HONG KONG STUDENT LAW GAZETTE

FALL 2022
ISSUE 21
SPECIAL EDITION

FEATURE

Public Lecture on "Equality" by The Honorable Mr. Justice Syed Kemal Shah Bokhary, GBM
Obituary: Vincent Connor, an Advocate of Many Talents

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Letter from the Founding Editor

As the founding editor of the Gazette, it is a privilege to submit this letter on the Gazette's ten year anniversary. The privilege lies not in being one of its founding members, but to reflect upon the hard work and dedication of those who have ensured its success over the past decade. It is one thing to dream and breathe life into a project, but it is another to see it flourish long after you're gone. The latter is entirely out of your control and in the hands of future generations, and for that reason, it is all the more rewarding to behold.

When the Gazette was founded in the fall of 2011, we hoped it would spark an interest in the community, and provide an avenue for students to engage with the pressing and important legal issues of the day. That hope has undoubtedly been met, and has exceeded our wildest imaginations. Today, the Gazette remains Hong Kong's leading law student publication and is a fully independent, student-run organization. Its membership has expanded beyond CUHK's postgraduate community to include our undergraduate law students, who have contributed a vital and important voice to the publication.

We have endured a global pandemic and experienced tremendous upheaval in recent years, which was unfathomable when this publication was founded. Yet despite these challenges, the Gazette still stands as a testament to our remarkable student community, including its passion for academic discourse and commitment to the rule of law. These values have never been more important, and should never be taken for granted. For those who come after us, let this be your calling, as the baton is passed into your hands.

I would be remiss if I did not acknowledge the efforts of each of the Gazette's past editorial boards, contributors, and advisors. Without each of you, the Gazette would not be what it is today. But in particular, I wish to acknowledge Kevin Ng, the Gazette's first layout editor, who tragically passed away in 2016. I have no doubt that he would have been so proud of everything that the Gazette has achieved, and will continue to achieve. Congratulations to the Gazette on this tremendous milestone. I am honored to have played a small part in its history, and look forward to celebrating many more milestones to come.

Eva Chan
Founding Editor

Letter from the Editors

Dear readers,

It is with great pleasure that the Gazette welcomes its tenth anniversary. Since its inception in 2011, the Gazette has been striving to promote legal scholarship and foster dialogues between law students and the community. This decade has seen rapid development of the law in Hong Kong and other common law jurisdictions, and every article the Gazette has published over the years are testaments to these changes. Eagle-eyed readers might have noticed changes in the cover designs and layouts of our publication throughout this decade, which aptly reflects the creativity and vibrancy of different sets of editorial board. Nevertheless, one thing stands unchanged – the Gazette values individuals' viewpoints and is committed to provide a platform for such purpose.

In this Special Edition, the Gazette reminisced about the life of Mr. Vincent Connor, the late head of Pinsent Masons' Hong Kong office, who had also served as a trusted member of the CUHK Law Advisory Board. A phenomenal lawyer, Mr. Connor continues to serve as a beacon to many despite his passing. Special thanks must also be given to Dr. Dean Lewis and Ms. Gillian Johnston for their invaluable insight that have aided the Gazette in painting a fuller picture of Mr. Connor's life. In addition, the Gazette covered a public lecture on equality delivered by The Honorable Mr. Justice Bokhary, paying tribute to Mr. Connor for his fervor in making the law his life's work.

This edition also included six articles written by our fellow writers, with topics ranging from calling for reform of Hong Kong divorce laws to analyzing aviation laws amidst pandemic. It is doubtlessly difficult for one to dabble in every possible legal field, but it is even more strenuous to become an expert in a particular field of law. We hope that through reading the articles published in the Gazette, our readers will learn something valuable and be exposed to more areas of law. Pertinently, we envision that our readers will be encouraged to start writing their own articles to contribute to the legal scholarship.

As the academic year of 2021-2022 has come to an end, it is also time for us to step down as Editors-in-Chief. We are grateful for our group of knowledgeable and self-driven editors who have been supporting us relentlessly since day one. We are confident that the new Editorial Board will carry on to manifest the spirit of the Gazette – legal scholarship with integrity. Our gratitude also goes to the CUHK Faculty of Law, our sponsor Skadden and our readers. Without their continuous support, the Gazette would not have flourished.

The pen is mightier than the sword – pick up your pen and yield the power it encapsulates to pursue greater causes. Wishing you all good health, happiness and success in the coming year and always!

Best regards,

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HONG KONG STUDENT LAW GAZETTE

2021-2022

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The controversial Hunter v Moss – Development of trust law or just throwing it into 'turmoil'?

Anson Leung

Introduction

It has been recognised that for a trust to be held valid, it must satisfy the 'certainty of subject matter' requirement, which is amongst the 'three certainties' test as laid down in the famous 19th-century case Knight v Knight. In *Re London Wine*, the court rendered that, for a subject matter to be 'certain,' it must be segregated from the bulk. This principle was recognised in *Re Goldcorp*, where the Privy Council held that a trust cannot be valid if the chattel concerned was not segregated. In particular, Lord Mustill in Re *Goldcorp* affirmed that a right in property cannot exist in air, and it can only exist when the property is ascertained. Despite that numerous cases in the UK had affirmed the segregation requirement, in a landmark case *Hunter v Moss*, the UK Court of Appeal ruled that for the formation of trusts over intangible (and fungible) properties, no segregation of the property is required. This decision has, of course, attracted a great number of critiques by academic scholars. Professor James Penner even commented that '*the English Court of Appeal's decision in Hunter threw this area of law into "turmoil."*' Despite such criticism, some scholars, although few, argue that *Hunter v Moss* has indeed made the law more colourful and, perhaps, more pragmatic.

The Controversial *Hunter v Moss*

In *Hunter v Moss*, the plaintiff Mr. Hunter was an employee of a company owned by the defendant Mr. Moss who declared to hold 50 out of his 950 shares of his company in favour of Hunter as remuneration. But later, Moss changed his mind and refused to honour the pledge he had made. Moss sold the entire 950 shares to another party. Hunter then sued Moss for not honouring the trust. The Court of Appeal distinguished *London Wine* on the basis that all shares were intangible as a form of chose in action and, hence, should differ from tangible chattels (such as bottles of wine). The Court held that no segregation of the shares was needed in this case and the trust over the 50 shares was valid.

Major Critiques on *Hunter v Moss*

There have been many criticisms raised upon *Hunter v Moss*. The major critiques surround the following three aspects: (1) *Hunter v Moss* ignored the requirement in English property law that, in order to show property right, the property concerned must be segregated and identified. (2) There is no good reason to distinguish the rule set out in *London Wine*, which has been approved in *Goldcorp*. (3) It is not necessary to set out a distinct rule for creating trusts over intangible property as many

tangible assets can also be identical. The following section will present and critically evaluate the above criticisms and will provide responses from different aspects to testify why some arguments may not stand.

Analysis

Regarding the first criticism, a counter-argument may be raised that the decision in *Hunter v Moss* can actually be reached from different law principles while keeping the segregation requirement in English property law intact.

Equity is founded on the notion of conscience. In *Hunter v Moss*, Moss has made a clear promise to Hunter. But later Moss changed his mind. If the court strictly follows the 'certainty of matter' test in English property law, it would to some extent allow Moss to not honour what he has promised. In other words, the court would help Moss act unconscionably. This clearly runs counter to the essence of equity. As Professor Hudson said, '*... that is the purpose of equity — to balance rigidity with fairness*.' Thus, not the exact same set of legal principles is to be strictly applied in every case. Equity should look into the facts and circumstances of each case. For cases involving clear promises and where there is an apparent issue of conscience, law should be less rigid concerning the requirement of segregation of subject matter, in order to achieve the purpose of equity.

However, not in every situation involving promises such as in *London Wine* and *Goldcorp* that the court should ignore the principle of segregation of subject matter. To explain, I will briefly introduce the concept of promissory estoppel. Promissory estoppel is a doctrine in equity that prevents someone from going back on their promise, upon which the promisee has relied with detriment. Promissory estoppel emerges where:

(i) The parties involved are in a recognised relationship involving enforceable or exercisable rights, duties or powers.

(ii) The promisor conveys a clear and unequivocal promise to the promisee that the promisor will or will not exercise some of the rights, duties or powers.

(iii) The promisee has relied upon the promise and been induced to alter their position on the faith of it.

In *Hunter v Moss*, the first requirement is satisfied, as Moss was the owner of the company and Hunter was employed by Moss. The second requirement is also satisfied as Moss made a clear promise to Hunter to give him 50 shares out of Moss's shares and to hold on the 50 shares for Hunter. The third requirement is also likely to be satisfied. Moss promised Hunter to give him 50 shares as part of his remuneration so that Hunter relied on it and, in view of the 50 shares, he continued to work for Moss. Thus, viewed within the aspect of promissory estoppel, it would not be equitable for the court to let go back on his promise. The decision in *Hunter v Moss* prevented the employer from resiling from his promise to its employee.

Furthermore, in similar situations as *Hunter v Moss*, the court should scrutinise and prevent the promisor from acting unconscionably. A maxim in equity says: 'He who comes into equity must come with clean hands.' Moss, as an employer who refused to honour his promise, had not come with clean hands. Thus, he should not be granted aid from the law and should not be allowed to rely on the strict rule set up for the certainty of matter. As Professor Hudson said, '… *the courts of equity act in personam against the good conscience of the defendant: in that case to prevent him from deliberately breaching his contractual obligations to pay an agreed wage*.'One concern arises immediately from this view, as one maxim in equity says: 'Equity will not assist volunteer.' However, this concern may not stand as Hunter had indeed given consideration to receive the 50 shares. Hunter relied upon the promise made by Moss to continue to work for him in view of receiving the shares as his remuneration. Hunter had foregone the option to work in other companies where he may possibly obtain a higher salary and a better career path. The consideration for Hunter to receive the 50 shares is obvious. Therefore, equity should step in to prevent unconsciousness.

Tangible-intangible Dichotomy

Some scholars proposed two different rules — tangible and intangible, guiding the courts to address different situations in the 'certainty of subject matter' requirement. This sort of dichotomy has, however, received multiple academic criticisms, arguing that it is not necessary to apply different rules for tangible and intangible property, as many tangible and intangible properties share common features. Some tangible properties are not identifiable, while some intangible properties are in fact identifiable. For example, mass manufactured products are tangible but not identifiable; the goodwill of a business is intangible but is identifiable. There is no unified standard to explicitly qualify which kinds of property should be subject to the segregation rule or not. It seems that the lack of consistency in the tangible-intangible dichotomy may eventually make this area of law even more confusing, just like what Professor Penner said — threw this area of law into turmoil.

To improve this particular area of law, as *Hunter v Moss* may suggest, the dichotomy needs not focus on the 'tangibility' of the property. Instead, it should focus on 'fungibility.'

'Fungibility' Approach

'Fungible property' means any unit of the subject matter is indistinguishable and interchangeable with each other. Fungibles can be tangible or intangible. For example, grains are tangible and fungible; shares are intangible but fungible. The reason why 'fungibility' would be more suitable for setting out different rules in certainty of subject matter is that, regardless of whether a property is tangible or not, as long as it is fungible, it is meaningless to segregate and identify it. For example, a customer purchases 50 kg fungible grain from the owner and the owner keeps the grain in his storage. Apparently, every single grain is identical, and that neither the owner nor the customer can identify them. It is meaningless to identify what exact portion of grain in the bulk belongs to the customer. It is the same case for shares as every single share is interchangeable and identical. Thus, no segregation is needed for the fungible shares to become 'certain.' In contrast, for non-fungible properties, they should be subject to the traditional rule of 'certainty of subject matter,' in which segregation of property is required.

The 'fungibility' approach was affirmed in *Pearsons v Lehman Brothers*. Lehman Brothers was an international bank that held money on behalf of its clients (the monies held were not segregated) and went bankrupt during the global financial crisis in 2008. The clients then claimed their money. The court followed the approach in *Hunter v Moss*, and held that segregation of the money was not needed. Briggs J in this case laid down a principle:

> "*A trust of part of a fungible mass without the appropriation of any specific part of it for the beneficiary does not fail for uncertainty of subject-matter...*"

The decision in *Hunter v Moss* was also followed in Hong Kong Court. In *Re CA Pacific Finance Ltd (No 1),* the court held that the need for segregation to identify the subject matter of the trust depends on the nature of the subject matter and it was not necessary to have segregation over fungible subject matter. Yuen J stressed that '*[s]hares are simply bundles of intangible rights against the company*.' Therefore, shares are fungible and need not be subject to the segregation rule. The certainty of subject matter test could thus be divided into two separate rules concerning 'fungibility,' in order to refine the tangible-intangible dichotomy:

(i) For non-fungible property, it should be subject to the conventional segregation rule held in *London Wine* and *Goldcorp*.

(ii) For fungible property, it should follow the approach held in *Hunter v Moss*, that no segregation is needed.

Conclusion

While it is true, as Lord Mustill stated in *Goldcorp*, *that 'a right in property cannot exist in air*,' the property may still exist even if it is not ascertained. It should depend on the nature of the property as to whether the property is 'fungible' or not. The tangibility approach adopted in the controversial case *Hunter v Moss* in determining 'certainty of subject matter' can be refined into the 'fungibility' approach. However, it does not mean that the decision in *Hunter v Moss* was wrong. In the common law world, laws are established by case precedents. Every branch in common law is developing and, of course, is changing constantly to suit societal needs. The controversies that arose from *Hunter v Moss* do not necessarily suggest that the decision has thrown the law into turmoil. Rather, *Hunter v Moss* and other cases concerning this area of law have indicated that the law is evolving and reaching clarity and certainty.

Current Developments

The No-Fault Divorce Regime in the UK: A Potential Radical Change for Hong Kong's Divorce Law

Dragon Koon Kit Lo

Introduction

The Divorce Dissolution and Separation Act 2020 ("DDSA") came into effect on 6 April 2022 in England and Wales and brought significant reforms to the divorce regime. Before the passage of the DDSA, the Matrimonial Causes Act 1973 ("MCA") governed the divorce regime. Section 1 of MCA required the petitioner to prove that the marriage had broken down irretrievably by satisfying one or more of the five reasons, namely adultery, unreasonable behaviour, two-year separation with consent of the other spouse, five-year separation without consent, and two-year desertion.

Landmark divorce case in the UK: *Owens v Owens*

This legal reform was prompted by a divorce case *Owens v Owens* [2018] UKSC 41, in which Mrs Owens petitioned for divorce relying on the ground of unreasonable behaviour and Mr Owens sought to contest. The Judge found at trial that Mrs Owens relied on ungrounded examples, exaggerated their seriousness, and complained about mostly one-off incidents. The Court thus concluded that the behaviours were not so unreasonable to the extent she could not be reasonably expected to live with him.

The Court of Appeal ("CA") and the Supreme Court ("SC") upheld the decision affirming that Mrs Owens should remain married to Mr Owens. The decision, however, was received with mixed views. Sir James Munby in the CA attacked the law for its hypocrisy and lack of intellectual honesty. Lady Hale in the SC also found the case to be troubling, and Lord Wilson invited the Parliament to consider replacing the law under the old MCA regime which denied Mrs Owens any entitlement to a divorce.

There is little reason why couples should have to cite reasons to prove a broken marriage when both parties agreed to such a split, especially because it does not help keeping the couples together. Even if a marriage might not have broken down irretrievably, it is in effect forcing couples to take up hostile positions from the very beginning by asking them to cite evidence to support their breakdown. Divorce should be readily accessible and should not only focus on the parties' innocence or guilt, it should be a practical solution to a marital breakdown.

The above concerns are shared among scholars. Mears, who took a condemnatory view of the system, stated that the five reasons were merely pegs to hang your *decree nisi* on, and that the real reason for the breakdown might have no bearing with the fact

submitted. Therefore, the law should be overhauled in order to stop incentivising couples to make lurid allegations against each other to get a quicker divorce.

Amendments of the DDSA

The DDSA retains irretrievable breakdown as the sole ground for divorce but removes any requirement to prove conduct. In other words, a statement of marital breakdown is conclusive proof of irretrievable breakdown. Consequently, it introduces a purely no-fault divorce system. It puts a halt to the blame game and ceases the finger-pointing battle, thus reducing hostility, bitterness and acrimony in the divorce process. It also helps parties to move on and avoids exacerbating pain and tension.

This is particularly important if there are children in the family. Ongoing conflicts between adults may cause children to have social and behavioural problems in the long run. The reform encourages divorcing couples to remain as supportive co-parents, rather than parents pitting against each other. It also promotes alternative dispute resolution and mediation as opposed to confrontation in heated court rooms.

Arguments against the No-fault Divorce Regime

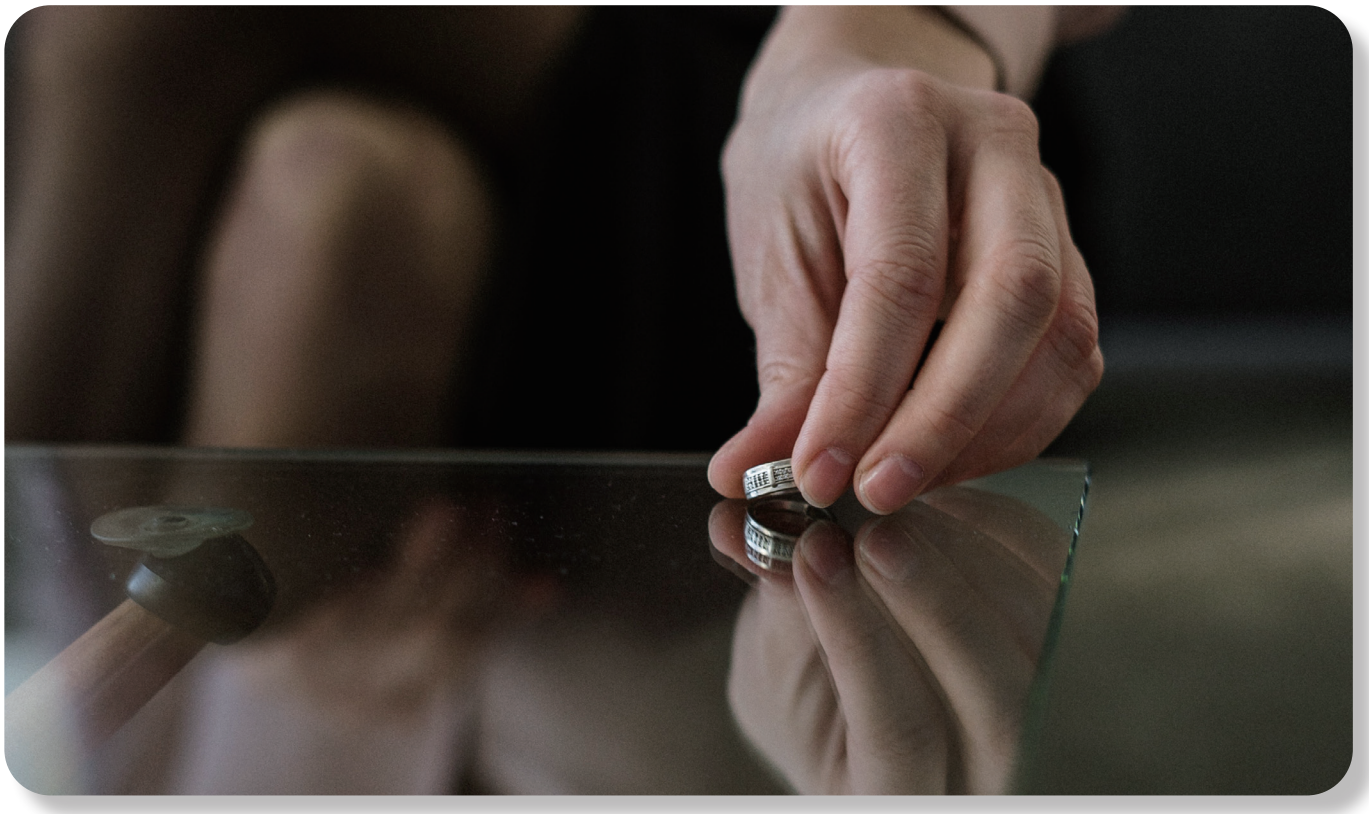
There are concerns over how sanctity of marriage is damaged when divorce is made easier, hence leading to a spike in divorce rates. Whilst it cannot be denied that that institution of marriage is crucial, Hon. Robert Buckland QC MP expounds that it is equally important to prevent exacerbating conflict and potential harm done to children.

Further, it can be expected that a short-term spike in divorces is inevitable because those who had wanted divorces, but were previously unable to meet the requirements, could finally get one. This is exemplified in the case of New Zealand. There was a spike in divorce rates from 9 to 17.1 between 1980 and 1982 after launching the no-fault divorce reform in 1981. However, the divorce rate between 2018 and 2020 were 7.6, which was even lower than the rate before.

Interestingly, the divorce process is not necessarily shortened after the reform. In fact, the reform elongates the divorce process. The DDSA introduces a minimum overall time frame of six months (i.e. 26 weeks) into the divorce process. A new minimum period of 20 weeks is introduced, in which the application of *decree absolute* cannot be made until 6 weeks have elapsed from the *decree nisi* order. This is contrasted with the previous fault-based regime where couples might have been able to complete their divorce in three to four months.

Situation in Hong Kong

Hong Kong used to follow England and Wales in the divorce law. As divorce rates had increased since 1972, the Hong Kong Law Reform Commission



recommended reducing the period required for separation and allowing joint application in 1992. Such recommendations were adopted, and the amendments came into force in 1996.

Pursuant to section 11A of the Matrimonial Causes Ordinance (Cap. 179), it is necessary in Hong Kong to demonstrate an irretrievable breakdown of marriage citing one of the five reasons. However, the requirements are not as stringent as those in the MCA. For example, the length of separation is different. If the parties have lived apart for 1 year with consent, or lived apart for 2 years, they would have fulfilled the requirement. Therefore, unlike England and Wales, Hong Kong enjoys the benefit of shorter periods of separation for no-fault ground divorce. There is also the option for both parties to file a joint application.

In England and Wales, unreasonable behaviour was the most common reason for opposite-sex couples divorcing in 2019 with 49% of wives and 35% of husbands petitioning on this ground. However, in Hong Kong, most divorcing couples relied on living apart for at least 1 year with consent as their reason for divorce, amounting to 57% of the cases in 2011. This was followed by 32% of the cases opting to live apart for at least 2 years. Unreasonable behaviour only contributed to about 10% of the cases, and surprisingly measly 0.3% citing adultery and desertion. Since the most common reason Hong Kong couples rely upon for divorce is separation, it implies that most people actually rely on no-fault grounds. One may therefore doubt whether there is a genuine need to reform the law.

Despite the change possibly bringing minimal benefit to divorcing couples, it can align our jurisdiction with the international trend and encourage parties to move on rather than blaming each other. Therefore, this article argues that it is ideal but not imminent to introduce a similar reform in Hong Kong.

Additional Benefits of the Reform

The introduction of the purely no-fault divorce regime would reduce the average costs of obtaining divorce since the amount of work involved in the process will be substantially reduced. It can also avoid costly and distressing litigation like *Owens v Owens*.

Besides, updating terminology in DDSA will enable couples to understand more about the process of filing a divorce application. For example, the new law replaces terms like “decree nisi”, “decree absolute” and “petitioner” with “conditional order”, “final order” and “applicant” respectively. The removal of legal jargons transforms it to a layman-friendly system with preliminary access to legal information. Such can be adopted in Hong Kong.

Moreover, the DDSA also removes the rarely used option to contest a divorce. Under the new law, the

petition can only be challenged on limited grounds like validity, subsistence of marriage, jurisdiction of the court and procedural compliance.

One may argue that given most divorces in Hong Kong are separation-based, abolishing the contesting system is unnecessary as it would only have trivial effects. However, taking into account the social landscape in Hong Kong, the removal of the contesting system can be beneficial.

The most obvious advantage is that it saves contesting couples from expensive and acrimonious divorces. The less obvious advantage relates to cases of domestic abuse, as removing the contesting system is effective in preventing abusers from further asserting coercive control over the victims. The ability to contest means some petitioners may instead consider relying on separation-based petition to fulfil the requirement, but it can be very difficult for the victims to live apart from the abusers. Many victims of domestic violence live in government housing with the abusers, and the family would not be able to afford living in two distinct households pending ancillary relief orders in the face of heavy financial hurdles. It is therefore desirable for Hong Kong to implement such changes to avoid this burden.

Conclusive Remarks

Hong Kong should reap the various positive impacts produced by the purely no-fault divorce regime, which encourages amicable rather than bitter separation. It is also beneficial to Hong Kong if the global trend is followed in introducing such divorce reform.

Current Developments

China's Legal Framework on Digital Platforms

Tingyin Luo

I. Introduction

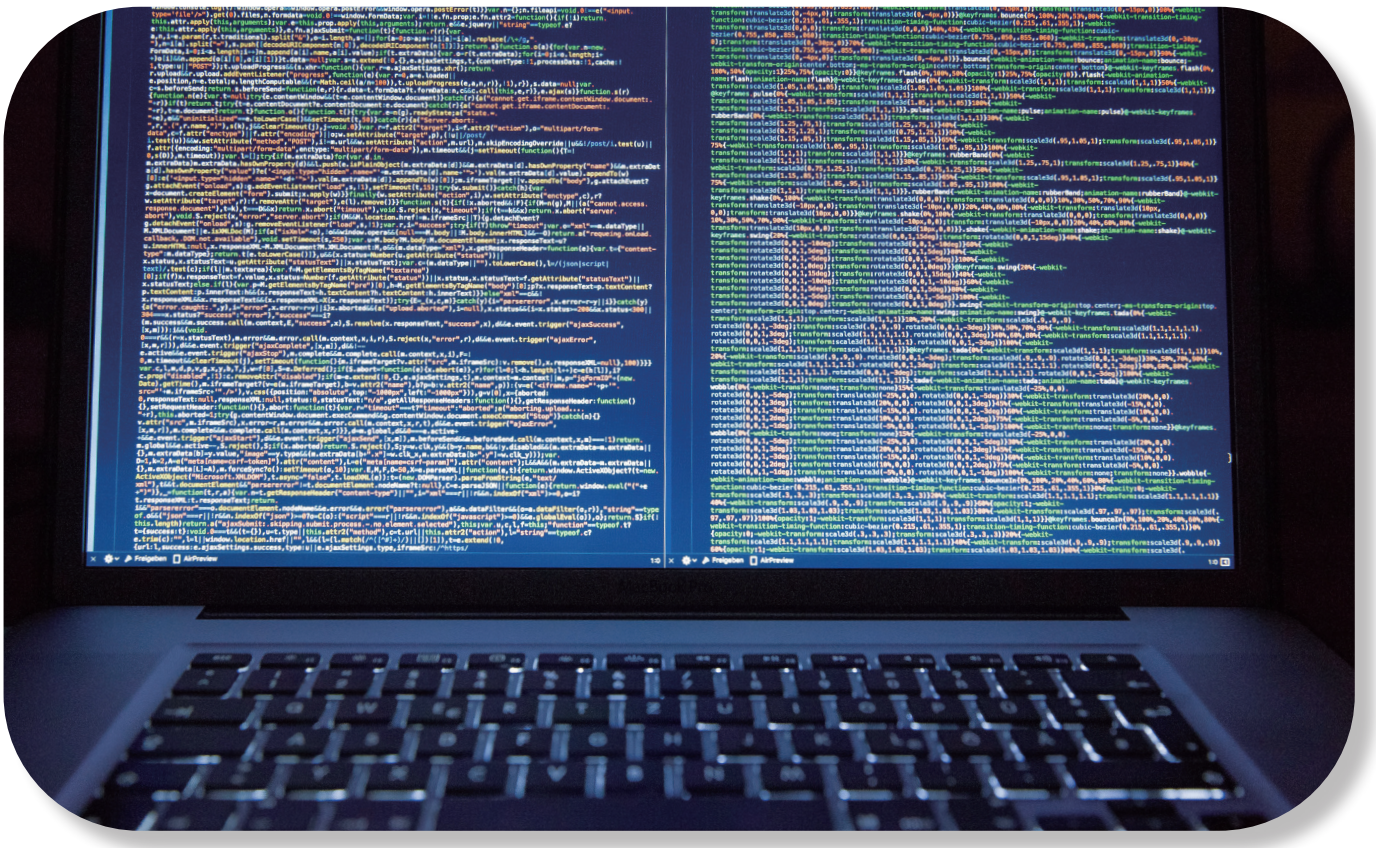
There have always been many disputes over the Chinese regulations of digital platforms. E-commerce has brought many economic benefits to society and contains multiple parties such as technology companies, consumers and multiple industries like entertainment and retail. Therefore, in terms of digital platforms, regulations need to involve the interests of all parties in different industries. Furthermore, regulations also need to be comprehensive and systematic in order to provide a safe, reliable, fair and open market environment for all parties in the digital platform industry. Regulations in China are also facing challenges. For example, balancing the relationship between the platform and market dynamics or innovation is the current difficulty in platform supervision. As it stands, China has already taken effective methods to manage digital platforms, but further development is still worth thinking about.

II. China's Digital Platforms Legal Framework

The regulatory features of digital platforms include multi-sided relations as well as cross-industry transactions. Therefore, to sort out the regulations of different legal subjects in different sectors, this article analyses Chinese laws and regulations involved in them from three subjects: the individuals, the platform corporations, and the society.

Data Security and Personal Information Protection

From the individual perspective, the openness and fragility of big data on platforms have made personal information security a concern in all countries. In September 2018, Facebook was hacked due to a security breach, resulting in the disclosure of 30 million users' private information. Similarly, according to statistics, more than 100 digital platform companies and their applications in China in 2020 posed a threat to the security of users' private data, due to problems such as a lack of user privacy agreements, ambiguous expressions about the scope of sensitive



data collection, and collecting sensitive data beyond the stated scope. In this context, China promulgated *The Cyber Security Law of the People's Republic of China (Cyber Security Law)* in November 2016 and the *Data Security Law of the People's Republic of China (Data Security Law)* in June 2021. Meanwhile, the *Criminal Law of the People's Republic of China (Criminal Law)* and the newly promulgated *Personal Information Protection Law of the People's Republic of China (Personal Information Protection Law)* also have clauses related to information protection on digital platforms.

On the practical side, currently, there are two main situations where digital platforms infringe users' personal information. One is to steal personal information from social applications, and the other is to obtain consumers' shopping preferences from e-commerce platforms. For the former circumstance, it may happen on both public and private platforms. For example, in the criminal case of Xu Yuyu in 2016, the defendant illegally invaded the website of the entrance examination platform of ordinary higher education schools in Shandong Province, stealing a large amount of the college entrance examination candidates' personal information and selling them for profit. Several defendants in the case were convicted of infringing citizens' personal information. Same in the private platform, the conscious or unconscious disclosure of citizens' personal information by communication platforms like WeChat will provide the possibility of fraud, extortion, or fraudulent use of personal data. Most cases like these have received civil or criminal penalties. The second circumstance is not as severe as the previous one, but it is more common in people's lives. Shopping platforms and short video platforms such as Taobao, China's largest online shopping platform, widely applies intelligent recommendation algorithm technology to collect and analyse user information and perform personalised customisation and precise delivery. At this point, personal information will have certain commercial value, and there may be hidden dangers such as customer price discrimination or information exchange between platforms. Therefore, Article 24 of the *Personal Information Protection Law* stipulates the transparency and explanations of personal information processors' actions as well as the option of individuals.

Platform Moderation

The moderation of the content on platforms has always been a problem faced by platform corporations. Facebook's content-moderation guidelines were leaked by its former employee in 2012, which caused a public sensation. After that, Facebook published publicly available standards of its community, but it is still vague to the public. Meanwhile, it has been announced that 99% of terrorist content on Facebook are flagged by AI-based systems, while YouTube also uses AI to flag extremist content. But the flaws of AI also make people unable to believe its effectiveness fully.

The European Union (EU) have promulgated *General Data Protection Regulation (GDPR)* to directly regulate the content moderation policies of online platforms, which includes the requirement that the data controller and processor need to submit an impact assessment in some cases. The United State's *Communications Decency Act (CDA)* has more free space than the EU's, tending to protect the platforms and give platforms freedom to decide their own audit standard. However, since the platforms in the U.S. raised more problems, it also issued the *Algorithmic Accountability Act of 2019 (AAA)*, which require all corporations that use 'automated decision systems' to submit impact assessments of some factors to the Federal Trade Commission. Turning to China, legislations give the platform a certain amount of autonomy. For example, Weibo, a social media platform like Twitter, has its own regulatory system, including committees, supervisors and rules. However, the supervision of the platform has begun to appear more stringent. More and more scholars believe that platforms should bear certain responsibilities. Professor Tang Yaojia believes that the responsibility for the platform should be changed from passive information transmission and notification to an active trading rule maker. Article 286 (I) of the Criminal law also stipulates the crime of refusal to perform information network security management obligations. The criminal case of Kuaibo also illustrates China's strict requirements for platform responsibilities. Therefore, no matter what method the platform adopts to review the content, it is necessary to keep a cautious attitude.

Anti-monopoly

Platform economy brings competition concerns from the market operation and socio-economic development. Big tech corporations with a large user base and a highly centralised core platform tend to occupy a dominant position in the digital market. This situation allows them to use their technological and capital advantages and emerging technologies to derive anti-competitive measures. Thus, preventing these monopolists and protecting competition and

consumers' welfare has become a crucial question.

EU, as one of the largest competition law jurisdictions, adopted the *Digital Markets Act* on 18 July 2022 to prevent 'gatekeepers' from engaging in unreasonable business practices. Likewise, in China, besides the fundamental law of *Anti-Unfair Competition Law of the People's Republic of China (Anti-Unfair Competition Law)* and *Anti-Monopoly Law of the People's Republic of China (Anti-Monopoly Law)*, *the Antimonopoly Guidelines about Platform Economy (Guidelines)* was also issued by the Anti-Monopoly Committee of the State Council to regulate monopolistic behaviour on digital platforms in February 2021. The *Guidelines*, which aims to be a powerful supplement to the anti-monopoly regulations in the digital platform area, is the world's first officially issued systemic anti-monopoly rule specifically for the field of the platform economy and initially established the legal norms for the monopoly identification of platform enterprises in China. The *Guidelines* make more detailed provisions of the subject, legislative system, and core elements of the digital market. Practically, in October 2021, the sensational Meituan's 'one out of two' administrative penalty case also further demonstrated China's determination to anti-monopoly on digital platforms.

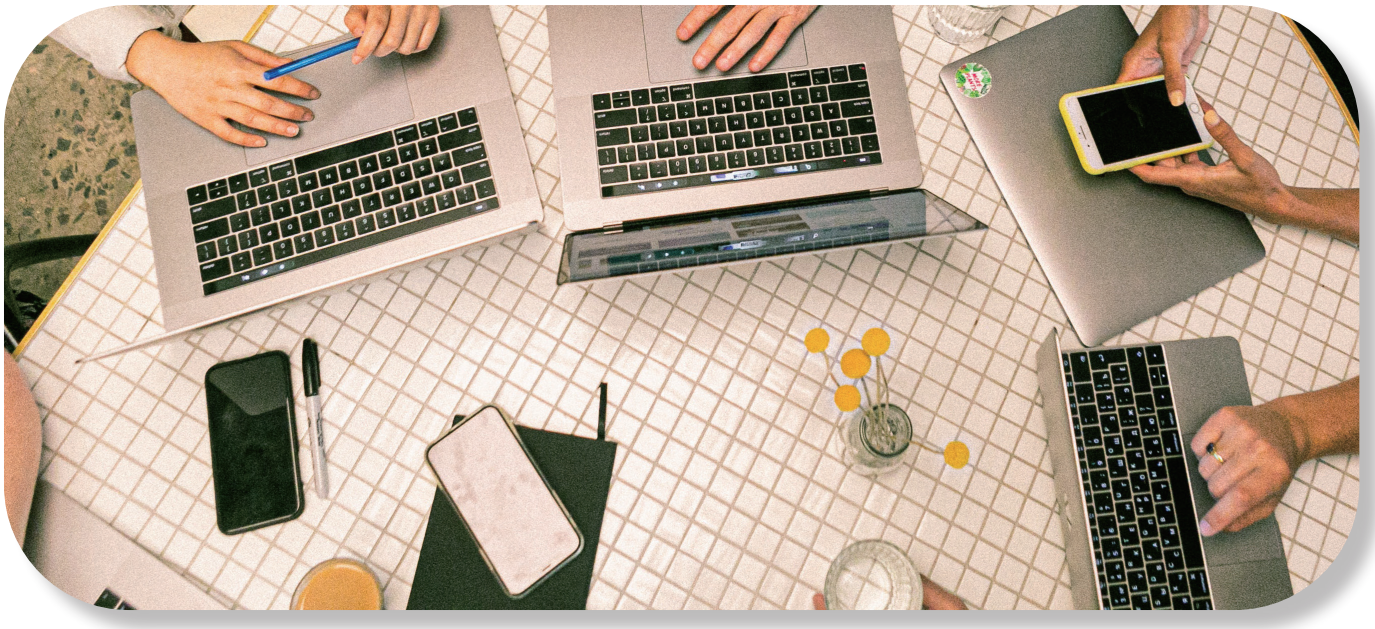
III. Pros and Cons of Chinese Regulations

Advantages

As stated before, China's legal framework for digital platforms covers multiple parties and various sectors.

China's legislation in the digital field is becoming more and more comprehensive. Firstly, it is becoming more and more targeted at the legislative level. From the *Anti-Unfair Competition Law* at the beginning to the emerging *Cyber Security Law* and *Data Security Law*, the requirements for managing Internet platforms have become more clarified. Secondly, China has always used an inclusive and prudent approach to platform supervision. China's competition regulation pattern, for example, is currently taking private enforcement as the principal and supplementing with public enforcement, with the goal of creating a new regulatory system for Internet Platforms. Adopting an inclusive and prudent principle may promote and standardise platform innovation to drive development. Furthermore, China's legal system for regulating digital platforms unites multiple departments. By refining laws and regulations within the scope of their powers and enforcement in their areas of responsibility, various departments can better constrain the behaviour of multiple entities on the platform.

Subjects	**Individuals**	**Platform Corporation**	**Market & Society**
China's Law & Regulations	• Criminal Law • Cyber Security Law • Data Security Law • Personal Information Protection Law	• Criminal Law • Data Security Law • Cyber Security Law	• Anti-Monopoly Law • Anti-Unfair Competition Law • Antimonopoly Guidelines about Platform Economy
Platform Examples	Wechat, Taobao	Weibo	Meituan
Cases	Criminal case of Xu Yuyu	Criminal case of Kuaibo	Administrative penalty case of Meituan's 'one out of two'



Finally, China is also dedicated to international cooperation. President Xi Jinping stated at the 6th World Internet Conference in December 2019 that countries should coordinate diversified international organisations, integrate resources from multiple sources, jointly advance cyberspace governance, and optimise the digital platform supervision system.

Disadvantages

Although China's legal framework on digital platforms has its advantages and uniqueness, it also has its defects.

For one, most of the legal provisions are still relatively vague. Some of the laws are more principled provisions. For instance, upper-level laws like the Anti-Monopoly law lacks legal provisions reflecting the characteristics of the Internet, and the legal effect needs to be further strengthened. The unique nature of the Internet and digital platforms requires that the law needs to regulate them in a targeted manner further. Furthermore, even if the *Data Security Law* is formulated for data as an independent legal benefit, there are still too many principled clauses. At the same time, the regulations on digital platforms lack systematicity. At present, China has numerous legal instruments related to personal data security, but the content of rights, regulatory methods and remedies of data subjects still have deficiencies. Meanwhile, conflicts between the provisions of the lower law and the provisions of the upper law also exist. As a result, China has a comprehensive framework for digital platform regulations, but it still needs an integrated system to promote its unified operation.

For another, there are some improper strict regulations for the platforms. Some provisions have the problem that they can be applied to all platforms and ignore the differences in business models of different types of platforms. Hence, authorities need to pay attention to analyse different cases respectively. Under this circumstance, if the same measures are taken uniformly on all platforms, platform companies may find it difficult in practice. Wrong punishments may occur, and the sound development of the platforms may also be affected. Therefore, to supervise these platforms, not only a detailed system is required, but also it cannot be too strict and lead to wrong enforcement.

To sum up, China's legal framework does have certain flaws. Still, China is gradually becoming aware of the emerging new problems and is now taking measures from all legal aspects to solve and avoid these issues.

IV. Conclusion

The digital platform has already become an indispensable factor in society, which requires strong regulation. The legal framework of China's digital platform is relatively advanced and complete worldwide. China has always been at the forefront of regulating e-commerce and constantly improved the regulation of digital platforms. While there are many advantages, there are also certain concerns, and China is currently working on them. Only by continuously advancing the benign governance of the digital platform can it become an effective tool that enriches people's lives in the process of its development.

Current Developments

The Approach of Considering the Doctrine of Undue Influence in Hong Kong

Xiayang Chen

1. Introduction

Undue influence is a situation where one party either employs improper tactics or abuses his position of trust or influence over the other in order to secure the other's agreement to a contractual bargain. It is trite that the existence of influence does not mean there is undue influence. The influence itself is neutral. The key point is whether the influence is "improper" or "undue", in other words, whether the influence is to the extent that it hinders the free will of the parties.

Hong Kong Courts generally adopt a common-sense approach to undue influence, in contrast to a mechanical application of the doctrine. In the first part, the classification of the undue influence will be introduced. In the second part, this essay presents the types of defence against undue influence. In the third part, the departure from the traditionally applied doctrine will be analyzed via a common-sense approach taken by the courts. In the last part, this essay discusses a recent shift to a common-sense approach and the inconsistencies in taking such an approach.

2. Classes of Undue Influence

According to Lord Browne Wilkinson in *Barclays Bank plc v O'Brien*, there are two classes of undue influence: actual undue influence (Class 1) and presumed undue influence (Class 2). Traditionally, the courts in Hong Kong adopted this approach when considering undue influence.

(1) Actual undue influence

According to *Bank of Credit and Commerce SA v Aboody*, there are four elements of establishing actual undue influence: (a) a party to the transaction (or someone who induced the transaction for his own benefit) had the capacity to influence the complainant; (b) the influence was exercised; (c) its exercise was undue; and (d) that its exercise brought about the transaction.

Unlike the doctrine of duress, actual undue influence does not have to take the form of a threat to the victim's life, liberty, property or economic interests. It exists when improper means of persuasion are used to procure the victim's consent. In *Diners Club International (Hong Kong) Ltd v Ng Chi Sing*, the wrongdoers threatened to report the defendant's son to the Commercial Crime Bureau to coerce the defendant to sign a contract. The Court of Appeal held that the contract was void for actual undue influence. The burden of proof thus lies with the party seeking to rely on the principle to demonstrate affirmatively that the undue influence was exerted on him to enter into the transaction.

(2) Presumed undue influence

Presumed undue influence has been developed by the courts to function even when there is no evidence to prove the actual undue influence. There are two elements of establishing presumed undue influence: (a) there is a relationship of trust and confidence between the complaint and the wrongdoer; and (b) the transaction calls for an explanation. Once a Class 2 relationship is established, the party asserting the

legal right bears the burden of proving the transaction not to be one of undue influence.

Presumed undue influence is further divided into Class 2A (irrebuttable undue influence) and Class 2B (rebuttable undue influence). In the former cases, relationships of trust and confidence automatically invoke the presumption, including trustee and beneficiary; solicitor and client; medical adviser and patient; parent and child (but not vice versa). In the latter cases, the presumption arises when there is no relationship falling within Class 2A. However, the defendant has to prove the *de facto* existence of a relationship under which trust and confidence are generally reposed in the wrongdoer.

When considering whether the transaction needs an explanation, the courts take many factors into account. On one hand, if the transaction cannot be understood by ordinary motive, it has to be explained. According to Lindley LJ in *Allcard v Skinner*. The application of the doctrine of undue influence depends on whether the amount of the gift can be reasonably explained. On the other hand, an explanation is called for when there is an obvious imbalance between the risks the parties take and the interests they obtain after the transaction is concluded.

This principle developed significantly in *Royal Bank of Scotland v Etridge (No 2)*, in which influence would be regarded as undue if unacceptable means were used and the consent procured by such means failed to represent one's free will. This approach was accepted by the Hong Kong Court of Final Appeal ("CFA") in *Li Sau Ying v Bank of China (HK)*.

3. The Defence of Undue Influence

A defense to undue influence would be informed consent. Such consent requires the complainant to fully understand the nature, consequences, and intention of the transaction. The counterparty should provide sufficient information and detailed explanation for the complainant to form a comprehensive understanding.

Another defense would be that the complainant received independent advice, which consequently affects the weight of evidence for undue influence. If the complainant obtained independent advice from a third party (usually people with professional knowledge or qualification, such as lawyers), the court would likely rule there to be undue influence.

Once the court rules that consent was freely given with full knowledge of the consequences of entering into the relevant transaction, that is the end of the matter, however improvident the transaction may objectively appear.

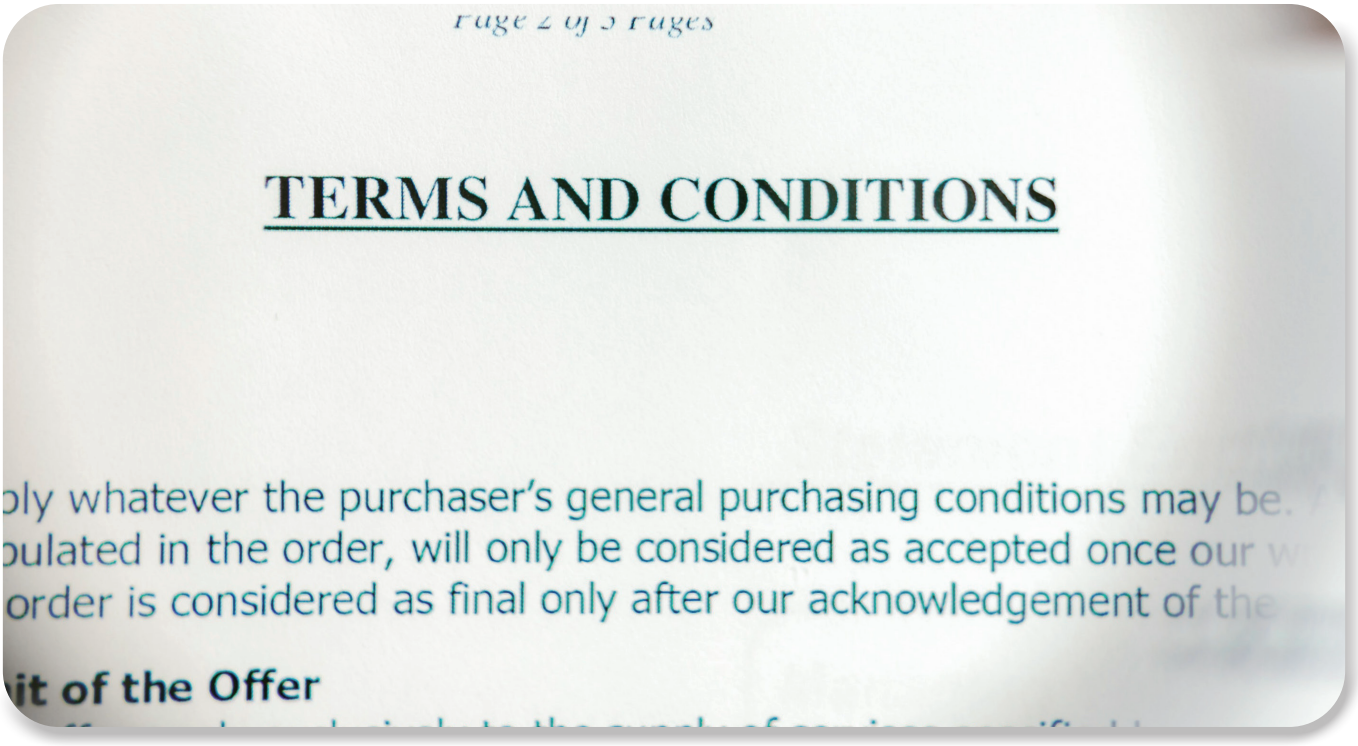
4. Common-sense Approach

Cases such as *Portman Building Society v Dusangh*, *Karsten v Markham* observed weaknesses in the traditional approach towards the doctrine of undue influence. A relationship of trust and confidence and a disadvantageous transaction will not always give rise to a finding of undue influence, and that such relationships between unrelated parties with a valuable transaction does not necessarily mean it was procured by undue influence. The modern approach is thus to focus more on establishing undue influence on a balance of probabilities.

In *C.I.B.C. Mortgages Plc Respondents v Pitt and Another Appellant*, the husband and wife remortgaged their house to support the husband's stock speculation. It turned out that the husband exerted actual undue influence on the wife to coerce her into the remortgage without showing her the documents. The wife also did not receive any independent advice. As a result, the wife successfully set aside the transaction between her and her husband. Nonetheless, the bank was not affected as it observed that such arrangement was to benefit the wife and was not alerted to the actual undue influence. The House of Lords held that if third parties were to be fixed with constructive notice of undue influence related to every transaction between husband and wife, such transactions would become almost impossible and would not accord with practical common sense as well.

Pitt endorsed a more common-sense approach, which the Hong Kong courts adopted. In *Bank of China (Hong Kong) Ltd v Wong King Sing & Others,* the Court of First Instance ("CFI") also held that it was supposed to apply a large degree of common sense to the matter when determining whether there was undue influence. Recorder Ma SC further criticized the tendency of using principles mechanically and regarding presumptions as almost formulas to be applied. Instead, presumptions served mainly as forensic tools to direct parties to the evidence required, but not as decisive factor.

Moreover, the court also doubted the utility of the classification of the undue influence in *DBS Bank (Hong Kong) Ltd v Cheng Mei Ling*. The court emphasized that artificial legal presumptions were not the reasons for the success of the doctrine of undue influence. Rather, such presumptions, coupled with available evidence, may be sufficient to justify a finding of undue influence on a balance of probabilities.



More importantly, the CFA in *Li Sau Ying* held that in cases outside those categories of undue influences, the parties should concentrate on whether the evidence on a balance of probabilities demonstrated that the impugned transaction was procured by undue influence. Namely, whether the dominant party had abused the trust and confidence reposed in him by the subservient party. A rigid focus on the categories would likely confuse and impede evaluation of available. Likewise, citing the *Etridge (No 2)* case, the CFA emphasized that concentrating on a so-called presumption of undue influence tended to detract from the real issue.

5. Shifting Between Presumptions and Common-Sense Approach

As evident in the aforementioned cases, it is not difficult to infer that Hong Kong courts are inclined to take a more common-sense approach in deciding whether a defendant may rely upon the doctrine of undue influence. However, the presumptions of undue influence have not been completely replaced by the common-sense approach. It appears that the lower courts in Hong Kong have not consistently applied *Li Sau Ying* when considering undue influence. As Lunn J said in *Pang Siu Hing v Tsang Kwok Man*, the principle included not only cases of abuse of trust and confidence, but also cases where a vulnerable person had been exploited. Lunn J further explained that there was no single touchstone for determining whether the principle was applicable, but each had its proper place.This is further exemplified in *Wong Wai Wing v Mang Fan Lin* where the CFI reiterated the category. To sum up, some judges continued to cling onto the categories, while others might have been less transparent regarding the weight of individual factors considered even after following *Li Sau Ying* case.

6. Conclusion

Nowadays, it has been suggested in Hong Kong that the approach of considering the doctrine of undue influence should be that of the *Etridge (No.2)* case, namely proving the two basic factors: (a) the existence of a relationship of trust and confidence; and (b) that the transaction calls for explanation. Lord Scott in *Li Sau Ying* further emphasized that the real issue is whether the totality of evidence justifies a conclusion that the impugned transaction was procured by undue influence. Despite the trend of adopting the common-sense approach when considering undue influence in Hong Kong, some continued to cling onto the traditional categories of presumed undue influence. Therefore, it is yet to be determined whether the common-sense approach will completely replace the presumptions of undue influence.

Current Developments

U.S. and China Financial Regulation 2000s - 2020s

Amos Xu

The Sino-U.S. relation has been one of the most significant bilateral geopolitical relations in the world during the past decades. Crucially, how to maintain such a long-existing political economy order inside an equilibrium when both sides turn slightly hostile is quite a question to ask, and naturally ensuing the financial regulation, market watchers and related regulators are bestowed with paramount responsibilities during such diplomatic downtimes. The Chinese concepts stocks, whose overall performance has been seen as the epitome of those macro- and micro-changes, will be estimated to experience a 'going out and coming back' period amidst the unwillingness or inability to meet the audit workpaper requirements of the Holding Foreign Companies Act (HFCAA) within the next three years till 2024 under the Public Company Accounting Oversight Board (PCAOB), ultimately supervised by the U.S. Securities and Exchange Commission (SEC).

Also, throughout the past two decades, the businesses of Technology, Media, Telecom ('TMT') companies seem to become increasingly sensitive in terms of data privacy and antitrust law-related matters they have tremendous involvement with. Such valuation-hurting changes greatly manifested in China. More laws are to be made in the two areas.

Until then, all interested parties, the intermediaries – investment banks primarily in the listing services and offshore fund managers shall stay tuned for all defining pieces of legislation from the PRC and keep an eye on the SEC's new bills, even though this well-established Variable Interest Entity ('VIE') way – commonly adopted by the tech giants since Sina.com – was not declared invalid by the end of 2021.

Current Developments

Live with COVID-19 in the Air: Aviation in Recovery From Legal and Policy Perspectives

Nelor Yuejie Li

Introduction

The COVID-19 pandemic is approaching its second anniversary as the year 2022 strikes. After two years of fighting the virus, the aviation industry, particularly the air passenger market, has suffered severe if not fatal loss.

It is essential that the aviation industry prepares for the post-pandemic era while learning to live with the virus. This paper will address two main challenges the aviation industry faces: airlines' financial difficulty and consumers' confidence in air travel. Four major solutions are discussed in depth: for airlines, (i) direct monetary and policy state aid, and (ii) alleviation of airline civil liabilities; for consumer confidence, (iii) COVID-free precautions, and mandatory insurance.

1) State Aid

The most common and efficient method is the direct state bailout of the airlines. During the pandemic's peak in 2020, most airlines, even the flag carriers and major airlines, suffered from financial difficulties, especially limited cash liquidity. In response, many states have granted state-guaranteed loans as direct cash flows to the airlines.

There are also other forms of state aid. States could waive various aviation-related taxes and fees or offer payments deferrals for a reasonable period. What is reasonable here may be subject to further examination. However, one could expect the time to be extended to a point where the airlines are reasonably expected to be capable of payments without huge encumbrance on their business operation. We could see this practice locally in Hong Kong.

States could also continue to relax the 80/20 slot allocation rule, at least temporarily, as suggested by the International Aviation Transport Association (IATA). Relaxation of the "use it or lose it" rule is also environmental-friendly to prevent airlines from flying nearly empty aircraft (i.e., ghost flights).

It is also important to address the aircrew requirement for pre-covid air travel. In Hong Kong, after Cathay Pacific's significant layoffs in 2019, "voluntary redundancy" was also suggested to relieve the airline of wage burdens. As the covid situation slowly improves, the shortage of professionals will hinder the aviation industry from recovering. Hence, it is vital for states to provide wage subsidies to selected airlines (most likely flag carriers or major airlines). In Canada, the *Second Act Respecting Certain Measures in Response to COVID-19* enacted in April 2020

provides employers with wage subsidies. Such wage subsidies will help airlines and other aviation-related businesses to get back on their feet shortly.

What concerns investors is the potential unequal competition and discrimination following state aid. Since the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures is not directly applicable to air transport service providers, state subsidies would usually raise challenges based on bilateral or multilateral air service agreements. France and Germany's state aids under the EU's State Aid Temporary Framework, notably recapitalization of privatized Lufthansa and state-guaranteed loans for state-owned Air France, exemplify an imbalance in state support and state ownership. Taking Hong Kong Government's ownership of Cathay Pacific shares as an example, state ownership will justify state aid yet unequivocally opens the box of legal debates on States' public and private functions and the provision of a "level playing field".

In February 2021, the General Court of the European Commission dismissed Ryanair's action for the annulment of a previous decision in 2020, which finds that the French state aid scheme is not unlawful. This decision, unsurprisingly, accepted that French aids were, even if differential, proportionate and not more than necessary to achieve the legitimate aim of public interest in the aviation industry. There is a sense of pragmatism in the Court's approach, emphasizing the circumscribed and finite nature of such temporary aid. Questions remain: Even if state aid is justifiable now, how far will it go to ensure an airline's role? Such a question is paramount, especially in Hong Kong with the upcoming operation of a private competitor in 2022, Greater Bay Airline.

2) Passenger liabilities in COVID-related claims

Air travel as a form of transportation undoubtedly performs as a hotbed for spreading COVID-19 worldwide. There had been an overflow of claims for COVID-related medical expenses, flight cancellations, and delays. Therefore, it is beneficial for airlines to have a certain degree of predictability on the likely results of certain types of claims. The legal clarification also advances aviation law and practices.

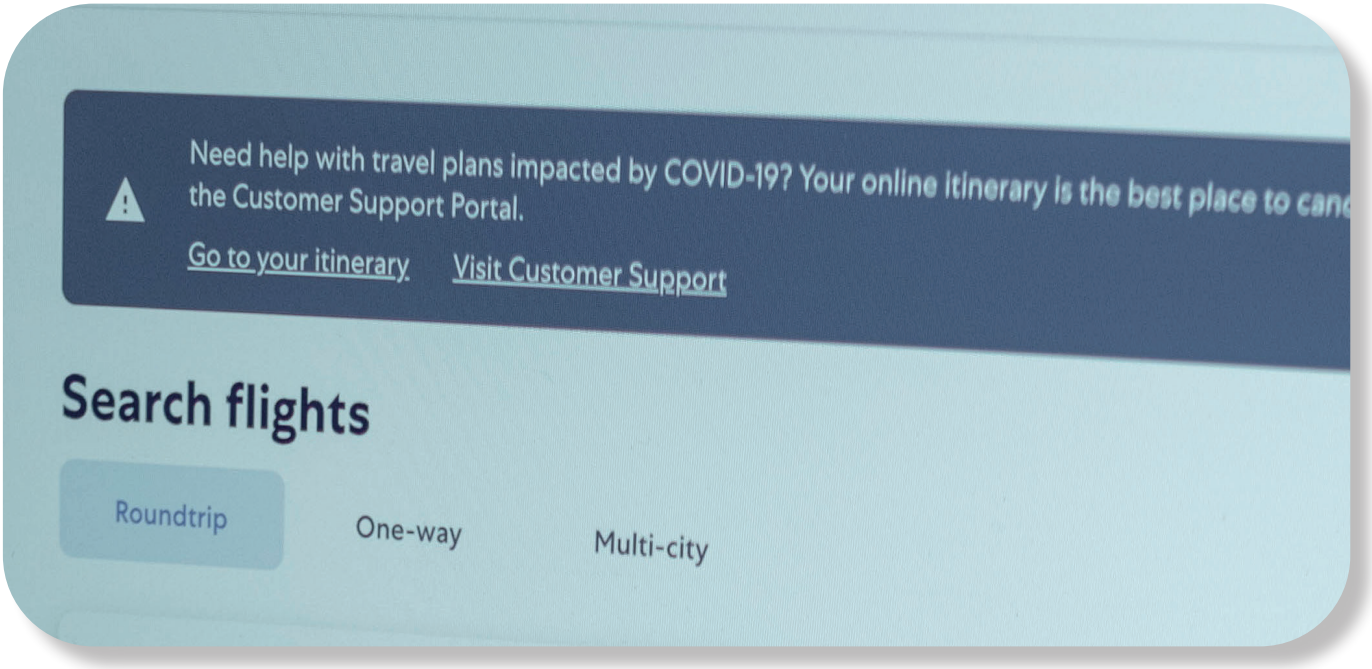
2a) Clarification of COVID-19 infection claims

Most international carriages of passengers by air are governed by the Montreal Convention 1999 (MC) or the Warsaw Convention 1929. These conventions traditionally provide an exclusive remedy for bodily injury and the death of passengers in 137 and 152 jurisdictions respectively. In similar terms, the Conventions provided (text extracted from MC Article 17):

> *The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.*

With COVID-19, the main issue is whether the MC Article 17 applies to and provides remedy for a passenger who alleged she caught the disease onboard an aircraft or during embarking or disembarking? The central issue lies with two queries: i) whether catching COVID-19 amounts to an accident; ii) whether the alleged infection of COVID-19 amounts to death or bodily injury under the MC.

The first query asks whether a disease is still an "accident" when it becomes a pandemic. It follows that the paramount consideration concerns the definition of an accident. Ample case law has discussed this in supplement of MC Article 17. A well-established definition in *Air France v Saks* (1985) refers to "accident" as "an unexpected or unusual event or happening that is external to the passenger". Both actions and omissions can constitute an accident, but failure to warn cannot form the basis of an accident unless the airline practice falls behind any industrial standard. As an infectious disease, COVID-19 does



not raise any novel legal discussions. Nevertheless, arguments will arise regarding whether being infected with the disease could be considered "unexpected or unusual", where it has become a pandemic. This question should be put into context. Nowadays, a person might catch COVID-19 anywhere: an air travel does not necessarily increase the infection risk compared to a train or boat travel or other daily activities. Hence, it is only sensible that the standard of "unexpected or unusual event" adjusts to the time, space, and overall circumstances.

Another debatable legal issue relates to the definition of bodily injury. As more variants of COVID-19 appear, we observe more asymptomatic infections. It is therefore doubtful whether simply the diagnosis of COVID-19 could be sufficient for MC since the plain meaning of "injury" seems to suggest at least a minor level of harm, detriment, or damage. Further, what if minor symptoms display only for a short period and produce no long-term effects? Confusing threshold could open a potential floodgate of cases. But, if only serious infections can constitute grounds for claims, where is that line drawn? These questions are yet to be answered.

How to clear the clouds? It would not be appropriate for States to apply thresholds on the eligibility of claims due to the nature of MC. To avoid strangulation by an overflow of injury claims and be more financially concentrated on their operations, airlines must take precautions during flying, embarking and disembarking. Examples include mask requirements, sanitizing facilities, displaying health credentials, and vaccinating air crew members. Rather than burdening it in this difficult time, it would then be fairer to find the airline liable if it has violated common industry standards of practice (e.g., did not follow social distancing rules or did not clean the aircraft thoroughly).

2b) Relaxation of flight cancellation and delay rules

Another way to relieve the airlines' burden is to alleviate their liabilities under COVID-related flight cancellation and delay rules. It is possible that flight cancellations would not be governed by the MC, but possibly be regulated by local laws, such as Regulation No 261/2004 in the European Union, which establishes consumer protection rules for cancellations, denied boarding, and delay. The Regulation grants consumers a right to standardized lump-sum compensation, reimbursement, and a right to care with the defence of "extraordinary circumstance".

However, exceptional times call for exceptional measures. Such automatic right of cash compensation should be stayed or replaced by vouchers for airline survival. Additionally, the right to care could be limited on necessity, and claims could be capped. Further, COVID-related events that result in flight cancellations, denied boarding, and long delay could be categorized as "extraordinary circumstances", as suggested by the *Interpretative Guidelines on EU Passenger Rights Regulations in the context of the Developing Situation with Covid-19* issued in 2020. Effectively, airlines will be relieved from strict liabilities in COVID incidents.

Delay of air carriage is generally governed by Article 19, MC, which provides that the carrier is liable for damage occasioned by delay unless the airline proves

that it took all measures reasonably required to avoid the damage or that it was impossible to take such measures. Since MC applies to most international carriages, it would be inappropriate and impractical for local authorities to issue policies that relax relevant requirements. When courts examine MC, the "taken all necessary measures or impossible" test applies. The key for the airlines is to take all necessary measures as the COVID-19 situation requires, such as compellent mask-wearing, temperature and health check before boarding, health document requirements, strict social distancing rules onboard. Once all reasonable precautions have been taken, the passenger's case has no merit. Also, the airline might assert that under stringent travel restrictions imposed by states, it is impossible to perform its duty and hence be exonerated from an overrun of claims.

Regain Consumer Confidence: Covid-free measures and mandatory insurance

Despite flights resumption, public perception seems to continue associating air travels with huge heal risks. Accordingly, it is paramount to regain passengers' confidence in safe air travel once restrictions are lifted.

Regular passengers are most concerned about catching COVID-19 during air travel. Health measures are not simply for the safety of both passengers and aircrew, but a way to obtain passengers' trust. Necessary precautions include but are not limited to compulsory health checks, provision of sanitizers, use of electronic boarding passes and health credentials, limited capacity of seating for social distancing, the shutdown of public eating areas, automated facilities, and standardized disinfection of aircraft and airports.

Furthermore, passengers are often concerned with medical and quarantine expenses and cancellation or delay compensation. As discussed above, airlines are being alleviated worldwide for their civil liabilities under the current plight. Providing consumers with an insurance safety net would help them regain the confidence to travel. Governments could prescribe insurance purchase as an entry requirement for air travel as a temporary method. The insurance could be purchased by either the airlines or the authorities. It is, however, more incentive for the industry if States provide mandatory insurance coverage to every flight, particularly inbound and domestic flights, to boost local tourism.

Conclusion

Under the current climate, state aids remain essential to support the aviation industry while putting forward heated debates on the issue of fair competition. Further clarification of the concepts "bodily injury" and "accident" and State alleviation of airline compensation under local laws could help airlines in this challenging time.

Regaining passengers' confidence in air travel will also awaken the industry. Now that some travel restrictions are lifted, passengers would be more willing to travel if more health-related precautions are taken throughout the entire process, and mandatory insurance schemes could ensure remuneration of expenses.

In exceptional times like today, the measures mentioned above can only exist temporarily with full respect to the free market. Nevertheless, they contribute not only to industry prosperity but also to travel facilitation in the post-COVID era.

SPECIAL FEATURES

Feature

Public Lecture on "Equality"

by The Honorable Mr. Justice Syed Kemal Shah Bokhary, GBM

Preface

The text below is a transcript of a lecture on Equality delivered by the Honorable Justice Kemal Bokhary* on the 22 February 2022, at the Graduate Law Centre of the Chinese University of Hong Kong, in dedication to the late Vincent Connor. Justice Bokhary has kindly added the abstract, footnotes and subheadings for the benefit of our readers.

Abstract

Cases show the law is at its best when delivering equality, at its worse otherwise. Equality is universally the bedrock of human rights, natural law, customary and treaty international law and constitutions. Constitutional provisions are of structure and rights. Suffrage is equal if universal. Legislative apportionment goes to structural equality. Legal positivism accommodates natural law ideas. Wide acceptance may have made the Universal Declaration of Human Rights binding as customary international law. Anyway, it binds via the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). Our constitution the Basic Law entrenches the ICCPR domesticated as our Bill of Rights. The non-domestication of the ICESCR creates rule of law concerns and inequality here between these Covenants. But Basic Law rights do include many socio-economic ones. And the ICESCR can aid the interpretation of socio-economic legislation. Constitutions typically guarantee equality. Save as true even-handedness requires differentiation, equality demands identical treatment. Stereotyping spawns discrimination. Affirmative action is often necessary. Universal design enables persons with, and without, disabilities to share equally. Selective placement services benefit employers and employees alike. Inequality is sometimes piled upon another disadvantage. More respect for otherness is needed. Equality in exercising the divine mandate to inhabit the earth needs work in this world of nation states. Struggles for equality continue. Justice is a long road.

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* A Permanent Judge of the Hong Kong Court of Final Appeal from 1 July 1997 to 25 October 2012 and a Non-Permanent Judge of that Court since then. This lecture was delivered on 22 February 2022 at the Chinese University of Hong Kong under the auspices of its Faculty of Law and Hong Kong Student Law Gazette.

Lecture Transcript:

This lecture is delivered in memory of the late Mr Vincent Connor, a distinguished lawyer who rendered this University valuable service on the Advisory Board of its Faculty of Law. He won the abiding affection and respect of all who served with him. Equality is today's subject. I consider it a fitting subject to speak on when paying tribute to a good man who made the law his life's work. For the cases show the law at its best when delivering equality and at the opposite end of the spectrum when it fails to do so.

Equality is the bedrock of human rights, natural law, customary and treaty international law and constitutions. Universally so. Hence Lord Justice Scrutton's resolve in *Ex parte Sacksteder*[1] to protect a foreigner's liberty as much as a subject's.

Scales of Justice

Sometimes a party can object to the case being heard by a particular judge. In *Locabail (UK) Ltd v Bayfield Properties Ltd* the English Court of Appeal declared itself unable to conceive of circumstances in which such an objection could be soundly based on the judge's religion, ethnic or national origin, gender, age, class, means or sexual orientation[2].

Natural rights and legal positivism

Constitutional provisions set government structure and secure fundamental rights and freedoms. Suffrage is equal if *universal*. Inherent in human beings, and therefore pre-existing the State, human rights are not for the State to create. They are for the State to protect and protect equally.

That is the classic natural law understanding. I commend it to legal positivists. "We must never", Lord Radcliffe said, "lose touch with the idea of Natural Law or give up the belief that all positive law bears some relation to it"[3]. The truth of that is attested by the views of judges of unchallenged greatness. I cite two instances.

Judgments of outlawry inflicted on persons: "attainder" (extinguishing their civil rights and capacities); "corruption of blood" (preventing them from holding or inheriting land or transmitting title by descent); and "escheat and forfeiture" (depriving them of their chattels and land). And yet, as Sir Edward Coke took the opportunity to say in the Exchequer Chamber in *Calvin's Case*[4], those outlawed were "not out either of [their] natural legiance, or of the King's natural protection; for neither of them [was] tied to municipal laws, but [were] due to the law of nature, which ... was long before any judicial or municipal laws"[5].

In *Ogden v Saunders*[6], Chief Justice Marshall, speaking in the United States Supreme Court, traced the right to contract, and obligations created by contract, to natural law principles brought by human beings to society.

Universal Declaration of Human Rights

"All human beings are", the Universal Declaration of Human Rights says, "born free and equal in dignity and rights". People, whatever their circumstances, are all of equal human personality. All States, strong or weak, are of equal international personality.

Customary international law?

Equality runs throughout the Universal Declaration which some view as having acquired customary international law status through widespread acceptance. Sir Robert Jennings and Sir Arthur Watts so noted[7]. Professor Martin Flaherty says that in the protection of human rights, international custom may prove more important than treaties[8]. The practice of courts around the world of looking beyond their own jurisprudence to international law and foreign decisions has been, he notes, especially pronounced when according judicial protection to fundamental rights[9].

ICCPR and ICESCR

The Universal Declaration may bind of itself. At any rate, many binding instruments have developed from it. By 2005, Baroness Kennedy QC had

1 [1918] 1 KB 578
2 [2000] QB 451 at p 480
3 Lord Radcliffe: *The Law and its Compass* (Northwestern University Press) p 93
4 (1608) 7 Co Rep 1a
5 Ibid 14a
6 25 US 213 (1827)
7 *Oppenheim's International Law*, 9th ed (Longmans, 1992) Vol 1, Peace, Part2 at p 1004
8 Martin S Flaherty, "Aim Globally" (2000) 17 Constitutional Commentary 205 at p 213
9 Martin S Flaherty: Restoring the Global Judiciary (Princeton University Press, 2019) at p 240

counted over fifty such instruments[10]. Principal are the International Covenant on Civil and Political Rights ("the ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("the ICESCR").

Article 26 of the ICCPR provides that the law shall guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status. The ICESCR guarantees, by art 2(2), that the rights which it enunciates will be exercised without any such discrimination.

Both Covenants' entitlements are conferred equally subject to provisions like art 10(2) of the ICESCR catering to the particular needs of mothers after childbirth.

Accident of history

Lawyers can agree with the anthropologist[11] who saw in the human condition a superstructure of higher things built on a material foundation. Material things costing money, the ICESCR permits progressive realization of socio-economic rights. To that natural difference between the two Covenants, an accident of history has added another difference between them in Hong Kong.

In British times, the ICCPR was reproduced almost verbatim to produce our Bill of Rights. Our then constitution consisted of the Letters Patent and the Royal Instructions. Upon the Bill of Rights coming into force, the Letters Patent were amended to prohibit the Legislative Council from restricting the rights and freedoms enjoyed under the ICCPR as applied to Hong Kong. That entrenched the Bill of Rights as the embodiment of the ICCPR's application to Hong Kong. Thus was the ICCPR domesticated and entrenched pre-handover.

By virtue of art 39 of our present constitution the Basic Law, both Covenants "as applied to Hong Kong" remain in force to be implemented by law. So the entrenchment of the Bill of Rights, as the embodiment of the ICCPR's application to us, continues post-handover. But we have not domesticated or entrenched the ICESCR. Hence, ironically, inequality here between the two Covenants.

That is regrettable, especially since the rule of law requires compliance with treaty obligations[12]. But all is not lost. The Basic Law provides many socio-economic, as well as civil and political, rights. We have a large body of socio-economic legislation. And in *Ho Choi Wan v Hong Kong Housing Authority*[13], I contemplated the ICESCR being prayed powerfully in aid of construing such legislation consistently with it.

Without socio-economic rights there would be substance in Anatole France's line that the law, in its majestic equality, forbids rich and poor alike to sleep under bridges, beg in the streets and steal bread[14].

Moral claims becoming legal rights

Moral claims may become legal rights[15] - sometimes through statutory interpretation. In *McHattie v South Ayrshire Council*[16], the Outer House of the Court of Session admirably construed anti-discrimination legislation to require both the prevention of the targeted discrimination and the promotion of policies to eradicate its root causes. Scotland produces excellent lawyers, as Vincent proved.

Constitutions

"The fundamental institution in modern democracy is the constitution ... written or unwritten." So said Chief Justice Muhammad Munir in the Federal Court of Pakistan in *Federation of Pakistan v Moulvi Tamizuddin Khan*[17]. Equal protection is typical of constitutions whether unwritten like Britain's or written like America's. Untypically, Australia's written constitution provides neither express nor (the High Court of Australia held by a majority[18]) implied guarantee of equality generally.

10 Baroness Kennedy: Just Law (Vintage, 2005) at p 310
11 Sir James Frazer in his Preface to Bronislaw Malinowski: *Argonauts of the Western Pacific* (Routledge & Kegan Paul, 1922)
12 Lord Bingham, "The Rule of Law" (2007) 66 Cambridge Law Journal 67 at pp 81-82
13 (2005) 8 HKCFAR 628 at para 67
14 Ch 7 of Anatole France: *Le Lys Rouge* ((Calman-Levy, 1894)
15 Ch 5 of Sir Hersch Lauterpacht: *International Law and Human Rights* (Stevens & Sons, 1950)
16 2020 SLT 399
17 PLD 1955 Federal Court 240 at p 254
18 *Leeth v The Commonwealth* (1992) 174 CLR 455

But the Australian ethos is egalitarian.

What equality entails

On what equality entails, our Court of Appeal spoke in *R v Man Wai Keung (No 2)*[19]. Its views were echoed by the Court of Final Appeal in *So Wai Lun v HKSAR*[20] and *Secretary for Justice v Yau Yuk Lun*[21]. From a starting point of identical treatment, true even-handedness sometimes requires a departure rationally referable, and proportionate, to such requirement. As Lord Nicholls of Birkenhead said in the House of Lords in *Ghaidan v Godin-Mendoza*, "unlike cases should not be treated alike" [22]. Professor John Finnis refers to "*relevantly* different people"[23]. And Professor V Venkata Rao speaks of similar treatment of like things[24]. Seemingly similar arrangements, the Supreme Court of Canada stressed in *Fraser v Canada*[25], may have discriminatory consequences. Professor Abdullahi An-Naim spoke similarly.[26] It begins with accepting that we are all, as natural law instructs, created with equal rights.

Treating a gender differently is, the Constitutional Court of Germany held in *The Nocturnal Employment Case*[27], permissible only if indispensable to solving problems naturally affecting it. "The law", Mr Justice Erle said in the Court for Crown Cases Reserved in *R v Wooley*[28], "is for the protection of the weak more than the strong".

Stereotyping

Gender-based stereotyping is usually against females. Exceptionally, it was a man's gender-stereotyping complaint that succeeded in the European Court of Human Rights case of *Konstantin Markin v Russia*[29]. Stereotyping spawns discrimination of many types. And as Professor Yoko Kawai warns, initially positive stereotyping can easily turn negative.[30]

Same-sex marriages

I say little about same sex-marriages now since I may have to consider them judicially in future. Some propose, others oppose, same-sex marriages being entered into in Hong Kong. Meanwhile, they litigate over policies withholding spousal entitlements from parties to same-sex marriages entered into abroad.

Affirmative action

The United Nations Human Rights Committee said[31] that affirmative action is "legitimate differentiation" if "needed to correct discrimination in fact". If problematical sometimes, affirmative action is far more often an obviously necessary corrective compatible with constitutionally guaranteed equality.

Pakistan's Constitution expressly mandates affirmative action to protect women and children. In *Shirin Munir v Government of Punjab*[32] the Supreme Court of Pakistan stressed that a minimum, but not a maximum, number of medical college places could be reserved for girls.

Special measures

Equality for the vulnerable sometimes requires special measures. Universal design enables persons with, and without, disabilities to share equally. Relevantly to democracy: electronic voting devices, Braille ballot papers and wheelchair-accessible voting desks preserve ballot secrecy while voting with another person's assistance does not[33]. Selective placement services benefit employers and employees alike.

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19 [1992] 2 HKCLR 207
20 (2006) 9 HKCFAR 530
21 (2007) 10 HKCFAR 335
22 [2004] 2 AC 557 at p 566 C
23 John Finnis, "Equality and Differences" (2011) 56 American Journal of Jurisprudence 17 at p 20
24 V Venkata Rao, "The Mahatma and the Concept of Equality" (1986) 47 Indian Journal of Political Science 413
25 (2020) 450 DLR (4th) 1
26 *Human Rights: Southern Voices* (William Twining ed) (Cambridge University Press, 2009) at p 102
27 (1992) 85 BVerfGE 191
28 (1850) 4 Cox's CC 193 at p 196
29 [2010] EHRR 1435
30 Yuko Kawai, "Stereotyping Asian Americans: The Dialectic of the Model Minority and the Yellow Peril" (2005) 16(2) Howard Journal of Communications 109
31 General Comment No 18 (37th session, 1989) para 10
32 PLD 1990 SC 295
33 Kemal Bokhary: *Human Rights: Source, Content and Enforcement* (Sweet & Maxwell, 2015) at paras 27.033-27.035

Iconic among transnational instruments according special protection are, naming two: (i) the Convention on the Rights of the Child; and (ii) the Convention on the Elimination of All Forms of Discrimination against Women.

Progress

Everywhere and always, there have been women in the highest positions of power. More progress will come. An Urban Council chairman once said that it was difficult to get government money for new public latrines because the Governor's lady could not be asked to open them[34]. The ready riposte to such jibes is that many women whose prominence originated from marriage became, through merit, effective public personalities in their own right.

In apartheid times, Cape Town advocates boycotted the robing room from which coloured advocates were excluded by the Group Areas Act 1950. In remembrance, they still robe in their chambers[35].

Is not all human life equally precious?

There was once a discussion[36] in a Wyoming mining town in 1914 of events in Europe following the assassination of Archduke Franz Ferdinand of Austria by a member of a Serbian secret society. Someone observed that nobody got all "het up" about a Serb killing an Austrian down at Camp No 3 the other night. Reminded that the Archduke "wasn't just an ordinary coalminer", he rejoined: "No better than a coalminer to me - nor as good". Subjectivity is only human.

Everywhere and through the ages, people have struggled for equal treatment. The struggle is far from over. Will it ever be over? Equality encompasses the right to be different. Yet shortfalls in respect for otherness abound.

Law at its best and at its worst

Four cases show the law at its best when delivering equality and at its worst otherwise. Famous are: *Sommerstt's Case*[37] decided by the Court of King's Bench in the 18th century; and *Brown v Board of Education*[38] decided by the United States Supreme Court in the 20th century. Both were unanimous.

Notorious are: *The Dred Scott Case*[39] decided in the mid-19th century; and *Plessy v Ferguson*[40] decided in the late 19th century. In them, the United States Supreme Court's good name was salvaged by dissents which provided (borrowing a phrase my grandson Zane Heady once used) "light even when it is dark" [41]. Incidentally, the International Court of Justice's decision in *The South West Africa Cases (Second Phase)*[42], which decision threw away an opportunity to advance equality, was reached only by the casting vote of the president. My most heartfelt dissent was for treating adopted children equally with other children[43]. In a court of last resort, a liberal dissent offers hope of better from that court in the future.

Slavery existed in some British possessions at the time of *Somersett's Case*. An escaped and recaptured slave was being held in chains on a ship in the Thames for passage to Jamaica and sale in the slave market there. By *habeas corpus*, Vincent's countryman Lord Mansfield for the court, condemning slavery as odious, pronounced him free.

Shockingly, the *Dred Scott* majority held (i) that persons of African descent were constitutionally disentitled to citizenship and (ii) that slave owners had a constitutionally protected right of property in their slaves. A dissentient called Lord Mansfield's words in *Somersett's Case* befitting of "a great judge".

The majority in *Plessy v Ferguson* produced a "separate but equal" excuse for segregation. That excuse was unanimously demolished by the Warren Court's desegregation decision in *Brown v Board of Education*.

34 Austin Coates: *A Mountain of Light* (Heinemann, 1977) at p 120
35 *Cape Tales 1950-1990* (Collected by Gerald Friedman and Jeremy Gauntlett (Siber Inc CC, 2013) at pp 16-17
36 Ch 17 of Robert R Rose: *Advocates and Adversaries* (Gene M Gressley ed) (RR Doubleday & Sons, 1977)
37 (1772) 20 State Trials 1
38 347 US 483 (1954)
39 60 US 393 (1857)
40 163 US 537 (1896)
41 Kemal Bokhary and Zane Heady: *The Constitutional Crocodile* (Sweet & Maxwell, 2021) at p xvii
42 (1966) ICJ Rep 6
43 *Tam Nga Yin v Director of Immigration* (2001) 4 HKCFAR 251 at pp 264-265.

Structure, too

In *Baker v Carr*[44], the Warren Court held that legislative apportionment which fails to reflect population equality is liable to be challenged as unconstitutional under the equal protection clause. That combines equality of rights for the people with equality in the structure of the democratic institutions by which they are governed. President Kennedy said that since the legislatures would never reform themselves, progress required judicial intervention.[45]

Legislatures should of course be democratic just as judiciaries should of course be independent. "[T]he legislature is there to reflect the democratic will of the majority [and] the judiciary is there to protect minority interests, and to ensure the fair and equal treatment of all." That is how it was cogently and convincingly put in the United Kingdom Supreme Court by Lord Mance in *R (Nicklinson) v Ministry of Justice*[46]. I entirely agree.

For the purpose of equal treatment, minorities need constitutional protection. If experience teaches us anything, it teaches us that no section of the population anywhere in the world stands in greater need of such protection than a misunderstood minority.[47] Cases might involve equality and another right - "in that order" as Professor CL Lim, astutely as always, once observed.[48] Interestingly, Rousseau considered equality a precondition of liberty.

Having noted that, I should perhaps go on to say this. Equality is a right. Liberty is a freedom - the archetypal freedom, one might say. Strictly speaking, rights sound in material items and services to which people are entitled. Still speaking strictly, freedoms, on the other hand, sound in the acts and omissions which people are entitled to be left alone to choose as they like. Human rights encompass both fundamental rights and fundamental freedoms.

Now I should state my understanding of the essential nature of human rights. As I see them, human rights represent what everybody everywhere in the world are entitled to demand for themselves and must accord to others. They enable all of us to live and let live as human beings, enjoying as much personal autonomy as is possible in organized, but nevertheless, free societies. These entitlements are unified by the principles of justice to which we are drawn by the better side of human nature. They sound in civil liberties, personal security, security of property however modest, self-expression, public participation, respect for otherness, education, healthcare and at least a tolerable standard of living. With these things, we all have an opportunity to live and let live with human dignity: in how we treat others and are treated by them.

By saying that, I have also stated my understanding of the essential substance of natural law.

On the same level

Not only is there a right to equality, but the very concept of rights is based on equality. To paraphrase Alexis de Tocqueville's line, when rights are claimed, those making the claims are not suppliants. Rather are they on *the same level* as those to whom the claims are addressed.

Extent of the problem

Delivering equality can often be as difficult as it is always imperative. Let there be no illusion as to the extent or dimensions of the problem. The tragic facts of *The Fireworks Factory Case* [49] decided by the Inter-American Court of Human Rights revealed gender inequality piled upon economic disadvantage. No wonder Professor Gabriel Leung spoke[50] of an "unethical pandemic of inequalities".

A long road

"[P]rogress", as Ms Emma Goldman said[51], "knows nothing of fixity". But, as everybody knows only too well, important changes for the better do not come just by themselves. And playing one's part, large or small, in bringing them to fruition may require a lifetime of toil. Addressing a convention on equal rights in 1867, Ms Sojourner Truth said: "I am above eighty years old; it is about time for me to be going. I have been forty years a slave

44 369 US 186 (1962)
45 Bernard Schwarz and Stephan Lesher: *Inside the Warren Court* (Doubleday & Co, 1983) at p 207
46 [2015] AC 657 at para 164
47 *W v Registrar of Marriages* (2013) 16 HKCFAR 112 at para 219
48 *Towering Judges* (Rehan Abeyratne and Iddo Porat eds) (Cambridge University Press, 2021) at p 130
49 https://www.corteidh.or.cr > casos > seriec_407_ing
50 "South China Morning Post", 22 November 2021
51 *Red Emma Speaks* (Alix Kates Shulman ed) (Humanity Books, 3rd ed, 1998) at p 369

and forty years free, and would be here forty years more to have equal rights for all."[52] Mrs Emmeline Pankhurst witnessed the introduction of legislation giving women in Britain the vote on terms of gender equality; but she died before it became law.[53]

"[A]s if it harm'd me, giving others the same chances and rights as myself - as if it were not indispensable to my own rights that others possess the same." Thus did Walt Whitman express his thinking on equality. [54] It is poetic but involves no poetic licence, for it is wholly accurate in every word. Inequality gives some people an illegitimate advantage. Equality, on the other hand, is in the legitimate interests of all. You save oppressed and oppressor alike when you stay the oppressor's hand from oppression.[55] None of these tasks are at all easy.

There is a divine mandate to inhabit the earth. But how do we accord to immigrants and refugees anything like equal opportunity to exercise that mandate in today's world of nation states and national borders? This is a question which I have pondered in court. It is a question which I have seen written on the face of a small child in a refugee camp for Vietnamese Boat People. Delivering equality is an ongoing struggle, all too often of great difficulty and much anxiety.

Justice is a long road. Vincent took it. His contribution inspired his contemporaries. It lives on to inspire our successors. *Ave atque vale*. Vincent deserves the highest thanks of each of us. I express mine in the name of my grandchildren.

52 *Proceedings of the First Anniversary of the American Equal Rights Association* (Robert J Johnston, 1867)

53 They were first given the vote in 1918 - but not on equal terms until the Representation of the People (Equal Franchise) Act 1928

54 Walt Whitman: *Leaves of Grass* (Wilson & McCormick, 1884) at p 219

55 *The Sunnah*

Obituary

Vincent Connor: An Advocate of Many Talents

Head of Pinsent Masons' Hong Kong Office passed away on 5 October 2021.

The stage is set at The Wanch in Wan Chai for the Basic Lawyers who play there regularly in a wide range of different genres. The spectators in the music venue are ready to sway or wave to the tempo of the music as the band starts tuning up. Then an energetic and spirited man, to kickstart the performance, sings and beats on the drums. Lawyer by day and drummer by night, the thrilling performer who took centre stage was Vincent Connor.

Vincent Connor was a formidable advocate who had a specialised practice in the field of construction and engineering. Before arriving in Hong Kong, he was the head of the Scottish Office of Pinsent Masons and later became the head of its Hong Kong Office. Within the first few years of his arrival, he grew a monumental reputation, was well-known among business networks and had worked on resolving issues on large infrastructure projects in Hong Kong and further afield.

While Vincent was successful as a lawyer, he also wanted to contribute to the wider community. He actively served on several committees, including being Chairman of the International Infrastructure Forum of the British Chamber of Commerce, serving as legal adviser for the Institute of Civil Engineers and also sat on the advisory board of the Law Faculty of the Chinese University of Hong Kong. Internationally, he sat on the appointment committee of the Hong Kong International Arbitration Centre, was granted higher rights of audience in Hong Kong courts as well as the Singapore International Commercial Court and was in the Pinsent Masons Global Advocacy Team.

Born in 1964, Vincent was raised in the Scottish city of Glasgow. He was the son of a Strathclyde Police Chief Superintendent and was the youngest child of the family.

The bedrock of Vincent's substantial talents and interests could be traced to his childhood. From a young age, his fondest memories were of going to the cinemas devoutly each weekend, flicking through comics (especially superhero ones!), sketching, drawing and reading. Amongst his many interests, one stood out: music. After persuading his father to get him a drum set, he would play and sing at every opportunity, especially family gatherings. His love for music was carried through to his adult life, so much so that he was comfortable singing any genre from "New York, New York" by Frank Sinatra to "Moondance" by Van Morrison.

The last year of university was a pivotal turning point for Vincent. In 1987, he graduated first-class from Glasgow University and completed his Diploma in Legal Practice a year later. In 1990, he worked at McGrigor Donald in construction law which was instrumental in finding his niche. During this period, he worked with several senior partners at the firm who acted as role models and mentors. In 1993, quite early on in both of their careers, he met the love of his life, Gillian Johnston, and they married three years later. In 2007, Vincent and Gillian left Scotland and headed east to Hong Kong.

The decision was daring. They had much to leave behind. Before moving to Hong Kong, Vincent had already established his name and had a strong practice. One of which was establishing a Scottish law firm for Pinsent Masons with close friends, in which they had found tremendous success. Vincent and Gillian were both content with their life and careers at that point in time but, being the adventurous couple they were, the move to Hong Kong was equally irresistible.

Inside courtrooms, Vincent was a fearless advocate who had successfully argued against more experienced counsel. At the office, colleagues found him to be supportive, eager to help even junior members of the firm with their next deadlines. He was diligent and endeavoured to make the best out of his long working hours. Additionally, Vincent was always smartly dressed. He had an impeccable sense of fashion and was not shy to express it. Every now and then when colleagues left the firm, he would give witty and thoughtful farewell speeches, noting their achievements in the firm and expressing his sincere gratitude for their work.

Away from his busy schedules, Vincent made sure to make time for his wife Gillian. They would enjoy their free time watching films and TV dramas, hiking and visiting other islands. They also relished attending cultural and art exhibitions, joining spinning and other exercise classes, and learning Spanish. Once in a while, they would write their out-of-work emails and head off for adventures on a far-flung back-pack trip. They were a very happy couple, full of love and joy, who truly appreciated life together.

Construction Advocate, Chairman of Committee and Head of Office, Vincent was also known as a spirited drummer, a caring friend and a loving husband. He was a person who lived in the moment right up to the very end. Those who knew him miss him. Those who have only heard about him, wish they had met him. Vincent Connor struck a chord wherever he went.

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The Chinese University of Hong Kong, Faculty of Law

Individuals

The Honourable Mr. Justice Syed Kemal Shah Bokhary, GBM
Dr. Dean Lewis
Ms. Gillian Johnston
Ms. Jay Wong

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