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FEATURE

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President of The Law Society of Hong Kong

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Letter from the Editors

Dear Readers,

It is our privilege and honour to welcome you to the 26th Issue of the Hong Kong Student Law Gazette. This is a special edition for us, as not only is it the first issue of 2026, it is also our first as Editors-in-Chief of the Gazette this academic year, a position we hold with immense gratitude and enthusiasm.

With the new year, we are living in a dynamic society, where the current legal landscape is evolving at an unprecedented pace. For this Issue, we are thrilled to address these changes in our feature interview with Mr. Roden Tong, President of The Law Society of Hong Kong, where he offers his perspective on how Hong Kong navigates transformative challenges in the legal field, such as the rise of AI, as well as opportunities for the region on the international plane.

This motif of convergence, where the law intersects with politics and technology, runs through our pages in this Issue. We are proud to have selected 9 submissions with topics in international and economic law, ranging from the multi-faceted goals of China's antitrust policies and the rise in global sanctions, to the legal nuances in technology, with subjects surrounding the legal implications of NFTs, extending to the criminality of cyberbullying and revenge pornography under Hong Kong law.

Yet, the law is not merely an exercise in technicality, it is also a mirror of our society. In keeping our commitment to legal scholarship, we have included articles on legal theory and jurisprudence, which explore the global implications of human rights ethics, models of governance, and the evolving impact of the rule of law in China, Argentina, and Iceland.

Taken together, these articles represent the core of the Gazette: challenging our readers and the student body to consider not just the black-letter law, but the contexts, consequences, and connotations behind the increasing convergence.

We hope this Issue provides you with as much insight and intellectual engagement, as it did for us in putting it together.

Happy reading,
Abraham Tse and Jasmine Wan
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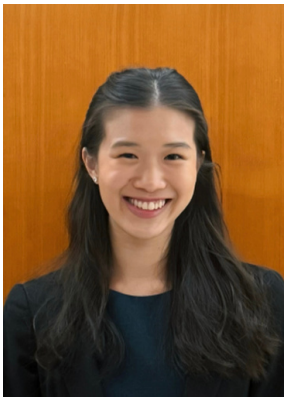

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The Gazette wishes you a happy reading.

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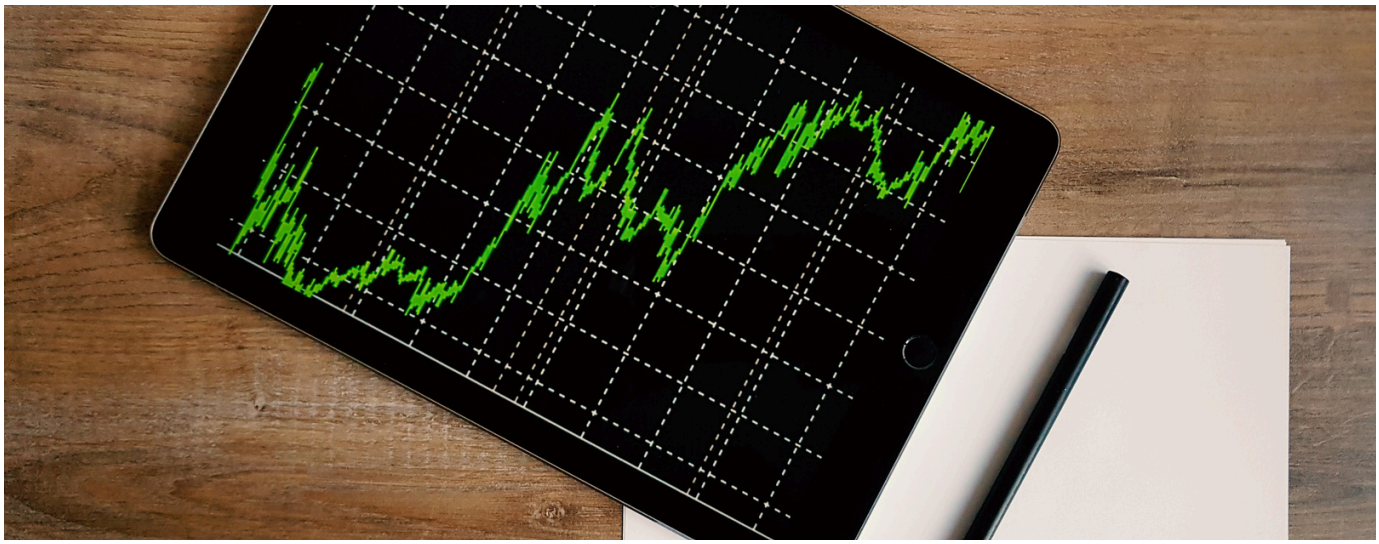
By Liu Shantao



Introduction

All antitrust lawyers and economists know that the stated instrumental goal of antitrust law in the United States is consumer welfare. Although there is still debate about the meaning of the term, the mainstream view is that 'antitrust concerns are the only ones that are taken into account. Any concerns regarding industrial policy, national security, and other policy areas should be addressed outside of the antitrust law context.' However, in other jurisdictions, antitrust law serves not only pure economic objectives, but also political and social considerations. For example, the core purpose of European competition law is to further market integration over other purposes, such as efficiency. A related pattern appears in developing countries, where antitrust law often serves the public interest and economic development. Especially in cases involving foreign firms, the role of antitrust law in facilitating national industrial advancement has been strengthened, while its function of protecting consumer welfare has been gradually reduced. This tendency is shaped by their economic structures and stages of development. Unlike in developed countries, trade, competition, and investment issues in developing countries are deeply interconnected. As a result, developing countries are more likely to adopt holistic approaches to global economic governance. Therefore, 'there is no reason to believe that the competition rules and standards that are good for America are good for developing countries.'

As the world's largest developing country, China enacted the Anti-Monopoly Law ('AML') in 2008 and amended it in 2022. Article 1 of AML (2022) sets out the purposes of China's antitrust law, which consists of direct and indirect purposes. Direct purposes include 'preventing and prohibiting monopolistic conduct, and protecting fair competition in the market,' while indirect purposes include 'encouraging innovation, improving economic efficiency, safeguarding consumer welfare and the public interest, and promoting the healthy development of the socialist market economy.'

This multi-goal framework was reflected in the first AML landmark case: Coca-Cola/Huiyuan merger, where China's antitrust authority blocked Coca-Cola's acquisition of a Chinese beverage firm Huiyuan. The decision was widely criticised as protectionist, despite being formally grounded in economic analysis. However, after the initial struggle between balancing economic and non-economic goals, China's antitrust agencies refined their approach: moving away from blanket protectionism in non-priority industries to more targeted enforcement that complements industrial advancement in designated strategic areas. Building on this evolution, this paper examines how China's antitrust enforcement interacts with industrial policy to advance the AML's stated objectives, drawing on case studies involving foreign firms in industries prioritised under China's Strategic Emerging Industries initiative in 2010.

The Interactions Between Antitrust Enforcement and Chinese Industrial Policy

A. Liquid Crystal Display ('LCD') Industry and the LCD Cartel Case

In October 2010, China's State Council promulgated 'The State Council's Decision on Accelerating the Cultivation and Development of Strategic Emerging Industries' ('2010 Strategic Emerging Industries Decision'), a guiding document outlining simplified steps to upgrade the Chinese industrial structure. It identified seven industries as key areas for development during the period, including energy-saving and environmental protection, new-generation IT, biological technology, advanced equipment manufacturing, new energy, new materials, and new energy vehicles.

Based on this top-level guiding principle, the relevant authorities formulated streamlined industrial policies to guide the development in these industries. The new display technology was to be developed within the new-generation IT industry. The LCD industry therefore received targeted policy support. The National Development and Reform Commission ('NDRC') and the Ministry of Industry and Information Technology ('MIIT') jointly issued the 'The 2010–2012 Development Plan for China's Flat Panel Display Industry' and '2014–2016 Action Plan for the Innovative Development of the New Display Industry'. These policy plans aimed for domestic LCD production capacity to exceed 20% of the global market and for the industry's total output to surpass RMB 300 billion by 2016. To meet these targets, they called on domestic LCD manufacturers to invest in key technologies, cultivate two industry leaders with annual revenues above RMB 30 billion, and develop integrated upstream and downstream industrial chains.

Against this backdrop, in 2013, the NDRC, acting under the Price Law, imposed fines totaling RMB 353 million and ordered corrective measures against six international LCD panel makers for participating in a price-fixing cartel. Notably, in addition to the fines, the six LCD panel producers agreed to implement three corrective measures: complying with Chinese laws and upholding fair competition, making their best efforts to supply Chinese TV manufacturers fairly, and providing equal access to advanced products and technologies.

These remedies were intended not only to protect consumer welfare, but also to address technological shortcomings among Chinese downstream manufacturers and to enhance their competitiveness in the international market. As a result, from 2017 to 2022, Mainland China's LCD market share increased from 25.2% to 55.5%; while South Korea and Japan's LCD market share declined from 32.9% to 13.5% and 13% to 2.9% respectively. These trends suggest that China's competition enforcement in the LCD industry was aligned with broader industrial policy goals and contributed to the industrial breakthrough.

B. Integrated Circuit ('IC') Industry and the Qualcomm Case

The IC industry is a key subindustry within the State Council's new-generation IT industry, identified in its 2010 Strategic Emerging Industries Decision. In 2014, the MIIT officially released the 'Outline for Promoting the Development of the National Integrated Circuit Industry'. The document acknowledged that, compared with advanced economies, China still lagged significantly in IC capabilities and remained heavily dependent on imports. The plan set phased development goals: by 2015, IC design technologies in key areas were to approach world-class standards and industry revenue was to exceed RMB 350 billion; by 2020, design capabilities in mobile, cloud computing, the Internet of Things, and big data were to reach global leadership; and by 2030, core segments of the IC supply chain were expected to attain internationally advanced standards, with a group of leading Chinese IC firms entering the global top tier.

Eight months after the outline was released, NDRC imposed China's largest-ever antitrust fine, RMB 6 billion, on Qualcomm for abusing its dominant position in licensing practices. NDRC concluded that Qualcomm engaged in monopolistic conduct, including: charging discriminatory and exorbitant patent-licensing fees; implementing tie-in sales of non-wireless telecommunication standard-essential patent licences without justifiable cause; and imposing unreasonable trading conditions during baseband chip transactions. NDRC stated that these monopolistic practices had eliminated and restricted market competition, stifled technological innovation and development, and harmed consumer interests.

During the investigation, Qualcomm proposed a package of corrective measures helping to reduce the costs and barriers that domestic manufacturers faced in using licensed patents. These measures were intended to facilitate domestic downstream companies to access advanced telecommunication chips and improve industry development, complementing the relevant industrial policies. With such comprehensive support, China's IC industry saw a rapid development. According to a 2025 ranking of the world's top 100 integrated-circuit cities, Mainland China accounted for 27 cities, compared with 26 in the United States. In particular, South Korea, Japan, Taiwan, and Malaysia accounted for 9, 8, 5, and 4 cities respectively.

C. Biopharmaceutical Industry and the Medtronic Case

In December 2012, the State Council issued the 'Development Plan for the Bio-industry', which reaffirmed the biological technology as a national strategic emerging industry and set the objective of making it a pillar of the domestic economy by 2020. Specifically, the Plan set out development objectives aiming to have the industry's added value as a proportion of GDP twice its 2010 level by 2015. Followed by this development, in 2016, six relevant departments issued 'Guidelines for the Development and Planning of the Pharmaceutical Industry', which described the pharmaceutical industry as vital to both the national economy and public well-being, and as a key focus area under the 'Made in China 2025' initiative. The Guidelines call for a focus on biopharmaceuticals, new varieties of chemical drugs, high-quality traditional Chinese medicines, high-performance medical devices, novel excipients (inactive substances in a drug) and packaging materials, and pharmaceutical manufacturing equipment.

In December 2016, Medtronic (Shanghai), a local unit of US-listed medical device firm, Medtronic, was fined RMB 118 million by NDRC for entering into fixed-price contracts. Medtronic plc is one of the world's largest medical device manufacturers. NDRC stated that Medtronic (Shanghai) held a leading position in the relevant medical device markets. Its strict resale price restrictions led to reduced competition among distributors, weakened competition between medical device brands, and artificially inflated prices for related products. These practices disrupted the normal functioning of market pricing mechanisms, increased the financial burden on patients, and harmed consumer interests.

This was the first antitrust enforcement in the medical device market. It also suggests that, since the pharmaceutical industry partly falls within the biological technology industry, which was one of the seven strategic emerging industries, antitrust agencies have gradually strengthened enforcement in this field to create favorable market conditions for industrial development.

D. Dynamic Random Access Memory ('DRAM') Industry and the Relevant Antitrust Investigation

In furtherance of the 2010 Strategic Emerging Industries Decision, the State Council issued 'the 13th Five-Year Plan for the Development of National Strategic Emerging Industries' in 2016, calling to strengthen the core IT industry, including the accelerated construction of memory-chip production lines. In the same year, the Wuhan National Memory Base Project officially commenced. During the launch ceremony, an official from MIIT stated that the State has adopted the following guiding principles for developing the DRAM industry: sustained and focused investment, resource integration, reinforcement of the entrepreneurial spirit, and promotion of international cooperation. Also in 2016, ChangXin Memory Technologies, a Chinese company specialising in DRAM design, manufacturing, sales, and R&D, was established. Soon, it was invested in part by local state-owned enterprises and China National Integrated Circuit Industry Investment Fund ('China IC Fund'). The China IC Fund is backed by state-owned enterprises, and central and local governments to support the development of the domestic IC industry.

Following the emergence of Chinese companies in the DRAM field, the newly constituted antitrust authority — the State Administration for Market Regulation ('SAMR') — announced at a press conference in November 2018 that it had opened an investigation into suspected collusion in the DRAM chip market involving Samsung, SK Hynix, and Micron. Afterwards, in the 2019 Annual Report on China's Antitrust Enforcement, the SAMR stated that it had 'focused on advancing the investigation into Samsung, SK Hynix, and Micron for suspected abuse of market dominance.' As of February 2026, no further official information regarding the investigation or its outcome has been made public.

Conclusion and Further Observations

China's antitrust enforcement against foreign firms is not a neutral application of competition law, but a deliberate instrument of industrial policy. The most evident observation is that since the issuance of 'The State Council's Decision on Accelerating the Cultivation and Development of Strategic Emerging Industries' in 2010, all landmark antitrust enforcement actions against foreign firms have taken place in the seven priority industries identified for development. Following the earliest AML case *Coca-Cola/Huiyuan*, a Chinese scholar argued that China's AML enforcement is not purely legal in nature, but rather functions as an administrative or political tool. After sixteen years of development, this trend has intensified.

This paper adopts an empirical rather than a normative approach. It draws an inference based on China's past practical experience: when developing countries plan to upgrade a strategic industry, advanced firms, particularly those from developed countries, operating in that industry are more likely to face antitrust enforcement actions by the host country.

Three motivations may help explain this interaction. Firstly, antitrust enforcement can restructure the relevant markets. Before being designated as strategic industries, many of these markets were dominated by foreign giants, such as Qualcomm and Medtronic. Enforcement actions may reshape market structures in ways that constrain dominant firms' conduct and in turn, align market outcomes with national industrial goals. Secondly, antitrust actions are often accompanied with corrective measures that may facilitate technology transfer to local enterprises. The LCD case discussed in subsection A illustrates how such remedies are able to strengthen downstream domestic manufacturers' technology and competitiveness. The final possible motivation is that antitrust enforcement itself can serve as a signal. In cases such as the DRAM market, the mere announcement of an investigation may reflect the government's intention to support domestic entry and rise in the industry.

From the perspective of the regulators, China's experience offers other developing countries a model of how antitrust enforcement can be integrated into industrial advancement strategies. The rapid progress observed in these designated priority industries is consistent with the view that targeted enforcement can effectively support industrial advancement. Consequently, transnational companies may face more complex antitrust challenges if more developing countries adopt similar approaches.

Fisheries Jurisdiction Case: A Corroboration in Judge Padilla Nervo's Dissent

By Rasmeet Kaur & Wincy Lee

Introduction

In the *Fisheries Jurisdiction* case between the United Kingdom and Iceland, the International Court of Justice ("ICJ") addressed a dispute regarding the strict wording of the Exchange of Notes between the Government of the United Kingdom and the Government of Iceland dated 11 March 1961 (the "1961 Exchange of Notes") and the changing rights of a small maritime state. In 1961, Iceland and the United Kingdom agreed that Iceland's exclusive fisheries zone would not exceed 12 nautical miles. However, 10 years later, Iceland sought to unilaterally expand the fishing zone to 50 nautical miles, claiming under *rebus sic stantibus* (a fundamental change of circumstances) on the grounds of declining fish stocks and its economic dependence on fisheries.

Under Article 62 of the Vienna Convention on the Law of Treaties ("VCLT"), there must be an unforeseeable change in circumstances, forming an essential basis of consent and radically altering the extent of the obligations. The ICJ held that the development of new fishing techniques was not considered sufficiently radical to satisfy the threshold of *rebus sic stantibus*. The legal obligations remained the same, the burden had not increased, and only the circumstances had shifted. Therefore, Iceland's claim had failed and Iceland remained bound by the previous agreement of 12 nautical miles.

However, Judge Padilla Nervo's opposing view gave a deeper look at what international justice should be. We believe the Court made an unsatisfactory decision for three main reasons: firstly, the 1961 Exchange of Notes was made under pressure; secondly, the situation had changed substantially, especially regarding Iceland's reliance on fishing for survival; and thirdly, the Court's focus on strict rules had helped powerful countries maintain predominance over weaker countries for a long time.

The Invalidity of 'Consent' Obtained Under Duress

The majority opinion rests primarily on the 1961 Exchange of Notes as the 'source of its jurisdiction.' However, true jurisdiction in international law must be born of free will and not of coercion. Judge Nervo exposes the 1961 Exchange of Notes as a settlement reached under significant pressure and was not negotiated on equal footing. It took place 'under extremely difficult circumstances, when the British Royal Navy had been using force to oppose the 12-mile fishery limit.' The presence of British warships in the disputed fishing zones created a militant environment that fundamentally tainted the negotiation process.

Judge Nervo argues that coercion is not limited to active shooting. A powerful state can exert influence and leverage over a vulnerable state in many ways, including the 'mere presence on the seas' of its navy. We agree with Nervo that 'gunboat diplomacy' undermines the fundamental nature of a binding treaty in international law, which requires free consent. As Nervo states, 'moral and political pressures... have, in history, given rise to treaties and conventions claimed to be freely concluded,' but which are actually the result of inequality. If a state signs a document, while another state's warships are patrolling near its waters, is this not a violation of the basic principles of international law? Validating such a document would encourage the use of force in international relations to achieve political objectives.

Consequently, the 'compromissory clause' (the promise to submit all disputes to the Court) was not a permanent, voluntary undertaking. Nervo asserts that 'certain "Notes", delivered by the government of a strong power to the government of a small nation, may have the same purpose and the same effect as the use or threat of force.' To treat such a document as a binding and perpetual obligation upon Iceland violates the spirit of the VCLT concerning free consent. The agreement was a temporary settlement to avoid further violence and not a permanent limitation on Iceland's sovereign rights.

A Fundamental Change of Circumstances: A Question of Survival

The doctrine of *rebus sic stantibus* allows for the termination of a treaty when the conditions essential to its consent have shifted radically. For Iceland, this was not merely a matter of economics, but of national habitability and existence. Unlike the UK, whose distant-water fishing is a commercial industry, coastal fisheries are, for Iceland, the conditio sine qua non (indispensable condition) of the country's economy. Judge Nervo emphasizes that without these fisheries, 'the country would not have been habitable.' The continental shelf is not just an underwater geographical feature, it forms the territorial and economic foundations of the state and should be treated as part of its national domain.

Since 1961, the intensified exploitation and technical development of foreign fishing fleets have created a new, lethal threat to these resources. The 'highly developed fishing effort[s]' of nations such as the UK threatened the 'maintenance of the resources of the sea, on which the livelihood of the Icelandic people depends.' Judge Nervo highlights that the spawning areas and nursery grounds on the shelf formed the backbone of the country's economy. The 'vital interests' of the Icelandic people are permanently at stake. A treaty signed a decade earlier cannot be reasonably interpreted to force a nation to accept the depletion of essential resources on which its survival depends; the 1961 Exchange of Notes was not intended to impose permanent constraints.

The Danger of Narrow Principles: Suppressing the Weak

In Judge Nervo's dissent, one of the most prominent aspects was his criticism of how strict and formalistic legal interpretations protect the privileges of powerful nations against the rights of weaker nations. Through a strict enforcement of the 1961 Exchange of Notes, without any regard to the reasons behind its creation, the Court may establish a principle that freezes historical injustices and produces a breeding ground for possible future injustice.

Nervo reprimands the Court for relying on 'dogmatic and formalistic assertions' to justify a 'previously admitted premise.' This formalism ignores the reality that old fishery limits owed their origin to the 'preponderant influence of distant water fishery nations,' who wished to exploit waters close to other nations' shores. The majority's approach suggests that a weaker state's right to protect its resources remains subject to the veto power of a stronger state indefinitely. Nervo notes that the UK's submissions imply that Iceland's extension of its fishery limit into the so-called 'high seas' would only be lawful with the UK's consent. Nervo aligns Iceland's struggle with the broader global movement to 'liquidate the unjust privileges obtained through the assertion of superior strength.' He argues that 'old practices and unfair so-called traditional situations must disappear.' In Nervo's view, by enforcing the 1961 Exchange of Notes, a small nation must continue to pay the price or provide a quid pro quo (something given in exchange) for its inherent rights. If the Court upholds jurisdiction based on coerced and outdated agreements, it sets a narrow principle that legal technicalities trump the fundamental principles of sovereign autonomy and self-determination. This suppresses the ability of developing nations to assert sovereign rights over their natural resources, which is an interest shared by coastal states across the globe.

Conclusion

The Court's judgment in Fisheries Jurisdiction may have satisfied the technical requirements of treaty interpretation, but it failed to address the inequities embedded in the 1961 Exchange of Notes. Judge Padilla Nervo's dissent is a powerful rebuke to a legal system that values the 'sanctity' of a compelled signature on a dotted line over the survival of a nation. The 1961 Exchange of Notes was concluded under coercive pressure, rendered obsolete by the threat of resource extinction, and utilized as a tool to maintain the 'unjust privileges' of a great power. To accept jurisdiction in this case is to affirm that the 'big power' may indefinitely dictate the terms of survival to the small power.

Sanctions Alienate Skies and Aircraft: A Legal and Safety Perspective Through the Lens of Russian Aviation

Long Shiqing Alina

International Sanctions

In response to Russia's "special military operation" in Ukraine, the US, the EU, and a host of other countries imposed sweeping sanctions on Russia across multiple industrial sectors, including the aviation industry in 2022. The core aviation-related sanctions included a complete ban on Russian aircraft exercising overflight rights over their airspace and the termination of all aviation-related commercial ties with Russia. The aircraft export ban, in particular, prohibited any future exports of aircraft to Russia as well as the provision of associated services – including spare parts supply, technical upgrades, and data support – and mandated that foreign aircraft leasing companies repossess all aircraft leased to Russian carriers by April 2022. These sanctions dealt a crippling blow to Russia's aviation sector. Of the 1,160 passenger aircraft then in active operation by Russian airlines, more than 600 were manufactured by Boeing or Airbus, and approximately 700 were owned by foreign lessors. As such, the sanctions essentially deprived Russia of its capacity to sustain normal aviation operations and undermined the critical technical support its aviation industry relied on. The blow to Russia's aviation sector also inflicted severe damage on its national economy, given that approximately 60% of Russia's GDP is derived from its natural resources trade, and over 60% of its territorial expanse relies exclusively on air transport for connectivity.

Russia responded with countermeasures against these sanctions, first by closing its own airspace to the countries that had imposed restrictive measures against it. This move had a tangible negative impact on the aviation industries of those countries, as the Siberian airspace accounts for approximately 7% of global air traffic volume. The US, for instance, was forced to suspend several air routes to Northeast Asia, due to the loss of cost efficiency caused by the inability to fly over Siberia. To safeguard its ailing aviation industry, Russia also took steps to retain the foreign-leased aircraft within its territory through two federal decrees issued in March 2022. These decrees prohibited the export of aircraft from Russia and permitted foreign-registered aircraft to be re-registered in Russia without the prior deregistration in the jurisdictions of their original lessors or owners, essentially creating a situation of dual-registration.

Impact of Relevant Sanctions

The closure of airspace by all involved parties carries notable legal implications under the Convention on International Civil Aviation, widely referred to as the Chicago Convention. By closing their airspace to specific contracting states rather than to all contracting states, Russia, the EU, and the US face the risk of breaching Article 9 of the Chicago Convention. This article prohibits discriminatory treatment between contracting states in respect of airspace closures, despite the Convention's Article 1 recognising their exclusive and absolute sovereignty over national airspace. Such closures may also give rise to breaches of the bilateral air services agreements between these parties, which typically stipulate the nine air freedoms of navigation, affording a full range of overflight rights to underpin international civil aviation.

This reciprocal airspace closure has also imposed substantial economic costs on the EU and the US. Long before the sanctions were imposed, EU airlines paid approximately USD 420 million to Russia in 2008 alone for the right to fly over Siberian airspace. Though Article 15 of the Chicago Convention explicitly prohibits the imposition of charges on contracting states solely for the right of transit over, entry to, or exit from a state's territory. With access to this key air corridor now revoked, EU and US carriers have seen a rise in the associated operational costs, including fuel expenses, costs stemming from longer flight times, and crew-related overheads.

The aircraft export and transfer bans imposed by the EU and the US have forced Russia to sever its aviation industry's ties with European and American technical and commercial support. Compounded by the attendant legal disputes examined below, Russia's international aviation operations have been severely curbed, compelling a dramatic shift toward a domestically focused aviation market. While the EU and the US hold clear legal entitlements under international law to repossess leased aircraft and terminate all aircraft-related commercial relations with Russia, Russia's countermeasures have sparked far more complex legal questions and controversies.

Before the sanctions, most Russian airlines operated foreign-owned aircraft, a standard financing practice in global aviation. Uniquely, though, most of their aircraft were registered overseas. This was because separating an aircraft's state of registration, which bears heavy obligations under the Chicago Convention, notably Article 31 on aircraft airworthiness and flight authorisations, from the state of its operator creates practical and legal inefficiencies. Further, despite the existing mechanism of delegating such responsibilities from the state of registration to the state of the operator under Article 83 bis of the Convention, states of registration often prefer to reserve such responsibility through bilateral air services agreements. Such an arrangement stems from longstanding concerns that Russia's aviation safety standards diverge from those of the international community. As a result, Russian-operated aircraft are typically airworthiness-certified abroad, and any foreign revocation of these certifications would, by the operation of Article 31 of the Chicago Convention, effectively ground Russian airlines' aircraft. Such risks materialised when Irish and Bermudian aviation regulators, as Russian-operated aircraft's major states of ownership and registration, decided to revoke Russian-operated aircraft's airworthiness certificates.

In response, Russia now permits the domestic re-registration and airworthiness certification of all Russian-operated aircraft. However, the validity of these Russian measures remains highly contested under international law: dual aircraft registration is explicitly prohibited by Article 18 of the Chicago Convention, rendering the lawfulness of Russia's domestically issued airworthiness certificates equally uncertain.

Such revocations have further legal implications for other states. Under Article 33 of the Chicago Convention, any aircraft deemed to fail the minimum safety standards set out in the International Civil Aviation Organization's (the "ICAO") Standards and Recommended Practices (the "SARPs") may be denied entry by other contracting states. All contracting states to the Convention are further bound by Articles 11 and 29 to ensure all domestic and foreign aircraft within their airspace adhere to international aviation regulations and carry valid airworthiness certification. In adherence to ICAO's international safety standards, the US has downgraded Russia's aviation safety rating to Category 2, while the EU has imposed a full ban on all Russian air carriers operating within its airspace.

The Convention on International Interests in Mobile Equipment (the "Cape Town Convention") was established to protect the rights of aircraft lessors by creating internationally registered proprietary interests and providing lessors with enhanced enforcement remedies. These remedies include the right to deregister the aircraft from the operator's state and to take possession or control of the aircraft in the event of default. Notably, Russia, Bermuda, and Ireland are all contracting parties to the Cape Town Convention, and yet, Russia's seizure of leased aircraft has made it all but impossible for foreign lessors and creditors to recover their assets through the Convention's prescribed remedies. This has led multiple lessors to file lawsuits against their insurance providers for compensation, with a high-profile trial in this regard heard in October 2024. In an attempt to comply with both the Cape Town and Chicago Conventions, Russia has sought to purchase the detained aircraft from foreign lessors in exchange for the deregistration by the lessors, a move intended to resolve the dual-registration issue. While foreign lessors face the risk of violating their domestic sanction regimes by selling the detained aircraft, Russian legal teams have structured these transactions as insurance settlements to circumvent such regulatory barriers. As of June 2025, it has been reported that Russia had successfully closed this gap for the ownership issues of the remaining 36 aircraft, with these matters expected to be fully settled in due course.

Beyond these issues, the unresolved nationality status due to dual-registration of Russian-operated aircraft has raised a host of legal questions. First and foremost, dual-registration is itself clearly prohibited by Article 18 of the Chicago Convention. Further, it raises practical jurisdictional questions, specifically as to which state may exercise authority over in-flight incidents, and which jurisdiction takes precedence in such cases. For instance, it raises questions as to who may conduct investigations when Russian-operated aircraft are in distress, as the Chicago Convention vests such rights solely in the state of registration to appoint observers and launch formal investigations. A report in January 2025 has shown that Russia had successfully removed 365 aircraft from Bermuda's registry and obtained sole registration for them.

On the periphery, Russia's acquisition of shares in Aeroflot and its provision of financial support for domestic aircraft acquisitions may also run afoul of the fair competition principles set forth in Articles 1 to 3 of the Agreement on Subsidies and Countervailing Measures. That said, strict adherence to these fair competition rules rings hollow in the context of an existential crisis for Russia's entire aviation industry, one exacerbated by sweeping international sanctions and ongoing military operations.

Airworthiness and Safety Concerns for Passengers

Genuine safety risks relating to airworthiness have emerged for Russian-operated aircraft, which are all foreign-designed and now cut off from the original manufacturers' support for production and maintenance. Deprived of critical technical resources, operational data, spare parts supply, and professional services, Russian airlines lack the ability to accurately assess the actual airworthiness of their aircraft in operation. This maintenance predicament is starkly illustrated by the reported practice of cannibalising parts from some aircraft to keep others flying. This measure was previously predicted on the basis of the theory of parts' green time, or the period during which components are designed to function safely. These challenges have been reported to remain true as of March 2025, with an increase in emergency landings, due to engine and landing gear malfunctions since December 2024. Russia has been actively seeking support from the ICAO to ease sanctions on spare parts and overflights over safety concerns, especially following an old-model aircraft crash with 48 fatalities and a crippling cyberattack on its flag carrier Aeroflot in late July 2025.

Broader safety concerns extend to two groups of air travelers: those flying with Russian airlines, and those travelling to or transiting through Russian territory. For passengers on Russian airlines, risks stem from both compromised aircraft airworthiness and degraded service standards. A key issue is whether domestic maintenance, repair, and overhaul (MRO) facilities are capable of carrying out work that meets international safety standards, given their lack of previous hands-on experience, professional knowledge, and direct support from the original aircraft manufacturers. Compounding this, the loss of external technical support means flight crews may not receive timely guidance in emergencies or access to the necessary professional training. It is also unclear whether Russian domestic aviation regulators can effectively monitor airline safety practices, as they lack access to the globally applicable or previously recognised safety standards. Operational risks therefore effectively accompany the physical safety risks of the aircraft. For passengers flying to or transiting through Russia, questions remain as to whether Russia may competently discharge its international obligations under the Chicago Convention, particularly Article 11 for contracting states to comply with its Annex 6: Operation of Aircraft to safely operate their aircraft. Such concern arises from the US and EU sanctions barring Russian access to the most up-to-date services and spare parts of its operated aircraft.

Conclusion

In response to Russia's "special military operation" in Ukraine, Western nations severed Russia's access to global air transport by barring its aircraft from their airspace and further crippled Russia's aviation industry by demanding the repossession of most aircraft operated by Russian airlines and imposing a complete ban on the provision of all associated technical and material support. Russia, on the other hand, closed its airspace to these Western states, seized the aircraft operating within its territory, and set about developing indigenous technical and material support for its aviation sector. Russia's airspace closure has inflicted widespread global operational and economic harm, while its own aviation industry has been left with no choice but to rely heavily on governmental support and domestic resources for both commercial operations and technical sustenance.

This series of events has spawned a raft of legal complexities, including: (a) disputes over airspace access, aviation safety risks, and aircraft registration conflicts under the Chicago Convention; (b) issues pertaining to aircraft ownership, creditor remedies, and insurance claims pursuant to the Cape Town Convention; (c) questions concerning governmental financial support under fair competition rules; and (d) uncertainties regarding aircraft nationality and the determination of jurisdiction rights.

For passengers travelling with Russian airlines or flying to and transiting through Russian territory, it is advisable to consider their confidence in Russia's domestically developed aviation safety support systems before travelling.

May the turbines be finally free from turbulence.

Human Rights Law

Argentina's Gender Identity Act: Context, Causes, and Global Implications

By Cheng Cheuk Nga Coco

Introduction

In the early 21st century, legal gender recognition shifted globally from traditional models to self-determination models. This essay examines Argentina's pioneering 2012 Gender Identity Act ("GIA"), the first national legislation adopting a self-determination model to promote transgender individuals' health and achieve social inclusion. By critically assessing factors that enabled the legislation, the essay illustrates how Argentina's unique socio-political context serves as an influential example internationally, though this inspiration may not be easily replicated in other jurisdictions.

Part 1: Gender Recognition in Argentina

Promulgated on 23 May 2012, the GIA marks a fundamental shift from the previous legal framework in three ways.

First, Argentina's gender recognition system moved from a "court-centred system," which requires judicial approval for all name and gender marker changes, to an administrative procedure. Previously, no specific statute governed gender recognition. Yet, Article 19 of Law 17,132 prohibited medical professionals from performing gender confirmation surgeries without judicial consent, thereby granting judges broad discretion. Judges' interpretations then evolved over time from strict biological criteria to recognising intersex conditions and respecting self-identified gender. This was exemplified in 2008 by Judge Pedro Hooft, who condemned surgical requirements as a "serious incongruence" and permitted a transgender woman to change her legal name without needing to undergo surgery.

While progressive, this revealed a heavy reliance on judicial discretion over clear administrative standards. After 2012, both adults and minors may request gender and name changes administratively. Adults may amend their birth certificates and national identity documents at the National Bureau of Vital Statistics or district offices; while minors must make requests through their legal representatives.

Secondly, mandatory medical and psychiatric requirements were abolished. Pre-2012, petitioners needed hormonal therapy, total or partial genital reassignment, and sterilisation, so their bodies were "irreversibly sterile," and "resemble[d] as much as possible the bodies of the people whose gender the person chooses to belong to." They also required "gender identity disorder" diagnoses, defined as discomfort with their assigned gender, body, or sex. After 2012, no medical or psychiatric treatment is required. Thirdly, Article 1 of the GIA constitutionally guarantees the right to gender identity as a fundamental right. It ensures all Argentines the rights to recognition of their gender identity, free development of their person, and treatment in accordance with that identity, including being identified as such in official documents with their first name, image, and sex. In contrast, no explicit legal protection of gender identity had existed before the GIA.

Part 2: Reasons Enabling Argentina to Implement GIA

While most English academic papers focus on the GIA's impact, a deeper question worth examining is why Argentina had made such a significant transformation from a model requiring medical intervention to one grounded in self-determination.

This essay argues that the successful transition is resulted from the intersection of three factors: the domestic and international human rights frameworks, the history of dictatorship and the 2001 economic crisis that empowered civil society and weakened traditional powers, and the strategic political leadership that recognised transgender rights as a vital political opportunity.

2.1 Domestic and International Human Rights Framework

GIA arose as a direct response to the constitutional and international human rights frameworks that recognise gender recognition as a fundamental right.

Under its Constitution of the Argentine Nation ("Constitution"), Argentina is required to respect gender self-determination and abolish mandatory medical requirements. Section 19 of the Constitution states that "the private actions of men which in no way offend public order or morality, nor injure a third party, are only reserved to God and are exempted from the authority of judges." This creates a constitutional haven to treat gender recognition as a private matter beyond state interference, provided it causes no harm to others. Moreover, Section 75(22) of the Constitution incorporates international human rights instruments and gives them legal weight equal to the Constitution. These binding international laws provide extensive protection to transgender persons.

For example, Article 7 of the International Covenant on Civil and Political Rights guarantees freedom from degrading treatment, stating, "no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." In gender recognition contexts, this prohibits forced medical procedures as prerequisites for legal recognition.

Similarly, the American Convention on Human Rights obligates states to respect rights to dignity, privacy, and freedom of expression as set out in Articles 5, 11, and 13 respectively. Hence, the pre-2012 mandatory medical requirements for legal gender recognition violated these protections and required reforms.

Moreover, the European Court of Human Rights, in *Carola Van Kück v. Germany*, recognised that requiring proof of medical necessity for gender reassignment treatment violates human rights. In this case, the transgender applicant sought reimbursement for gender reassignment surgery from German social insurance. The German courts imposed the burden of proof on the applicant to demonstrate medical necessity and ultimately denied reimbursement, as the applicant had "deliberately caused" her own transsexuality by not consistently living as a woman before her hormone therapy. The European Court of Human Rights rejected this approach. It held that requiring such proof placed a disproportionate burden on the applicant, and breached Article 8 of the European Convention on Human Rights, which guarantees the right to private life. This principle was reaffirmed in a 2007 judgment, *L. v. Lithuania*. Loukēs G. Loukaidēs, a later judge of the Court, articulated that "for [someone] to be able to function freely, in the full sense of the term, [they] must have the possibility of self-definition and self-determination: the right to be [oneself]."

Finally, the Yogyakarta Principles had inspired the GIA and acted as the blueprint for GIA's legislative drafting. Developed in 2006 by leading human rights experts, the Yogyakarta Principles set international standards on sexual orientation and gender identity. Among the drafters was Mauro Cabral Grinspan, an Argentine intersex and trans activist, whose participation helped shape the document's progressive vision. Building on this foundation, fellow activist Lohana Berkins advanced the Yogyakarta Principles within Argentina, organising public presentations of her book on the Yogyakarta Principles and using them as advocacy tools to influence legislators.

As a result, the international framework resonated in the GIA. Principle 3 of the Yogyakarta Principles is reflected in Article 4 of the GIA: both establish the right to gender identity without medical or judicial restraints. Principle 3 states that "each person's self-defined sexual orientation and gender identity [are] integral to their personality and [are two] of the most basic aspects of self-determination, dignity and freedom." While Article 4 of the GIA emphasises that no person shall be forced to undergo a "surgical procedure for total or partial genital reassignment, hormonal therapies, or any other psychological or medical treatment" as a requirement for legal gender recognition. Article 2 of the GIA also adopts Yogyakarta Principles' definition of gender identity with minimal amendment, both highlighting the autonomy in gender expression and self-determination. The close alignment reflects the influence of international standards on the GIA's implementation.

Hence, the GIA results from the domestic and international human rights frameworks that treat gender recognition as a fundamental human right rather than a medical or judicial matter.

2.2 History of the Military Dictatorship and the 2001 Economic Crisis

Domestic and international human rights frameworks are not unique to Argentina, for many jurisdictions have ratified and constitutionalised them. Yet, few have enacted gender identity laws as progressive as Argentina's GIA, which required its distinctive historical and political backdrop.

The dictatorship's repression from 1976 to 1983, causing the disappearances of approximately 30,000 people, catalysed rights-based activism through groups, such as the Grandmothers of the Plaza de Mayo and the Permanent Assembly for Human Rights. Their public and persistent protests embedded human rights discourse in Argentine civil society and created organisation models later adopted by transgender rights movements. Simultaneously, the Catholic Church's silence in the face of state terror gravely weakened its moral credibility and post-dictatorship influence, reducing its capacity to oppose progressive sexual and gender reforms.

The 2001 economic collapse further eroded institutional legitimacy and unleashed grassroots mobilisation. Building on traditions of civic protest, transgender groups united across fifteen districts to form the National Front for the GIA in 2010, presenting a unified bill to the Argentine National Congress, while simultaneously filing hundreds of judicial appeals demanding identification changes by the courts, thereby creating a judicial avalanche of decisions favouring individual gender recognition requests. This synergy of social, judicial, and legislative pressure on the Congress significantly contributed to the GIA's implementation.

2.3 Recognition of Transgender Rights as a Political Opportunity

The 2001 economic crisis and institutional vacuum paved the way for Kirchnerism led by Néstor Kirchner (2003-2007) and his wife, Cristina Fernández de Kirchner (2007-2015), with the latter actively supporting LGBT rights as a political strategy.

While Cristina Kirchner inherited a recovering economy and public support from Néstor Kirchner, her approval ratings plummeted after her government's 2008 decision to raise export taxes on agricultural products via Resolution 125 amid booming global commodity prices. Following this crushing political defeat, she had to forge a new coalition. She recognised that left-leaning voters offered an expandable base and advanced LGBT rights legislation to attract communities, younger people, and feminists. On 12 July 2010, just before the crucial Senate vote, she delivered a passionate speech confronting Archbishop Jorge Bergoglio (later Pope Francis), framing same-sex marriage as foundational to democratic equality.

The law took effect on 21 July 2010 and contributed to her landslide re-election victory, securing 54% of the vote against her competitors each garnering merely 5% to 16%. In view of the success of the left-wing approach, Cristina Kirchner continued this trajectory by pushing forward with the GIA, which reinforced her image as a forward-thinking leader valuing human rights.

2.4 Redefining the Left: Argentina's Distinct Path within the "Pink Tide"

Beyond domestic strategy, Cristina Kirchner utilised the GIA to redefine the Latin American "Pink Tide" by expanding the leftist discourse from purely economic concerns to radical social policy. Cristina Kirchner's left-wing approach should be understood within the broader context of the "Pink Tide", a wave of leftist governments that swept Latin America in the early 2000s.

While regional leaders such as Hugo Chávez in Venezuela, Evo Morales in Bolivia, and Lula da Silva in Brazil focused largely on economic redistribution and anti-neoliberal policies, Cristina distinguished herself through pioneering progressive social policies that many of her regional counterparts ignored or opposed. Argentina led Latin America in legalising same-sex marriage in 2010 and inaugurated a global precedent with the 2012 Gender Identity Act. Following Argentina's footsteps, Brazil's Supreme Federal Court legalised same-sex marriage in 2013, and Uruguay enacted a similar legislation in the same year. Consequently, Cristina is widely recognised as a leader in LGBT rights, positioning her as a defender of marginalised groups and an initiator of a more inclusive society, which has proven to be advantageous to her political career.

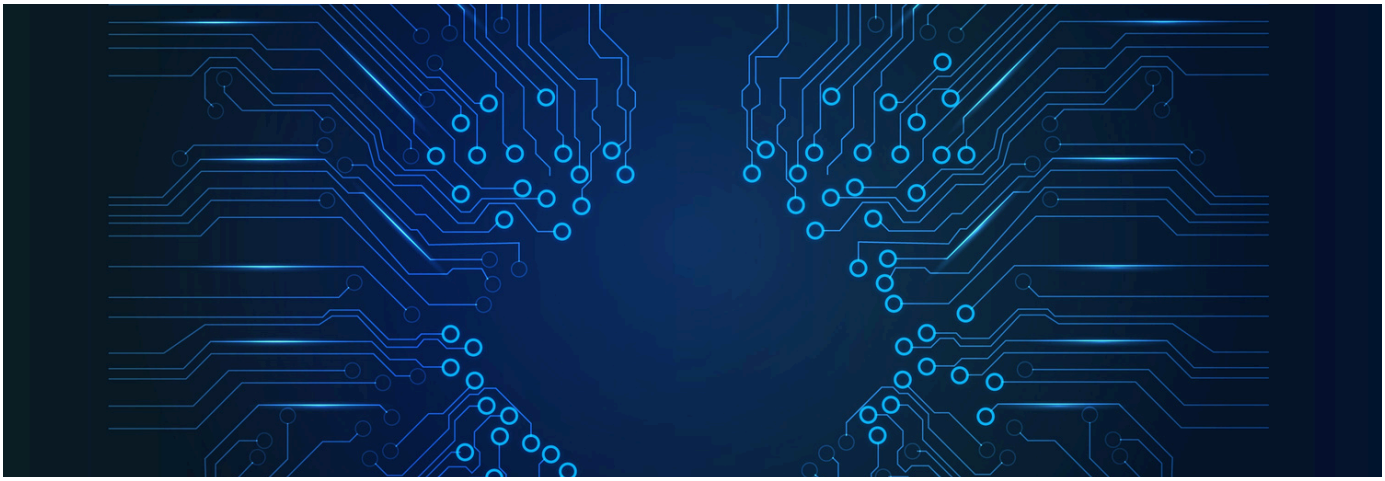
Conclusion: Future Implications and Limitations

Following Argentina's implementation of the GIA, discrimination against transgender individuals has significantly reduced, access to healthcare, employment, education, and political participation have expanded. Argentina's success was shaped by its unique socio-political context: domestic and international human rights influences, an empowered civil society, Cristina Kirchner's strategic political leadership, and Pink Tide progressivism. Although over twenty countries including Belgium, Denmark, Finland, Germany, and Malta have now adopted similar self-determination models, such a distinctive political moment is inevitably unlikely to be replicated everywhere. Countries with strong religious parties or conservative leadership would undoubtedly face considerable challenges to the implementation of a self-determination model. Hence, the overarching lesson is clear: legal recognition matters profoundly, but true change demands more than persuasive arguments; it requires civil society pressure, constitutional alignment, and committed leaders.

Technology and the Law

When Algorithms Start 'Signing Contracts': Legal Boundaries and International Rules in the Platform Economy

By Hai Tianxin



Introduction: the Legal Weight of an Ordinary Click

Late at night, opening a food delivery app has become an almost automatic habit for many university students in Hong Kong. A few taps on the screen — selecting a restaurant, confirming an order, and authorising payment — and dinner is on its way. The entire process often takes less than a minute. There is no conversation, no negotiation, and no visible legal ceremony. Yet, in legal terms, a binding contract has already been formed.

For most users, this transaction feels purely practical. It is fast, convenient, and familiar. However, the simplicity of the interface conceals a more complex reality. Behind this single click, there exist a web of contractual terms, algorithmic decisions, and cross-border commercial relationships. Prices are calculated dynamically, delivery obligations are assigned automatically, and dispute resolution is often pre-determined by internal platform rules rather than legal negotiation. Instead of treating this issue as a broad question in international economic law, it is more accurate to situate it within the emerging field of digital trade governance. Platform contracts are not only private agreements, they are embedded in cross-border digital transactions that fall within the ongoing discussions on e-commerce regulation at the World Trade Organization ('WTO'), regional trade agreements, and domestic digital markets laws.

The connection therefore lies not in ideology, but in structure: digital platforms mediate cross-border trade, and the rules governing these platforms progressively determine how international market access, consumer protection, and data governance operate in practice.

Why Platforms Exist: Transaction Costs and Economic Logic

Ronald Coase's thesis in 'The Nature of the Firm' is that firms arise when organising transactions internally is less costly than relying on open market exchange. Transaction costs, such as searching for information, negotiating agreements, and enforcing contracts, justify the existence of firms.

Digital platforms can be understood as a contemporary extension of this logic. By centralising information, standardising contractual terms, automating matching processes, and embedding enforcement mechanisms into code, platforms dramatically reduce transaction costs in cross-border commerce. The Organisation for Economic Co-operation and Development reports on digital platforms confirm that these systems lower entry barriers for small businesses and facilitate participation in international markets.

The legal relevance lies in what follows from this efficiency. If platforms exist because they minimise transaction costs, they simultaneously internalise contractual governance. Negotiation is replaced by standard terms, enforcement is replaced by automated systems, and dispute resolution is shifted from the courts to internal mechanisms. The question is therefore not simply why firms exist, but how their internal governance structures interact with public legal norms.

Platforms as Market Designers: Insights from Industrial Economics

Economist Jean Tirole's work on two-sided markets provides a useful framework for understanding this phenomenon. Platforms do not merely connect buyers and sellers, they actively design the market. They decide how prices are set, how participants are ranked, and under what conditions access may be restricted or revoked.

Survey-based evidence on ride-hailing platforms illustrates this clearly. Studies examining Uber's pricing mechanisms have found that fares respond not only to supply and demand, but also to user behaviour, location, and time sensitivity.

Two users requesting similar rides may be quoted different prices, even from within the same area. From a legal standpoint, automated dispute resolution raises concerns regarding procedural fairness and access to remedies. While incomplete contract theory explains why discretion exists, the allocation of that discretion is ultimately a regulatory question rather than an efficiency issue. From a contractual perspective, this complicates the notion of a fixed and transparent agreement.

Food delivery platforms exhibit similar characteristics. Consumer protection agencies in several jurisdictions have documented discrepancies between advertised prices and final payment amounts, often justified by real-time 'system recalculations'. In some cases, delivery fees increase after the order has been confirmed, raising questions about whether contractual terms are being modified unilaterally by the algorithmic systems. Platforms often describe themselves as neutral hosts. Yet, their ability to shape market outcomes suggests a more active role. They function as rule designers in privately governed marketplaces. Their structural power has significant implications for legal accountability.

Why Users Rarely Read: Bounded Rationality and Interface Design

One of the most readily observed patterns in digital contracting is that users rarely read or understand the contractual terms. Behavioural economist Herbert Simon's concept of bounded rationality helps explain this pattern. Faced with time constraints, information overload, and cognitive limits, individuals rely on shortcuts rather than full optimisation. Herbert Simon's concept of bounded rationality suggests that individuals do not maximise utility through an exhaustive evaluation of all available information (full optimisation). Instead, they rely on simplified decision rules — often referred to as heuristics or cognitive shortcuts — to make satisfactory rather than optimal choices. In digital contracting, clicking 'agree' without reading the terms can be understood as such a heuristic response; the costs of processing the information exceed the perceived benefits of detailed scrutiny.

Research has consistently shown that more than 90 percent of users accept online terms without reading them. Experiments have demonstrated that even when agreements contain clearly unreasonable clauses, users still click 'agree', if doing so allows them to proceed quickly. Platform interface design reinforces this behaviour. Consent buttons are visually prominent, while the contractual text is lengthy, technical, and difficult to navigate on mobile screens. In this environment, giving consent becomes a formal gesture rather than a meaningful safeguard. This raises an uncomfortable but necessary question: when users predictably do not read contracts, can their consent alone continue to serve as the foundation of the contractual legitimacy?

Incomplete Contracts and Algorithmic Discretion

The theory of incomplete contracts, developed by economists such as Oliver Hart and Bengt Holmström, offers another useful lens. In complex and rapidly changing environments, it is impossible to specify all future contingencies in advance. Contracts therefore leave gaps that must be filled through discretion.

In the platform economy, these holes are increasingly filled by algorithms rather than human judgment. Automated systems determine whether an order qualifies for a refund, whether a seller has violated platform policy, or whether a user's account should be suspended. Researches tasked by the European Commission indicates that a majority of disputes between users and platforms are resolved entirely through automated processes, with limited access to human review.

From an efficiency perspective, automation allows platforms to operate at scale. Relating to the law, however, it conceals discretionary power within opaque systems. Users often receive standardised notifications referencing internal policies, without access to the evidence or reasoning behind the decisions. This arrangement reflects a broader shift: discretion has not disappeared from contracting, but it has been relocated from negotiable human judgment to algorithmic enforcement.

Empirical Evidence from Automated Dispute Resolution

Automated dispute resolution is one of the least visible, yet most consequential aspects of platform contracting. Traditional contract law assumes that disputes may be resolved through negotiation, mediation, or adjudication. In platform environments, disputes are often handled internally and automatically. The studies of major e-commerce platforms show that refund requests, delivery disputes, and account complaints are frequently processed through rule-based systems. While this approach ensures consistency and speed, it often lacks procedural transparency. Users are rarely informed about the criteria applied or the possibility of a meaningful appeal.

Cross-border disputes amplify these problems. Surveys conducted by consumer protection agencies indicate that users are significantly less likely to pursue claims involving foreign platforms. Language barriers, uncertainty about the applicable law, and the costs of arbitration or litigation all discourage the enforcement of potential cases. As a result, contractual design itself becomes a deterrent to legal challenge.

Cross-border Digital Trade and Consumer Harm

Within the emerging framework of digital trade law and cross-border platform regulation, these empirical patterns are particularly concerning. Data published by WTO and United Nations Trade and Development shows that digital trade has expanded rapidly and yet, mechanisms for addressing cross-border consumer harm remain underdeveloped. While trade agreements increasingly include provisions on digital trade and dataflow, consumer protection is often addressed only indirectly or through non-binding cooperation frameworks. This gap has practical consequences. Consumers engaged in cross-border platform transactions are less likely to obtain compensation when disputes arise, even when their legal rights theoretically exist.

This imbalance reflects a broader tension within international economic law: efficiency and market access are prioritised, while distributive and protective concerns receive less attention.

Data, Behaviour, and Contractual Outcomes

Sociologist Shoshana Zuboff's concept of surveillance capitalism highlights the role of data in shaping economic behaviour. Platforms collect vast amounts of behavioural data, which are used to optimise algorithms and influence user decisions.

Empirical research on personalised pricing and recommendation systems suggest that users may face different contractual outcomes, basing on their inferred willingness to pay. Two users may agree to identical-looking contracts, but experience materially different prices, discounts, and service conditions. This raises deeper questions about equality and fairness. When contractual terms are shaped by behavioural data, consent becomes more symbolic. Users in fact agree to contracts without fully understanding their economic consequences.

Platforms as De Facto Legal Institutions

Taken together, these observations suggest that platforms virtually function as de facto legal institutions. They set rules, interpret violations, impose sanctions, and resolve disputes often without external oversight. Unlike the courts or regulators, platforms are not bound by principles of transparency nor due process, unless they are explicitly required by the law. Their authority derives from market power rather than democratic legitimacy. Yet, for many users, platform decisions have immediate and significant consequences. This does not imply that platforms should be treated as public authorities. However, it does suggest that traditional distinctions between private contracts and public regulations are becoming progressively blurred in the digital economy.

Hong Kong's Position: Legal Capacity and Structural Limits

Hong Kong's common law system provides doctrinal tools, such as reasonableness and unconscionability, to address unfair contractual practices. Data from the Hong Kong Consumer Council indicates a growing number of complaints related to digital platforms, particularly concerning unclear terms and dispute resolution difficulties.

At the same time, regulatory intervention remains cautious. Hong Kong's openness to global markets and reliance on multinational platforms limit the effectiveness of purely local regulations. This reflects a broader challenge faced by open economies in the digital age: how to balance innovation, competitiveness, and legal protection.

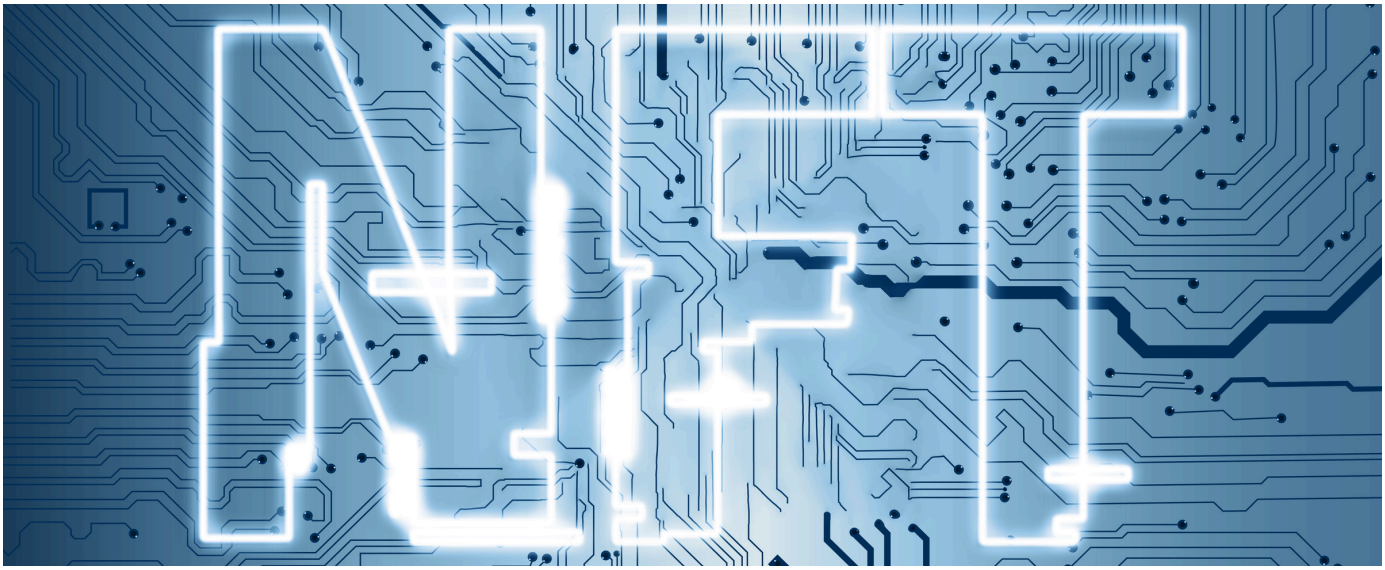
Rethinking Consent and Fairness

Economic theories and empirical evidence increasingly propose that reliance on formal consent alone may be insufficient. Scholars have argued for a shift toward substantive fairness, focusing on transparency, contestability, and proportionality, rather than on technical agreement.

Under the framework of international economic law, this shift aligns with ongoing debates about embedding social values within global trade governance. Without such balance, public trust in digital markets may erode, potentially undermining the legitimacy of cross-border economic integration.

Conclusion: Seeing the Contract Behind the Click

When algorithms begin to 'sign contracts', the nature of contractual relationships changes in subtle but significant ways. Platforms reduce transaction costs and help expand markets, yet they also create power inequality and reshape legal expectations. Economic theories help explain why platforms function the way they do. Empirical studies reveal how these dynamics affect users in practice. Collaboratively, they suggest that legal frameworks must evolve, not by rejecting technological efficiency, but by ensuring that efficiency does not come at the expense of fairness. For everyday users, recognising the legal significance of a simple click is the first step. For policymakers and scholars, the challenge lies in designing rules, which reflect economic realities while preserving trust in the digital marketplace.



Legal Implications of NFTs and Blockchain Technology: Lessons from Nike v. StockX

By Yeung Tsz Tung Ariel

When non-fungible tokens ("NFTs") are mentioned, many may think of the "Bored Ape" digital art NFTs popular in 2021. However, NFTs faded from the public spotlight following its market crash in mid-2022, which saw investments decrease in value by millions of dollars. In truth, NFTs have simply made a shift from mere speculative investments, often tied to art or creative assets, towards utility-focused services. Legal concern arises in cases, such as *Nike v. StockX*, demonstrate the immense, existing regulatory gap, as applications of blockchain technology continue to grow. This article aims to explore the background and implications of such cases, as well as to analyse the current legal landscape, regarding NFTs, tokenisation, and other blockchain technology.

Understanding Tokenisation

Before embarking on an exploration of tokenisation and NFTs, it is crucial to first understand these concepts. Tokenisation refers to the process of creating a digital representation (a token) of an asset. It is a record on a blockchain that clarifies the owner of a certain asset. NFT is a token, which is unique and non-interchangeable, i.e. it cannot be traded one-to-one like currency. This non-fungible nature renders NFTs hard to be stolen or forged, enabling NFTs to verify the ownership of an item.

Every token is essentially a smart contract (coding that defines the rules or transfers for that token) that is deployed to a blockchain with a token ID inside the smart contract. The token ID then links to an owner address and metadata of the tokenised asset. The token itself is the on-chain entry in the contract that points to a certain asset or data, while the asset itself is technically elsewhere. Hence, what you own when you possess an NFT or a token is usually the contract and the token ID, unless the contract specifies the transfer of the tokenised asset.

Rather than as mere speculative investments, NFTs and tokens now represent a novel and arguably more accessible way to manage ownership and value. Notably, they can:

1. Provide a method of identification or certification

Since NFTs are minted on a blockchain, it is extremely difficult and time-consuming to replicate or forge them. Hence, the form of NFTs can be a way to easily and securely verify the ownership of assets.

2. Fractionalise ownership

Assets that are too expensive for an individual buyer or difficult to be divided into parts for purchase can be fractionalised through tokenisation. An NFT could be minted of a hard-to-fractionalise asset; a set of new, fungible tokens could then be created of this NFT, representing a fractional share of the NFT. These fungible tokens could be used to represent the fractional ownership of the asset. Provided that the contract makes clear that the ownership of the tokens directly corresponds with the ownership of the asset, this representation would allow for fractionalised ownership.

3. Monetise intangible or hard-to-monetise assets or data

Assets that were previously difficult to own in a literal sense can be monetised or taken ownership of through tokenisation. For example, minting NFTs of an in-game asset could allow you to own the in-game asset, independent of game restrictions like a server shutdown. The asset's independent nature would also allow it to be sold or traded, giving it monetary worth, which would previously be impossible.

Legal Issues Surrounding Tokenisation and NFTs

Despite the expansion of applications for blockchain technology, there remains extensive regulatory uncertainty. Hong Kong has taken steps to ensure that virtual assets, tokens, and cryptocurrency are regulated, but these efforts are currently unable to fully safeguard those engaging in the technology.

Hong Kong presently has three main pieces of legislation that provide for forms of regulation of blockchain technology:

1. Stablecoins Ordinance (Cap. 656)

The Stablecoins Ordinance is the latest piece of legislation used to address blockchain technology, having come into effect on 1 August 2025. However, its scope is limited to "specified stablecoins" and does not encompass other blockchain-related assets.

2. Securities and Futures Ordinance (Cap. 571)

The Securities and Futures Ordinance only regulates NFTs and other tokens that are considered as securities or interests. If the token behaves in other ways, for example, it acts as an authentication certificate, or it is only a representation of an asset, this Ordinance does not regulate such token.

3. Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("AMLO")

Similarly, most tokens do not fall under the regulation of the AMLO. Standard NFTs, which are just representations of assets and not independent virtual assets are unregulated. Furthermore, mere peer-to-peer trading of NFTs does not fall under the licensing regime of the AMLO and thus, not subject to the stringent licensing requirements for virtual asset NFTs.

While all three ordinances provide some forms of regulation towards blockchain virtual assets, they fail to cover all scenarios, in which the technology is used. Consequently, tokens can often evade regulation by exploiting classification issues. Some tokens may blur regulatory lines by having some, but not all characteristics of regulated tokens. It remains unclear whether such tokens would be regulated under the existing laws.

Outside of Hong Kong, several countries have also taken steps to regulate blockchain technology, but these efforts are often incomprehensive. The Property (Digital Assets etc) Act 2025 in the UK formally recognised NFTs, cryptocurrencies, and other digital assets as a "third category" of personal property under English law, removing the binary classification of "things in possession" and "things in action." Instead, assets are no longer excluded from property possession solely because they are digital or intangible, and do not fit squarely into either traditional category. While this provides those transacting with NFTs with remedies aside from suing for monetary value, including the proprietary remedy of a court order, the Act does not define the used terms. The courts will likely have to determine on a case-by-case basis whether a specific NFT is regulated, indicating that confusion surrounding NFTs will continue to exist. In the USA, where the majority of recent NFT disputes have arisen, there is no clear-cut regulation either. Despite legislative efforts, the proposed NFT Act remains unpassed as of February 2026.

Intellectual property issues may also arise, owing to token-related ownership issues. It has become increasingly easy to mint or create NFTs using others' creations. Furthermore, the discrepancy between physical ownership and intellectual property rights means that it is not always easy to determine who can tokenise an asset. Buyers of such tokens may also be unaware that they are not necessarily buying the item the token represents nor the related copyright. Oftentimes, only the token is received. Which rights are being transferred is often vague and confusing, particularly to those unfamiliar with tokenisation.

In Practice: Nike v. StockX

In 2022, footwear company Nike filed a trademark infringement, dilution, and unfair competition complaint against StockX, an online marketplace and clothing reseller. Nike claimed the marketplace site had minted NFTs that used Nike's trademarks to market the NFTs to consumers at high prices, by making them believe the NFTs were authorised by Nike. Later, Nike submitted an amended complaint, adding counterfeiting and false advertising to its causes of action. It requested the court to "swiftly and permanently stop StockX from continuing to sell Vault NFTs bearing Nike's famous marks, selling counterfeit Nike goods, and making false and/or misleading claims regarding the purported authenticity of those goods."

In response, StockX filed an answer claiming it did not infringe on Nike's trademarks. Instead, its NFTs were used exclusively "to track ownership of frequently traded physical goods." StockX further stated that "no one has been – or could be – confused as to the source[s]" of the items it was selling, as "consumers [were] made aware they [were] purchasing physical goods that StockX ha[d] authenticated" and that "the Vault NFT may be redeemed for the physical goods themselves." StockX also denied the majority of Nike's new claims in the amended complaint. It affirmed the NFTs were "lawfully used" for efficiency, claiming that Nike's court action was an "anticompetitive" attempt to "stifle the secondary market."

StockX's main claim was that the NFTs behaved as a method of authentication or digital receipts for the authenticated goods (such as Nike sneakers). Therefore, they did not infringe on Nike's trademarks. In addition, it argued that minting NFTs of its goods was essentially the same as any other digital representations (e.g. photos or descriptions) of goods made in e-commerce. The classification of these NFTs was the centre of the legal dispute. Although Nike and StockX announced in August 2025 that they had settled out of court, the case remains as one of the only major fashion cases focused on the intersection of trademarks and NFTs. Moreover, it provides insight into how the behaviour of NFTs could affect its legal classification and which regulations NFTs may be subjected to.

The NFTs were controversial in *Nike v. StockX* because they behaved as both assets and services. NFTs of Nike sneakers could be traded independently and also be used as a method of authentication. Hence, *Nike v. StockX* calls into question whether the intent behind the minting of such NFTs would distinguish different cases. The US courts seem to suggest that this would be determined by how the NFTs were used in effect. As an example, if the consumers regarded the NFTs as having independent value and therefore, resold or traded them, it might be more likely that the courts would determine them as having infringed on Nike's trademarks.

Hermès v. Rothschild

This conclusion was also the suggested *obiter dictum* in *Hermès v. Rothschild*, otherwise known as the *MetaBirkins* case. In *MetaBirkins*, artist Mason Rothschild created 100 NFTs of faux-fur covered depictions of the Hermès Birkin bag for sale. Hermès sued Rothschild for trademark infringement, dilution, and cybersquatting, arguing that the NFTs caused consumer confusion. Rothschild argued that the NFTs were artistic expressions, which were protected by intellectual property law and his First Amendment rights. The District Court for the Southern District of New York found that the MetaBirkins were not protected as art and constituted trademark infringement, awarding Hermès USD133,000 in damages. Consequently, the court confirmed in the US that brand rights in intellectual property extend to NFTs and other virtual goods. However, the initial ruling noted in its footnote that if the NFTs were attached to a "virtually wearable" MetaBirkin bag, it could be considered a "non-speech commercial product" and therefore, be treated as a traditional commercial product. The NFTs would then weigh differently under the First Amendment and other intellectual property considerations.

Implications

Having been settled out of court, *Nike v. StockX* highlights the global legal uncertainty surrounding tokenisation. It is simple to dismiss NFT issues as relating to the tokenisation-ownership gap, where separating physical ownership and intellectual property ownership complicates monetisation. However, *Nike v. StockX* suggests the existence of a larger, unresolved issue on function and legal status.

The lack of judicial conclusion in *Nike v. StockX* creates uncertainty as to whether the function of a token affects its legal status. Would the fact that the NFTs were for authentication distinguish this case from the ruling in *Hermès v. Rothschild*? This remains unclear. Furthermore, due to the high financial stakes and uncertainties, most parties in NFT-related disputes choose to settle out of court and avoid the risks of large court-ordered financial penalties. This has led to a lack of comprehensive case law governing NFT-related disputes, despite the numerous newly arising issues surrounding blockchain technology.

As NFTs start to play an increasingly common role in our society, it is imperative to learn, understand, and manoeuvre the legality of such technology. Much due diligence is required to understand what rights a token confers upon its creation or purchase. Lawyers play an increasingly important role in advising clients, who wish to create or purchase NFTs. Contracts have to delineate the frameworks of such transactions and the purposes of the usage of such technology. Legal ambiguity in defining the NFTs' purposes was central to the *Nike v. StockX* dispute. While StockX's Vault NFTs initially functioned as "claim tickets," they were later sold for many multiples of the physical shoes' price. This exacerbated the problems with the NFTs' ambiguity. The fact that NFTs were marketed with unique utility, beyond simple proof-of-ownership, may risk NFTs being legally classified as standalone assets rather than receipts of ownership.

In the absence of definitive court rulings, both overseas and at home, NFTs remain in a grey area. Prioritising licensing agreements and collaboration over adversarial minting could help avoid the high costs and reputational risks of multi-year litigation, as both Nike and StockX learned painfully in their lengthy dispute.

Conclusion

As NFTs evolve from speculative assets to utility-focused tools, regulatory gaps continue to persist despite technological growth. The analysis of tokenisation fundamentals, Hong Kong's fragmented legislative framework, and key cases demonstrate that the legal classification of NFTs remains uncertain. The *Nike v. StockX* settlement leaves whether an NFT's function — authentication versus standalone asset — determines its legal status unsettled. As the courts and regulators grapple with these novel issues, businesses and practitioners must navigate through a landscape where ambiguity is the only certainty.

Does Hyperlinking 'Hype Up' Charges? An analysis of 'Misuse of Computer' under the Crimes Ordinance (Cap. 200)

By Chong Hei Chit Hana & Wong Hon Tze Charles

Introduction

Imagine this: you share a link that allows others to enter a computer system without consent. The question is: are you breaking the law by sharing this link?

This essay argues that hyperlinking, as an act of digital reference, can constitute the actus reus of criminal damage by functioning as a novel instrument of harm. Our analysis will focus specifically on establishing the requisite element of 'misuse of a computer' under section 59 of the Crimes Ordinance, as well as discussing its application in the context of section 161 of the Crimes Ordinance. For the purpose of specificity, the issue addressed is whether (a) misuse of a computer and (b) access to computer under the Crimes Ordinance (Cap. 200) ('the Ordinance') included the act of hyperlinking.

Historical Background of the 'Misuse of a Computer'

Subsection 59(1A) of the Ordinance was introduced by the Computer Crimes Ordinance 1993 (Ordinance No. 23 of 1993) to extend the statutory meaning of 'damage any property'. The 1993 Ordinance was described in its long title as 'An Ordinance to clarify and amend the criminal law relating to the misuse of computers, and for related matters.' It created a number of crimes under various ordinances in relation to computers, aiming at the computer-related crime before it became a major problem. The foci include circumstances where computers have been accessed dishonestly, 'hacking', causing a computer to malfunction or to alter or erase the software and data held in it, and computer-related fraud .

The 1993 Ordinance, by adding subsections 59(1) and 59(1A), extended to 'destroy or damage any property in relation to a computer, including the misuse of a computer.' The statutory explanation of 'misuse' appears in subsections (a), (b) and (c). Subsection (a) concerns a computer being caused to function in a different way other than as has been established by its owner, notwithstanding that the misuse may not impair the operation or program of the computer, or the reliability of data held within the computer. While subsections (b) and (c) relate to the altering, erasing, or adding of any program or data held within a computer or a computer storage medium.

The Ordinance did not define 'computer', instead allowing the court to construe the term in light of technological advancements. As stated in the Hong Kong Legislative Council Official Record of Proceedings (the recommendations of the Legislative Council Subcommittee and the government's adoption of those recommendations), presented by Mr. Poon Kwok Lim, the Administration considered that defining 'computer' in legislation is inadvisable, as rapid technological advancement would quickly render any definition obsolete. A statutory definition also creates unnecessary constraints for prosecutors and offers defendants technical loopholes. Law enforcement reported no practical need for such a definition, as the courts could apply the term's common meaning supplemented with expert guidance when required.

Historical Background of the 'Access to a Computer'

Similarly, 'Access to a Computer' with intent was criminalised by the legislative council by way of amendment to the Computer Crimes Bill 1992 reflected in the1993 Ordinance. The birth of such new offence also stems similarly from common law jurisdictional reforms that have happened in the UK following its amendment along with its suggestion of 3 new substantive offences of computer misuse in 1989. Under the new offence, 'any person who obtains access to a computer- (a) with intent to commit an offence; (b) with a dishonest intent to deceive; (c) with a view to dishonest gain for himself or another; or (d) with a dishonest intent to cause loss to another, whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.'

Governing Laws and Principles

Whilst no case has directly dealt with this issue, one can observe many binding and persuasive guidance offered by different apex courts on issue(s) tangential to this.

A. Culpability under the 'Misuse of Computer' Offence

Firstly, *Chu Tsun Wai v HKSAR* is directly relevant in terms of what conduct constitute 'misuse of computer' under subsection 59(1A)(a). Specifically, the Court of Final Appeal had to consider whether the appellant had caused the computer to '*function other than as it has been established to function by or on behalf of its owner*' within the meaning of this subsection. The case itself concerned *Chu*, who was charged with criminal damage for launching a DDoS attack (Distributed Denial of Service) against the website of the Shanghai Commercial Bank. The defendant at the material times contested, submitting that the construction of the statute regarding what amounts to 'misuse' should be literal, focusing on the design function of a website rather than its purpose. Lord Hoffman (in giving the judgement of the court) rejected this argument by explaining that:

'Mr Shek was hard put to offer an example of an act which came within his construction of "other than as it has been established to function by … its owner" which was not excluded by the following words. In my opinion the functions for which the computer is established to do are not so much concerned with the way it works (or fails to work) but what it was intended to do.'

What we can extract from the ratio is the principle that the construction of misuse of computers (as is under subsection 59(1A)) takes a purposive approach rather than that of a literal approach. Lord Hoffman NPJ went on and held that:

'In my view, a DDoS attack is very appropriately described as a misuse of the bank's computer…Mr Shek suggested that so broad a definition of the offence could cause injustice. But one must take into account the general defences to a charge of criminal damage and in particular the requirement that the "damage" must have been caused "without lawful excuse".'

B. Culpability under the 'Access to a Computer' Offence

Secretary for Justice v Cheng Ka Yee is a case that turned on the use of a teacher's computer. The respondents were three teachers in a primary school (the first to the third respondents) and a teacher of another school (the fourth respondent). The three teachers were briefed on the competitive interview-based assessment for student admission to their school, including a folder containing the interview questions and marking scheme, on the material day. Two of the three teachers (the first and second respondents) used their mobile phones to take photographs of folder contents during the briefing and sent them to third parties via WhatsApp.

Curiously, one may submit that the act of hyperlinking is not an 'access' to another's computer. Although the case of *Cheng Ka Yee* concerned section 161 of the Ordinance rather than subsection 59(1A), it reflects a more limiting approach to the reach of computer offences.

Essentially, the Court of Final Appeal had to decide on the issue of whether restricted to unauthorised extraction and use of information from computers constituted criminal damage under section 161 of the Ordinance. In unanimously dismissing the appeal, Robert French NPJ, in delivering the judgment, upon a scrutiny of the legislative history of relevant provisions, held that:

'All in all, text, context and purpose in this case point in the direction of a construction of s.161 that does not extend to the use of the offender's own computer, unless that use involves getting access to another computer in which case the conduct is also likely to be covered by one of the other offences created or extended by the Computer Crimes Ordinance 1993.'

Evaluating Both Approaches to Criminalising Hyperlinking

Taken together, these cases frame the interpretive choice that matters for hyperlinking: *Chu Tsun Wai* uses a purposive, consequentialist approach to define what 'misuse of a computer' is; whereas *Cheng Ka Yee* limits such misuse to a personal sphere. If one adopts the approach from *Chu Tsun Wai*, the act of hyperlinking (provided that the requisite mens rea of the offense is satisfied) suffices to constitute misuse of computer; whereas adopting the *Cheng Ka Yee* approach, the act of hyperlinking can arguably be construed as an act of extraction that does not require physical (or even virtual access) to someone else's computer. With respect, the co-authors argue that the approach in *Cheng Ka Yee* is no longer sound for two reasons:

Firstly, such a line of distinction drawn between what criminal damage is or is not seems arbitrary. 'Access', as concluded in the ratio from *Cheng Ka Yee*, was found by implicit reasoning of what 'access' to computers could mean. But it is reasonable as well for one to submit that access does not need to take place for misuse of computer to occur.

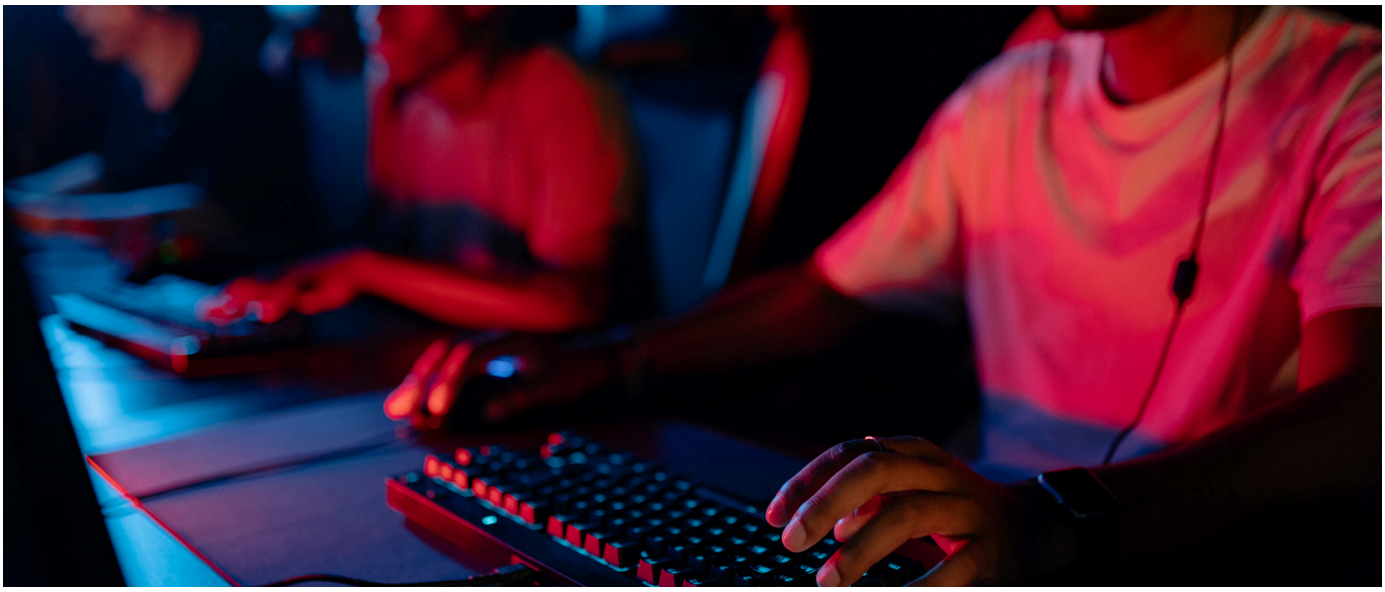
Secondly and more importantly, offences have evolved to a point where damage does not require access to someone else's computer, in order for them to be committed. Cases in the post-2019 era have well illustrated that hyperlinking can equally lead to damage or misuse of computers.

This is the exact question that the Magistrate had to decide in *HKSAR v Shik Chun-hay*, a recent case concerning a man, who logged into a link mistakenly sent by a TVB employee and sent multiple push notifications on the 'TVB News' mobile app. The defendant in the case was convicted of criminal damage and sentenced to community service. In the appeal, the court noted that, based on common sense, TVB, as a television station, would not authorise anyone to upload data at will. The appellant argued that the website provided a link, which, when clicked, displayed a message inviting users to create an account. There were no other reminders or warnings, and the average person would not understand the purpose of the link. The Department of Justice countered with an analogy that an 'open' sign on a storefront does not equate to an invitation to enter and vandalise. This case suggests that, depending on the situation, 'an access to another computer' requirement may be too narrow where hyperlinking is the mechanism by which unauthorised interference is carried out.

Thoughts and Implications

A. Hyperlinking: Passive Reference or Instrument of Interference

One may question what the scope of hyperlink is. Does it mean that whenever one hyperlinks, they breach the law? If that is the case, then a lot of us might have committed an offence in our daily lives. As mentioned above, one form of misuse is causing the computer to function other than as it has been established to function by its owner. If one knows the link leads to an unauthorised function, such as executing malicious code or participating in a DDoS attack, then the hyperlink ceases to be a passive reference. Instead, it becomes an active tool or instrument that causes a computer to perform the unauthorised function. Accordingly, the critical distinction is whether the hyperlink is deployed to cause a computer to function otherwise than as established, rather than being shared as a reference. Different kinds of misuse of computer could mean different things.



B. Meaning of 'Computer': a Purposive Construction

It leads to the second question: what is a computer? As explained above, the legislature intended to leave it for the the court to construe what a 'computer' is. The Official Record of Proceedings stated that all the attempted definitions are so complex that in an endeavour to be all-embracing, they are likely to produce extensive arguments, which confused magistrates, judges and added hurdles for prosecutors. On the other hand, the England & Wales Law Commission Report No. 186 of Criminal Law, Computer Misuse stated that they *'cannot think there will ever be serious grounds for arguments based on the ordinary meaning of the term 'computer'*. However, with technological advancements, most mobile phones possess some computer functions. Sending and forwarding most hyperlinks can be done through smartphones, smartwatches, and other electronic devices. So how should the term 'computer' be interpreted in the Ordinance? Albeit there is some confusion in this area, a purposive approach should be taken. A restrictive interpretation of subsection 59(1A) would significantly undermine its purpose and efficacy in combating computer-related crime. Regardless, what stands here is the need for the legislature (or the judiciary) to revisit what a 'computer' is. Whilst the legislature had much confidence in the judiciary's willingness to interpret and define what a computer is, the judiciary has been actively refraining from approaching this question point-blank.

Referring to *Cheng Ka Yee,* French NPJ in fact noted that:

'There are a number of constructional questions which could arise in this case. One is whether a smartphone or an iPhone is a computer for the purposes of s 161(1)(c)? Another is whether, assuming such a device is a computer, its use to take photographs and transmit them to another involves "access to a computer"? The answers to those questions are not straightforward and do not fall to be determined in this appeal.'

The judiciary's lack of proactiveness in appropriately framing this much-needed guidance seems to have fallen short of the legislature's expectations.

C. Hyperlinking and 'Access': Moving Beyond the Offender's Own Device

The third question will be how hyperlinking constitutes criminal damage if one uses one's own computer, instead of someone else's computer. In *Cheng Ka Yee*, the court held that the construction of section 161 does not extend to the use of the offender's own computer, unless that use involves getting access to another computer. Even though the case turned on section 161, Mr. Justice French NPJ nevertheless stated that this construction is also 'likely to be covered by one of the other offences created or extended by the Computer Crimes Ordinance 1993'.

Our analysis submits that the act of hyperlinking in an unauthorised context inherently transcends the boundary of the offender's own device. When an individual hyperlinks, the act no longer concerns a single computer in isolation. The process involves at least three computers: the source, the offender's computer, and a hyperlink upon its arrival at a recipient's device. Thus, even if the initial 'send' command is executed from the offender's phone, the offence is completed at the moment the hyperlink is deployed into a system, where it can cause the recipient device to perform the unauthorised function. The damage is not to the sender's own hardware, but to the data and programs accessed through the networked chain.

D. Remoteness / Causation

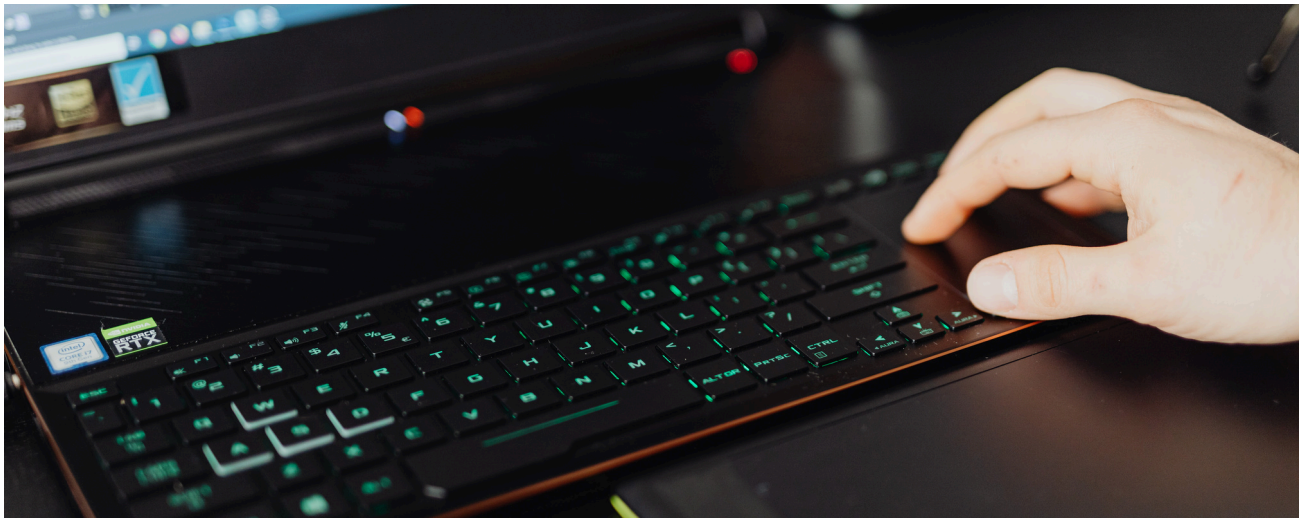
Upon establishing the actus reus and mens rea, there may still be a gap to hold an individual liable for criminal damage by hyperlinking. Unlike the analogy used in *Shik Chun-hay* about the 'invitation of an "open door" sign', giving someone an axe does not mean you endorse the person using it to break and enter. The issue here is whether hyperlinking (as construed by the sharing of hyperlinks) is the causative reason for which criminal damage occurred. Since Smith, Hogan & Ormerod's Criminal Law classifies criminal damage as a result crime, it follows that the offence is subject to a test of causation. The proper test in relation to causation is the 'but for' test, but that is not all.

In *R v Kennedy (No 2)*, the court held that chains of causation can be broken where a defendant provides a means of offence, if the ultimate act was voluntarily committed by someone else. Applied here, even if hyperlinking is the causative link, the subsequent test is whether the damage is reasonably foreseeable to a layman, who decided to share a link that led to such damage. The caveat here could be that there is a causative gap between hyperlinking and the eventual misuse of computer.

Conclusion

The question of whether hyperlinking amounts to 'misuse of a computer' is a relatively unexplored issue that remains to be directly addressed by the Hong Kong judiciary. Criminalising hyperlinking under the Crimes Ordinance (Cap. 200) is a move that can ripple through many underlying problems related to the notion of computer misuse. There also exist some potentially conflicting interpretations of hyperlinking in current case laws. This is a space that warrants more clarity, certainty, and discourse.

Arguably, billions of people share hyperlinks on a daily basis; this is an issue that concerns everyone. Watch this space.



How Does Hong Kong Law Address Issues of Cyberbullying and Revenge Pornography?

By Ma Chuqiao Ada

Introduction

Universal access to technology gives rise to a concerning issue: the rapid spread of cyberbullying, online harassment, and revenge pornography. Digital aggression, i.e. the use of information and communication technology to inflict harm on others, is exacerbated due to the anonymity on the internet. While there have been attempts addressing these offences, Hong Kong's existing legal framework is still largely inadequate in addressing these complex issues.

This article will first analyse cyberbullying and online harassment, then delve into the specific challenges posed by cyberbullying incidents involving children and young adults, and conclude that the current legal system may inadvertently shield perpetrators from accountability.

This article will also investigate the current law on regulating revenge pornography, including the previous legal framework and the addition of section 159AAE to the Crimes Ordinance (Cap. 200) ("CO"), governing the publication or threatened publication of intimate images without consent. While the introduction of section 159AAE is an adequate response to the rife incidents of revenge pornography, there are still significant shortcomings, including the absence of post-incident procedures and the impotence in the investigation and tracking of offenders.

Online Harassment: an Overview

As defined by the Office of the Privacy Commissioner for Personal Data ("PCPD"), cyberbullying refers to "the use of email, images, or text messages sent to web pages, blogs, chat rooms, discussion forums, online gaming networks, mobile phones, or other information and communication technology platforms" to act in a way that constitutes "harassment, denigration, disclosure of real-world identities, framing, impersonation, trickery, and exclusion". As online harassment is an integral component of the broader issue of cyberbullying based on the PCPD definition, online harassment will be examined together with cyberbullying.

As of now, Hong Kong government has not implemented any statutory provisions directly addressing cyberbullying. Instead, cyberbullying is governed by ordinances regulating defamation, criminal intimidation, doxxing, and the infringement of intellectual property.

Not only is the legal framework tackling cyberbullying and online harassment relatively disorganized, but online anonymity has also severely reduced perpetrators' legal accountability. It is difficult to track the identities of cyber-bullies, as they can "hide their identities on the internet" and require "neither the physical nor social prowess that may be needed for traditional bullying." Eventually, the absence of comprehensive legal protection and online anonymity has made everyone susceptible to cyberbullying.

Adolescents and Young Children as Victims of Cyberbullying

Adolescents and young children are unsurprisingly more prone to cyberbullying. According to a 2022 survey by Save the Children Hong Kong, 20% of secondary school students experienced some forms of cyberbullying, of which 40% experienced sexual harassment online. A victim responded that he found the current Hong Kong Law "hardly restricts" people's speech and actions online, so he can only protect himself by not reading or listening to abusive comments.

Researchers have identified a unique cyberbully-victim relationship from cyberbullying on youngsters. While some studies found that adolescent victims have no idea who the cyberbullies are because of their hidden identities on the internet, other studies indicated that the majority of cyber-bullies are peers from school or victims' direct acquaintances. This means that teenage cyberbullies are of similar ages to their victims, implying possible social and physical interaction beyond the web. This creates a serious problem of persistent bullying, which begins with traditional bullying at school and continues as cyberbullying at home.

Cyberbullying is particularly troubling when committed by minors, given the implications for both accountability and social development. When young individuals commit abusive acts severe enough to incur criminal liability, the law operates in a way that protects underage criminal offenders. According to section 3 of the Juvenile Offenders Ordinance (Cap. 226) ("JOO"), children under the age of 10 are not liable for criminal offences. Although the likelihood of a child under the age of ten engaging in cyberbullying that meets the threshold for criminal liability is low, it cannot be ruled out, given the widespread involvement of young children in harmful online activities. The same issue occurs with older adolescent cyber-bullies. Under section 3C of JOO, offenders under 16 are tried in juvenile court, making imprisonment unlikely.

The current legislative framework may in fact undermine the deterrence of the law on young cyber-bullies. Children and young adolescents, who engage in cyberbullying, often lack full comprehension of the severity of the harm they have caused. Coupled with the low practicality of imposing legal punishment on anonymous cyberbullies, some perpetrators may exploit the regulatory loopholes as a shield for further abusive and malicious behaviours. Legislative reform is therefore necessary to better safeguard youngsters from cyberbullying and halt the act of teenagers hurting each other on the internet.

Currently, the resources combating teenage cyberbullying primarily focus on educational promotions. The Hong Kong Education Bureau delivered workshops and seminars to guide schools and parents on intervening in potential cyberbullying behaviours, educating young victims on strategies to protect themselves from cyberbullying, and promoting compassion and sympathy. Despite continuous effort on guiding youngsters to handle cyberbullying, only 15% of students know how to protect themselves in cyberspace and 88% of victims do not take any action to inform their parents or confront cyberbullies. At the same time, the number of cyberbullying victims is mounting in an alarming manner.

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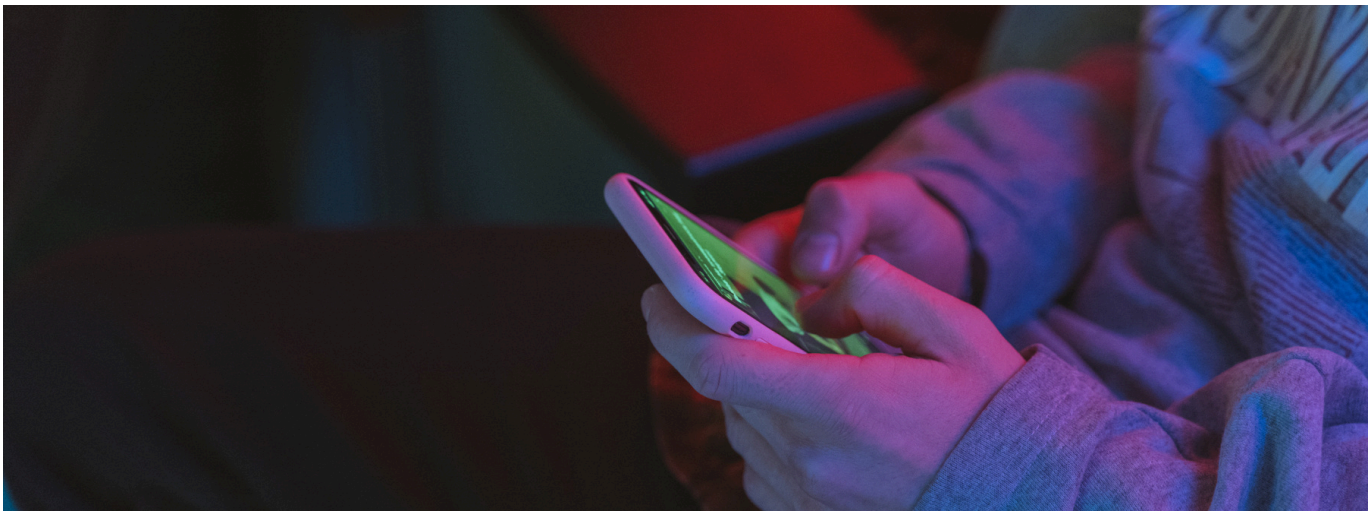


Schools in Hong Kong usually adopt a restorative approach in resolving bullying. A direct meeting between the victim and the bully would be arranged, and punitive measures are taken to warn the perpetrators of their undesirable behaviours towards their peers. Yet, it appears to be ineffective to stop bullying acts, for teachers report that offenders cannot fully comprehend the gravity of their acts. More often, schools simply separate the reported cyberbullies from the victims as an immediate solution, potentially neglecting the psychological distress that the young victims have already experienced.

The absence of a step-by-step post-incident procedures on cyberbullying is deemed to be destructive to victims' mental health. Quantitative psychological studies found that adolescent victims of cyberbullying are more likely to experience depression, anxiety, and stress. When victims perceive that the authorities and the legal framework have failed to hold perpetrators accountable, their faith in institutions that are meant to protect them is undermined. Consequentially, victims experience a strong sense of helplessness, exemplifying the negative psychological impact towards them. In the worst scenario, these negative feelings will develop into mental illnesses, with some even committing suicide. These findings highlight the urgent need to address the shortcomings in holding underage cyberbullies accountable.

Suggestions to Better Protect Teenagers from Cyberbullying

Policymakers are urged by the prevalence of cyberbullying to closely examine the problem of juvenile offenders in relation to cyberbullying. The goal is to establish a comprehensive framework that deters bullying, provides victims with the necessary support, educates young perpetrators to understand the negative impact of their actions, and ultimately eliminates cyberbullying. This shall involve legislative reforms to hold teenage cyberbullies accountable for their acts, the incorporation of restorative justice by educational stakeholders to address the root cause of cyberbullying, and the implementation of additional educational programs to strengthen youngsters' understanding towards bullying's harm and teach them the ability to resist partaking or doing further harm to cyberbullying victims. It is important to emphasise that legal interventions should be implemented to better ensure victims are not further traumatised, and young offenders are punished adequately.

Teachers and staff should be provided with clear guidance on how to effectively stop cyberbullying and more importantly, identify potential cyberbullying before it takes place. Schools should report serious cyberbullying incidents to the relevant governmental department and organs for follow-up actions. The above initiatives can safeguard the vulnerable underage internet users from different forms of online harassment and humiliation.

Revenge Pornography

In Hong Kong, the ordinance regulating revenge pornography has undergone several stages of development. Revenge pornography is defined in *HKSAR v Lam Ming Tung*, where the boyfriend threatened to share sexually explicit or nude images of his minor girlfriend online unless she agreed to continue their relationship. In the judgement delivered by District Court Judge Sham, this case is a classic example of revenge pornography, which is a type of online harassment when an ex-partner posts or threatens to post sexually explicit images of a person online without their permission.

The court approached the case by considering the negative impacts of revenge pornography being "devastating" on the victim, including "shame and humiliation," "depression," "feeling helpless and despair," and even "suicide." Then, the court suggested that the offence of revenge pornography should be "severely dealt with by the law" and "a prison sentence is almost inevitable." After a one-third sentence reduction of pleading guilty, the defendant was sentenced to 16 months of imprisonment for the offences of criminal intimidation and production of child pornography.

Prior to the legal reform in 2021, revenge pornography offence is often charged with criminal intimidation. The penalty ranged from a fine at Level 1 i.e. HK$2,000 to a maximum imprisonment of 5 years. This case serves as a precedent for threating to post revenge pornography, while more directions are required in deciding similar cases, given the increasing number of revenge pornography incidents in the society.

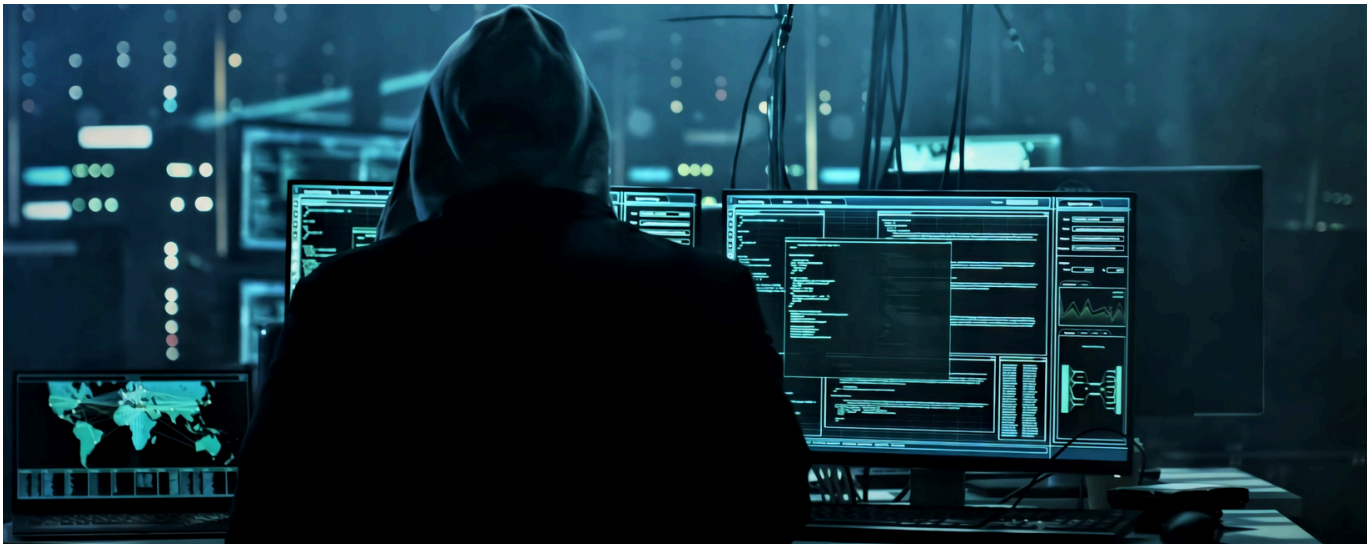
The Legislative Council ("LegCo") introduced six new sexual-related offences in July 2021, including sections in the Crimes Ordinance (Cap. 200) regulating the non-consensual distribution of intimate images without consent. The public response to the new law has been generally positive. LegCo received over 200 submissions from the Law Society of Hong Kong, the Hong Kong Bar Association, the PCPD, and various public organisations.

In October 2021, section 159AAE CO comes into effect. It stipulates that a person, who publishes or threatens to publish intimate images of an individual without consent, commits an offence. The mens rea for the offence is broadly defined: both the intention and recklessness to cause humiliation, alarm, or distress to the individual through the publication or the threat to publication. One is liable on conviction on indictment to imprisonment for 5 years if one commits an offence under subsections 1 and 2 of section 159AAE.

The addition of this section to the CO reinforces the court's previous view that revenge pornography will be "severely dealt with by the law" as noted in *Lam Ming Tung*. The maximum imprisonment of 5 years reflects the severity of the offence. A clear legal guideline for revenge pornography convictions is thus established in the hope of deterring potential perpetrators.

Notably, the law stipulates that the location of the image's creation, whether it was created with consent, the time it was made, and the perpetrator's capacity to publish it are immaterial to the offence. By rendering such factors legally irrelevant, the law strengthens protections for victims of revenge pornography, many of whom may be unwilling or unable to confront their perpetrators. Surveys have found that the majority of victims are susceptible to the sense of self-blame under the cultural and social context of traditional gender roles when they are faced with revenge pornography. The way the ordinance is constructed can effectively undermine the self-blaming narratives, which in turn encourages victims to seek legal support, marking a legislative leap to protect digital privacy.

However, the law enforcement body often fails to identify the perpetrator, due to the anonymity of the internet. Statistic shows that Hong Kong police received 1,207 complaints of non-consensual publications from 2021 to 2023, but only 830 arrests took place, and only 4 people have been convicted under section 159AAE CO. Another research conducted by RainLily, a non-government organisation against sexual violence, shows that the number of victims seeking to tackle non-consensual publications of intimate images almost doubled in 2022, compared to 2021. The disparity between the high number of reported incidents and the strikingly low number of convictions highlights the ineffectiveness of enforcement. As the police have acknowledged, the uses of overseas social media platforms and false identities by perpetrators make these image-based sexual abuse cases exceedingly difficult to trace.



In addition, the use of Artificial Intelligence ("AI") technology further issues of accountability, as revenge pornography can be made through deepfake. Deepfake pornography refers to synthetic sexually explicit material, in which AI is used to superimpose the face of a real person onto the body of another individual. The distribution of deepfake images and pornography without the subject's consent is also an offence under section 159AAE CO.

In cases of deepfake revenge pornography, the victim may not discover the material until long after it has been published. Even when victims become aware of the publication, the content may have been widely disseminated online. Given the perceived permanence and anonymity of the internet, the delayed discovery of non-consensual material means that the full extent of its dissemination is unlikely to be identified. This poses significant challenges for efforts to remove the content. As a result, victims may experience heightened feelings of humiliation, alarm, or distress.

Law enforcement that involves foreign parties further complicates the challenge of non-consensual material removal. As many platforms, such as Instagram and Pornhub, are based in foreign jurisdictions, the Hong Kong police may encounter difficulties in obtaining data from these platforms for investigative purposes. Even if the perpetrators are identified, a court order requiring the removal of non-consensual content may have effect only within Hong Kong and not in other jurisdictions. By the time legal proceedings concluded in Hong Kong, the content may have been further disseminated or saved by anonymous internet users. Accordingly, combating revenge pornography requires a coordinated international approach that extends beyond Hong Kong's jurisdiction.

The clarity of the legal provision raises concerns addressed in the submission of the Law Reform Commission. When the data subject's consent of the intimate photos is given and subsequently withdrawn, will the ex-partner commit the section 159AAE offence, if the ex-partner keeps those photos without sharing and says, "you know I have taken 100 pictures of you?" The victims will certainly be harassed and intimidated by the mere knowledge of this statement. However, this will not be considered as "publications" because there are no publications of the photos onto the internet. In this case, can the criminal intimidation offence provide grounds for the victim? Or should the victim seek help from the Office of the Privacy Commissioner for Personal Data to protect their data, given the withdrawal of consent for using these images? These questions require the court's further interpretations when the case arrives at the higher courts.

Another issue concerns civil remedies. As the Hong Kong court has previously recognised, the mental and emotional damages to the victim of revenge pornography are "devastating." This underscores the need for victims to resort to not only criminal prosecution, but also civil claims to obtain compensation for the psychiatric injuries suffered. Such claim is recognised in other common law jurisdictions. In the U.S., a victim was awarded US$6.5 million in damages following a systematic revenge pornography campaign. Similarly, a UK court awarded a victim of sexual image-based abuse £97,000 in damages. However, the award of damages under revenge pornography through a civil claim has yet to be addressed by the Hong Kong courts. The inherent difficulty to start a lengthy tort claim and the absence of directions as to the calculation of damages awarded to revenge pornography victims are possible attributing factors to the absence of cases. Issues, such as the discretion of awarding monetary or non-monetary damages to revenge pornography victims, and the feasibility of claiming damages under psychiatric injury shall be answered by the court when cases arise. Until then, it is uncertain how the victims can seek damages apart from through the criminal justice system.

In general, the Hong Kong government's efforts to address the issue of revenge pornography through section 159AAE CO nonetheless represents a significant step forward. The clear definition of the offence and the corresponding penalties conveys a strong message that publications or threatened publications of intimate images without consent shall not be permitted.

That said, technical and practical issues have not yet been addressed. Removal of pornographic materials disseminated outside of Hong Kong, clarity of the statutory language, and the availability of a tortious pathway as a remedial measure of the harm suffered by the victim, are to be further discovered through the actual practice of the law and application of the rules in future cases.

Conclusion

This article analyses the development of Hong Kong law in combating the offences to cyberbullying and revenge pornography. Hong Kong's current legal apparatus remains largely ineffective in securing a safe cyberspace for its citizens, despite some progress on combating these two issues through the combined efforts of various stakeholders.

There are significant obstacles faced by law enforcement in investigating forms of cyberbullying and revenge pornography. More guidance is needed on the appropriate legal remedies and damages for victims, particularly in terms of the psychological harm inflicted for underage victims and revenge pornography victims. This gap has to be filled to ensure a safer cyberspace for all.

Moving forward, this article calls for strengthening investigative capabilities of the Hong Kong police through international collaboration, further clarifications on the laws of cyberbullying and revenge pornography, allocation of social resources to protect underage victims, and the establishment of clearer guidelines on legal remedies.

Trial-and-error Governance and the Conditional Advancement of the Rule of Law in China

By Zhang Hanqi

Introduction

China's reform trajectory has long followed a "trial-and-error" approach, in which policies are first tested through localised experiments and then adopted with incremental adjustments in response to feedback. This adaptive style of governance has undoubtedly driven much of the country's economic and institutional development by enabling continuous policy refinement. At the same time, this very flexibility raises a profound question: whether reforms rooted in experimentation can truly lead to substantive progress in advancing the rule of law?

The rule of law involves more than simply having laws on the books; it requires clarity, consistency, effective checks on arbitrary power, and equal treatment under the law. By contrast, experimental reform often starts with intentionally ambiguous guidelines, grants broad administrative discretion, and results in uneven or fragmentary implementation across various local jurisdictions. This dynamic creates an inherent tension: while the rule of law relies on stability and predictability, experimentation operates through flexibility and adaptability.

This essay argues that China's trial-and-error reforms can promote the rule of law, but only when certainty, transparency, and institutional accountability are embedded into the reform's design and objectives. When these values are prioritised, reform becomes a tool not just for administrative efficiency, but for the advancement of legal governance. To support this argument, the essay is structured as follows: firstly, it outlines the theoretical tension between experimental reform and rule-of-law principles. Secondly, it examines the foreign investment negative list reform as a case study, where trial-and-error governance can enhance legal predictability and transparency. Thirdly, it considers the reform of China's state-owned enterprises ("SOEs") as a counterpoint, showing how similar experimental methods can be directed toward reinforcing political control rather than advancing legal norms. This comparison highlights how the impact of reform depends not on the method itself, but on the goals and institutional structures guiding its implementation.

Trial-and-error Reform and its Conditional Advancement of the Rule of Law

China's reformative efforts have tended to prioritise practical effectiveness over strict adherence to formal procedures. Many initiatives begin as localised pilot programs, refined through ongoing feedback, and gradually expanded in scope. These reforms are often carried out in the absence of a clear and detailed legal framework. This approach reflects a governance philosophy, commonly described as "crossing the river by feeling the stones," a method by which the central government tests the viability of policies through incremental, adaptive adjustments.

However, this logic often stands in tension with the concept of the rule of law. According to the United Nations' definition, the rule of law implies legal certainty, accessibility, generality, and constraints on arbitrary power. In contrast, experimental reforms may begin with informal rules and wide administrative discretion, relying more on internal Party-state consensus than on public law-making processes.

Nevertheless, trial-and-error reforms are not inherently incompatible with the rule of law. Rather, their compatibility depends on the features of and the subsequent institutionalisation of the reform. When experimentation aims to reduce judicial discretion and improve legal clarity, and is later codified into official legal documents, then it can create space for legal predictability and accountability. This was partially demonstrated in the case of the foreign investment negative list reform, which was piloted in the Shanghai Free Trade Zone ("FTZ") and later shaped the 2020 Foreign Investment Law. By contrast, when experimentation reinforces discretionary control, bypasses legal procedures, or prioritises political objectives, as observed in the SOE reforms, it improves administrative efficiency but not legal autonomy.

Therefore, the key issue is not to ask whether trial-and-error works, but what kind of legal outcomes it produces. Reforms that emphasise legal transparency, constraint, and replicability are more likely to advance the rule of law than those driven primarily by political responsiveness or stability.

Case Study: Foreign Investment Reform as a Path to the Rule of Law

The shift from a "positive list" to a "negative list" model in China's foreign investment regime illustrates how trial-based reform can contribute to the rule of law. Traditionally, even with China's commitment to the World Trade Organization ("WTO"), foreign investors could only enter sectors explicitly approved by the government. This "positive list" system required investors to seek case-by-case approval from the relevant government authorities.6 The lack of clarity and consistency imposed challenges to both legal certainty and equal treatment under the law.

The negative list reform was not constructed out of a vacuum. It reflected both domestic governance needs and international pressures. Domestically, the long-standing approval-based "positive list" system was increasingly criticised for its lack of transparency, arbitrary decision making, and unpredictable market access conditions, which undermined investor confidence.

Externally, China's WTO membership and its active pursuit of high-standard bilateral investment treaties ("BITs"), particularly with major economies like the United States, created strong expectations that China would incubate a clearer, rules-based, and more open investment environment. Additionally, global trends favouring negative list approaches in regional trade agreements, such as the Trans-Pacific Partnership, further encouraged China to align with international norms and reduce existing barriers to foreign entry into China's market.9 These internal and external motives converged to push forward a structural shift in China's foreign investment regulatory framework.

In 2013, the Shanghai FTZ piloted the first negative list model. Under this system, all sectors were presumed open to foreign investment except those explicitly restricted or prohibited.

Though the initial list contained 190 items and several ambiguities, it marked a fundamental transition from state permission to market access by default. Over successive revisions in 2014, 2015, and 2017, the list was significantly shortened, reflecting feedback from enterprises, internal policy adjustments, and growing regulatory confidence. The reform expanded to other FTZs and was eventually formalised nationwide through the 2020 Foreign Investment Law, which codified the pre-establishment national treatment and negative list mechanism as the legal standards.

From a rule of law perspective, the reform had several significant effects. Firstly, it improved legal predictability by providing stable and certain rules. Secondly, it reduced administrative discretion, limiting local officials' ability to block entry or demand additional approvals. Thirdly, the reform enhanced regulatory transparency, aligning China's investment governance more closely with international norms, such as those found in the WTO and BIT frameworks. Though the presence of legal documents and official rules improves the capacity for legal redress within the administrative law framework, and promotes the advancement of the rule of law, the government still retains significant discretionary power over investment activities in sensitive areas like national security.

According to the Draft Foreign Investment Law, "any foreign investment that endangers or may endanger the national security" will be reviewed by a conference consisting of multiple relevant departments. Neither administrative reconsideration nor administrative litigation is available where there is any dispute concerning the decision of the national security review.

In conclusion, the "negative list" reform represents a positive step toward enhancing institutional predictability, narrowing administrative discretion, and advancing the rule of law. It serves as a prime example of how experimental, trial-and-error reforms can promote legal formalisation. However, it also reminds us that even when the general goal is to advance the rule of law, the reform process itself may remain constrained by underlying political logic and state interest. As such, progress in legal governance is rarely linear, but rather it unfolds within ongoing tensions between top-down and bottom-up governances, and between globalisation and state sovereignty.

A Comparative Perspective: Two Reform Paths and their Diverging Legal Outcomes

While China's foreign investment reforms reflect an incremental turn toward rules-based governance, the reform of state-owned enterprises reveals a parallel but contrasting practice. Both initiatives adopted trial-and-error approaches. However, they differ fundamentally in their final objectives and their reform logic.

Whereas the negative list reform reduced administrative discretion and enhanced legal predictability, the SOE reform reinforced hierarchical political oversight through legal mechanisms, a model best described as "rule by law under political leadership."

The 2015 "Guiding Opinions on Deepening SOE Reform" ("Guidelines") marked a significant milestone in this process. It restructured SOEs into functional categories (commercial, strategic, and public welfare) and promoted innovations, including mixed ownership. The Guidelines not only addressed reforms of SOEs, but also redefined the relationship between the SOEs and the Chinese Communist Party. The Party strengthened its political leadership and primary-level organisations in these entities.

This embeddedness illustrates a shift from informal Party influence to formalised political control. As Professor Hu Shixue, an Assistant Professor at The Chinese University of Hong Kong, specialising in international law, investment law, and trade and transnational business law, has argued, SOE reform represents not a withdrawal of politics from enterprise, but a reconfiguration of control methods, embedding authority through legalistic forms without relinquishing hierarchical power. The law here does not serve as a constraint on political authority; rather, it functions as an instrument to legitimise and stabilise that authority.

In contrast, the negative list reform created clearer legal baselines for market access, minimised discretionary barriers, and aligned China's regulatory regime with international legal norms. It introduced legal texts that are nationally unified and in principle subject to administrative and legal challenges. These features are the hallmarks of rule of law governance, even if they do not yet guarantee full judicial autonomy. The divergence between these two reform trajectories highlights a broader tension between two conceptions of legal authority: the rule of law, which constrains power through general and reviewable legal norms, and rule by law, which deploys legal instruments to advance policy objectives and consolidate political authority. The SOE reform reflects the latter, illustrating how legal experimentation and trial-and-error mechanisms can operate alongside intensified political control.

Conclusion

China's trial-and-error reforms reflect a flexible approach to governance that emphasises practical problem solving over strict legal formalism. While this method has encouraged institutional innovation and policy adjustment, it also highlights a fundamental tension between experimentation and the rule of law. As this essay has discussed, the legal impact of such reforms depends largely on how they are designed, carried out, and institutionalised. The foreign investment negative list reform shows that when transparency, legal codification, and accountability are built into the process, experimental reforms can strengthen legal clarity and predictability. On the contrary, trial-and-error reforms can also be used to entrench political control when legal tools are used to reinforce, rather than limit, state authority. Ultimately, China's experience suggests that experimentation is not inherently incompatible with the rule of law; instead, whether it advances legal reform depends on whether law is used to check power or simply to legitimise it.

Feature Interview

with Mr. Roden Tong, President of The Law Society of Hong Kong

In January 2026, we sat down to conduct a casual interview session with Mr. Roden Tong, President of The Law Society of Hong Kong and Chief Executive of Berkley Insurance Asia.

Q1: On behalf of the Hong Kong Student Law Gazette, thank you so much Mr. Tong for doing the interview with us today. Let us begin by asking about your professional journey. From being in private legal practice to leading Berkley Insurance Asia, and becoming President of The Law Society of Hong Kong, you seem to have gone through a lot of changes in your career path. Would you mind telling us about your background, and what were some inspirations that shaped this career path?

RT: I completed my first degree in Australia. After returning to Hong Kong, I worked in a law firm as a paralegal and subsequently undertook formal legal training, including an LLB with the University of London and an LLM at the City University of Hong Kong. In the past, particularly in Australia, it was commonly said that one should not take law as a first degree. There was a prevailing belief that aspiring solicitors needed broader life experience in order to effectively advise clients. While perspectives have clearly evolved over time, that thinking did influence how I approached my legal education and early career, encouraging me to remain open-minded and curious about different professional pathways.

Frankly, I had no intention whatsoever at the time to move into an in-house role. I sent my CV to an insurance company largely out of curiosity. At that stage, I was already handling a considerable amount of insurance litigation in private practice, and I wanted to better understand how the industry operated from within. Somewhat unexpectedly, I was invited for an interview almost immediately, and I eventually joined the company because they were looking for someone with a solid litigation background. From that specialist role, I was later promoted into managerial positions covering Hong Kong, Greater China, and eventually North Asia, before becoming Chief Executive.

As for my involvement with the Law Society, it was very much a gradual and long-term commitment. I served the Law Society for nearly two decades before assuming the presidency. My journey began at the foundational level, through participation in committees and working groups, before I later stood for election to the Council. I have often described myself as a "reformer," in the sense that I believe the Law Society must continue to evolve in response to the particular challenges faced at different stages of Hong Kong's legal development.

One key inspiration that shaped my career path came from my former principal, who consistently encouraged me to try new things. He once said to me, "You are still young. Why don't you try? If you don't like it, just come back and start over again." That advice stayed with me. Maintaining an open mind and a sense of curiosity is vital for professional growth, particularly in the legal profession, where legal knowledge must constantly be transformed and applied to real world challenges and increasingly complex global issues, such as sanctions and regulatory risks.

Q2: Hong Kong is often compared to rivals like Singapore and London. From the Law Society's perspective, what is Hong Kong's core competitive edge as a legal jurisdiction today? And secondly, how do you see us leveraging that edge — particularly our role in the Greater Bay Area — to better connect our legal services with the region and the world?

RT: Many people continue to ask why Hong Kong still needs the framework of "One Country, Two Systems." This is a highly unique and historically grounded arrangement, and it requires constant explanation to the international community. Some find the idea of two systems within one country difficult to grasp, and they often question how such a structure can function in practice. In the early years leading up to the 1997 handover, there were genuine uncertainties about whether Hong Kong's common law system would continue. However, as we stand here in 2026, it is clear that the system has not only endured but remains robust. Hong Kong operates a bilingual legal system under Article 9 of the Basic Law, with both Chinese and English as official languages. The continuity of the common law system provides long-term confidence to the international legal and business community.

Comparisons are often drawn between Hong Kong and Singapore, but I do not believe this is an entirely like for like comparison. The two markets are fundamentally different. Unlike Singapore, Hong Kong is part of China, the world's second largest economy, and serves as a direct gateway to Chinese Mainland's capital markets. Hong Kong is also a major international IPO centre and the largest offshore RMB centre globally. These are advantages that are not easily replicated elsewhere.

In addition, Hong Kong lawyers are often trilingual, with proficiency in Cantonese, English, and Mandarin. This linguistic capability allows Hong Kong to play a genuine bridging role between Western, Asian, and Middle Eastern markets.

To further connect Hong Kong's legal services with the region and the world, I believe efficiency and adaptability are key. The legal market here is highly responsive to technological change and evolving client expectations. In the past, responses were not expected to be instantaneous. Today, clients expect timely communication through digital platforms, such as WhatsApp and WeChat, and the profession has adapted accordingly.

Rather than viewing AI and new technologies as threats, Hong Kong's legal sector has embraced them as opportunities for growth. This adaptability is one of the reasons Hong Kong continues to remain competitive on the global legal stage.

Q3: As you have just mentioned, challenges such as AI are more prevalent in the current legal landscape. How would you suggest young professionals tackle these challenges associated with AI and legal technology?

RT: If I were to tell young people not to use AI, they might reasonably think that I am being unrealistic. AI is already embedded in many aspects of legal work. However, what I always emphasise is that, even if you use AI, you must still understand how to draft and analyse documents independently. You should never rely entirely on AI to do the work for you.

At the end of the day, this is your professional journey. If everything you produce comes solely from AI, you will not develop the analytical and critical thinking skills that define a competent legal professional. Over time, your role and professional value will inevitably diminish.

Some universities have suggested that the Law Society should formulate a policy governing the use of AI by law students. We have considered this from a regulatory standpoint, but in practice, it is extremely difficult to implement. Without a disclosure requirement, it is nearly impossible to monitor or identify the use of AI, particularly given the speed at which technology evolves.

The Law Society published a Position Paper on AI in 2024, which makes it clear that the ultimate responsibility for any legal work produced rests with the legal professional, and not with the technology. If a lawyer relies on AI without maintaining professional standards, they will still be held accountable under the rules of professional conduct.

Q4: You have already discussed a number of skills that you believe legal professionals and law students should possess, such as bilingual language skills, client-centric communication, and knowing how to properly use AI. Is there anything you would like to add?

RT: In addition to technical skills and legal knowledge, I would strongly emphasise the importance of cultivating your human qualities. In the age of AI, knowledge alone is no longer sufficient. AI can already perform many knowledge-based tasks. If a person's work is indistinguishable from what AI can produce, there is little incentive for employers or clients to engage that individual. To remain professionally relevant, you must develop qualities that technology cannot replicate.

One such quality is proactiveness. I often tell my young mentees that the ability to take initiative and engage meaningfully with others is crucial. AI can provide information and analysis, but it cannot replace the human drive to seek mentorship, build trust, and form professional relationships.

I have also observed a tendency for students from similar backgrounds to remain within small, familiar circles. For example, many Chinese Mainland students are highly proactive in reaching out to seniors to discuss career paths, partly because they have fewer opportunities to build international networks at home. By contrast, Hong Kong students, who already live in a highly international city, sometimes become more comfortable communicating digitally rather than practising face-to-face interpersonal skills.

I hope that both the Law Society and universities can encourage students to engage more actively with people from diverse backgrounds. Self-isolation, even if unintentional, may hinder the development of the very human qualities that are essential to competing in an AI-driven professional environment.

Q5: Many law students apply for different positions, whether they be internships, mini-pupillages, or training contracts. Often, students feel quite discouraged when we get rejected from our dream positions. Do you have any advice for the students to persevere in the face of adversity?

RT: Different individuals face adversity at different stages of their professional lives. Historically, the legal profession in Hong Kong was far less competitive. There was only one law school, and solicitors were relatively inaccessible to clients, who often communicated through clerks.

Today, the landscape is very different. Hong Kong now has three local law schools, a significantly larger pool of solicitors, and increasing competition from Chinese Mainland lawyers, whose numbers are substantial. Given Hong Kong's relatively high remuneration and the profession's respected status, it continues to attract talent from around the world.

That said, competition also creates new opportunities. These include developments arising from the Greater Bay Area, the Belt and Road Initiative, and emerging markets, such as the Middle East. At the same time, the legal profession is evolving beyond traditional practice areas into innovative fields, including cryptocurrency, stablecoins, and regulatory investigations.

In this environment, neither young nor experienced lawyers can rely solely on their existing training. Continuous learning is essential. Even I recently attended a presentation on digital asset insurance and the distinction between "cold" and "hot" crypto wallets, topics that were new to me. Rejection is part of the process. Rather than being discouraged, view it as an opportunity to reassess, improve, and adapt.

Q6: The final question is, if you can give one piece of advice to us law students, what would you want to say?

RT: If I had to offer just one piece of advice, it would be this: legal knowledge remains the foundation of professionalism in the legal field. Without it, nothing else can be sustained.

Beyond that foundation, proactiveness is the single most important quality that distinguishes outstanding professionals. It is what allows individuals to stand out in the eyes of employers, clients, and the wider community. A professional must take the initiative to reach out, to discuss ideas, and to drive implementation.

If you wait passively for instructions or feedback, opportunities will pass you by. Instead, actively seek out mentors and colleagues, engage in dialogue, and refine your work through discussion. Even as President of the Law Society, I continue to place great emphasis on interpersonal engagement and collaboration. Ultimately, progress, both personal and professional, depends on your willingness to take the lead.

The Hong Kong Student Law Gazette extends its sincere gratitude to Mr. Roden Tong for sharing his remarkable professional journey, insights, and reflections on the legal profession of Hong Kong.

Acknowledgment

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