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FEATURE

Mr. José-Antonio Maurellet S.C.
Chairman of the Hong Kong Bar Association

Letter from the Editors

Dear Readers,

Welcome to the 27th issue of the Hong Kong Student Law Gazette!

We are grateful for the insights and contribution from our student writers, time and utmost dedication from our editorial team, guidance from The Chinese University of Hong Kong, and most of all, our curious readers. We are pleased to play one small part in your law school journey and wider commitment to self-education and lifelong learning.

As always, this ambitious issue covers a lot of ground, ranging from a critique of the Supreme Court of Hong Kong's undisciplined handling of a Chinese customary law case in 1940, to a comparison of the Hong Kong and English jury systems, stemming from a recent Leeds Crown Court case. Across our two Issues in 2026, we have seen a common thread of the impact of the Russo-Ukrainian War on civil aviation in Russian and Russian-adjacent airspaces. Our student authors are equally captivated by the intersection between law and technology — in figuring out whether the current Copyright Ordinance (Cap. 528) is adequate in conferring the copyright of AI-generated outputs to the right person, as well as suggesting reforms to the Personal Data (Privacy) Ordinance (Cap. 486) based on the European Union models. The latter article was penned by our talented Managing Editor Amber Lee, and edited by our meticulous Editor Dina Guo, who have both worked steadfastly alongside the editorial team for the past two years.

We extend our gratitude to Professors Steven Gallagher and Christopher Roberts for invariably providing us with student article submissions through their exhilarating courses. In this Issue, we published a deep dive into the anti-fraud maxim and the ambiguous division between express and constructive trusts. There is also a perceptive piece on the Hong Kong Observatory as a colonial instrument, which prioritised protecting the British interest in maritime trade over the Chinese majority population.

Mirroring our last Issue (Issue 26, Spring 2026) on the President of The Law Society of Hong Kong, we have interviewed Mr. José-Antonio Maurellet S.C., the current Chairman of the Hong Kong Bar Association. There are many lessons to be learned from Mr. Maurellet's decision to deviate from the common path and become a barrister, to the cost-efficiency of junior barristers, and to the intellectual curiosity and intellectual humility that junior barristers — and all of us — should exhibit.

Finally, we hope you will thoroughly enjoy reading and learning from this Issue, and that something resonates with you and sparks an interest you did not know existed! It has been our honour to provide this independent platform for student writers and showcase their academic writing. We sincerely thank all seven members of our 2025-26 editorial team for their hard work as well as the teams that have come before us — until next Issue!

Happy reading,
Abraham Tse and Jasmine Wan
Editors-in-Chief

Editorial Board

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- Respective interviewees are only responsible for the interview they have given;
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- Citations for each article are checked and recorded.

The Gazette wishes you a happy reading.

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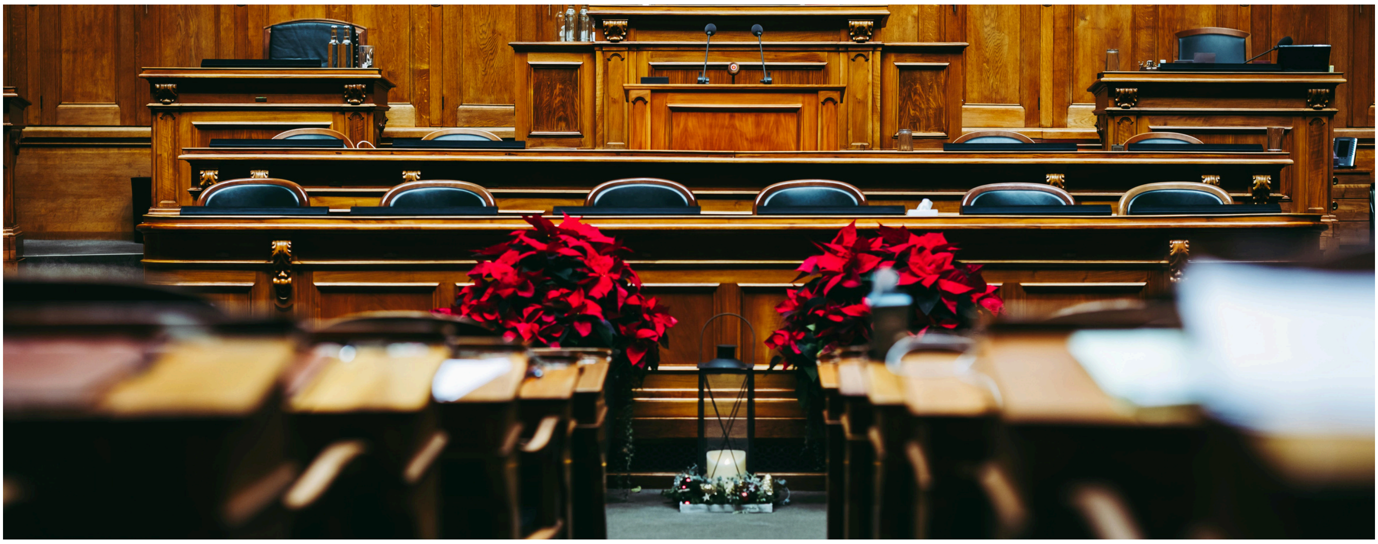
Criminal Law

Inside Court 12: Murder Trial with Mr. Jeremy Dein KC and Analysis into the Birthplace of the Common Law Jurisdiction

By Ng Cheuk Hei Harold & Chan Chak Fung Charles



Introduction

Stepping into Court 12 at the Crown Court, we witnessed the gravity of the English justice system in action. Mr. Jeremy Dein KC, as defence counsel, has brought us into the practicalities of United Kingdom criminal law.

Three defendants stood trial for a high-profile murder within the high-security walls of an English male prison. All three men were already serving long custodial sentences for prior violent offences before this alleged prison homicide took place.

The 'Death' Penalty with 'Nothing to Lose'

This trial concluded with the highest penalty in the UK: a whole life order imposed on all three defendants. Unlike Hong Kong, where parole remains possible in life sentences, this order condemns offenders to die in prison. It is a last resort for the most serious aggravated murder offences. Across England and Wales, official criminal justice records confirm fewer than 100 offenders are currently serving such irreversible custodial terms.

For defendants already serving life sentences, the trial was not about freedom, but about justice itself. Observing Mr. Dein's advocacy revealed a vital truth: the law's rigour does not diminish simply because a defendant is 'lost' to the system. Every charge must still be proved to the exacting standard of being 'sure.' This principle is less consistently upheld in Hong Kong prison offence trials, where defendants with prior convictions often face implicit jury prejudice that lowers informal evidential thresholds.

The English Jury System

In the representativeness of its jury system, England operates differently from Hong Kong, namely in two core procedural areas within Hong Kong's jury regime.

In Hong Kong, under Jury Ordinance (Cap. 3) section 4(1)(c), jurors must have 'sufficient knowledge of the language' of the proceedings. In practice, this requirement limits the jury pool to those with at least Form 6 education. Since most High Court criminal trials are conducted in English, this excludes many less-educated local Cantonese speakers, reducing jury representativeness and creating a middle-class biased jury pool. By contrast, in England and Wales, the Juries Act 1974 imposes no formal educational requirement or blanket language test. Jurors are randomly selected from the electoral register between the ages of 18 and 75.

The panel we observed in this trial, twelve men and women of varied ages and backgrounds, is seen as a genuine cross-section of society with balanced gender representation. Few jurors were also seen with tattoos, and while they bore no specific affiliations, nor should we judge them by so. The jurors appeared to be a true mirror of the local community, a diversity rarely seen in Hong Kong High Court jury panels.

The protection of random sampling is further seen in the abolition of defence peremptory challenges in England in 1988. Only challenges for legal cause remain, unlike Hong Kong with section 29 of Jury Ordinance, where up to five jurors may be struck out without cause. In England, advocates accept the ballot as it falls, with no room to tailor a favourable jury panel. The result is a jury, whose verdict reflects the common sense of a reasonable man. The decision made by ordinary citizens would be drawn from a broad reservoir of human experience.

Juries, as the finders of fact, continue to serve their essential role in the common law tradition in criminal trials across both jurisdictions, and yet, English jury rules better uphold trial impartiality.

It is, however, interesting to note that the prime minister of the United Kingdom has recently proposed removing jury trials for a significant number of criminal offences. A major change to the traditional jury system, in hopes of balancing the time management of the court, has sparked an open debate.

Three Defendants — 'Wrong Place at the Wrong Time?'

This is a closed-circuit-TV-led joint enterprise murder case occurring inside a segregated prison wing, with no direct eyewitness testimony and no conclusive forensic evidence linking a single defendant to the fatal stabbing. The prosecution relied purely on group CCTV presence to construct collective guilt. This case merits academic writing for two key reasons: firstly, it tests the boundary of joint enterprise law in custodial settings, a disputed legal doctrine also applied in Hong Kong criminal courts. Secondly, it presents a clear comparative study on how English defence advocacy challenges group prejudice, an advocacy skill transferable to Hong Kong jury trials involving multiple accused persons.

The trial's complexity lies in its multi-defendant nature. While the prosecution presented the three accused as a single, coordinated 'unit,' Mr. Dein differentiated his client's position to fight collective conviction bias.

In this trial, the Crown alleges a joint enterprise, a legal doctrine where a defendant may be found guilty if they either personally caused an injury, or intentionally encouraged and assisted an attack. As the three defendants were seen on CCTV entering into the activity together, the defence's task is to peel back this one-sided narrative of collective guilt. Mr. Dein firmly argued that mere presence is insufficient for conviction. Each defendant's intent and participation must be proven individually beyond a reasonable doubt.

In what is termed as an 'evidential black hole,' the case required a narrow focus on minute details: the lack of a scintilla (the slightest amount) of forensic evidence linking Dein's client to the fatal weapon, the impaired physical state of one defendant due to medication, and the routine movement habits of the accused inside the prison wing. The defence seeks to prove that while the defendants might have been present at the scene, the Crown might have failed to bridge the legal gap from passive presence to criminal participation. This maintains the high criminal standard of proof beyond a reasonable doubt, especially when the bulk of prosecution's evidence is largely circumstantial.

Guarding against Demonisation

Mr. Dein cautioned jurors against 'demonisation.' Prior convictions can cast a 'negative gloss,' swaying juror judgment instinctively, but procedural justice demands strict impartiality. The jury must judge the evidence and not the defendants' criminal records or personal characters.

Working with the Evidence Given

As suggested previously with an 'evidential black hole,' the Crown suggests that a lack of a reasonable explanation for their voluntary presence in the restricted prison cell supports a finding of guilt. The defence counters that this interference does not displace the Crown's statutory burden in this trial, nor does it create an exception from standard criminal trial rules, namely the prosecution's duty to prove their case beyond a reasonable doubt.

Mr. Dein navigated a trial, in which his client chose not to testify in his own defence, leaving the defence team to solely address evidential gaps in the prosecution's circumstantial case.

This leads to a vital, practical lesson for common law advocates: the art of advocacy in the face of circumstantial gaps. Defence counsel's core task is to present the same case facts in a different light. With the casual remarks made by the defendants onsite, the statements could be interpreted as prison bravado rather than a premeditated 'confession.' The prosecution points to certain offhand remarks as proof of a pre-planned criminal 'business,' while the defence argued that the term 'business' carries a broad informal meaning within prison culture, and does not refer to this specific fatal attack in the custodial environment.

The Honourable Mrs. Justice McGowan delivered her closing remarks, addressing both parties' counsel. She praised that for high-stakes prison homicide cases of this nature, 'very little can be said to excuse the conduct;' nonetheless, both sides' advocates have upheld their duties with the highest level of professionalism, assisting in ensuring impartial justice is properly done.

Verdicts

Ultimately, the juries returned guilty verdicts for all three defendants. As they were led away from the dock, the chilling finality was seen in a simple, two-word comment uttered aloud: 'Worth it.' For legal observers, the trial stands as a testament to the endurance and integrity of the English jury system. But it is equally important for all advocates practising in both English and Hong Kong courts to ensure that even the most socially unattractive defendants are tried not by their tainted reputations, but by a comprehensive evaluation of the available evidence, to preserve every person's constitutionally protected right to a fair trial.

'The one place, where a man ought to get a square deal, is in a courtroom, be he any colour of the rainbow, but people have a way of carrying their resentments right into a jury box.' —Atticus Finch

Equity and Trusts

Between Form and Fairness: Reconciling Fraud Prevention with Statutory Integrity in Rochefoucauld v Boustead and its Aftermath

By Shi Si Ava

Introduction

In English law, the proposition that 'equity does not allow a statute to be used as an instrument of fraud' had been well-established long before it was applied to the trusts cases, specifically those involving land conveyance. Where property was involved, the courts often cited *Rochefoucauld v Boustead* as the landmark case for this anti-fraud maxim.

This essay argues that the significance of *Rochefoucauld v Boustead* in the development of English trust law lies in its entrenchment of equity's anti-fraud principle and its catalytic role in shaping debates over the classification of trusts. *Rochefoucauld*'s importance can be understood through three points: firstly, it solidified the maxim that equity does not allow a statute to be used as an instrument of fraud, applying it decisively to the trusts of land, thereby making oral evidence admissible to prevent statutory abuse; secondly, it exposed doctrinal ambiguity between express and constructive trusts, sparking scholarly disputes and highlighting the fragility of classification; thirdly, it influenced the trajectory of modern trust law, where the courts increasingly preferred to adopt the constructive trust reasoning under section 53(2) of the Law of Property Act 1925 to reconcile equity's anti-fraud maxim with statutory integrity.

To demonstrate this, this essay will proceed in six parts: (1) outlining the formal requirements of trust creation and the difficulties posed by oral declarations, (2) setting out the facts and judgment of *Rochefoucauld*, (3) examining how the case solidified the anti-fraud principle, (4) analysing the doctrinal ambiguity between express and constructive trusts, (5) tracing the historical trend towards the constructive trust approach, and (6) critically evaluating whether *Rochefoucauld* was truly groundbreaking, concluding that its enduring legacy lies in catalysing debates, which continue to shape modern English trust law.

Part 1: Formality, Express Trust, and Constructive Trust

Before taking a closer look at the *Rochefoucauld* doctrine, it is important to note three key concepts: formality, express trust, and constructive trust. In *Knight v Knight*, Lord Langdale MR held that 'three certainties' were prerequisites for a court to acknowledge an express trust: (1) certainty of intention to create a trust, (2) certainty as to the subject (property) of the trust, and (3) certainty as to the object (beneficiaries or purposes) of the trust. As such, the law requires that the declaration of trusts complies with proper formalities. This issue of formality foregrounds judgments in property conveyance cases like *Rochefoucauld*, which involved oral declarations.

As with its predecessor, section 7 of the Statute of Frauds 1677, section 53(1)(b) of the Law of Property Act 1925 clearly regards the written form of a trust declaration as a statutory requirement: 'a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person, who is able to declare such trust, or by his will'. Nonetheless, similar to section 8 of the Statute of Frauds, the Law of Property Act offers a statutory exemption for such writings, stating in section 53(2) that '[t]his section does not affect the creation or operation of resulting, implied or constructive trust'. Prima facie, when a case is read as an express trust, it generally would still be bound to the proper written procedure. However, the complexity of an oral trust lies in distinguishing 'validity' and 'enforceability'.

The courts have repeatedly deemed oral declarations capable of establishing an express trust that is valid yet unenforceable. This line of reasoning is best summed up by William Swadling, who frames section 53(1)(b) as an issue not about 'validity' but about 'proof', that an express trust is not 'void' in the absence of a written declaration:

'[T]here is no shortage of authority to show that no rule of 'creation' is here engaged, that the statute does not speak to settlors, but to those involved in litigation, who allege a declaration of trust and bear the burden of proof in that regard.'

Thus, Swadling argues that, to reconcile a situation where a valid express trust has been created, and yet remained unenforceable, due to the absence of proof, equity necessitates the court to 'disapply' the written formality requirement in section 53(1)(b) to recognise the trust.

However, constructive trust is quite the opposite. It is non-express, informal, not always intended, and institutional. Implied by its nature, 'a constructive trust of land is created and operates without formality'. Rather, the fundamental question in determining the creation of a constructive trust, as Sir Robert Megarry VC stated, is 'whether the conscience of the recipient is bound in such a way as to justify equity in imposing a trust on him'. In other words, this is a retroactively imposed trust rooted in equity. Jacob J. Meagher has also provided a useful characterisation, describing constructive trusts as trusts that are 'treated as if they were express trusts'.

Part 2: The Rochefoucauld Doctrine

It shall be prefaced that certain facts of the case had not been captured or captured accurately in the case headline and related legal discourses. Nonetheless, material facts of the case can still be relied upon. Notwithstanding the sophisticated players and relationships involved in *Rochefoucauld*, the skeletal fact pattern, which the Court of Appeal considered, was a rather simple one: Boustead purchased a property from a Dutch company on behalf of the Comtesse on oral terms that he would hold it on trust for her; the Delmar Estates, having been mortgaged by the Comtesse's adoptive father, was eventually passed down to her, before sold to Boustead by the mortgagee (the Dutch company) upon default.

In delivering the judgment, Lindley LJ cited the equity principle, which bars the use of a statute to commit fraud, especially when the said statute was designed to prevent fraud. Of significant importance is how Lindley LJ explained 'fraud': 'it is a fraud on the part of a person to whom the land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land himself'. Having satisfied that there were the knowledge and intention necessary to create a trust, the court allowed parole evidence to prove the existence of a valid trust on equitable grounds.

The most controversial aspect of this judgment was arguably the legal strategy carrying out the equity doctrine. Lindley LJ stated that the trust 'is clearly an express trust within the meaning of that expression as explained in *Soar v Ashwell*'. In context, the trust enforced was viewed as an express trust to comply with the Statute of Limitations, which would have barred a constructive trust in *Rochefoucauld*, a case litigated more than ten years after the plaintiff's grievance arose. Thus, the judgment itself was rather ambiguous regarding the classification of trusts, leaving open the possibility of either an express trust or a constructive trust interpretation of the case.

Part 3: Solidifying the Anti-Fraud Equity Principle

By the time *Rochefoucauld* unfolded, numerous precedents had enforced orally declared trusts notwithstanding the Statute of Frauds. However, the courts had not been consistent with the anti-fraud equity principle. *Davies v Otty (No 2)* was a 1865 case in which the plaintiff, fearing legal troubles, voluntarily conveyed a property to the defendant, subject to an agreement for the return of the property. In deciding the case, Sir John Romilly MR avoided the formality requirement by ruling for an unrebutted presumption of a resulting trust. In a similar case, *Haigh v Kaye*, James LJ stated that 'the Statute of Frauds was never intended to prevent the Court of Equity from giving relief in a case of a plain, clear, and deliberate fraud', invoking equity as a result. Other cases also concurred. The Canadian case *Denny v Lithgow* and a subsequent UK case *Chattock v Muller*, both admitted oral evidence to prove the existence of trusts without explicit equity framing.

The applications of *Rochefoucauld* in subsequent cases demonstrated its landmark role in solidifying the equity maxim in oral trusts. Cases often cite *Rochefoucauld* as a binding authority. Far from being a theoretically clear resolution to the issue of formality in oral trusts, however, the case is a seed. *Bannister v Bannister* was a prime example of subsequent cases that cited *Rochefoucauld* and yet developed a much clearer constructive trust framework, which balances equity law and statutory law integrity. Scott LJ explicitly explained that the fraud 'arises as soon as the absolute character of the conveyance is set up for the purpose of defeating the beneficial interest'.

Part 4: Classification: Express versus Constructive Trusts

There are numerous debates assessing the novelty of the *Rochefoucauld* doctrine. In a sense, this is an extension of another debate: the classification of the trusts enforced in *Rochefoucauld*-type cases. Gregory Allan, who supports an express trust reading of the case, repeatedly described the case as ‘uncontroversial’ and ‘not groundbreaking’. To him, *Rochefoucauld* simply provided another precedent for what was said in cases, such as *Soar v Ashwell*. On the contrary, Ying Khai Liew declares that *Rochefoucauld* has created a ‘new category of constructive trust’, one where an agent, in taking conveyance from a third party on behalf of the principal, becomes a trustee bound by fiduciary liability. In light of both framings, this essay takes the view that the most significant legacy of *Rochefoucauld* is arguably the classification debates that ultimately shape the development of our modern understanding of express and constructive trusts.

As previously discussed, a major argument for the express trust framing is Swadling’s ‘disapplication thesis’. However, proponents of a constructive trust approach argue that the absence of a proper settlor is the primary obstacle to an express trust justification. As Liew points out, ‘he cannot declare a trust of property that he does not have’. *Re Ellenborough Park* has made it clear that a trust was void for uncertainty when a future property is made central to the declaration of trust. Thus, neither the Comtesse nor the Dutch company could have been settlors. While the Comtesse lacked absolute title, the Dutch company, acting as mortgagee, had not foreclosed the equity of redemption, and therefore, was not the absolute beneficial owner. Boustead himself could not have declared a trust either, since ‘the immediacy of remortgaging would have made it impossible for Boustead to have declared a trust over the unencumbered beneficial interest of the estates for the Comtesse’s benefit’. This factual and doctrinal impossibility undermined an express trust reading.

Moreover, Liew suggests that the constructive trust framework is more consistent with both the facts and the judgment of Rochefoucauld. The court treated Boustead’s trusteeship as commencing from the moment the estates were conveyed to him, not even for *scintilla temporis* (a brief moment of time). As Liew puts it, ‘“Fraud”, then, relates to the attempts to use the absolute form of the conveyance in combination with section 53(1)(b) to cloak the true nature of the transaction’. In this sense, fraud is ‘merely a state of affairs’, the situation where equity must intervene to prevent the statute from being used to defeat reliance and intention. Constructive trust rationalisation captures this dynamic by recognising that the transfer itself, coupled with reliance, generates equitable obligations.

Arguments for a constructive trust reading also gain strength from the reliance principle. As Liew explains, ‘the giving up of property in reliance on the transferee’s promise is always more detrimental to the transferor and more advantageous to the transferee than the reliance, which arises through the giving of consideration’. This makes the reliance through conveyance the most compelling trigger for equitable intervention. The Comtesse’s transfer of the estates, in reliance on Boustead’s promise, created precisely the kind of detrimental reliance that equity responded to. Hence, constructive trust analysis avoids the analytical inconsistencies of the express trust route and better reflects the equitable rationale Lindley LJ sought to establish in his judgment.

Part 5: Towards a Constructive Trust Reading

5.1 Historical Trend

Although *Rochefoucauld v Boustead* was framed at the time as an express trust case, in which oral evidence was admitted to prevent fraud, modern scholarship and judicial practice have increasingly preferred a constructive trust analysis. This doctrinal shift reflects a desire to reconcile equity's anti-fraud principle with the statutory framework under the Law of Property Act 1925. By categorising such trusts as constructive trusts, the courts avoid the awkwardness of 'disapplying' section 53(1)(b) and rely on the statutory exemption in section 53(2) instead.

5.2 Case Law Development

The trajectory of case law confirms this preference. The 1917 case *Langille v Nass*, though not a leading English authority, was held to involve a constructive trust imposed for the benefit of third parties, showing early judicial willingness to frame oral arrangements in constructive trust terms. In *Bannister v Bannister*, Scott LJ applied the *Rochefoucauld* doctrine, and yet he explicitly described his rule in constructive trust terms, with emphasis on identifying fraud by evaluating how the nature of the conveyance was disputed. This marked a clear doctrinal shift from enforcing the trust as an express oral trust to a constructive trust that arises from unconscionable reliance on the absolute form of conveyance. This shift is later reinforced by *Neale v Willis* in 1968, where Lord Denning MR saw a conveyance, subjected to 'beneficial interest to another', always gave rise to a constructive trust, despite it being 'absolute in form'. Lord Denning's decision confirmed that the courts preferred to frame such cases within section 53(2), rather than to expand and reinterpret section 51(1)(b) in the context of equity. Indeed, *Paragon Finance v Thakerar*, a more recent case in 1999, encapsulated this developmental trajectory in English trust law, describing the *Rochefoucauld* rule as a subcategory of constructive trusts.

Part 6: The Extent of Equity in Rochefoucauld

This leading authority of the anti-fraud maxim in oral trusts, however, is not devoid of elements that could undermine its equitable purpose. Allan's 2015 article uncovered previously overlooked and thus unknown facts in Rochefoucauld. Upon closer examination, it is arguable whether the Comtesse's conduct was entirely innocent. For example, having waited more than ten years to litigate, during which the estates appreciated in value under Boustead, she might have maneuvered to secure the property entirely for herself, excluding both her ex-husband and Boustead. This raises the concern that equity's anti-fraud principle, while designed to prevent statutory abuse, can itself be manipulated to achieve opportunistic outcomes. On a theoretical level, admitting oral evidence poses certain risks to the equity maxim. A good example is illustrated by *Jones v Lock*, in which the court found no trust, despite Jones' oral self-declaration giving £900 to his nine-month-old son. In his decision, Lord Cranworth LC warned of the precariousness of construing the intention of trust based on 'loose conversations', in lieu of a proper declaration of trust.

Nonetheless, case law suggests that a balance is often required to achieve equitable goals. As Mark Pawlowski and James Brown put it, '[s]ome relaxation of the formality requirement is, therefore, inevitable where the usefulness of form is outweighed by the desire to produce fairness between the parties'. The justice, previously achieved through this 'relaxation of formality', enforcing an express trust for the purpose of the limitation acts, could now be attained through section 51(2), via imposing a constructive trust. This effectively avoids the danger of undermining the parliamentary intent and even the constitutional separation of powers.

Conclusion

This essay has argued that the significance of *Rochefoucauld v Boustead* in the development of English trust law was foregrounded by the doctrinal ambiguities left unresolved. The case elicited classification debates over *Rochefoucauld*-type trusts, as jurists deliberated on an approach that could effectively reconcile equity's anti-fraud principle with statutory integrity. Subsequent case law, from *Bannister* to *Paragon Finance*, demonstrated how the courts increasingly preferred a constructive trust reasoning in line with section 53(2) as a resolution. In essence, far from settling the law regarding the oral trusts of land, *Rochefoucauld* provoked dialogues between equity law and statutes with a carefully maintained balance that shapes the modern English trust law.

Intellectual Property Law

Beyond Plain Reading: Reinterpreting Hong Kong's Computer-Generated Works Regime for AI-Generated Outputs

By Wang Mu Yun Audrey

Introduction

Artificial intelligence ('AI') has intensified an important copyright question in Hong Kong, as the city seeks to promote itself as a regional intellectual property trading centre: can AI-generated outputs be protected under the existing computer-generated works ('CGWs') provisions of the Copyright Ordinance (Cap. 528) ('CO')?

Relying on a plain reading approach to sections 11(1), 11(3), and 198(1) of the CO, the Consultation Paper finds that the existing framework, i.e. the CGW provisions, is sufficiently flexible to accommodate evolving technologies.

However, this approach results in tensions between doctrinal coherence and policy ambition. This article argues that Hong Kong's CGW provisions can continue to operate coherently in the era of generative AI, but only if section 11(3) is treated narrowly as a residual provision. The courts should first determine whether a human author can be identified under the ordinary authorship principles in section 11(1); only where no human author can be identified, should section 11(3) be engaged. It also argues that the concept of the 'necessary arranger' should be controlled through an output-specific proximity inquiry, focussing on the person whose arrangements were most directly responsible for the final disputed output.

Part 1: The Existing Framework in the CO

Inherited from the UK's Copyright, Designs and Patents Act 1988 ('CDPA'), Hong Kong's CO offers a pragmatic, yet contested framework for AI-generated works primarily through its CGW provisions. These provisions mainly govern the authorship of literary, dramatic, musical, and artistic ('LDMA') works. Section 11(1) provides that the author of a work is generally 'the person who creates it,' while section 11(3) states that, in the case of a CGW, the author would be the person 'by whom the arrangements necessary for the creation of the work are undertaken.' This provision must be read together with section 198(1), which defines 'computer-generated' works as works 'generated by computer in circumstances such that there is no human author.' Taken together, the provisions preserve a human-centred structure of the CO by identifying a human arranger behind a work, where no human author can otherwise be identified.

The government's current position is that this existing framework is sufficiently flexible to accommodate evolving AI technologies. It has repeatedly emphasised that issues arising from AI-generated works should be determined on a 'case-by-case basis.' While such an approach is both realistic and necessary, a complete reliance on case-by-case reasoning in the absence of a clear doctrinal framework is undesirable. It risks expanding section 11(3) beyond what the originality structure of copyright can bear.

Part 2: Doctrinal Analysis of the CGW Framework

Scholars in both Hong Kong and the UK classify the gaps left unsolved by the Consultation Paper into two categories. Firstly, there is a problem of originality. Both the CO and the CDPA treat AI-generated LDMA outputs as CGWs. When read together with section 198(1), which defines CGWs as works with no human author, a doctrinal tension arises. Section 11(3) nonetheless attributes authorship to the 'necessary arranger.' It is not immediately clear how this attribution can be reconciled with the originality requirement, which is generally understood to presuppose human skill, labour, and judgment. Secondly, there is a problem concerning arrangement and attribution. Even if a work falls within the CGW category, section 11(3) does not clearly explain what it means by 'necessary arranger.' The following parts examine these two issues separately: part 2 considers the tension between CGWs and the originality requirement, while part 3 analyses the uncertainty surrounding arrangement and attribution under section 11(3).

2.1 A Narrow Residual Reading

The first tension of originality concerns classification. Rather than endorsing the government's plain reading approach, this paper proposes a narrow residual reading of the existing framework: section 11(3) should not be a parallel route to section 11(1), meaning that the CGW provision should be a residual category, triggered only when human authorship has been ruled out.

Under this approach, the court should first begin by classifying the output, since different statutory rules apply depending on whether the work is an ordinary LDMA work, a computer-generated LDMA work, or a non-LDMA work. Once the work has been classified, the CGW category should be confined to cases in which no 'human author' can be identified. In other words, where the human user's contribution to the final output is sufficiently specific, the work shall remain within ordinary LDMA authorship under section 11(1). Only where no human contribution crosses the threshold of authorship should the work be classified as the residual CGW category under section 11(3), and be read together with section 198(1).

This narrow residual reading approach has two advantages. It avoids treating all AI-assisted outputs as computer-generated merely because software was involved in the process. This aligns with the Consultation Paper, which distinguishes 'AI-generated works' from 'AI-assisted works,' and states that ordinary copyright principles generally continue to apply to the latter. This reading is also consistent with The Law Society of Hong Kong's distinction between prompts and instructions that amount to the user's expression of an idea, and prompts that remain merely at the idea level.

Moreover, it mitigates an apparent contradiction between sections 11(3) and 198(1). Once CGWs are confined to cases in which no qualifying human author can be identified, it prevents the broad assumption of authorlessness in AI-generated works and reserves the 'necessary arranger' mechanism for a genuinely residual class of cases. This also prevents section 11(3) from swallowing section 11(1), and therefore, preserves the human-centred structure of copyright law, which will be addressed in the next part.

However, this interpretive method does not eliminate the issues completely, but merely confines them to a narrower set of cases.

2.2 Unresolved Tensions and their Doctrinal Implications: the Unanswered Originality Pradox and the Case for Retaining Section 11(3)

The human-centred stance of copyright law gives rise to a further tension. If section 11(3), like section 11(1), focusses on the protection of human creativity, does it risk becoming redundant? The issue at hand is that a work, classified as computer-generated because it fails to satisfy the requirement of authorship under section 11(1), may also fail to fulfill the same originality requirement under section 11(3). As Patrick Goold noted, 'there is no way the current CGWs provision can be subject to an originality requirement without becoming incoherent.' Therefore, the narrow interpretation method does not claim to eliminate the originality paradox entirely. The issue cannot be fully resolved within the current wording of the Ordinance because both ordinary LDMA works under section 11(1) and CGWs under section 11(3) must ultimately satisfy the originality requirement.

However, this does not mean that section 11(3) should be abandoned. Given that AI can generate outputs that reflect meaningful human input, entirely rejecting protection for such works does not reflect commercial reality. The framework in section 11(3) is therefore not redundant, but instead serves as a bridge between the increasing amount of AI-assisted works in the economy, while at the same time maintaining the principle that copyright vests in persons and not machines.

Moreover, there remains a practical and normative difficulty in treating AI-generated and human-generated outputs as categorically different, solely because AI was involved in the production process. Even when works are generated by AI, it is still possible to identify a human contributor behind the ideas. Retaining section 11(3) thus helps to avoid the problem of having materially similar outputs being treated, 'with one being copyrightable and the other being forced automatically into the public domain.'

Unlike the stricter approach suggested by Goold, this essay argues that the continued operation of the provision remains possible. Copyright should still depend on there being at least some minimum human intellectual contribution in the arrangements that produced the disputed output. However, given the importance of maintaining the human-centred characteristic in copyright law, it must be applied in a disciplined way, which directly raises a separate problem of identifying the necessary arranger.

Part 3: The Necessary Arranger Test: Toward an Output-Specific Proximity Inquiry

3.1 The Under-Specification Problem: Why the Existing Test Falls Short

If section 11(3) is to remain viable, the practical question is how to identify the 'necessary arranger.' Section 11(3) of the CO stipulates that the author of a computer-generated LDMA work is deemed to be 'the person by whom the arrangements necessary for the creation of the work are undertaken.' This formulation is workable on its face, as the statutory language itself implies a filter: not every involvement qualifies; only arrangements that are necessary count.

However, in the context of generative AI, the causal chain behind a single output may involve a wide range of actors, such as developers, programmers, trainers, system operators, and users who input prompts, each of whom may plausibly claim to have contributed to the creation of the work.

The only judicial authority directly applying the provision is *Nova Productions v Mazooma Games*, in which the court treated the programmer/designer as a necessary arranger of the on-screen frames generated during gameplay, as he contributed 'skill or labour of an artistic kind' in designing the pre-drawn frames and software. By contrast, the court held that the player's act of pressing a button did not amount to authorship, as they merely played the game and contributed no artistic skill or labour to the image itself. Nova Productions is helpful in two respects: firstly, it shows that not every causal contribution counts. Secondly and more importantly, the judgment implies that system-level design choices may count as relevant arrangements, where they affect the system's final output.

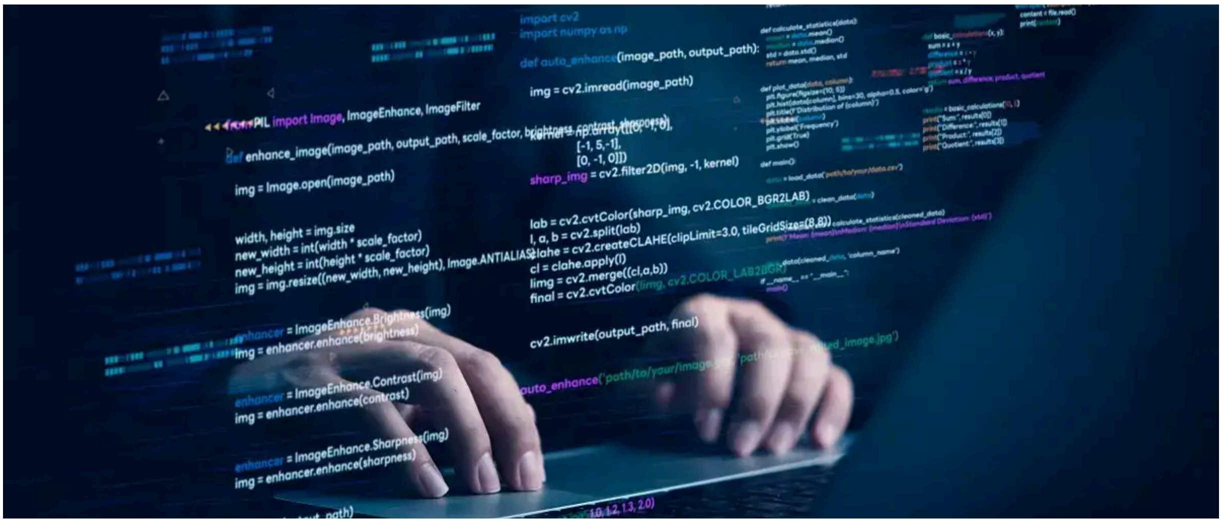
However, the case arose in a stable, rule-bound environment, in which the programmer's contribution clearly dominated the generation of the screen images. Hence, it formulates a principle, but not a complete solution to the challenges posed by generative AI.

In addressing the definition of 'necessary,' the Consultation Paper again emphasises that it is ultimately fact-specific and should be determined on a case-by-case basis. While this paper agrees that a degree of contextual flexibility is practical, a clearer guideline is needed and will be discussed in the following part. Without such guidance, the courts risk adopting an overly inclusive approach similar to the but-for test, which risks treating all contributors to an AI output as potential authors.

3.2 The Question of 'Who' — Who are the Possible Candidates?

To begin, AI itself cannot be an author because it lacks the expressive agency and communicative intent that underlie the very concept of authorship.

Secondly, scholars have suggested that developers should not be arrangers because the developer-user relationship is similar to a teacher-student or a camera-photographer relationship. For example, in *Minecraft*, one must ask where the creative elements of the final output really came from, rather than assume that section 9(3) of the UK CDPA automatically points to the software designer. However, this analogy is not decisive in the context of AI. Developers may still be candidates in a limited category of cases, and should not be excluded automatically. This is because generative systems are often built around pre-designed rules, parameters, and training architectures that substantially shape the range of possible outputs before any user interaction even occurs. In such cases, the developer's contribution may be much closer to the final work than the contribution of a camera manufacturer is to an ordinary photograph. From a logical standpoint, it is also difficult to exclude developers entirely from consideration, as there is indeed a causal link between them and the final product. The better view is to recognise them as necessary arrangers in limited cases, where the final output is substantially shaped by their pre-designed parameters. This approach also mitigates concerns regarding over-protection.



Thirdly, users are referred to as the most reasonable and justifiable candidates for identification as the 'necessary arranger,' as they are the most proximate actors of any outputs. Unlike earlier CGW cases, users may shape outputs through iterative prompting, regeneration, parameter control, and other similar acts of creative control. Hence, they are the most likely group of candidates to be identified as arrangers, which in turn raises the question of when a user's involvement becomes 'necessary.'

One possible response might be to turn to the idea and expression differentiation. However, having narrowly read and interpreted sections 11(1) and 11(3) as suggested above, the works that reach section 11(3) are those that have failed the originality test in section 11(1), meaning that the user's contribution would not have been sufficient to constitute human authorship. Consequently, this leaves a gap: if the contribution is not enough to satisfy originality, how can it be enough to amount to the 'necessary arrangements' required by section 11(3)?

Therefore, this article proposes that an output-specific proximity test is necessary: the arranger should not be every person involved in the AI ecosystem, but rather the person, whose arrangements were most directly responsible for the disputed output, in this form and at this time.

Notably, the output-specific approach does not require a fixed hierarchy. It is not accurate to say that the user must always come first, followed by the platform controller, and then the developer. In many cases, the strongest candidate will often be the user or another person exercising control over the generation process, since that person most directly configures the prompts, constraints, revisions, and selection processes that shape the disputed output. But where the system is tightly pre-configured and the user's freedom is minimal, the more plausible arranger may instead be the application designer or the platform operator, whose design choices substantially determine the result.

3.3 Balancing Innovation and the Copyright Principle

3.3.1 Originality Issue: Evaluating Alternative Proposals

The first response is the adoption of a *sui generis* (of their own kind) right for AI-generated works, as adopted in Ukraine. Under this approach, right-holders could be given only a thin scope of protection, allowing them to prevent others from exploiting exact copies of the machine-generated works. However, even China, as a leading country in AI innovation, has not yet taken such a step. Therefore, the *sui generis* model would sit awkwardly in the UK and HK contexts.

Another possible response is to introduce a different standard of originality for CGWs. The Law Society's submission in response to the Consultation Paper attempts to clarify the boundary between ordinary human-authored, AI-assisted outputs and CGWs without suggesting a new analytical lens. The Law Society's proposed distinction between detailed prompts and generic prompts is useful up to a point because it tries to separate AI-assisted works from genuinely computer-generated works. However, this approach is problematic because if the user's prompts are merely ideas, then the user has not supplied the kind of authorial expression that the copyright doctrine normally requires. If that is so, it is unclear why the law should award exclusive rights under section 11(3) at all. This difficulty is reinforced by the concern that, in the absence of authorship in the conventional sense, it is unclear who can be conceptually regarded as 'in charge' of the work. The conferral of exclusive rights in such circumstances may therefore appear doctrinally inconsistent.

So, as Yang Chen suggests, the 'originality' requirement under section 11(3) should be interpreted differently, as compared to section 11(1). The proposal is beneficial, as it allows authorless outputs to qualify as 'original works' on their own without requiring conventional human authorship. However, it risks loosening copyright's human-centred foundations in the current systems by extending rights to non-human outputs, which may distort incentive structures and reduce access to cultural and creative resources. Moreover, protection for AI-generated outputs may concentrate rights in the hands of a small number of technology firms. Given these risks, the proposal is intellectually important, but is better viewed as a future reform option rather than the preferred answer within Hong Kong's current framework.

3.3.2 A Calibrated Approach within the Existing Framework

Within the existing framework, the preferable approach is a calibrated one. Firstly, section 11(3) should be read narrowly, as explained above. The CGW category should only engage where no human author can be identified. This preserves the human-centred structure of the CO, while avoiding the over-expansion of the CGW provision.

Secondly, once section 11(3) is engaged, the arranger should be identified through the suggested output-specific proximity inquiry. The question should not be who participated somewhere in the wider AI system, but whose arrangements were most directly responsible for the disputed output in its final form. The fact that the user will often be the person, who directly configures prompts to shape the final result should only be a guiding presumption.

Thirdly, prompt specificity should be treated as relevant, but not determinative. The more specific and determinative the prompts, the stronger the case that they form part of the relevant arrangements for the disputed work. For example, an instruction such as ‘paint sunflowers’ is less specific than prompts such as ‘an impressionist oil painting of sunflowers in a purple vase’ and ‘an impressionist oil painting of sunflowers in a purple vase but also with nuances of Picasso’s style.’

Insights can be drawn from comparative cases in the US and China. In *Kenneth Michael Stern v. Does*, a single sentence was not attributed copyright, due to a lack of creative effort. In *Li v Liu*, the Beijing Internet Court placed weight on repeated prompting, parameter adjustment, and selection of the final image. Even though the court ultimately found originality and thus addressed a different issue from the one considered here, it is useful in demonstrating how prompts relate to the judicial process. However, that does not mean that specificity should be treated as the same as originality, nor does detailed prompting automatically amount to authorship. This is suggested by comparative materials that criticised *Li v Liu*, which revealed the weakness of prompt-based authorship reasoning and warned against equating detailed prompting too readily with authorship. Similarly, in the *Théâtre D'Opéra Spatial* case, the Review Board of the US Copyright Office held there is no copyright as the ‘key idea was made by AI,’ despite the elaborate prompting. Given the range of possible interpretative approaches, the issue should ultimately be resolved through a disciplined case-by-case assessment based on the facts.

This approach also reduces the risk of misclassification. By confining section 11(3) to residual cases and then applying a structured arranger inquiry, it becomes harder for claimants to present borderline AI-generated outputs as ordinary human-authored works under section 11(1) merely to obtain stronger protection.

Ultimately, there is a need to balance human creativity and the increasing use of AI across industries. Hong Kong’s ultimate goal is to make itself an AI hub, and therefore, it is crucial to balance these competing interests to encourage innovative works.

Conclusion

Hong Kong should neither abandon its CGW provisions nor treat them as a complete solution to the challenges posed by generative AI. The better approach is one of interpretive restraint. Section 11(3) should apply only where ordinary human authorship cannot be established, and the necessary arranger should be identified through output-specific proximity. This preserves the commercial utility of CGW protection, while respecting the human-centred foundations of copyright law.

Legal History

Early Colonial Typhoon Forecast and Response: Science, Inequality, and Internationalism in Hong Kong (1883-1937)

By Mak Hoi Man

Introduction

When the Hong Kong Observatory ('HKO') opened in 1883, it was hailed as a triumph of modern science over tropical chaos. Yet, its typhoon warnings were never intended to protect Chinese lives. This essay argues that colonial typhoon forecasting in Hong Kong was a political instrument: it protected British maritime trade and elite European residents, institutionalised racial and class vulnerabilities through urban segregation laws, and legitimised colonial rule by marginalising indigenous Chinese forecasting knowledge. Far from a neutral public service, the Observatory was a tool of the empire.

Literature Review

Meteorological Colonialism

Typhoons are tropical cyclones that form over the warm ocean waters of the western Pacific before typically moving westward to strike East and Southeast Asia. As a result, typhoons posed a substantial and persistent threat to the maritime trade, urban infrastructure, and population safety of the European empires' presence in the Far East. Meanwhile, modern meteorology emerged in the 1850s, signified by the development of observation, forecasting, and warning systems for typhoons. Therefore, modern meteorology was fundamentally co-produced with European empires. The concept of 'meteorological sovereignty' illustrates how states sponsored science to serve specific imperial interests, such as securing shipping and air routes. Meteorological institutions in the colonies were thus not merely scientific outposts, but also 'tools of governance,' designed to serve the empire's political and economic objectives and thereby legitimise colonial rule.

For instance, studies of British Malaya and Imperial Japan have shown that colonial governments established weather stations and forecasting networks, primarily to achieve military, agricultural, and economic ambitions as part of state power-building projects. The underfunded and fragmented meteorological infrastructure reflected colonial hierarchies and the neglect of local welfare. Colonial observatories were not merely scientific outposts, but key nodes in an 'atmospheric empire,' designed to produce standardised knowledge for utilitarian imperial ends, while grappling with the material and social challenges of the colonies.

Meanwhile, colonial empires employed meteorological science to construct narratives of their own superiority and the inferiority of indigenous peoples, thereby legitimising their rule. For instance, within the British Empire, India was labelled a 'tropical world,' emphasising its 'otherness' and the colonisers' dominance.

The Coloniality of Disaster

The colonial meteorological enterprise was inextricably linked to what Yarimar Bonilla coined as the 'coloniality of disaster,' whereby disasters are understood not as purely natural events, but as socio-political phenomena rooted in colonial histories that reinforce pre-existing inequalities. In this context, disaster response was never purely humanitarian. Analysing three areas of pre-1945 Asia, Gerry van Klinken argues that state responses to typhoons depended on the 'distance' between the affected populations and the state — a distance that was geographical, institutional, classist, and cultural.

Colonial administrations consistently prioritised urban and elite interests above those of rural and marginalised communities. Disaster response in colonial contexts was seen as a deeply political process, concerning governance, control, and the institutionalisation of vulnerability along racial and class lines.

The Hong Kong Observatory (1883-1937)

A. The Colonial Mandate of the Observatory

The HKO was established in 1883 with a clear mandate: to protect the empire's vital maritime trade. The push for a dedicated observatory gained momentum after the catastrophic 1874 typhoon killed over 2,000 people and devastated the port, exposing the absence of scientific warning systems. A new observatory in the colony was recommended in 1877 by the Surveyor General, John Price, who was driven by the Royal Society's proposal that Hong Kong's favourable location made it ideal for studying meteorology and typhoons. However, after nearly five years of debate and downsized funding, the HKO was finally established under its first Director, Dr. William Doberck.

The HKO's first major initiative was a visual storm warning system in 1884, using four red signals to alert ships in the harbour to nearby tropical cyclones, and firing a 'typhoon gun' at Tsim Sha Tsui to warn the public of imminent gale-force winds. Under Doberck, the Observatory also began compiling and publishing meteorological data, such as the *Law of Storms in the Eastern Seas* and the *China Coast Meteorological Register (1887)*, solidifying Hong Kong's role as a regional data exchange centre.

The Marginalisation of Indigenous Knowledge

The systematic marginalisation of indigenous knowledge in South China is exemplified by the colonial authorities' dismissal of sophisticated local forecasting methods. Pre-colonial Chinese gazetteers documented precise typhoon precursors, such as clouds 'scattered like a spider's web (蜘蛛爪),' a 'broken rainbow drinking from the sea (斷虹飲水),' and the theory that clashing atmospheric forces would generate a typhoon and cause the sea to become unnaturally warm (風氣相搏，則颶生而水燠也). Colonial scientific institutions systematically framed this knowledge as primitive to centralise epistemic authority, creating a hierarchy in which such wisdom was later deemed culturally valuable, but scientifically limited — a view that even former HKO Director Leung Wing Mo acknowledged. British colonial discourse argued that 'Hong Kong can afford a typhoon or two,' justifying imperial control by contrasting the colony's 'tropical' character with Britain's 'civilised identity.' The marginalisation did not erase indigenous knowledge entirely, as Chinese fishermen and residents continued to use traditional forecasting informally. However, these traditional sayings were excluded from official colonial science and disaster protocols.

B. The Early Colonial Typhoons and Institutionalisation of Inequality (1874-1937)

Between 1874 and 1937, Hong Kong suffered three catastrophic typhoons, with fatalities peaking in 1906, when the storm claimed 4% of the colony's population. The 1874 typhoon, which killed over 2,000, established a recurring pattern: minimal government relief and heavy reliance on the Chinese charitable organisation Tung Wah Hospital for body recovery, medical aid, and burials. The Governor's personal donation of his salary only highlighted the administration's dependence on community charity.

After the 1906 typhoon, the government's foremost objective was 'to enable the trade of the Colony to be carried on with as little loss and dislocation as possible,' explicitly privileging economic recovery over social relief. Furthermore, official post-disaster narratives revealed racialised fault lines, exemplified by the scapegoating of a junior Chinese staff member at the Observatory, marginalising non-European personnel to deflect institutional blame.

Major typhoons caused persistent, severe damage to fishing boats. The acute vulnerability of the local fishing community was compounded by colonial neglect, as exemplified by the 32-year delay between the first typhoon shelter in Causeway Bay in 1883 and the second in Yau Ma Tei in 1915. Despite post-1906 evaluations explicitly recommending new shelters, and officials emphasising both the economic necessity and the moral duty of protecting seafaring communities, their appeals fell short of overcoming institutional indifference. The colony was caught in a cycle of continual technological advancement in weather forecasting that repeatedly failed to protect its most vulnerable residents.

Critically, this institutionalised social inequality was spatially encoded into Hong Kong's urban fabric through legislation, such as the 1888 European District Reservation Ordinance and the 1904 Peak District Reservation Ordinance. The 1888 Ordinance was debated as a means 'to preserve the character of the European district and avoid the mingling of European and native races.' This intended racial segregation and class distinction was intensified by the 1904 Ordinance, which legally restricted residence within elevated areas 'situated above the 788-feet contour and to the west of a line drawn in a north and south direction through Middle or Cemetery Gap, including the hills known as Mount Cameron, Mount Gough, Mount Kellett, and Victoria Peak.' The law explicitly stated that, 'It shall not be lawful... for any owner... within the Peak District to let such land or building... for the purpose of residence by any but non-Chinese.' The ultimate outcome was a stark spatial division: vulnerable Chinese populations were confined to hazardous, low-lying districts, while Europeans and the affluent were guaranteed exclusive, safer residences on higher ground.

C. The Failed Promise: Technological Progress and Persistent Vulnerability

The HKO's primary mandate was to protect maritime trade, a focus that drove its technological modernisation. From its inception, the HKO progressively implemented new technologies — from flags and a typhoon gun to wireless telegraphy — to improve typhoon detection. However, social vulnerability persisted and even intensified, due to colonial urban development and institutional failures. These institutional failures were starkly exposed in 1906. Director Doberck, a theoretical astronomer, ignored warnings from the Manila Observatory, due to personal rivalries and anti-Jesuit sentiment. Doberck's own public warnings were fatally delayed and inadequate: the typhoon gun was fired only 40 minutes before the storm struck — too late for many to prepare. The resulting losses were catastrophic, and a Commission of Inquiry blamed Doberck, destroying his reputation. Doberck left the post in 1907 at the age of 55. As Philip MacKeown notes, unlike other early colonial officials, no monument or street in Hong Kong bears Doberck's name — a telling silence that reflects his legacy.

This institutional failure was compounded by the fact that early warning systems, such as flags and the typhoon gun, were designed for mariners and offered little practical use to the general public. The gun's sound was often drowned out by storm winds, reflecting a fundamental flaw in a system that protected commercial assets rather than human lives. As the Observatory's own history states, its storm warnings were 'solely for... masters of vessels,' explicitly prioritising British and international shipping over the densely populated, low-lying urban Chinese population.

Finally, these entrenched vulnerabilities were catastrophically amplified by external geopolitical crises. In 1937, an influx of merchant and passenger ships seeking refuge following the Lugou Bridge Incident in July and the Battle of Shanghai in August crowded the waters of the world's seventh-busiest port. When the typhoon struck in September, this congestion produced far greater numbers of ship sinkings and maritime accidents than the harbour might otherwise have suffered.

Despite this uneven performance that repeatedly failed to protect the colony's most vulnerable residents, the Observatory was awarded 'Royal' status in 1912 for its services to trade and shipping, a testament to its success in fulfilling its primary colonial mandate rather than its commitment to public safety.

International and Inter-Colonial Dimensions

The HKO's isolationist stance had fatal consequences. Director Doberck, driven by personal rivalries and anti-Jesuit animus, refused to cooperate with the Manila and Zikawei observatories, despite their longer operational histories and superior reputations for typhoon forecasting. He dismissed Manila's warnings as 'mischievous' and branded the Jesuit-run observatories as 'irresponsible private institutions.'

This intransigence had direct consequences. While The China Mail routinely published 'Manila weather news (小呂宋風信),' relayed via the U.S. Consulate, Doberck's official warnings lagged fatally behind. The 1906 typhoon disaster exposed the cost: Manila and Zikawei had issued earlier alerts, but Doberck ignored them. Robert Brown of the Manila Observatory later suggested that absent Doberck's anti-Jesuit prejudice, casualties might have been reduced. The Hong Kong Daily Press asked whether the Observatory operated on a principle of 'glorious isolation.'

The rivalry thus functioned as evidence of Hong Kong's institutional failure. One might object that this places the blame for the deaths in 1906 on a single man's incompetence rather than on colonial design that the system was malfunctioning. Yet, this objection mistakes the relationship between the individual and the institution. The colonial administration appointed Doberck, retained him for nearly two decades, and tolerated his feud precisely because the constituency he failed — the Chinese population ashore was not the one the Observatory existed to protect. His prejudice was permitted to operate because nothing in the institution's priorities rendered it costly to those who governed it.

Crucially, this structural tolerance of failure did not end with Doberck's retirement. The turn towards internationalism after 1907, including cooperation with Manila, the 1930 Conference, and the 1934 signal agreement, produced the same outcome as Doberck's isolationism. The 1930 Conference of Far Eastern Weather Services — dominated by colonial meteorologists — prioritised shipping safety over public protection, as Hong Kong's Colonial Secretary openly stated: 'the safety of shipping and hence, the prosperity of our trade in general, is largely dependent on our meteorological services, while the safety of life and property ashore is to a lesser degree imperilled by typhoons, and can only be properly safeguarded by a system of timely warnings.'

Only after Doberck's retirement in 1907 did the Observatory pivot toward regional cooperation — much too late for the 1906 victims. *The China Mail* expressed the hope that 'the friction that used to exist between Hong Kong and the neighbouring Observatories can cease now…' and that the staff would no longer 'sacrifice the public interest to a stupid feud that has now become traditional.' The succeeding Director Frederick Figg visited Manila in 1909 at the government's request to foster cooperation and later, under similar official insistence, Director Thomas Claxton visited the observatories in Tokyo, Zikawei, and Manila in 1911 to build connections and learn their methods, signalling a new era of regional collaboration.

By 1937, Hong Kong had become a regional meteorological hub — but for shipping and not public safety. Whether through isolationist feud or international cooperation, the Observatory's core priority remained unchanged: the protection of trade rather than the Chinese public. Both regimes of Doberck's rivalry and Claxton's diplomacy served the same colonial mandate.

Discussion: Convergent Priorities and Divergent Mechanisms

Colonial typhoon science in Hong Kong was fundamentally designed to protect imperial economic interests and to legitimise colonial rule rather than to serve humanitarian needs. The primary focus was on safeguarding maritime trade routes and elite settler communities. Typhoon warnings were issued primarily to help merchants and elite communities 'avoid areas of disturbed weather and take necessary precautions' for their ships and cargoes, measures that were vital to the colony's commercial prosperity.

In British Hong Kong, vulnerability was spatially engineered through urban planning and racial segregation policies that concentrated protective infrastructure and safe housing for Europeans in elevated, less flood-prone areas. This effectively relegated the poorer Chinese population to hazardous, low-lying districts exposed to typhoons. Paralleling these social controls, the colony reinforced imperial authority by centralising meteorological knowledge in state-sanctioned observatories, while systematically marginalising indigenous forecasting systems. Colonial science dismissed these long-established, community-based knowledge traditions as archaic, replacing them with 'modern' meteorology to demonstrate state competence.

The Doberck affair is often read as individual prejudice, but it reveals colonial structural logic. The government tolerated a director, who ignored foreign warnings and delayed public alerts, which costed Chinese lives, and yet, he remained in the post for nearly two decades. This demonstrates that protecting Chinese lives was never a performance metric for the Observatory. When international cooperation replaced isolation after 1907, the mandate remained unchanged: shipping first, public safety a distant second. Whether through Doberck's feuds or Claxton's conferences, colonial typhoon science consistently prioritised trade over the territory's majority population.

Conclusion

In British Hong Kong, typhoon science operated as empire by other means. The Observatory's flags and guns were tuned to warn ships rather than slums, while the 1904 Peak District Reservation Ordinance reserved the colony's safe high ground for Europeans alone. Chinese fishermen and low-lying residents consequently bore the worst of each storm, while their own forecasting traditions were dismissed as primitive. When the Observatory received its 'Royal' title in 1912, it was for serving trade – not the territory's majority population. The legacy of this colonial meteorology endures in the way modern warning systems continue to privilege economic continuity over equitable protection.

A Dead Man, A Cock, and A Fortune: Chinese Customary Law and the Expert Witness Problem in Hong Kong

By Steven David Bernstein

Introduction

In July 1940, the Supreme Court of Hong Kong found itself grappling with an unusual question: could a cock, draped in red and decorated with golden flowers, lawfully stand in for an absent bridegroom?

Young Ling-shi claimed to be the lawful widow of Young Sing, a laundryman presumed to have died in City Island, New York in 1930. The estate — over $20,000, held in Hong Kong banks — was what she sought to claim. Her claim depended entirely on the validity of a 1922 ceremony in a Guangdong village, where Young Sing, while still in New York, had been represented by the cock in question. Their marriage had never been consummated. Young Sing never returned home.

Chief Justice Atholl MacGregor heard two days of testimony. He then informed both parties that any judgment he could deliver would be against both of them. The case settled on the third day.

What happened in 1940 was not an isolated incident in colonial legal history. It remains a symptom of something more serious. It exposed a structural failure that persists today: the Hong Kong courts have never developed a coherent framework for determining the content of Chinese customary law. Litigants, whose most fundamental rights depend on that law, are therefore left with no certainty. This is not merely a historical defect; it is an ongoing institutional deficiency.

Two Experts with no Consensus

The problem before the court was straightforward. Both sides called expert witnesses on Chinese customary law, and those experts gave irreconcilable accounts.

The plaintiff's expert, Mr. T.F. Law — a barrister and former legal adviser to the Legislative Yuan in Nanjing — testified that once the cock had entered the ancestral hall and the bridal chamber alongside the bride, the marriage was complete. No consummation was needed. The defendant's expert disagreed entirely. According to him, the Qing Code required three things for a valid marriage: a proper betrothal, a public ceremony, and an eventual consummation by the actual parties. Since consummation had never occurred, the marriage bore no legal effect.

Neither expert was obviously wrong. The Chief Justice simply had no way to choose between them — and he said so. A court that cannot determine whether a woman was lawfully married without resorting to a battle of experts is not applying law. It is improvising.

This was not Unusual

One might expect that by 1940, the Hong Kong courts would have developed some settled approach to Chinese customary law. They had not.

As early as 1911, Chief Justice Francis Piggott had lamented in *Li Chok Hung v Li Pui Choi* that no inquiry had ever been made into what Chinese customary law was — calling it an 'extraordinary fact' that the courts dealing constantly with Chinese family disputes were 'entirely in ignorance' of the relevant law. Nearly thirty years later, MacGregor's court was in exactly the same position. Writing in 1962, the legal scholar Edwin Haydon counted only two reported cases in fifty-seven years of New Territories law reporting that had directly engaged with Chinese customary law — describing this as a 'remarkably small' number. The 1940 case was not an aberration. It was the norm.

It is worth pausing on what this means in practice. Young Ling-shi was not a litigant in some arcane property dispute. She was a woman trying to establish that she was lawfully married and that she was entitled to what her alleged husband had left behind. The question of what Chinese customary law required for a valid marriage had been before the Hong Kong courts in various forms for decades. The courts had simply never developed any coherent answer to it.

The Deeper Problem

The adversarial system is designed to resolve disputes about facts and law. What it cannot do is conjure up the law from thin air. In the 1940 case, that is precisely what was required.

Chinese customary law in Hong Kong had never been sufficiently codified for a court to apply it with any consistency. The court was not being asked to apply a legal rule. It was being asked to find one. And the only mechanism available for that was a battle of experts.

This problem was especially acute with Chinese customary law because as Haydon noted, such law varied ‘not only from province to province, but sometimes from clan to clan in the same neighbourhood.’ The two experts in the 1940 case were probably both right about something — they were describing genuine practices from different communities. The court had no tools to work out which community's practices were relevant, no hierarchy of sources to consult, and no baseline against which to test the expert accounts. Young Ling-shi's inheritance rights turned, in effect, on a coin flip.

This also raises a question about what the courts were actually doing when they applied Chinese customary law. Haydon's article suggests the answer is uncomfortable: they were largely constructing it, case by case, from whatever expert evidence happened to be placed before them, with no mechanism for ensuring consistency across decisions. That is not the application of a legal system. It is the improvisation of one.

What should have been Done — and Why it Still Matters

Haydon's 1962 article called for a formal restatement of Chinese customary law, drawing on the knowledge of administrative officers, who worked daily with New Territories communities. The 1948 Committee on Chinese Law and Custom in Hong Kong had said much the same thing. Neither suggestion was acted upon with any urgency.

This is not to say the solution is easy. Customary law is, by its nature, flexible and locally variable. But there is a meaningful difference between a system that acknowledges local variation within a coherent framework and a system that simply outsources the question to whichever expert turns up on the day. The former is law, and the latter is managed uncertainty dressed up as adjudication.

It may be tempting to regard the Marriage Reform Ordinance (Cap. 178) as having resolved this problem. It did not. While the Ordinance abolished customary marriage going forward, it was not retroactive. All pre-1971 customary marriages were grandfathered in and remain legally recognised. This matters more than it might seem. Intestacy cases involving parties to pre-1971 Chinese customary marriages continue to come before the Hong Kong courts today, raising precisely the same questions that paralysed MacGregor in 1940: was the marriage valid under Chinese customary law? And if so, who is entitled to inherit?

Nor is this the only context in which the problem persists. The Basic Law preserves Chinese customary law in Hong Kong, and the New Territories remain home to a living system of Chinese customary land trusts — the *tso* and *tong* — governing the property of indigenous clans. These trusts and the succession disputes they generate, require the courts to engage with customary law on a regular basis. The framework for doing so is, even now, largely the same one that failed Young Ling-shi in 1940: expert evidence, adversarial contest, and no authoritative baseline against which competing accounts can be tested. The institutional method has remained static despite the persistence of the problem.

The Marriage Reform Ordinance did not sidestep the problem. It merely ensured that the stock of unresolved cases would shrink slowly rather than grow. The underlying structural failure — a legal system asked to apply rules it has never properly codified — remains. And so long as the Basic Law continues to recognise Chinese customary law as a legitimate source of law in Hong Kong, this failure cannot be dismissed as simply historical.

Conclusion

Young Ling-shi got her share of the estate in the end — not because the Supreme Court had resolved the legal question, but because both sides decided settlement was preferable than judgment. That is not how the law should work.

The cock in the 1940 case tends to be remembered as an amusing colonial anecdote. It should instead be understood as a warning. When the courts are asked to apply a legal system that has never been adequately codified, through a mechanism structurally unsuited to the task of establishing what that law is, it is the litigants who pay the price. More than eighty years after MacGregor threw up his hands, Hong Kong has still not fully answered the question his court could not resolve. It is time it did.

The Weaponisation of GNSS Interference and its Effects on Civil Aviation Safety

By Lam Wing Tung Christy Caris

Introduction

Since 2022, Russia's large-scale jamming and spoofing of global navigation satellite systems ('GNSS') around North Atlantic Treaty Organization ('NATO') and European Union's ('EU') airspace has turned electronic warfare into a daily operational hazard for civil aviation. Airlines in the Baltic and Black Sea regions reported thousands of satellite navigation disruptions.

This article argues that even though Russian GNSS interference around NATO-adjacent airspace may fall below the 'armed attack' threshold of the International Court of Justice's ('ICJ') Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*) judgment, it constitutes a wrongful act that breaches international obligations under the Convention on International Civil Aviation ('Chicago Convention') and the customary principles reflected in the *Tallinn Manual 2.0*. This article further contends that the practice of widespread jamming exposes a gap between the severity threshold for 'armed attack' in cyberspace and the safety obligations of aviation law.

Factual background: Russian GNSS interference near NATO airspace

After Russia's full-scale invasion of Ukraine in February 2022, EU and NATO states have documented a sharp increase in GNSS interference affecting civil aviation in the Baltic and Black Sea regions.

Concrete figures illustrate the scale of the phenomenon. Lithuania recorded more than 1,000 cases of GPS interference in June 2025 alone, twenty-two times the number recorded in June 2024. Estonia reported that 85% of its flights had been affected by GNSS interference during certain periods. Poland documented 2,732 cases of jamming and spoofing in January 2025; similar disruptions have been noted in northern Norway and Finland, where jamming traced to Russian territory has affected civil aircraft.

In August 2025, the navigation system of a Dassault Falcon 900LX carrying European Commission President Ursula von der Leyen experienced GPS jamming in the Bulgarian airspace. Bulgarian authorities disclosed that the satellite signal feeding the aircraft's GPS was 'neutralised,' forcing pilots to use paper charts and terrestrial navigational aids to land at Plovdiv. EU officials proclaimed blatant interference from Russia.

Beyond individual flights, GNSS interference is a systemic threat. Euronews reported that Russia operates jamming bases in Kaliningrad, along its borders with the Baltic states and Ukraine, with interference dramatically increasing since August 2024 and affecting EU aircraft from Finland all the way to Cyprus.

The Convention on International Civil Aviation

Article 1 of the Chicago Convention grants each contracting State 'complete and exclusive sovereignty over the airspace above its territory.' However, contracting States are bound by safety-related obligations under International Civil Aviation Organization's ('ICAO') Standards and Recommended Practices, aimed at ensuring the safe and orderly development of international civil aviation.

Article 3 *bis*, adopted after the Soviet shooting down of Korean Air Lines Flight 007 in 1983, prohibits States from using weapons against civil aircraft in flight and requires that, in intercepting state aircraft, they refrain from endangering civil aviation safety.

While GNSS jamming does not involve kinetic weapons, the underlying principle is that States must not endanger civil aircraft. Deliberate interference that degrades pilots' navigation in congested airspace, as when President von der Leyen's pilots had to revert to paper charts during their approach, sits uncomfortably with this safety logic.

Where Russia's GNSS interference foreseeably affects foreign civil aircraft in the flight information regions of other States or in international airspace, it constitutes a breach of Russia's obligation not to endanger civil aviation safety, as a signatory to the Chicago Convention.

Use of Force, Armed Attack, and the Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations ('Tallinn Manual 2.0')

The more controversial question is whether GNSS jamming near NATO airspace can amount to a prohibited 'use of force' or even an 'armed attack' under Articles 2(4) and 51 of the United Nations Charter ('UN Charter'). The *Tallinn Manual 2.0* reflects the now-dominant view that cyber operations can, in principle, constitute armed attacks where their scale and effects are comparable to kinetic operations.

The *Tallinn Manual 2.0* is not an international treaty binding upon states and cannot be cited as a primary source of law in international courts. Rather, it is an academic work, produced by an international group of experts under the NATO Cooperative Cyber Defence Centre of Excellence, that complements the courts' interpretation as a secondary source of law. Updated in 2017, the *Tallinn Manual 2.0* serves both as a codification of customary international law and as a collective teaching by the world's leading experts on cyber law. It represents the experts' consensus in identifying the lex lata (the law as it currently stands) and how the existing international law applies to cyber operations.

The ICJ in *Military and Paramilitary Activities in and against Nicaragua* at paragraph 191 distinguished the 'most grave' forms of the use of force – armed attacks, as identified by a high threshold of 'scale and effects' – from less grave forms of the use of force, holding that only the former triggers the inherent right of self-defence under Article 51. The international group of experts reached the conclusion in Rule 68 of *Tallin Manual 2.0* that cyber operations can qualify as a use of force, based on the ICJ's finding in the *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* that the prohibition on the use of force and the right of self-defence apply to 'any use of force, regardless of the weapons employed.'

Then, Rule 71 of *Tallinn Manual 2.0* provides that cyber operations, whose consequences reach the level of an 'armed attack,' reasonably expected to cause injury or death to persons, or damage or destruction to objects, may trigger the right of self-defence. It is not the weapon used but the severity of the effects that matters: disabling an air traffic control system in a way that causes aircraft to crash would qualify, whereas temporary disruption causing inconvenience or minor economic loss would not. This cyber attack definition has been recognized by numerous states including Canada, Germany, France, and the United States. These states emphasise that whether a cyber attack amounts to an armed attack depends on its effects and consequences. States like Canada, Germany, Denmark, Italy, and Norway have expressly adopted this approach by publishing Position Papers.

Applied to Russian GNSS jamming, current practice appears to fall below this armed attack threshold. While thousands of flights have experienced interference, there is so far no publicly reported case in which jamming alone caused a civil aircraft accident or serious physical damage. This suggests that such incidents are treated as wrongful interference, but not as uses of force in the UN Charter sense.

Nonetheless, *Tallinn Manual 2.0*'s focus on effects leaves open the possibility that more severe GNSS interference, for example, cyber operations disabling air traffic control and causing an aircraft accident, would potentially constitute an armed attack, even where no kinetic weapon is employed. Michael Schmitt, the Director of *Tallinn Manual 2.0* project, cited two Russian incidents that the affected States could reasonably regard as armed attacks. Firstly, armed-capable Russian decoy drones, which are designed to confuse air defenses, intruded into Polish, Estonian, and Romanian airspace in 2025. Secondly, GNSS interference of jamming and spoofing, recorded in the Baltic Sea region, which disrupted the GNSS of vessels and aircraft can be routinely traced back Russian stations in the St. Petersburg region and the Kaliningrad enclave.

Taken together, the UN Charter, the ICJ's 'scale and effects' approach, and the *Tallinn Manual 2.0*'s effects-based test points towards an emerging consensus, that cyber operations including GNSS jamming and spoofing are not excluded from the jus ad bellum (the conditions under which States may resort to war or the use of armed force), but only the most serious incidents that are reasonably expected to cause death, injury, or physical destruction, cross the threshold of an 'armed attack' and thus, can lawfully trigger the inherent right of self-defence. While the *Tallinn Manual 2.0* does not bind states, it offers a structured way to assess when specific incidents exceed the threshold of unfriendly acts and become internationally wrongful uses of force and armed attacks, leaving room for future state practice and opinio juris (an opinion of law or necessity) to clarify how customary international law should respond as the technical risks to civil aviation continue to evolve.

State Responsibility, Due Diligence, and Possible Responses

Even when beneath the armed attack threshold, Russia's conduct may engage state responsibility. Rule 6 of *Tallinn Manual 2.0* affirms that a State is internationally responsible for cyber operations attributable to it that breach an international obligation, and contemplates interference with air traffic control and civil aviation systems as scenarios where such responsibility may arise.

The first issue concerns attribution. Attribution of GNSS interference is technically challenging, especially where jamming originates from Russian territory but its effects are felt in the airspace of neighbouring States. Where the jamming is carried out directly by Russian military units or other state organs, the conduct is attributable to Russia automatically as the act of a State organ. The Nicaragua test of 'effective control' becomes relevant only where the interference is executed by non-state actors, in which case the affected States must show that those actors operated under Russia's direction or control. The presence of known Russian electronic warfare bases in Kaliningrad and along its borders with the Baltic states and Ukraine, as revealed by European technical experts, supports such attribution, though formal evidence remains classified or incomplete.

A second question concerns the matter of responsibility and due diligence. Persistent GNSS interference that foreseeably endangers civil aircraft breaches both Chicago Convention obligations and the broader duty of due diligence in cyberspace reflected in Rule 4 of the *Tallinn Manual 2.0*, which requires States to ensure that cyber operations emanating from their territories do not cause serious adverse consequences to other States' rights. Victim States may therefore adopt non-forcible countermeasures, such as targeted sanctions, diplomatic protests, or reciprocal restrictions on Russian air services, provided these measures are proportionate and aimed at inducing compliance.

The last issue is on state practice and possible responses. European and NATO practices are gradually moving in this direction. Issued in May 2025, a joint letter by the transport ministers of 13 EU member states urged for coordinated EU-level action, potentially including steps within the International Telecommunication Union under the UN to suspend Russia's right to register certain radio frequency uses while GNSS interference persists. NATO's Aviation Committee and other bodies are working with ICAO and EUROCONTROL (European Organisation for the Safety of Air Navigation) on resilience measures, including interference-resistant GNSS services, and enhanced monitoring and reporting. Such practice, if sustained, may crystallise into a more explicit norm that systematic GNSS jamming against civil aviation is an internationally wrongful act attracting collective countermeasures.

Conclusion

Russian GNSS jamming and spoofing around NATO-adjacent airspace sits at the intersection of traditional aviation law concepts of sovereignty and safety, and contemporary cyberspace law debates about use of force and armed attack. This practice clearly undermines the safety obligations under the Chicago Convention and the principles evidenced in the *Tallinn Manual 2.0*. Yet, absent catastrophic accidents, it remains below the *Nicaragua* threshold for armed attack.

For international aviation law, the challenge is to close this accountability gap before a serious incident occurs. Clarifying, through ICAO, NATO, and state practice, that systematic, cross-border GNSS interference targeting civil aviation is an internationally wrongful act, even when it does not amount to an armed attack, would strengthen the legal basis for EU-coordinated countermeasures and help protect civilian aircraft in an increasingly contested electromagnetic environment.

Regulating the Recommender: What Hong Kong's PDPO can Learn from the EU's Algorithmic Governance

By Lee Ching Amber

Introduction and Overview

The collection and use of personal data have become pivotal to the functioning of digital platforms. With an ever-expanding range of online content, automated recommender systems (‘RSes’) are increasingly used to provide personalised experiences. Defined under the EU's Digital Services Act (‘DSA’) as fully or partially automated systems used to prioritise information based on browsing records, RSes are far more than sophisticated algorithms. They constantly digest data, allowing digital platforms to intimately map consumer preferences. By shaping what users see based on inferred preferences, these systems now strongly influence our decisions, explaining their ubiquitous deployment by multinational technology conglomerates like Meta and Google.

However, behind the algorithms that achieve personalisation via user profiling, profound data privacy issues arise. Among these concerns, discrimination is particularly significant, often stemming from low diversity in training data, inputted biases, and flawed modeling algorithms. Furthermore, the extensive data collection and retention required for RSes to function create severe vulnerabilities for data leakage. Significant breaches occur when users input sensitive data — such as political view or age — or when ‘shilling attacks’ inject fake feedback to disrupt the system and manipulate recommended content.

As data privacy is increasingly compromised by the widespread use of RSes, governments are attempting to tackle these issues through robust data protection legislation. The European Union is a global leader in safeguarding consumer data processed by algorithms. The General Data Protection Regulation (‘GDPR’), fully enacted in 2018, prevents platforms from forcing users to consent to algorithmic profiling. The subsequent DSA, enacted in 2022, imposes more stringent controls on the operation of RSes, requiring transparency regarding recommendation metrics and providing user customisation options. In stark contrast, Hong Kong's Personal Data (Privacy) Ordinance (Cap. 486) (‘PDPO’) has seen a lack of comprehensive revision concerning the deployment of RSes within the territory.

This article argues that Hong Kong should modernise its privacy protection by adopting a targeted framework for recommender systems, drawing on the EU’s GDPR and DSA. The roadmap is as follows: Part 1 explores RSes and their associated data privacy risks; Part 2 analyses the achievements and shortcomings of the GDPR and the DSA in combating these risks; and Part 3 provides constructive suggestions for modifying Hong Kong's laws to better protect users exposed to algorithmic harms.

Part 1: Recommender Systems and Data Privacy Risks

A. The Evolution of Recommender Systems

The internet has become the primary platform for countless commercial and social transactions. To navigate the resulting information overload, mechanisms like rating systems (e.g. star ratings, likes, and dislikes) were developed to help consumers make choices. This necessity laid the foundation for modern RSes.
Article 3(s) of the DSA defines an RS as 'a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service or prioritise that information, including as a result of a search initiated by the recipient of the service or otherwise determining the relative order or prominence of information displayed.'

The prototypes of modern RSes, such as the experimental mail system Tapestry and the news filtering system GroupLens, were introduced in the 1990s. RSes have since evolved into complex algorithmic models — including Collaborative-Filtering, Context-Aware, and Hybrid models. Current developments integrate external knowledge, giving rise to LLM-based (Large Language Model) RSes.

Today, RSes are heavily integrated into daily services. Amazon utilises item-based collaborative filtering to deliver featured recommendations generated from purchase histories. Netflix deploys deep learning to maximise long-term user satisfaction. While RSes are designed to create positive effects for stakeholders by mitigating information explosion and driving sales, their widespread use represents an ongoing trade-off between utility and user privacy.

B. Algorithmic Data Privacy Issues

The following sections highlight three main types of algorithmic data privacy issues, which users are likely exposed to as a trade-off for the benefits generated by RSes, including the reduction of information overload and support for digital commerce.

1. Systemic Risks

The DSA identifies four main categories of systemic risks arising from algorithmic systems:

1. Dissemination of illegal content
2. Negative effects on fundamental rights, human dignity, and personal data protection
3. Negative effects on electoral processes
4. Serious negative consequences for physical or mental well-being

Real-world illustrations corresponding to these include teenage exposure to extremism, social media platforms monitoring micro-interactions — like scrolling speed — to exploit stereotypical behaviour, political polarisation through echo chambers, and problematic health suggestions —such as a mental healthcare app encouraging users with bipolar disorder to consume alcohol for better sleep.

2. Bias, Shilling Attacks, and Data Leakage

Bias remains a pervasive challenge, occurring when recommendations are manipulated to alter product visibility. This risk is closely related to the feedback-driven nature of RSes. In particular, collaborative filtering RSes are highly vulnerable to 'shilling attacks' — large-scale biases carried out to promote or demote a target item by injecting fraudulent user ratings. These concerns are compounded by data leakage. As RSes extensively collect granular information — such as gender, occupation, and location — fraudulent actors may exploit these vulnerabilities to access confidential data, thereby causing financial loss, reputational damage, and identity theft.

3. Algorithmic Opacity

Opacity is a multifaceted issue in RS data privacy. The 'Black Box' issue has become more pressing as AI-driven models are increasingly integrated into RSes. In this context, the value of informed consent is significantly weakened by users' incapacity to understand algorithmic language and the difficulty of assessing the effects of sharing personal data with RSes. Beyond consent, the algorithmic opacity appears in the form of an additional barrier for tracking and tracing in situations where personal data is leaked. In many cases, data anonymisation and pseudonymisation may render leaked data difficult to trace. Thus, the culprit who disseminated personal data without consent may be hard to identify.

In general, opacity comes in different forms, and can be categorised into three distinct types:

1. **Corporate/State Secrecy:** Hiding algorithmic design under the guise of trade secrets or competitive advantages to evade regulation.
2. **Technical Illiteracy:** The inherent difficulty the general public faces in understanding complex coding languages, filtering methods, and human-in-the-loop interferences.
3. **Application Scale:** The sheer complexity of accurately tracking how an algorithm operates when processing massive, dynamic datasets.

Part 2: EU Regulation — GDPR (2018) & DSA (2022)

A. General Data Protection Regulation

1. Overview and Key Provisions

The GDPR is widely considered as one of the most stringent privacy laws globally. Its primary aim is to protect the 'fundamental rights and freedoms of natural persons and in particular, their right to the protection of personal data.' Data processed by RSes falls under its scope, as personal data is defined as 'any information relating to an identified or identifiable natural person.' Article 5 sets out core data protection principles, including lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, and accountability. Article 7 protects users from data processing without explicit consent. Crucially, Chapter 3 grants data subjects vital rights that are particularly relevant to RS usage, including:

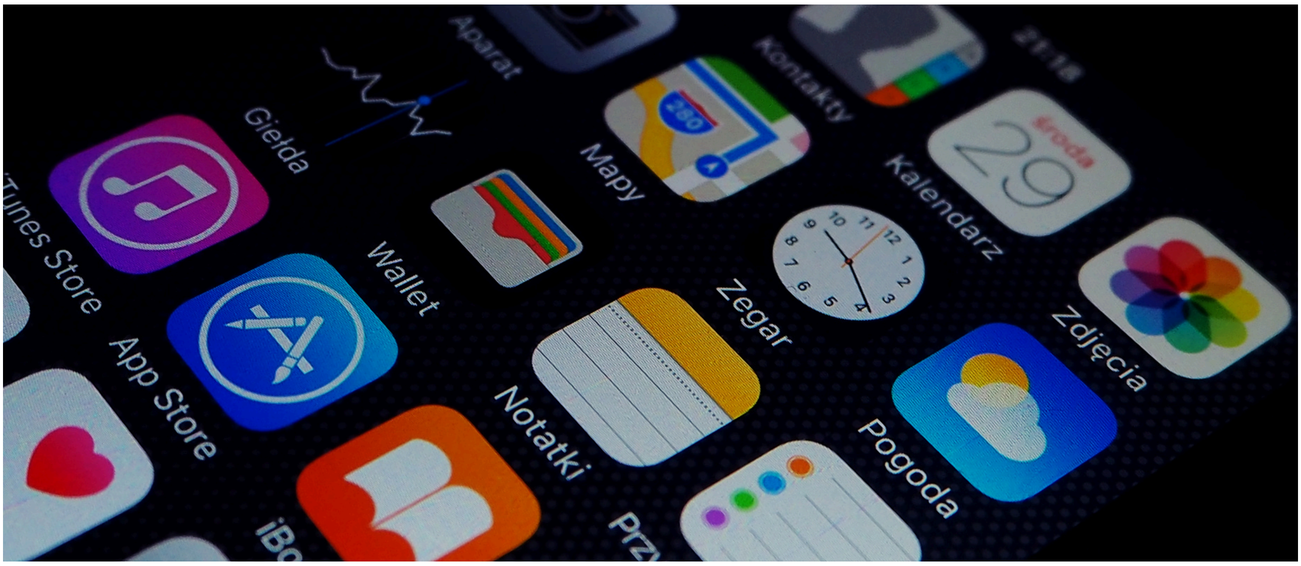
1. The right to transparent information (Article 12) and access (Article 15)
2. The right to be forgotten (Article 17)
3. The right to restrict processing (Article 18)
4. The right not to be subject to solely automated decision-making, including profiling (Article 22)

Pursuant to Article 83, non-compliance carries severe administrative fines of up to €20 million or 4% of a firm's worldwide annual turnover (whichever is higher).

2. Strengths and Shortcomings

EU regulators have actively enforced the GDPR, evidenced by the Irish Data Protection Commission's €1.3 billion fine against Meta for unlawful transatlantic data transfers. However, its effectiveness in regulating RSes is limited by two fundamental weaknesses. The first issue is with its over-reliance on user agency. GDPR utilises a rights-based approach, placing the burden on data subjects to protect their information.

Nevertheless, since most users do not thoroughly read the Terms & Conditions, the 'free consent' for automated decision-making is often an illusion. Another issue is the absence of sector-specific focus. The GDPR does not explicitly target algorithmic transparency or RS mechanics. For example, the high-profile fines against Amazon and TikTok focussed heavily on generalised consent and data transfer safeguards, rather than the specific ranking, amplification, or feedback-loop mechanics of RSes.



B. Digital Services Act

1. Overview and Key Provisions

Introduced in 2022 to assure fairness, trust, and safety in the digital environment, the DSA directly addresses the regulatory gap concerning digital service providers' use of RSes.

Article 27 (Recommender system transparency) requires providers of online platforms using RSes to set out relevant terms in plain and intelligible language; disclose the 'main parameters' and significant criteria used in their RSes; and provide users with accessible options to modify and influence these parameters.

Furthermore, Very Large Online Platforms ('VLOPs') and Very Large Online Search Engines have heightened obligations. They must assess systemic risks, enforce effective mitigation measures, provide at least one RS option not based on profiling, and explain their algorithmic logic to the European Commission upon request. Penalties for non-compliance include fines of up to 6% of annual worldwide turnover, interim suspension measures, and binding compliance commitments.

2. Strengths and Shortcomings

The DSA represents an evolutionary step from the GDPR's general data protection model because it directly regulates digital platforms and RS transparency. The European Commission has already required VLOPs like YouTube and TikTok to detail their RS parameters, while platforms such as AliExpress have faced formal proceedings over transparency failures.

Despite these advancements, enforcement remains imperfect. Deterrence is arguably weak; for instance, a 6% turnover fine may still represent a nominal cost of doing business for a platform like YouTube, which generates tens of billions quarterly. More importantly, the DSA's transparency requirements mandate *explanation* rather than *exposure*. By only requiring platforms to disclose broad metrics rather than the underlying code, systemic risks are mitigated but not eliminated — as seen with ongoing concerns regarding harmful content on TikTok's algorithmic feeds.

Concerns have been raised that RSes may be used as tools for algorithmic manipulation through relying on subtle behavioural signals and emotional response to infer user vulnerability, and thus repeatedly recommend harmful content. One extreme example is that when a user's name is changed and includes words like 'lose weight,' the user receives 12 times more self-harm content recommendations. In such circumstances, where harmful outcomes arise from complex interactions between user behaviour, ranking objectives, and real-time feedback loops, the DSA may fall short of capturing these risks through general parameter disclosure alone.

Part 3: Suggestions for Improving RS Governance in Hong Kong

A. The Current Law: Personal Data (Privacy) Ordinance

Enacted in 1996, Hong Kong's PDPO sets out six Data Protection Principles ('DPPs'), the governing areas of which overlap with several GDPR principles. However, they differ in terms of data subject rights. While the PDPO demonstrates a principles-based approach of governing data privacy protection, the GDPR as a global leader in data protection law, operates a rights-based approach, raising public awareness towards understanding and safeguarding one's data privacy.

Apart from its structural difference from the GDPR, the PDPO remains a relatively obsolete piece of legislation. It has only been significantly amended twice, primarily focussing on direct marketing and criminalising doxxing.

In contrast, although the GDPR was enacted only in 2016, it responds more directly to actual data privacy scenarios associated with the proliferation of the internet. Legal professionals note severe flaws in this outdated framework when compared with both the GDPR and the DSA. The PDPO lacks a mandatory data breach notification mechanism, and its deterrent effect is exceptionally weak — the highest penalty is capped at HKD 1 million and two years of imprisonment. As a result, RS-related privacy issues, such as behavioural manipulation, biased recommendations, and harmful content amplification may fall outside the PDPO's effective reach.

B. A Roadmap for Legislative Reform

With over 6.15 million social media users in Hong Kong, the jurisdiction should consider stronger protections for data subjects exposed to RS-related harms. The following amendments to the PDPO are proposed, drawing upon the successes and failures of the EU framework:

1. Adopt Comprehensive User Rights (The GDPR Model): Hong Kong should expand data subject rights to mirror the GDPR, explicitly including the right to restrict processing and the right to opt out of solely automated decision-making and algorithmic profiling.

2. Mandate RS Transparency (The DSA Model): The PDPO should incorporate a transparency requirement for platforms using RSes. Unlike the DSA, which limits the strictest rules to VLOPs, Hong Kong should apply scaled risk assessment and disclosure requirements to all online services utilising RSes. This is to ensure that the regulatory framework could capture all possible violations against the ethical use of RSes, for RS-related risks may arise wherever services use behavioural data to personalise, rank, or amplify.

3. Statutory Disclosure of Coding Architecture: Addressing the opacity loopholes in both the GDPR and the DSA, Hong Kong should mandate the statutory disclosure of coding construction to the Office of the Privacy Commissioner for Personal Data ('PCPD'), moving beyond mere parameter disclosure. At the same time, the PCPD should employ expert data engineers to audit codes for systemic risks prospectively, rather than relying on retrospective investigations after harm has occurred.

4. Empower the PCPD with Injunctive Relief: Echoing the interim measures in the DSA, the PCPD should be granted statutory power to apply to the courts for punitive injunctions. In serious cases, suspending the operations of platforms that pose significant, immediate harm through their RSes would serve as a powerful deterrent.

5. Turnover-Based Financial Penalties: The current HKD 1 million penalty cap is insufficient. Hong Kong should adopt a penalty framework tied to a percentage of a platform's annual global turnover. This would create a stronger financial incentive for compliance, while allowing penalties to remain proportionate to the scale and resources of different platforms.

Conclusion

Recommender systems are double-edged swords; they are essential for navigating the digital landscape, but create inescapable data privacy risks. They can rapidly amplify illegal content, manipulate electoral processes, and erode physical and mental health.

An analysis of the EU framework highlights both the potential and the limitations of regulatory intervention. The GDPR provides a vital cornerstone for data minimisation and user access rights, yet struggles to address complex algorithmic harms, due to its reliance on individual agency. The DSA adds a much-needed targeted layer, imposing transparency obligations and offering users more control over content prioritisation. However, the DSA's safeguards are still maturing, and its failure to penetrate the deepest structural levels of RS algorithms leaves critical vulnerabilities unresolved.

These lessons provide a valuable blueprint for Hong Kong in that any modification should not merely replicate the GDPR or the DSA. A more effective framework to modernise the PDPO includes incorporating robust user rights, establishing turnover-based penalties, and strengthening an unprecedented prospective algorithmic auditing by the PCPD. In doing so, Hong Kong may have the opportunity to address the regulatory gaps left by the EU, while facilitating a truly modernised, resilient data privacy regime fit for the algorithmic age.

Feature Interview

With Mr. José-Antonio Maurellet S.C.

In June 2026, we sat down to conduct a casual interview session with Mr. José-Antonio Maurellet S.C., Chairman of the Hong Kong Bar Association ('HKBA') and a leading barrister at Des Voeux Chambers.

Q1: On behalf of the Hong Kong Student Law Gazette, thank you so much, Mr. Maurellet, for doing the interview with us today. Let us begin by asking about your professional path before you became Chairman of the HKBA. We note that you were first called to the Hong Kong Bar in 2000 and then to the Inner Bar in 2016. Would you mind telling us what was it that called you to the Bar, and what later on encouraged you to become Chairman?

JM: In truth, I did not know any barristers when I decided to study law, so my original aim was not particularly clear. Most of the people I knew at university were actually becoming solicitors, so I did not have a very strong idea of what barristers were. I completed a mini-pupillage in my first year with Mr. Keith Yeung Kar-hung, as he then was. Now he's a Justice of Appeal of the Court of Appeal of the High Court, but back then he would have been ten years called and he did criminal work. That two-week period was a good experience, but I did not really think further about a career at the Bar. I did not engage in much mooting – in fact, I did zero mooting or debating, and I didn't really think I'd be good at it. I didn't dislike the idea, but it simply seemed too difficult and I didn't know anybody in the field, so I did not think too much about it. Instead, I pursued a number of other activities. I worked for law firms, of course, but also in a bond sales desk at a bank locally, and in mergers and acquisitions at a bank in London. I also did extensive equity research at an investment bank, among other roles.

At that stage, I thought I would probably become a solicitor, as most of my friends were pursuing the same path. There is always a false sense of safety in numbers: if you do what everyone else does, it feels less risky. During my PCLL year, however, I received great kindness from Dr. Richard Wu – now retired, he works with the Singapore Judiciary on development matters. He encouraged me, saying, 'Perhaps you should give it a try.' I replied that it seemed very risky, whereas becoming a solicitor appeared less so. He then said, in effect, that even as a solicitor, one might still be dismissed – a remark made partly in jest, I believe, to steer me back towards the Bar. Eventually, I wrote to a number of chambers and made an attempt. The process was quite incremental.

I had no grand plan or master strategy, so I consider myself fortunate in that respect. I also think that in those days, the competition was perhaps less intense than it is today. While doing my PCLL, I applied for pupillages, and then a couple of people took me on. So, it was really a matter of crossing the river by feeling the stones.

Turning to my role as Chairman of the HKBA, that was not really a decision either. I had involvement on and off at the Bar around my mid-twenties. A couple of friends and I decided that we had ideas that nobody else had. Of course, that was not truly the case, but that was our mindset at the time. So we went to see the then Chairman and said, 'These are our ideas. Would you be interested?' He very kindly took the three of us onto his Council. It was somewhat random. We made an appointment with the secretary, and he accepted us. I then served another year under the following Chairman, after which I was away from council work for about eight years.

When Mr. Russell Coleman S.C. and Mr. Kumar Ramanathan S.C. were Chair, I did another three years. Immediately after I took silk, Mr. Paul Lam S.C., who is now the Secretary for Justice, invited me to rejoin the Council once more. Thus, one thing led to another. I sometimes think that life is more like that than a matter of planning. When I was an undergraduate, for instance, I thought I would practise in judicial review – it was the only subject in which I achieved the highest grade; the rest were consistent, I suppose, but not outstanding. Judicial review has become one of the rare areas I have virtually never practised, not because I lacked interest – I remain open to it – but simply because sometimes in life, you go where it takes you.

Q2: Despite rarely doing judicial review, we note that from your biography, you have other judicial experience, such as being a Deputy High Court Judge and a Recorder of the Court of First Instance of the High Court. How different is that judicial experience as opposed to you being a barrister? Has being a High Court Judge changed the way you work as counsel?

JM: I think there is the similarity that you serve the administration of justice. As a barrister, you try to think of a fair and reasonable result within a particular range, which is closest to what your client would want, but still within reason. Based on the evidence and the law, there is a range of possible results, so you try to steer in the direction that is probably closer to the way your client wants. When you are a judge, you are not there to look after any particular parties; you are really there to try to do justice. I have sat on and off – for eight years now, about a month per year – and I believe the greatest satisfaction comes from actually trying to short-circuit things, so as to save money and time for people. At the end of the day, as interesting as it may be for lawyers to develop the law to try to find how this principle is reconciled with that principle, that is all very well for textbook writers. But if you are the actual people involved, it simply means you are facing additional stress and costs. To the extent you can actually short-circuit things and work out what parties really want, you can then do it, and I find that this gives me quite a lot of satisfaction. It is problem-solving at the end of the day.

Q3: Apart from asking about your professional path, we would also like to ask you some questions about Hong Kong's position in the legal world. A lot of students hear that arbitration and mediation are supposed to reduce the burden on the courts. In your actual experience in Hong Kong, both as a barrister and as an arbitrator on the Hong Kong International Arbitration Centre ('HKIAC') panels, do you believe that has happened? Or have arbitration and mediation just created new kinds of court work, such as injunctions, enforcement, or applications to set aside?

JM: It's actually a very good question. In one sense, a case which is successfully mediated, or a case which is dealt with by arbitration, is one less case for the courts to deal with. So in a sense, they have reduced the work. But on the other hand, as you've rightly pointed out, we have now seen an explosion of cases involved with arbitration – in particular, the setting aside of arbitral awards, and also leave to enforce arbitral awards, and they are very time consuming. This is because it effectively might be set for one day and yet, the judge who deals with it has not had the time nor the involvement which the lawyers have. The lawyers probably spent ten days on that arbitration, and then arguing about whether this point was argued, whether justice was denied because say, paragraph 221 does not refer to a particular argument. So it places quite a big burden.

The Judge in charge of our arbitration list, Madam Justice Mimmie Chan Mei-lan of the Court of First Instance of the High Court, has done a remarkable job at keeping the list efficient because obviously you understand that very often the losing party will try every trick in the book to delay enforcement. Therefore, if you take your time, effectively you are letting the party who lost to subvert, to some degree, the gains. So it has created quite a lot of work.

Many of the awards are made in Hong Kong, whether under HKIAC or other arbitral institutions, but some of the awards come from nearby jurisdictions. To that extent, of course, we will not be involved in setting aside those awards, as you normally do that in the court of the seat of arbitration. For example, for leave to enforce, if I want to say this is manifestly unfair, or there is some ground against public policy, I can still resist. So if the assets are in Hong Kong, ultimately there will be a court application in Hong Kong. That work has really exploded. Over the last twenty-five years, a certain type of work has vanished. For example, when I started off, I did not get any of it, but there used to be what they called vendor purchase summons. Somebody bought a property, and then because the prices were falling, people came and said, 'I would love to buy this flat, but there is a problem with the title, so I am not completing.' So there was that sort of work for a while. Then, after the 2008 Lehman Brothers-induced global financial crisis, there were many of these misselling cases where people said, 'Oh, I did not know my portfolio was so risky. Oh my god, how come?' So I did quite a bit of that as well. Different eras will have different types of work. I think it is just that the work is probably quite stable – it has grown a bit – but on the whole, as the economic cycle moves and society shifts, you have different types of crimes and different types of civil work which come about.

We still need both arbitration and the courts because arbitration is a private contractual and consensual process. But once you get to enforcement, which is 'I want to take your property, I want to take your shares, or I want to bankrupt you,' then you have to go back inside the court process. It works quite nicely. In one area I tend to do quite a bit, which is shareholder disputes, in a pre-arbitration era, everything had to be dealt with by the court, so you would sit through fifteen days of testimony about how the grandfather always allowed his favourite grandson to manage the company, which everybody agreed with, until the grandson was very rude, and this destroyed the trust and confidence.

Now, once you have an arbitration clause, the primary facts can be determined by the arbitrator. The arbitrator would go through the fifteen days, so you hive off that part. But ultimately, if you want to wind up the company, for example, only the court has the power to wind up, so the parties go to court with the arbitral award. You still end up with a lot of cost savings.

Q4: Last month you officially welcomed six distinguished barristers to rank as senior counsel. During the ceremony, you remarked that Hong Kong's self-employed barristers are an essential pillar in the administration of justice, and that the justice system should be kept free from commercial, media, and governmental influences. As the Chairman of the HKBA, do you think these ideals are harder to maintain now than they were when you were first called to the Bar in 2000?

JM: I would say that it is always challenging – it is just that the source or type of challenges varies. But I suspect that it was just as hard fifty years ago as it was hard when I started twenty-six years ago. In real life, of course, if you take on cases for people who, for whatever reasons, are hated by ninety-nine percent of the population, by way of example, that will always bring an extra pressure.

However, this is something that we learn to deal with, and it is important that in our professional code we have the cab rank rule. The idea is that if somebody is willing to pay your usual fee, and you are free and have sufficient expertise or experience to do it, then you have to do it. When I first came across it, I wondered: do people actually abide by it, or would they simply pay lip service to it? My own experience, for what it's worth, is that we actually abide by it one hundred percent. It is quite important because the idea is that, apart from having an independent and fair judge who resolves disputes, there is somebody who is willing to represent you in court. If there is not, then it is a little bit hollow to say, 'Oh well, you can be represented.' I think we are very, very fortunate in Hong Kong in that we really have not – as far as I am aware – come across a situation where people go to court and you say, 'Where is your lawyer?' and they say, 'Well, I have no lawyer,' and you say, 'Oh, you have no money?' – 'Oh no, I have money.' – 'So what is the problem?' – 'Well, I called ten people and nobody wanted to represent me.' That would be a very bad day. This is something we are very proud of – that it is not happening. Our members take on all sorts of cases, which have political and socio-economic implications. Obviously, we make it a point to try to check on them to make sure that behind the scenes, if you like, there is no pressuring of any sort because that is certainly not something which any society governed by the rule of law can tolerate.

Q5: Moving onto your advice and guidance for law students and future lawyers: many prospective junior barristers may be deterred from entering the profession by the financial uncertainty of the earlier years, as opposed to say a training contract. Do you see this as a structural barrier to entry for barristers and future barristers? Do you think there should be any reform, or what can be done to solve this?

JM: When I started, approximate numbers were that within about five years of call, fifty percent of barristers would do something else. That does not mean that they suddenly become unemployed or something terrible happens to them. Some people went in-house, a couple joined solicitor firms, some joined the family business, and others pursued entrepreneurship or other opportunities. I think the first thing to remember is that even if you join the Bar and do not stay there until you are seventy-five, it does not mean that nothing was learned, that time was wasted, or that it has been a failure.

To a large extent, it is a matter of personality. There is always luck, but that happens everywhere. Obviously, for your students – since I have looked at this very recently – I can say that getting in is very hard. So, obviously, all of you have very good grades. Congratulations. That does mean, actually, that if you have the sort of IQ and the sort of soft skills to get into Law at university, you probably are able to do quite a lot of things. Whether the Bar is the thing for you is a matter which only you can resolve. I would really encourage people to come and do summer internships – some of what we call summer pupillages – so that you can actually see whether you like or dislike it. As I say, I never imagined I would be a barrister. Nobody in my family was a barrister, no friend was a barrister. I did not know what chambers were when I first applied here. Eventually, I applied to Mr. Keith Yeung, and I was very lucky that he took me on. But when I graduated, and then looked back, I thought, 'Oh, actually, that was probably the thing I enjoyed the most.' At the time, I did not know because you have nothing to compare with. So I would also recommend, even for people with that ambition, to try banks, try law firms, try management consulting, try whatever else, so that you can actually have a feeling for what you are more attracted to. It is a process of self-learning, which in a way is what the teenage years and early twenties are about: as much about learning about the world as about learning about yourself. In high school, at least for some boys, we tend to take our time to find ourselves a little bit.

In terms of risk, I would say that risk exists everywhere. The risks of joining as a barrister: risk number one is that you cannot find a pupillage; number two is that you need tenancy; risk number three is what if you have no work after you become a full practitioner, and you have to pay rent. These are the risks. But if you join a law firm, of course, there is a risk that they do not retain you. There is a risk that you are made redundant. There is a risk that they close down the office. These are also very real risks, and we have seen that, especially with the advent of AI. In a sense, when you are self-employed, some of the risks are outside of your control, but relatively speaking, more are within your own hands.

You know whether you have put in the work and whether you have the ability to connect with people. In a large organisation, sometimes it is a little bit like being on the Titanic: no matter how good a swimmer you are, if the Titanic sinks, you sink with it. I think we are on a smaller canoe. It looks perhaps a bit rockier at times, but you, comparatively speaking, have more steer on your little canoe than when you are on the big boat. The big boat feels safer, but the risk is just that when something happens, there is lesser control. It is really a matter of personality. There is no better or worse personality or ability; it is really about what you find more appropriate. And we now have a lot of people from The Chinese University of Hong Kong at the Bar.

Q6: What are the most important qualities for a junior barrister to succeed in practice today?

JM: I think you need a minimum degree of diligence. In an odd way, perhaps it affects what I would call the people who think they are the high flyers more than people who are average – like I was – which is that because you have some people who think, 'I got a first here and best in high school, so I must come up with the answer within ten minutes. This is the answer.' This is what I see quite a bit amongst the high flyers: very quickly they will come and say that this is the answer, and then put down their pen. I think you need some intellectual curiosity, but also enough intellectual humility to think, 'Well, maybe there is more than one answer, or maybe this is what you think is the best answer, but would it not be safer to think of another angle?' So it is also intellectual curiosity. Then, perhaps as a result partly of the Covid years and partly of social media – compared with ten or twenty years ago – I find that for some of the junior members, they find it harder to connect with people. I would not say it is shyness, but it is maybe that people are perhaps slightly less collegial on the whole. That is why, generally speaking, people who do things like scouts or group sports activities tend to find it a little bit easier to gel and laugh together. I think laughter is a very good way of gelling people together, or eating meals together – things like that. Also, I think now, at least among some people, there is perhaps a greater degree of individualism, which is: 'I don't want to waste my lunch hour talking to you; I would much rather do yoga or listen to my podcast.' People are perhaps less outwardly sociable.

Q7: What is the one piece of advice you would give to law students, who may feel uncertain about their career paths?

JM: On the last part of the question, I would say just take each day at a time because it is not too useful, in a way, to look too far ahead, simply because things are changing so very often. It is really about picking the opportunities as they come. Sometimes at the Bar, we like to say, treat this case as your last, in the sense that you really want to do the best you can because people get to see it.

That was also the observations made by the Chief Justice Mr. Andrew Cheung Kui-nung and the Secretary for Justice – said at the silk ceremony – in essence, what you do is peer reviewed. The upside is that, unlike working in a company where it is possible your boss might take credit for your hard work, or conversely your bad work somehow gets hidden or swept under the carpet, generally speaking at the Bar because part of the work is done in court, people get to see it. The judge gets to see it, your solicitor gets to see it, and the other side's solicitor gets to see it. So if you actually do a good job, at least when you start, it is not uncommon that the other side's lawyers would then go, 'Oh, this guy is not quite bad, and he is quite cheap.' This is one thing I mention to a lot of people when they ask, 'How do you get your first case?' – as it is quite daunting. The thing is, why on earth would somebody use a twenty-three or twenty-four-year-old kid out of university? The answer, of course, is that he cannot afford the same person who is thirty-five. So he will then say, 'Okay, with this budget, am I better off with you, you, or you?' You are not competing with somebody super good, who has done it for forty years. At the end of the day, you have to perform, and you have to be on the ball – be more updated than your peer group, if you'd like. If you do a good job, then very quickly your name gets around. I remember when I started, there were people who would call me – I did not know who they were – and they would say, 'Oh, I have this case and I have a huge headache.' I said, 'Why is it hard?' They replied, 'No,' – 'So what is the problem?' – 'The client's low budget.' And then I knew the man, and they would call me. At the beginning, people call you not because you are the most well-spoken, or you know the most law, or you are good-looking. It is simply because for that budget, you present the best option. Then as you become more senior, you charge a bit more, and then people call you and tell you, 'I really like you, but this client cannot afford you.' Then you look to the next somebody who is two or three years younger than you, and that becomes their chance. Then you start eating into the next layer. The progression happens quite naturally. It is not as scary as it may look.

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