Ltd [2020] HCA 16 at [49].

67. Emmett v McCormack [2016] FCAFC 65 at [91]; August v Commissioner of Taxation [2013] FCAFC 85 at [88]; Seven Network (Operations) Ltd v TCN Channel Nine Pty Ltd [2005] FCAFC 144 at [77]; Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Services Union of Australia v Australian Competition and Consumer Commission [2007] FCAFC 132 at [142].

68. Preston v Minister for Information & Multicultural & Indigenous Affairs (No 2) [2004] FCA 107 at [22]; Nezovic v Minister for Immigration & Multicultural & Indigenous Affairs (No 2) [2003] FCA 1263 at [50] and [55]; Civil Aviation Safety Authority v Central Aviation Pty Ltd [2009] FCA 49 at [32]; Tuncok v Minister for Immigration & Multicultural & Indigenous Affairs [2003] FCA 1069 at [62]–[63]; Williams v The Queen [2000] FCA 1868 at [44] and [46]; W v The Queen [2001] FCA 1648 at [42], [43] and [85]; Conway v The Queen [2000] FCA 461 at [120] and [122]; Australian Institute of Professional Education Pty Limited v Australian Skills Quality Authority [2016] FCA 814 at [38]; Connect TV Pty Ltd v All Rounder Pty Ltd (No 5) [2016] FCA 338 at [63].

69. The numbers for total number of cases successfully or failing to admit evidence through RG are different from the cases which considered or invoked RG because some cases considered RG but did not invoke it to admit evidence.

70. Bull v R [2000] HCA 24 at [41]; Roach v The Queen [2011] HCA 12 at [49].

71. Baker v The Queen [2012] HCA 27 At [122]; Patel v The Queen at [256].

72. Emmett v McCormack [2016] FCAFC 65 at [92].

73. August v Commissioner of Taxation [2013] FCAFC 85 at [88]; Nezovic v Minister for Immigration & Multicultural & Indigenous Affairs (No 2) [2003] FCA 1263 at [55]; Tuncok v Minister for Immigration & Multicultural & Indigenous Affairs [2003] FCA 1069 at [63].
causes of action. Thus, once the admissibility of evidence can be resolved by statutory means, from a practical perspective, there is no incentive to further consider if nevertheless, the evidence should be admitted via RG, especially if it was not pleaded in submissions.

For completion, it is worth noting that in Australia, the situation mirrors that of Singapore—a statutory equivalent of RG exists and is distinct from the common law doctrine of RG. However, nothing definitive has been said about first, whether the common law doctrine of RG will be banished, how the courts should decide between the two and what the current common law test for the common law doctrine of RG should be. Yet minimally, as the empirical stats suggest, the common law doctrine of RG is still very much alive as it has been considered or invoked 21 times in the last 21 years.

India. The jurisdiction of India was included in this article because the Evidence Act in Singapore was largely modelled after the Indian Evidence Act (Siuyuan and Chua, 2018: 1). Thus, the application of RG will be most useful to study.

The status of RG in India is the same as in Singapore. Section 6 of the Indian Evidence Act codifies RG. Section 6 is applied as if it replaces the common law doctrine totally.74 This was the case in Supreme Court of India case—Dhal Singh Dewangan v State of Chhattisgarh.75 The Supreme Court endorsed that s. 6 embodied the common law doctrine of RG and the essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue so as to form part of the same transaction, becomes relevant by itself.76 The rationale in making certain statement or fact admissible under s. 6 of the Evidence Act is in considering the spontaneity and immediacy of such statement or fact in relation to the fact in issue.77

A total of 21 cases invoked or considered the doctrine of RG in India, across all of its courts, from 2000 to 2020. The breakdown of cases by court level is set out as follows:

(a) 11 cases invoked or considered the doctrine of RG in the Supreme Court of India from 2000 to 2020.78
(b) 3 cases invoked or considered the doctrine of RG in the High Court of Judicature at Allahabad from 2000 to 2020.79
(c) 1 case invoked or considered the doctrine of RG in the High Court of Andhra Pradesh from 2000 to 2020.80
(d) 1 case invoked or considered the doctrine of RG in the High Court of Madras from 2000 to 2020.81
(e) 2 cases invoked or considered the doctrine of RG in the High Court of Kerala from 2000 to 2020.82
(f) 2 cases invoked or considered the doctrine of RG in the High Court of Madhya Pradesh from 2000 to 2020.83

74. Section 6, The Indian Evidence Act 1872.
75. Dhal Singh Dewangan v State of Chhattisgarh [2016] INSC 663.
76. Ibid. at [21].
77. Ibid. at [19].
78. Ibid. at [13]; Chaman & Anr v State of Utrahand [2016] INSC 300 at [25]; Tejram Patil v State of Maharashatra [2015] INSC 169 at [26]; State of Maharashatra v Kamal Ahmed Mohd Vakil Ansari & Others [2013] INSC 321 at [18]; Krishnan Kumar Malik v State of Haryana [2011] INSC 549 at [13]; Rajput Jabbar Singh Malaji v State of Gujarat [2011] INSC 523 at [14]; State of M.P. v Ramesh and others [2011] INSC 282 at [18]; Shanker & Another v State of U.P. [2009] INSC 1233 at [2]; Javed Alam v State of Chhattisgarh and another [2009] INSC 994 at [6]; Ramashray Yadav & Others v State of Bihar [2005] INSC 628 at [10].
79. Taslim v State [2006] INUPHC 11222; State of U.P. v Ram Charittar and others [2005] INAHHC 7555; State of U.P. v Bashishat Rai and seven others [2005] INAHHC 1982.
80. Battula Konadulu v The State of Andhra Pradesh [2006] INAPHC 630; Magam Venkateswarlu & Others v State of A.P. [2004] INAPHC 51.
81. Kannan v The Deputy Superintendent [2002] INTNHC 991 at [14].
82. State of Kerala v Shaji [2007] INKLHC 3190 at [5]; Murali @ Kuttai v State of Keral [2007] INKLHC 3143 at [12].
83. Jagdish v State of Madhya Pradesh [2007] INMPHC 385 at [13].
(g) 1 case invoked or considered the doctrine of RG in the High Court of Punjab and Haryana.  

In total, 17 cases successfully admitted evidence through RG across all courts from 2000 to 2020.  

As a preliminary point, it is interesting to note that all cases which considered RG also invoked it. Also, there is an overwhelming majority of cases which successfully invoked it; 17 of 21 cases translates to a success percentage of about 81%, which is a huge majority. Prima facie, on its own, it indicates that s. 6 of the Indian Evidence Act viz. the doctrine of RG is given constant attention and development. The difference between Indian cases and Singapore cases is discernibly that the former makes clear that s. 6 of the Evidence Act replaces the common law doctrine of RG because it embodies it. Notwithstanding that this may be principally wrong, the Indian courts have ensured certainty in the law regarding RG. In this connection, it is unfortunate that principles have been sacrificed at the altar of certainty. This should, in my view, not be the case for Singapore—to conflate s. 6 of the Evidence Act with the common law doctrine of RG. Instead, as demonstrated in the section below, a stringent common law test for RG should be employed.

New Zealand. In New Zealand, RG is applied as a common law doctrine. Despite previous attempts to codify it in statutes, the New Zealand Supreme Court expressly rejected this in the New Zealand Supreme Court case Rongonui v R. In so doing, the Supreme Court held that there was nothing in the legislative history of s. 35(1) of the Evidence Act to suggest that the New Zealand parliament intended this. Thus, the common law doctrine is still defined as whether the evidence was part of the events in issue. In the Supreme Court’s view, the purpose of the common law rule of RG is to ‘prevent witnesses bolstering their testimony by reference to something they had said to the same effect on a previous occasion.’ That RG continues to be a common law doctrine post Rongonui v R was expressly affirmed in recent New Zealand High Court case, Mavor v Police.

In New Zealand, 45 cases considered or invoked the doctrine of RG between 2000 to 2020 across all its courts. The breakdown according to each court in New Zealand is as follows:

(a) 4 cases considered or invoked the doctrine of RG in the Supreme Court of New Zealand between 2000 to 2020.  

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84. Subhash v State of Haryana [2006] INPBHC 1170.
85. Taslim v State [2006] INUPHC 11222; State of U.P. v Ram Charitattar and others [2005] INAHHC 7555; State of U.P. v Bashisht Rai and seven others [2005] INAHHC 1982; Magam Venkateswarlu & Others v State of A.P. [2004] INAPHC 51; Jagdish v State of Madhya Pradesh [2007] INMPHC 385 at [13]; Subhash v State of Haryana [2006] INPBHC 1170; State of Kerala v Shaji [2007] INKLHC 3190 at [5]; Murali @ Kuttai v State of Keral [2007] INKLHC 3143 at [12]; Kannan v The Deputy Superintendent [2002] INTNH 3991 at [14]; Dhal Singh Dewangan v State of Chhattisgarh [2016] INSC 663 at [29]; Tejram Putil v State of Maharashtra [2015] INSC 169 at [26]; State of Maharashtra v Kamal Ahmed Vakil Ansari & Others [2013] INSC 321 at [18]; Krishnan Kumar Malik v State of Haryana [2011] INSC 549 at [13]; Rajput Jabbarsingh Malaji v State of Gujarat [2011] INSC 523 at [14]; State of M.P. v Ramesh and another [2011] INSC 282 at [18]; Shanker & Another v State of U.P. [2009] INSC 1233 at [2]; Ramashray Yadav & Others v State of Bihar [2005] INSC 628 at [10].
86. Battula Konadulu v The State of Andhra Pradesh [2006] INAPHC 630; Chaman & Anr v State of Uttrakhand [2016] INSC 300 at [25]; Bairon Singh v State of M.P. [2009] INSC 1123 at [16]; Javed Alam v State of Chhattisgarh and another [2009] INSC 994 at [6].
87. 80.9524%; rounded off to two decimal places.
88. Rongonui v R [2010] NSC 92.
89. Ibid. at [45].
90. [2017] NZHC 1935 at [49]. Davidson J held ‘Under s 35(2)(b) of the Act, statements form an integral part of the events before the Court if they are made during the course of the offence. This brings such statements within the range of the common law res gestae doctrine in terms of the Supreme Court Judgment in Rongonui v R.’
91. Rongonui v R [2010] NZSC 92 at [31]; Hart v R [2010] NZSC 91 at [17]; Singh v R [2010] NZSC 161 at footnote 11; Mahomed v R [2011] NZSC 52 at [58].
In total, 13 cases successfully admitted evidence through the common law doctrine of RG across all New Zealand courts from 2000 to 2020.96 Fourteen cases failed to admit evidence through the common law doctrine of RG across all New Zealand courts from 2000 to 2020.97 The total number of cases succeeding and failing to admit evidence through RG differs from the total number of cases which considered or invoked RG because some cases only considered or discussed the doctrine but did not invoke RG to admit evidence.

The even spread of cases which succeeded and cases which failed to admit evidence through RG indicates that the doctrine is still being actively contemplated by the New Zealand courts. Strikingly, New Zealand courts have been clear that s. 35 of the Evidence Act did not codify the doctrine of RG and continues to apply the common law doctrine of RG independently. Such clarity can be introduced in Singapore courts regarding whether the common law doctrine of RG continues to exist independently. Thus, inspiration can be taken from New Zealand courts.

Hong Kong. In Hong Kong, the common law doctrine of RG is applied.98 As a preliminary point, if a statement is admissible as original evidence, there is no need to invoke RG.99 Regarding the applicable

92. The Queen v Gerrard Joseph Kora [2000] NZCA 47 at [12]; The Queen v Whareaitu [2006] NZCA 337 at [12]; The Queen v Wright [2006] NZCA 247 at [15]; R v Bourke [2006] NZCA 440 at [32]; R v Cox [2005] NZCA 401 at [24]; WAHO v R [2005] NZCA 68 at [34]; R v B [2004] NZCA 410 at [22]-[23]; Bennett v R [2004] NZCA 239 at [28](b); R v Sturgeon [2004] NZCA 368 at [25]; Wynn Williams v Police [2004] NZCA 425 at [18]; Wilson v R [2004] NZCA 50 at [11]; R v S [2004] NZCA 336 at [34]; The Queen v Meynell [2003] NZCA 262 at [8]; R v Ariki Manihera Reiri [2003] NZCA 257 at [10]; R v Maihi [2003] NZCA 381 at [13]; The Queen v Filo Pio [2001] NZCA 161 at [6]; Hitchinson v The Queen [2010] NZCA 388 at [28]; R v Ronjomui [2009] NZCA 279 at [34(d)]; The Queen v Aroh and Aroh [2008] NZCA 457 at [53]; The Queen v Sikulet and others [2008] NZCA 418 at [8]; R v Barlien [2008] NZCA 180 at [38]; Grooby v R [2018] NZCA at [14]; Va’Afiti v R [2017] NZCA 141 at [31]; Wyllie v R [2016] NZCA 613 at [22]; Clarke v R [2011] NZCA 516 at [6]; James v R [2011] NZCA 219 at [33].

93. Janif v Police [2014] NZHC 2753 at [19], R v Tanginoa [2012] NZHC 3121 at [35]; Boyd v Police [2012] NZHC 713 at [25]; R v Bouvong (No 7) [2012] NZHC 524 at [37]; R v A HC Rotoma [2009] NZHC 1485 at [36]; Greenwald v New Zealand Police [2009] NZHC 64 at [24]; R v G HC Auckland [2007] NZHC 2126 at [13]; McKay v District Court at Auckland [2007] NZHC 2033 at [9].

94. Ataya v Westfield Container Park Trust at 115/01 [2001] NZEmpT 149, at page 18; Wilson v JF & CA Fagan ta Feltrin Grazing Trust HT 109/00 (Hamilton) [2000] NZEmpT 564 at page 30; Linton v C & A Singh ta Waingaro Hot Springs HT 16A/00 [2000] NZEmpT 472 at page 4; Randwick Meat Co Limited v Burns [2015] NZEmpC 188 at [24]; R v G HC Wanganui [2007] NZHC 650 at [13]; R v D HC Auckland T013830 [2002] NZHC 221 at [17].

95. Objection 26/01 v Commissioner of Inland Revenue [2003] NZTRA 8 at [22].

96. R v G HC Wanganui [2007] NZHC 650 at [13]; R v D HC Auckland T013830 [2002] NZHC 221 at [18]; R v G HC Wanganui [2007] NZHC 650 at [13]; Janif v Police [2014] NZHC 2753 at [19]; The Queen v Wright [2006] NZCA 247 at [15]; WAHO v R [2005] NZCA 68 at [34]; R v S [2004] NZCA 336 at [36]; The Queen v Meynell [2003] NZCA 262 at [20] and [25]; R v Ronjomui [2009] NZCA 279 at [51]; Grooby v R [2018] NZCA at [24]; Va’Afiti v R [2017] NZCA 141 at [34]; Wyllie v R [2016] NZCA 613 at [25]; Clarke v R [2011] NZCA 516 at [6].

97. Greenland v New Zealand Police [2009] NZHC 64 at [24]; R v A HC Rotorna [2009] NZHC 1485 at [96]; R v Bouvong (No 7) [2012] NZHC 524 at [101]; Boyd v Police [2012] NZHC 713 at [23]; R v Tanginoa [2012] NZHC 3121 at [52]; The Queen v Gerrard Joseph Kora [2000] NZCA 47 at [13]; R v Bourke [2006] NZCA 440 at [32]; R v Cox [2005] NZCA 401 at [24]; R v B [2004] NZCA 410 at [49]; Bennett v R [2004] NZCA 239 at [30]; R v Sturgeon [2004] NZCA 368 at [30]; R v Maihi [2003] NZCA 381 at [13]; Hitchinson v The Queen [2010] NZCA 388 at [30]; R v Barlien [2008] NZCA 180 at [56]; Ronjomui v R [2010] NZSC 92 at [47]; Hart v R [2010] NZSC 91 at [17].

98. HKJSAR v Chu Chi Ho [2017] HKCU 1950 at [12].

99. HKJSAR v Nancy Ann Kissel [2008] HKCU 1531 at [475(5)].
test for RG, in *HKSAR v Li Cheung Yin* Keith J held that the Hong Kong courts have moved away from the strict requirement that that a hearsay statement must be contemporaneous with the act before it can be admitted. The applicable test now is twofold. First, whether there was spontaneity, which excludes the possibility of concoction, ensuring its reliability. Second, whether there is a logical connection between the statement and the act which is sought to be proved to make the statement relevant to, and probative of, that act.

In Hong Kong, 31 cases considered or invoked the doctrine of RG between 2000 to 2020 across all its courts.

The breakdown is as follows:

(a) 2 cases considered or invoked the common law doctrine of RG in the Hong Kong Court of Final Appeal, the Highest Court of the land;
(b) 12 cases considered or invoked the common law doctrine of RG in the Hong Kong Court of Appeal (which together with the Hong Kong Court of First Instance forms the High Court in Hong Kong);
(c) 15 cases considered or invoked the common law doctrine of RG in the Hong Kong Court of First Instance; and
(d) 2 cases considered or invoked the common law doctrine of RG in the Hong Kong District Court.

In Hong Kong, 9 cases successfully admitted evidence via the common law doctrine of RG across all its courts, and 8 cases failed.

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100. *HKSAR v Li Cheung Yin* [2018] HKCFI 581 at [13].
101. *HKSAR v Li Cheung Yin* [2018] HKCFI 581 at [14].
102. *HKSAR v Z* [2012] HKCU 449 at [7]; *Nina Kang v Wang Din Shin* [2005] HKCU 1254 at [492].
103. *HKSAR v Ali Nazakat* [2021] HKCA 121 at footnote 76; *HKSAR v Chu Chi Ho* [2017] HKCU 1950 at [12]; *HKSAR v Touray Edrisa & another* [2011] HKCU 1926 at [32]; *HKSAR v Tsui Chi Kin and Anor* [2008] HKCU 1851 at [26]; *HKSAR v Lam Man Kin William* [2009] HKCU 73 at [51]; *HKSAR v Nancy Ann Kisel* [2008] HKCU 1531 at [475(5)]; *HKSAR v Chan Ka Man* [2007] HKCU 908 at [35]; *HKSAR v Wong Kam Tong* [2007] HKCU 871 at [14]; *Tai Fook Futures Ltd v Cheung Moon Hoi* [2006] HKCU 1765 at [29]; *HKSAR v Sao Ming and another* [2005] HKCU 73 at [35]; *HKSAR v Wong Kam Tong* [2007] HKCU 536 at [19]; *Wang Din Shin v Nina Kung* [2004] HKCU 730 at [987].
104. *HKSAR v Wong Kok Fung & another* [2002] HKCU 953 at [7]; *HKSAR v Chan Tak Kuen* [2001] HKCU 112 at p.3; *Brian Alfred Hall v Secretary of Justice* [2006] HKCU 1171 at [19]; *Hotung v Ho Yuen Ki & Others* [2005] HKCU 264 at [33]; *HKSAR v Z* [2011] HKCU 1780 at [24]; *Polestar Assets Limited v Anton Capital Limited* [2012] HKCU 2 at [11]; *HKSAR v Chow Heung Wing Stephen* [2017] HKCU 3203 at [22]; *HKSAR v Tang Wai Lim* [2004] HKCU 968 at [7]; *Ips Man Shankyung v Chung Hing Construction Co Ltd (No 2)* [2003] HKCU 25 at [181]; *HKSAR v Lee Tai Lung* [2007] HKCU 1569 at [54]; *HKSAR v Lee Cheung Yin* [2018] HKCU 965 at [13]; *Wang Din Shin v Nina Kung* [2002] HKCU 1355 at [17.28]; *HKSAR v Chen Hua Zhang and others* [2010] HKCU 2001 at [15]; *HKSAR v Chung Zhen Yu* [2018] HKCU 905 at Footnote 4; *HKSAR v Liang Wei Dong* (unreported) [2017] HKCU 1265 at [33(vi)].
105. *Wong Yu Cho Rolly v the Hong Kong Museum of Stone Sculpture and Asian Art v Lam Kwok Man* [2008] HKCU 185 at [26]; *HKSAR v Jian Ming Xian and others* [2017] HKCU 780 at [118].
106. *HKSAR v Tsui Chi Kin and Anor* [2008] HKCU 1851 at [26]; *HKSAR v Wong Kam Tong* [2007] HKCU 871 at [19]; *Tai Fook Futures Ltd v Cheung Moon Hoi* [2006] HKCU 1765 at [29]; *HKSAR v Wong Kam Tong* [2007] HKCU 536 at [19]; *HKSAR v Wong Kok Fung & Another* [2002] HKCU 953 at [8]; *HKSAR v Chan Tak Kuen* [2001] HKCU 112 at p.3; *Hotung v Ho Yuen Ki & Others* [2005] HKCU 264 at [34]; *HKSAR v Z* [2011] HKCU 1780 at [24]; *HKSAR v Tang Wai Lim* [2004] HKCU 968 at [10].
107. *HKSAR v Jian Ming Xian and others* [2017] HKCU 780 at [120]; *HKSAR v Chu Chi Ho* [2017] HKCU 1950 at [13]; *HKSAR v Lam Man Kin William* [2009] HKCU 73 at [51]; *HKSAR v Wong Kam Tong* [2007] HKCU 871 at [37]; *HKSAR v Chow Heung Wing Stephen* [2017] HKCU 3203 at [22]; *HKSAR v Lee Tai Lung* [2007] HKCU 1569 at [55]; *HKSAR v Lee Cheung Yin* [2018] HKCU 965 at [16]; *HKSAR v Chen Hua Zhang and others* [2010] HKCU 2001 at [16].
108. There is a difference between the total number of cases which were successful in admitting or failed to admit evidence through RG from the total number of cases which considered or invoked the doctrine of RG because for cases in the latter category, some cases considered and did not apply RG, but merely discussed it.
In summary, Table 1 sets out the application of RG in the above jurisdictions (Table 1).

Evidently, RG is still relevant—142 cases invoked it across all jurisdictions in the last 21 years. Indeed, there were substantially more successful cases which admitted evidence through RG across all jurisdictions than those which failed. This minimally indicates the merits of invoking RG as a common law doctrine. Another statistic in support of the continue retention of RG as a common law doctrine is that out of 142 cases across all jurisdictions in the last 21 years, 55 cases (or 39% of cases) only considered or discussed the said doctrine in relation to other evidentiary issues. Thus, even if RG is not deemed to have any merits on its own, it still has wider relevance in relation to other evidentiary principles. In this connection, the common law doctrine of RG should still be applied in Singapore courts, albeit with a slightly tweaked test.

The proposed common law test

Given the continued need for RG as a common law doctrine, this article further proposes a three-strand test. This test has been formulated upon considering case law from jurisdictions which have been successfully in ensuring clarity in applying RG—such as in New Zealand, with the greatest number of cases considered or invoking the doctrine.109

As a preliminary point, the common law doctrine of RG is distinct from s. 6 of the Evidence Act, meaning that if s. 6 applies, it does not apply.

The test, encompassing three conjunctive requirements, is set out as follows:

1. First, as a preliminary requirement, s. 6 of the Evidence Act does not apply. Then we ask if there was concoction involved. This is an objective test—the purpose is to ensure that the evidence was given as it were, and not after reasoned reflection, which would affect its credibility and reliability;

2. Second, the evidence must relate to facts forming part of the same transaction where the event is concerned, but not contemplated in the established hearsay exceptions set out in s. 32(1) of the Evidence Act; and

3. Third, the evidence must have sufficient probative value to outweigh its prejudicial effect. The probative value of such evidence can be guided by how imminently clear the evidence is, as part of the same transaction. This should be an objective consideration.

As a preliminary point, the first strand incorporates the concoction test which remains the purpose of the RG regime. This is because the concoction test, as established in Table 1, is useful in excluding evidence

109. See Table 1.
which may have been given after reasoned reflection. However, to say that the purpose of the test—to deter concocted evidence—is the sole requirement would be inadequate in safeguarding against uncertainty for two reasons. First, because while concoction is a salient concern (Law Commission, 2015: 34, para. 3.37), there are other considerations which should be factored into the inquiry, including the probative value of the evidence. Second, because legal tests do not simply incorporate their purposes as the sole strand. This may confl ate the purpose of the test with what the test actually requires. The former relates to the objectives of the RG regime, the latter relates to whether the evidence meets the requirement to be admitted.

For the second strand, the purpose is to ensure no clash between the common law doctrine of RG and evidence provided under s. 32(1) of the Evidence Act. Moreover, it preserves the status quo that RG and s. 32(1) are disjunctive. Another benefit from having this strand is that it excludes evidence on two levels. First, for evidence to be legally relevant, it must relate to facts forming part of the same transaction. This excludes evidence which are logically relevant but not legally relevant. In this connection, the common law doctrine of RG preserves the element of spontaneity which is not caught by s. 6 of the Evidence Act. Second, the requirement that it be not otherwise caught by s. 32(1) is another exclusionary consideration.

For the third strand, it is vital to streamline RG in accordance with the test for similar fact evidence.110 The purpose of having probative value of the evidence outweigh its prejudice is not a novel concept. In fact, in Australia, in the context of sexual offences, evidence which form part of the res gestae of proceedings will only be admitted if the probative value of the evidence ‘outweighs any distress, humiliation or embarrassment which the complainant might suffer as a result of its admission’.111 Having such a requirement adds an added layer of exclusionary consideration which augments the rigour of the common law test for RG. In this connection, this helps to resolve difficult cases where it is not immediately clear that the evidence forms part of the same transaction.112 This is because even if the evidence is deemed to form part of the same transaction, this next step in the inquiry will catch any evidence if admitted will cause more prejudice than assist the courts with its probative value. Indeed, this was exactly how the admissibility of evidence under RG was resolved in New Zealand High Court case Greenland v New Zealand Police. The High Court held that the evidence sought to be admitted had no ‘probative value at all in the case the way it has been presented’113 to the court and did not assist the court in any way; it was deemed inadmissible. Also, in considering whether an evidence could be admissible under the common law doctrine of RG, the New Zealand High Court in Boyd v Police observed that ‘immediate reactions can be of probative value’.114 In a similar vein, the second requirement of the common law doctrine of RG in Hong Kong courts also includes considering the probative value of the evidence.115 In this connection, the consideration of probative value against the prejudicial effect in admitting evidence via the RG gateway is not novel, and merits application in Singapore courts.

For completion, the probative value of such evidence can be guided by how imminently clear the evidence is, as part of the same transaction. This should be an objective consideration, although what is deemed probative turns on the facts of each case.

The countervailing objection is then prejudice, just as in similar fact evidence. Prejudice is something which ‘goes beyond the tendency of evidence to incriminate the accused’.116 In the context of similar fact evidence, this entails:117

110. Lee Kwang Peng v Public Prosecutor and another appeal [1997] SGHC 201 at [48]; Tan Meng Jee v PP [1996] 2 SLR(R) 178 at [52], endorsing R v P [1991] 3 All Er 337.
111. Section 36BC(2)(b), Evidence Act 1907 (Australia).
112. See Figure 1.
113. Greenland v New Zealand Police [2009] NZHC 64 at [24]; see also Va’Afati v R [2017] NZCA 141 at [34].
114. Boyd v Police [2012] NZHC 713 at [25]; see also R v Sturgeon [2004] NZCA 368 at [25].
115. HKSAR v Li Cheung Yin [2018] HKCFI 581 at [14].
116. Chua (2018: [19]); see also Ho (1998: 166).
117. Chua (2018: [19]).
(a) risk of cognitive error—people tend to draw stronger inferences from evidence of past acts than which is rational;
(b) risk of the fact-finder being tempted to convict from an emotional standpoint instead of an objective view of the evidence;
(c) fear that the accused may be deprived of the benefit of the presumption of innocence because the fact-finder may give the other evidence more weight than it objectively deserves;
(d) it may not be acceptable to take a person’s criminal past against him although it may be logical to do so.

In the context of RG, the considerations for prejudice should similarly entail:

(a) risk of cognitive error—just because something seems to be part of the transaction, cognitive bias must be accounted for\(^\text{118}\)—facts pertaining to any event after the crime happened, if admitted will be inherently prejudicial. They cannot be admitted just because they were similar to the event.
(b) risk of the fact-finder being tempted to convict from an emotional standpoint instead of an objective view of the evidence.
(c) fear that the accused may be deprived of the benefit of the presumption of innocence because the fact-finder may give the other evidence more weight than it objectively deserves.

In weighing probative value against prejudicial effect, this prevents evidence which only seem to form part of the same transaction from being admitted. This acts as a vital exclusionary concern, given that RG is an exception to admitting hearsay evidence, of which the general rule is hearsay evidence is generally not admissible as

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\(^{118}\) Daniel Kahneman and Amos Tversky famously opined that ‘many decisions are based on beliefs concerning the likelihood of uncertain events such as the outcome of an election, the guilt of a defendant, or the future value of the dollar.’ See Tversky and Kahneman (1974: 1124).
evidence. Another upshot to this is in parallel to considering similar fact evidence, the courts do not have to consider whether nevertheless they should exercise their discretion to exclude evidence. This is as any prejudice of admitting the evidence would already have been considered and weighed against its probative value.

Thus, the proposed new test for the common law doctrine of RG is set out in Figure 3.

**Summary of this article’s conclusions**

The following is a summary of this article’s conclusions:

(a) Throughout the course of history, from the 18th to 20th century, the fundamental basis of the common law doctrine of RG was never in doubt. What was and still is difficult, is the application of the said doctrine.

(b) In particular, there are two categories of cases where RG is applied. First, cases where it is immediately clear that the evidence relates to facts forming part of the same transaction of the event. Second, cases where it was not immediately clear that the evidence is or is relating to a fact which formed part of the same transaction of the event. It is submitted that it is the second category of cases which has deeply troubled judges over centuries, across different jurisdictions.

(c) It is categorically unwise to abolish the common law doctrine of RG. It is not harmful nor is it useless, as what is unclear is its application in cases where it is not immediately clear and obvious that evidence constitutes RG. This has been the trend since the application of RG in the 18th century. Thus, to say that it confuses principles conflates principal foundations with the application of RG.

(d) Further, empirical evidence has illustrated its relevance in the jurisdictions of United Kingdom, Australia, India, New Zealand and Hong Kong from 2000 to 2020.

(e) As a corollary, 57 cases have successfully relying on the common law doctrine of RG to admit evidence in the jurisdictions of United Kingdom, Australia, India, New Zealand and Hong Kong from 2000 to 2020. This is substantially more than the 30 cases which failed to do so. This minimally illustrates the salience of RG as a common law doctrine.

(f) In Singapore, the solution is for Singapore courts to clearly state the applicable test for the common law doctrine of RG and whether s. 6 of the Evidence Act operates independently of the common law doctrine of RG.

(g) Thus, this article proposes a new common law test, incorporating the merits in the historical development of RG as a common law doctrine. This test entails:

(i) First, as a preliminary requirement, there must have been *no concoction* involved. This is an objective test—the purpose is to ensure the evidence was given as it were, and not after reasoned reflection, which would affect its credibility and reliability.

(ii) Second, the evidence must relate to facts forming part of the same transaction where the event is concerned, but not contemplated in the established hearsay exceptions set out in s. 32(1) of the Evidence Act.

(iii) Third, the evidence must have sufficient probative value to outweigh its prejudicial effect. The probative value of such evidence can be guided by how imminently clear the evidence is, as part of the same transaction. This should be an objective consideration.

On the final note, ‘whither’ and ‘hither and thither’ are archaic Latin terms like ‘Res Gestae’. ‘Whither’ means ‘where’ and ‘hither and thither’ means ‘in different directions’. This symbolises the current...

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119. Cambridge Dictionary. Available at: https://dictionary.cambridge.org/dictionary/english/whither/ (accessed 10 May 2021).

120. Cambridge Dictionary. Available at: https://dictionary.cambridge.org/dictionary/english/hither-and-thither/ (accessed 10 May 2021).
(unsettled) state of the common law doctrine of RG in Singapore. In what direction are we headed, and where?

For the above reasons, it is submitted that the common law doctrine of RG should be retained in Singapore. The common law test can be tweaked to ensure co-existence with the statutory option. Co-existence in this respect does not necessarily mean uncertainty—other common law jurisdictions have coped well even with statutory ‘equivalents’. Instead of blatantly uprooting the 213-year-old tree which has developed since 1808, why not just trim the overgrown branches, so its development is not sacrificed at the altar of simplicity and convenience?  

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References

Indiana Law Journal (1930) Evidence—res gestae—connecting circumstances. Indiana Law Journal 5(7): 526–527.

Law Commission (2015) Evidence in Criminal Proceedings: Hearsay and Related Topics. London: Law Commission.

Barnes SA (1891) The Doctrine of Res Gestae. Cornell Law School, Historical Theses and Dissertations Collection, Paper 230.

Birch D (1987) Res gestae—statement by victim since deceased-admissibility—functions of judge. Criminal Law Review 487.

Blair C (2013) Let’s say goodbye to Res gestae. Tulsa Law Journal 33: 349–357.

Bolen HF (1903) The admissibility of declarations as part of the res gesta. University of Pennsylvania Law Review 51(4): 187–223.

Catterall TR (1935) Res gestae in Virginia. Virginia Law Review 21(7): 725–762.

Chin TY (2014) Hearsay reforms, simplicity in statute, pragmatism in practice. Singapore Academy of Law Journal 26: 398–435.

121. Indeed, Dean Roscoe Pound in concluding his piece on the spirit of the common law, said ‘For through all vicissitudes the supremacy of law, the insistence upon law as reason to be developed by judicial experience in the decision of causes and the refusal to take the burden of upholding right from the concrete each and put it wholly upon the abstract all have survived. These ideas are realities in comparison whereof rules and dogmas are ephemeral appearances. They are so much a part of the mental and moral makeup of our race, that much more than legal and political revolutions will be required to uproot them.’ See Pound (1921).
Chua E (2018) Recent developments concerning similar fact evidence in Singapore: Pushing the boundaries of admissibility—PP v Ranjit Singh Gill Menjeet; Micheal Anak Garing v PP [2017] 1 SLR 748. *Singapore Academy of Law Journal* 30: 367–383.

Harper AE (1927) Admissibility of declarations of corporate agents. *University of Pennsylvania Law Review* 76(1): 1–18.

Ho HL (1998) An Introduction to similar fact evidence. *Singapore Law Review* 19: 166–183.

Laird K (2020) Re-evaluating the admissibility of Res gestae. *Archbold Review* 6: 4–7.

Morgan E (1922) A suggested classification of utterances admissible as Res gestae. *Yale Law Journal* 31(3): 229–239.

Morgan E (1937) Res gestae. *Washington Law Review* 12: 91–111.

Odgers JS (1989) Res gestae regurgitated. *UNSW Law Journal* 12: 262–283.

Pinsler J (2002) Approaches to the Evidence Act: The judicial development of a code. *Singapore Academy of Law Journal* 14: 365.

Pinsler J (2017) *Evidence and the Litigation Process* (6th edn). Singapore: LexisNexis.

Pound R (1921) The spirit of the common law. University of Nebraska. *Faculty Publications*. Available at: https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1000&context=lawfacpub/ (accessed 9 May 2021).

Siyuan C (2013) The 2012 amendments to Singapore’s Evidence Act: More questions than answers as regards expert opinion evidence? *Statute Law Review* 34(3): 262–280.

Siyuan C and Chua E (2018) The Indian Evidence Act and recent formulations of the exclusionary discretion in Singapore: Not quite different rivers into the same Sea. *De Gruyter International Commentary on Evidence* 15(1).

Thayer BJ (1881) Bedingfield’s case—declarations as a part of the Res gesta—part II. *American Law Review* 15(1): 1–20.

Tversky A and Kahneman D (1974) Judgment under uncertainty: Heuristics and biases. *Science* 185(4157): 1124–1131.