



Year Book 98

Law Association

FOREWORD



*With Unity, Diversity,
fraternal care within us,
we look to far Horizons,
and Challenges we pursue.*

As the Editor-in-Chief, one is usually trapped in a somewhat paradoxical dilemma — when a publication receives applause, you dare not take too much of the praise, as it is really the substance of various contributors and editors that is appealing; on the contrary, it is a virtual certainty that you have to shoulder all the blame for failure in putting together individual talents into a complete mosaic for the enjoyment of the readers.

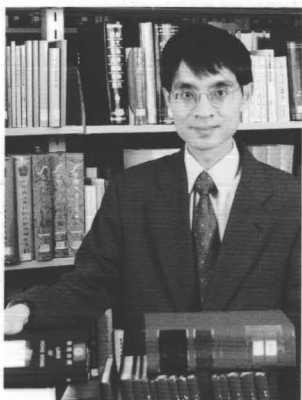
Upon my soul, the coming into existence of a publication is far outweighed by the pleasure derived during the process of its making. Beginning with a very raw theme, then a bundle of handwritings and eventually the grinding away at refinement of layout, such process calls for a determined mind and a sound body. It is not even recognized as a “flow” as it never lacks times of difficulties, confusion and disappointment. But it is also through such repetitive testing that perseverance and self-confidence are strengthened.

Having the opportunity in concluding my work by this foreword, I must make it clear that it's not my own production! Instead, it's the result of teamwork of the whole board of editors, to whom I am much indebted for their coming to terms with my aggressiveness and stubbornness. Far beyond mere endurance, they have always answered my harsh requests with hard work together with commitment. In particular, I would like to thank Jonathan and Rebecca. If not for their respective support and inspiration, I would have never made it!

Tang Kam Wing
Editor-in-Chief



A MESSAGE FROM THE DEAN



This is the message which Professor Albert H. Y. Chen, Dean of the Faculty, wrote to the new students joining the Faculty in August 1998.

University education is a precious gift in life that not everybody has the chance to enjoy even once in a lifetime. On behalf of the University of Hong Kong and its Faculty of Law, I would like to welcome you to this new stage in your life, this door to further knowledge, this adventure in exploring both the world of the intellect and the world of university student activities.

At the beginning of this stage in your life, it is a good time for you to think, reflect, meditate and discuss with your friends about these basic questions: What is university education? What is legal education? What do I want to get out of it? What do I want to do with my University years? What kind of person do I want to become? What do I want to achieve in this life?

There is no single, uniform and correct answer to these questions. Each one of you will have to find your own answers. But before the answers can be found, you must ask the questions and think hard about them. If you never ask these questions now and attempt to answer them, there is the risk that you may regret a few years later and discover that you have wasted your time.

Every moment of time is indeed so precious. It is unique, unrepeatable, and slipping away from us so quickly and easily if we do not grasp hold of it. There is a saying: "Seize the day." Let us appreciate the blessing of the rising sun every day bringing to us a new beginning. A chance to learn. A chance to grow. A chance to live this life to the full. Although life has its darker sides, and no one can be free from pain and suffering in this life, there are also so many beautiful things in life which make it worth living. There is knowledge, wisdom and insight. There is faith, hope and love. There is solidarity, friendship and conversation. There is loyalty, sincerity and trust. And there is, after everything, memory of all things bright and beautiful, and of all kind and good deeds that have ever been done by any one of us.

May I take this opportunity to wish that your University life will be a time of intellectual and spiritual growth for you, and that your journey of personal growth will continue when you graduate. May I share with you Confucius' view of life as a process of growth:

The Master said, "At fifteen I set my heart on learning; at thirty I took my stand; at forty I was never in two minds; at fifty I understood the Decree of Heaven; at sixty my ear was attuned; at seventy I followed my heart's desire without overstepping the line." (Analects, Book II)

子曰：「吾十有五而志於學，三十而立，四十而不惑，五十而知天命，六十而耳順，七十而從心所欲不踰矩。」

Professor Albert Chen

REFLECTIONS OF THE DEPARTMENT HEAD



Dept. of Professional Legal Education



Having joined the University in 1983 I have been a member of the Department of Professional Legal Education since the School of Law split into the Departments of Law and Professional Legal Education more than 10 years ago. I have been the Head of that Department for five of those years. I am rather alarmed to think that I must have taught nearly 3,000 of the present solicitors and barristers in Hong Kong! Life in the Faculty and the nature of my work have, however, changed quite significantly over that period.

In the early days of the Law School life was reasonably simple. We had 60 PCLL students and most of my time was spent teaching. I knew the names of all my students and felt close to them. Now I have 400 PCLL students and only know the names of the naughty ones! I do very little teaching save to the full student class which can only be conducted in the largest lecture theatre in the University (and this only barely seats them all). Sadly I have very little close contact with any of my students any more. Now perhaps 40% of my working time is devoted to writing, 40% to administration and only 20% to teaching and preparing for classes.

You may think that a head of department is a very grand and powerful position. It is not! The head is the servant of everyone. Most of my administrative time is devoted to such mundane tasks as organising the teaching time table, ensuring that we have adequate staffing, ordering stationery and equipment, conducting the examination process, balancing (or failing to balance) the budget and attending countless meetings. I sit on many professional bodies and am involved in the teaching and qualification of overseas lawyers who wish to practise in Hong Kong. I also spend quite a substantial amount of time representing the department at functions organised by the Government, the professions or the judiciary. In so doing I have consumed more snacks washed down by glasses of red wine than is good for my health!

When the teaching is over and the administrative tasks that my wonderful secretary Cecilia insists that I perform are done, I can get down to some research and writing. My writing is done mainly in the evenings, weekends and vacations and I write mainly in the areas of conveyancing, civil procedure and legal ethics. I am very fortunate in that I still find law fascinating and challenging and to research a legal issue and reach a clear and logical conclusion gives immense satisfaction.

I miss the teaching. There is nothing so stimulating as to teach a class of enthusiastic students who respond to questions, argue the law and show an interest in the subject matter under discussion. On the other hand, to teach a class who remains silent and whose only involvement in the session is to sit with downcast eyes copying down everything that is said is disheartening. My greatest criticism of Hong Kong students is their unwillingness to question authority, whether that authority be a teacher or text book. A successful practitioner must be able to challenge authority by logical argument and to advocate a cause.

I have spent more of my academic life in Hong Kong than any other jurisdiction. Over the past 20 years the Faculty has gone from strength to strength; it attracts very able students and has a fine staff of quality teachers. In conclusion I feel enormous affection for and pride in the Faculty, its students, staff and the lawyers that have graduated from its ranks. I very much hope that it will continue to prosper.

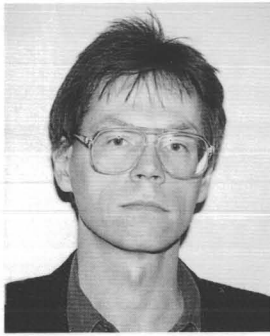
Michael Wilkinson

Professor Michael Wilkinson



REFLECTIONS OF THE DEPARTMENT HEAD

Department of Law



When I first left Canada to work abroad, my professional friends there asked me why I would want to leave behind the security of my position in an established law firm, and the certainty of life in my native country. Well, there was no shortage of answers, but my sentiments were perhaps best expressed by the poet Robert Frost in *The Road Not Taken* —

*Two roads diverged in a yellow wood,
And sorry I could not travel both*

I went down the less travelled road, which was a winding one, and came to Hong Kong in 1989, via West Africa, where I had been doing law reform work for the government of a small, developing nation. My intention in coming to Hong Kong was to take up a teaching position at HKU for a two year term, and then move on, as I had been doing all of my adult life. However, I did not then realize how much I would like Hong Kong, the people, the students, and my job as university teacher and academic.

My current position, as Department Head, was also beyond my contemplation. I never imagined myself in such a role, and it is still a surprise to me how it came about. Having served as Deputy Head from 1993, and Acting Head in 1995, I naively thought that my administrative obligations were more than discharged. However, others thought differently, and perhaps as a matter of expedience, it was easier to leave me in this office rather than try to find a new tenant.

What are my thoughts as this time on being Department Head, as I approach the final semester of my three year term? Well, it has certainly shown me another side of academic life. It is a considerable challenge to try to be a good teacher and even a modestly accomplished academic while negotiating the subtleties and personalities of a large teaching department of 33 colleagues from more than a dozen countries. However, on balance, I consider myself lucky to work with such a friendly and professional group of academics and support staff who are committed to their work, to the education of law students, and to the institution of law in Hong Kong. This aspect of the job has proved not as difficult as some people would think.

Of greater interest to you perhaps is the role of Department Head vis-a-vis the students and the teaching programme. Indeed, this is the more interesting and rewarding part of my administrative work, although it has its hazards too. It may come as a surprise to learn that there are actually about a dozen degree or diploma programmes in the Department of Law, comprising as many as 550 students. This can make for a busy life for a Department Head. Early in my tenure as Department Head I announced that I would receive students in my office as I always had, without the necessity of a formal appointment, assuming of course that I am not otherwise engaged. This has proved an expensive promise, but I still follow this practice today. For me, the students are and will always be my primary constituency, and take priority over my colleagues (but don't tell my colleagues!).

Teaching remains the greatest joy of my job, and I look forward to the day when I can return to full-time teaching and academic work. However, this is the age-old cry of the university academic/administrator, and I will not go on here about that. For now, I have no regrets, and I find confirmation in the words of the poet —

*Two roads diverged in a wood, and I —
I took the one less travelled by,
And that has made all the difference.*

Mr. Rick Glofcheski



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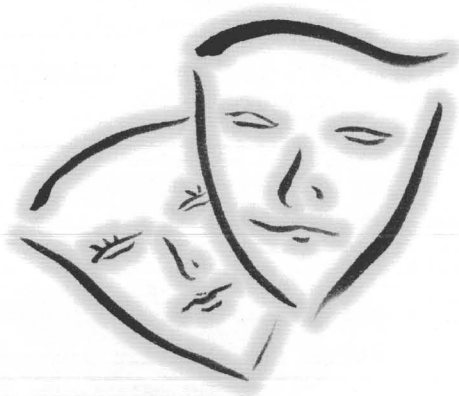


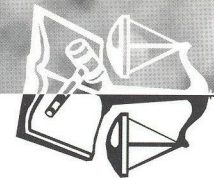
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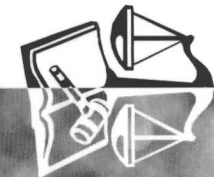




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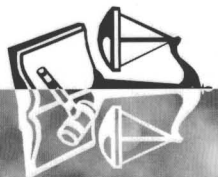


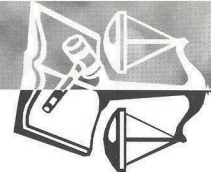


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| 1st row | Evelyn Liu, Joanne Lam, Varsha Chugani, Elaine Wong, Drew Lai, Kristen Kwok, Lily Ma, Lydia Cheung, Harmony Ng, Rebecca Lau, Chionia Lau, Frances Li, Christine Chong, Connie Cheung, Eva Chan, Karen Law |

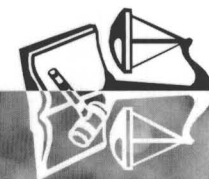


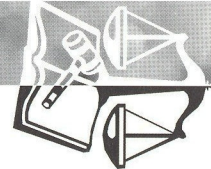


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| 7th row | Simon Chan, Christopher Cheng, Gary Ho, Timothy Tso, Eddie Lee, Yip Chi Ho, Cyrus Tin, Benjamin Ng, Dennis Fong, Marcus Cheung, Kevin Tong |
| 6th row | Bernard Lam, Clifford Tavares, Jeff Chan, Edmund Chan, Rudy Chung, Eugene Yim, Polly Wong, Connie Chow, Jessie Wong, Megan Chia, Eliza Wong |
| 5th row | Grace Fung, Sabrina Mak, Amanda Yik, Marianne Cheng, Flora Cheung, Patricia Wijaya, Mickey Fung, Chloe Lau, Teresa Kam, Dorothy Ho, Winnie Hui, Elizabeth Yang, Karen Lui |
| 4th row | Ellen Lam, Betty Young, Amy Tam, June Cheung, Ida Yau, Molly Kan, Jennifer Lam, Connie Sy, Rita Cheung, Sharon Ngan, Gigi Lau, Sabrina Kirpalani |
| 3rd row | Yeda Hong, Rena Lam, Silvia Hung, Candice Leung, Celia Li, Yvonne Yeung, Jane Lo, Anne Leung, Anita Shum, Connie Lo, Felicity Wong, Charlotte Tse, Jo Lit |
| 2nd row | Anda Wong, Cindy Chiu, Jaime Pang, Mandy Choi, Choi Kwan Wing, Patricia Fung, Memi Ng, Joan Auyang, Joanna Lee, Cecilia Wong, Jane Ting, Eva Wong |
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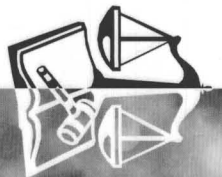




PCLL (from left to right)

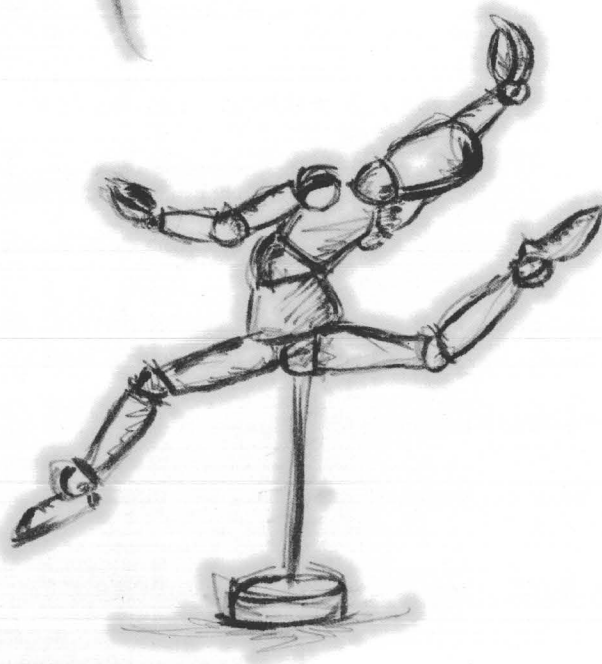


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| 8th row | Howard Kong, Jonathan Ko, Jonathan Lee, Sunny Lam, Louis Lai, Charles Mo, Brian Pong, Grams Richard Scott, William Lee, Wilson Yiu, Durward Kan, Wayne Law, Leung Sai Kit, Chiu Pit Ming, Victor Lee, Johnny Ma |
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Body





Statistics

Introduction

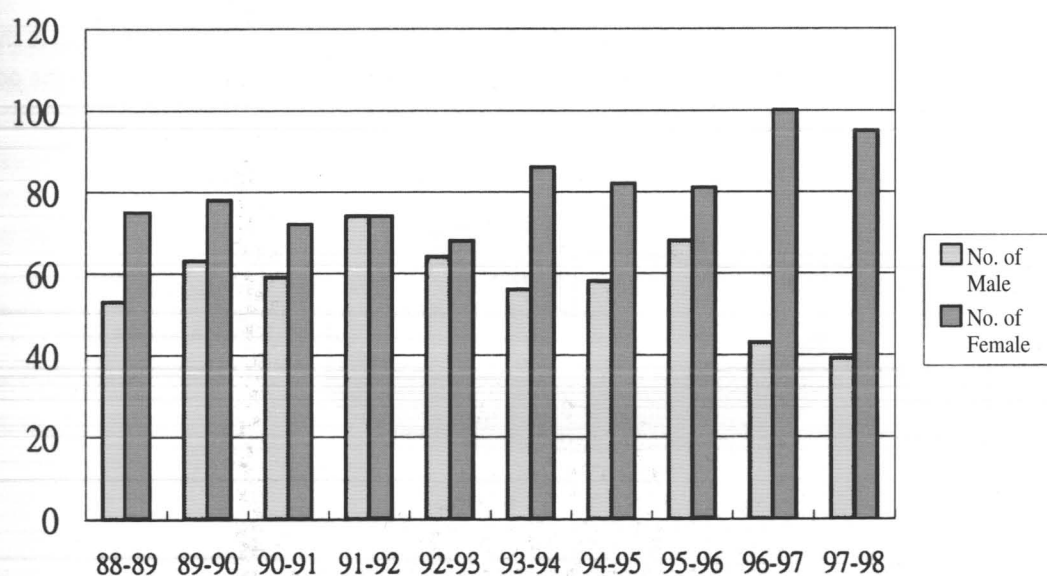
The information contained in the following section is obtained from the Law Faculty Office of HKU and the Career Education and Placement Centre:

- Academic Result (1989-1998)
- Sex Ratio (1989-1998)
- Employment — Employment sector (95-97)
— Basic Salary & Gross Income (94-97)

Bachelor of Laws

| Year | First Class | Second Class (Upper) | Second Class (Lower) | Third Class | Passed | Total of student graduated |
|---------|-------------|----------------------|----------------------|-------------|--------|----------------------------|
| 1997-98 | 13 | 54 | 63 | 4 | 0 | 134 |
| 1996-97 | 9 | 47 | 83 | 4 | 0 | 143 |
| 1995-96 | 6 | 41 | 97 | 5 | 0 | 149 |
| 1994-95 | 7 | 49 | 73 | 10 | 1 | 140 |
| 1993-94 | 1 | 26 | 99 | 16 | 0 | 142 |
| 1992-93 | 0 | 21 | 99 | 12 | 0 | 132 |
| 1991-92 | 3 | 38 | 95 | 12 | 0 | 148 |
| 1990-91 | 0 | 37 | 92 | 2 | 0 | 131 |
| 1989-90 | 3 | 32 | 92 | 14 | 0 | 141 |
| 1988-89 | 0 | 29 | 87 | 12 | 0 | 128 |

Sex Ratio of LLB Students Over Past Ten Years





Employment Sectors

92% of the 1995 PCLL graduates were employed in commercial & industrial field. The remaining 8% joined the civil service. (Figure 1)

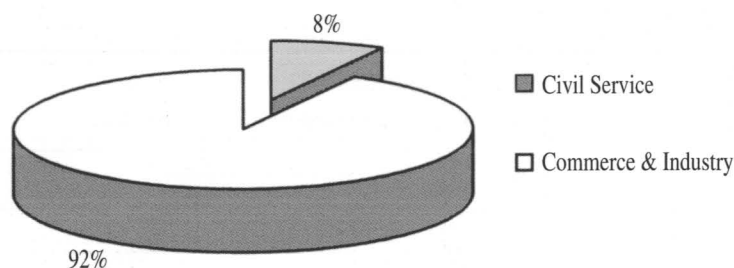


Figure 1. Employment Sectors of 1995 graduates

86% of the 1996 PCLL graduates were employed in commercial & industrial field. The remaining 12% joined the civil service and 2% worked in community, social & personal services. (Figure 2)

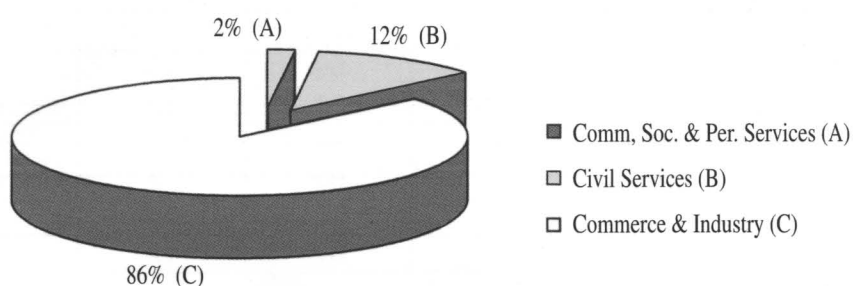


Figure 2. Employment Sectors of 1996 graduates

Most (92% or 122 graduates) of the 1997 PCLL graduates were employed in commercial & industrial field, followed by 6.8% (9 graduates) in the civil service. This remaining 0.8% (1 graduate) joined the education sector. (Figure 3)

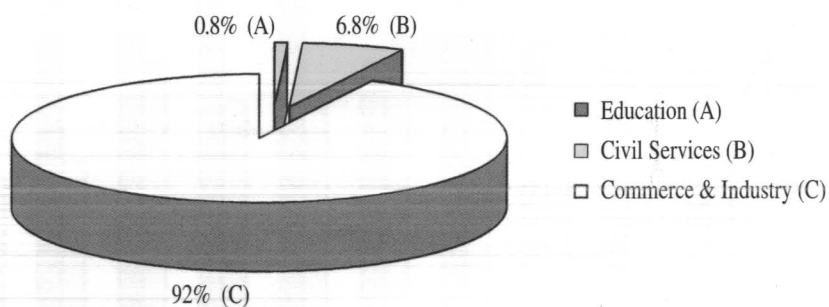


Figure 3. Employment Sectors of 1997 graduates



Basic Salary and Gross Income

The remuneration received by the 1994 to 1997 graduates is shown as follows:

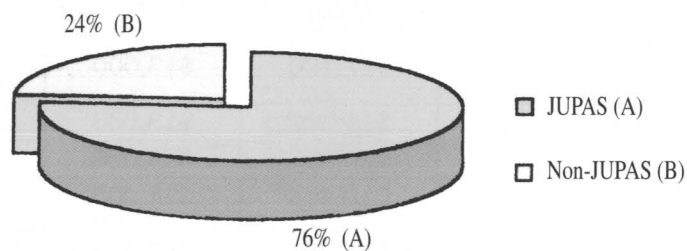
| | | | Mean | Median | Minimum | Maximum |
|--------------|-------------|-----|----------|----------|---------|-----------|
| Basic Salary | PCLL | '94 | \$17,120 | \$13,000 | \$8,000 | \$75,000 |
| | | '95 | \$15,262 | \$13,000 | \$0 | \$34,000 |
| | | '96 | \$20,346 | \$15,000 | \$8,000 | \$102,900 |
| | | '97 | \$18,864 | \$16,000 | \$0 | \$37,500 |
| | | | | | | |
| HKU Average | HKU Average | '94 | \$17,306 | \$15,000 | \$7,000 | \$75,000 |
| | | '95 | \$16,431 | \$15,000 | \$0 | \$54,145 |
| | | '96 | \$18,492 | \$15,500 | \$6,650 | \$102,900 |
| | | '97 | \$19,306 | \$18,000 | \$0 | \$66,500 |
| | | | | | | |
| Gross Income | PCLL | '94 | \$19,397 | \$15,000 | \$8,000 | \$135,000 |
| | | '95 | \$16,177 | \$14,000 | \$0 | \$34,000 |
| | | '96 | \$21,944 | \$16,792 | \$8,000 | \$129,900 |
| | | '97 | \$19,839 | \$17,333 | \$0 | \$44,500 |
| | | | | | | |
| HKU Average | HKU Average | '94 | \$19,091 | \$16,475 | \$7,000 | \$135,000 |
| | | '95 | \$17,574 | \$15,833 | \$0 | \$71,145 |
| | | '96 | \$20,345 | \$16,792 | \$7,204 | \$129,900 |
| | | '97 | \$20,326 | \$19,500 | \$0 | \$75,000 |
| | | | | | | |

Monthly Income by Occupation (1997)

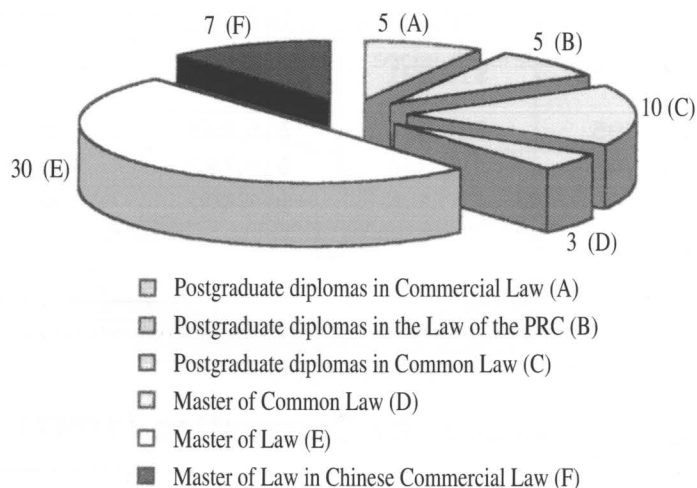
| Occupation | Median HK\$ | | Maximum HK\$ | | Minimum HK\$ | |
|---|-------------|--------|--------------|--------|--------------|--------|
| | Basic | Gross | Basic | Gross | Basic | Gross |
| Legal personnels | 15,000 | 16,250 | 37,500 | 50,417 | 0 | 0 |
| Pupil barristers | 0 | 0 | 0 | 0 | 0 | 0 |
| Barristers/Pupil Barristers working in Government | 33,335 | 33,335 | 33,335 | 33,335 | 33,350 | 33,350 |
| Solicitors/Trainee solicitors in Private practice | 15,000 | 17,000 | 37,500 | 50,417 | 10,000 | 10,000 |
| Solicitors/Trainee solicitors working in Government | 33,335 | 33,335 | 33,335 | 33,335 | 30,000 | 30,000 |
| Other legal personnels | 18,000 | 19,500 | 18,000 | 19,500 | 18,000 | 19,500 |



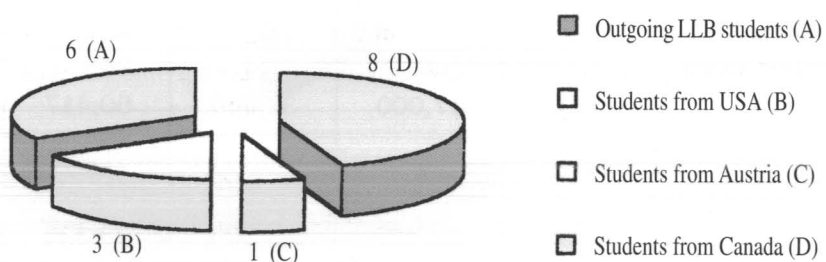
Intake of LLB Class 1998



Postgraduate Students (1998-99)



Exchange Students (1998-99)





Links to other institutions have been strengthened in recent years. In the current academic year, ten students from Austria, Canada and the United States are studying the LLB course here. At the same time, eight of our LLB students are studying at universities in Australia, Canada, Singapore, Sweden and the United Kingdom under the Worldwide Undergraduate Student Exchange Programme (for more information, you may refer to <http://www.hku.hk/local/acad/worldwide/on the net>).

In the following section, students who have gone on exchange, who are currently on exchange and who are going to go next year, will share with us their experience and feelings about exchange, the merits and demerits of it and why they wanted to go on exchange in the first place.

My Life at Nottingham

Michelle Poon



THE UNIVERSITY OF Nottingham

world wide web server



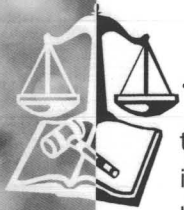
Two totally naked guys running in the freezing wind, one hundred elated spectators cheering, two lonely saucers lamenting (who would like to be the "protective shields", receiving the whole world's attention at this particular moment?) and all because someone had lost in a pool game ... Not very British to you? Well, it did happen in the beautiful greens of the University of Nottingham (UN), in the hometown of Robin Hood. Not to say, I was excited when I saw this "spectacular" scene, just as when I first arrived at UN, seeing the delightful picture of the campus: white clouds, blue, boundless sky and a beautiful lake encircled by thick green woods, like a painting of Monet, only this time there are also squirrels jumping here and there. Everything is just so different from home! When I got on the plane in Hong Kong, it was 30°C outside; when I arrived at Heathrow, it was 10°C. I could still remember clearly my first night staying at the hall. It was cold but the heater was not on yet, so I had to get up in the middle of the night to wear more just to keep myself warm.

It took some time to adjust myself to all the changes, weather for the first thing. One moment there is hail and the next moment, there is sunshine. Therefore, one thing you can't forget to put into your bag is an umbrella. For those who have great concerns for their artistic tastes, I am afraid it is

necessary to lower their standards a bit at Nottingham. It is indeed wiser to wear layers of clothes here so that you won't be frozen in the chilling winds but would not feel too warm when you stay in a heated, closed-window classroom.

Food is another, all in one word: potatoes. Jacket, grilled or chips, every-single-day. It doesn't take long before you realize you can't fit in those old jeans anymore. Don't want plain chips? At this school where D.H. Lawrence graduated, no ketchup provided unless you pay an extra 20p! Nostalgic of Chinese food? Well, go downtown and you will get "Ma Pau" beancurd for only 7.5 pounds (HK\$97.5) and porridge with pork and salted egg for 4 pounds (HK\$52), still a great deal cheaper than flying home!!!

Once get settled, however, you will see UN is really a nice place to study. Basically, there is nothing much to do at night, especially if you are not a party-animal or you don't fancy alcohol very much (many students here love stocking crates of beer in their rooms). Thus, if you need to concentrate on your studies, this is the right place (unless your neighbours are hyper-active + Oasis fans like mine). As a law student, one would also have the privilege of sitting next to a wood-panel window in the law library and be able to admire



the graceful swans swimming in the scenic lake right in front of the law faculty building. However, people here are just too busy queuing for the 4 photocopying machines, inter alia, there are tones of readings to do every week, so there is hardly any time for swans. Actually, law students at Nottingham share many characteristics with my learned classmates at HKU. They are smart and very hardworking and the teachers are friendly and devoted like the lecturers and tutors back home. The way they arrange lectures and tutorials is quite similar to ours. Like HKU, UN has achieved a very high reputation for their law school.

At UN, about one-fifth of the students come from 100 different countries so you can hear all kinds of accents of English and have chances to understand their diverse cultures and their points of view. You can always hear something interesting from them. As an exchange student from Hong Kong, I have always encountered the "must-ask" question

of whether there is any significant change after the handover and of course I always try my best to tell them the best I know. Communication is the best way for resolving misunderstandings among people and is a vital means for having a peaceful world. I am honoured to have the opportunity of being a bridge for this meaningful purpose.

Courage is among the many things I have learned at Nottingham. Everyday, I have to walk up a hill to class and will always meet those fat, vivid worms on the road which one would step on inevitably. This has trained me to be brave. I have also learned to be independent and to manage my financial situation successfully. But above all, I have learned that despite all the differences in our cultures, there are still many things that are common to all of us. I have learned that the world is a beautiful place and only if we respect each other's differences, we can make the earth into an even more lovely place to live in.



Why Not Take a Chance?

Grace Chow (III)

When asked to write this article I immediately jumped at the opportunity, if not just to explain my sudden disappearance last year to fellow classmates and just as sudden appearance in second year classes this year. Rather than being transferred out of the Faculty or abducted by aliens as some would have liked to believe, I was studying at the University of Toronto as an exchange student.

Just over a year ago, there was most definitely less talk of going on exchange programs but this year it seems quite the fashionable thing to do, exciting a "Buzz" around the Faculty evident from the display of enthusiasm by which students hurtle questions at me concerning my exchange experience.

Many have asked why I decided to go on an

exchange program. My response is simply why not? Someone actually gives you money to go and it's a legitimate reason to have a good time abroad! Seriously though, experiencing life in a foreign country is always a good opportunity to see what's out there beyond the narrow contours of Hong Kong society. Just as importantly, getting away from the comforts of home and being pampered by your parents promotes much self-growth.

Furthermore, it's a rare opportunity to experience life as a student in a prestigious law school, for which humble students like myself may not be otherwise possible!? I should not mislead you to believe that it was by all means easy to study at Canada's top law school and that I breezed through it. I still remember the sense of intimidation and feeling of ignorance at the beginning to sit in a



class with students, all having obtained at least one degree, who were much more, shall we say, "mature" than myself. However, I gained a great deal from interacting with these people from all walks of life and it really broadened my own perspectives. Law school in Canada also induces a certain responsibility for your own learning and sharpens one's critical skills. Although there were no (dreaded?) tutorials, the lectures were more like seminars and active participation of students (which means prior preparation of materials) was expected.

There is also the social aspect of going on

exchange. Through extra-curricular activities and living at a residential college, I gradually made many friends which quickly allowed me to assimilate into the new lifestyle and thoroughly enjoy my stay.

Of course, returning from an exchange program has its difficulties in trying to read just and the need to take certain pre-requisite or core subjects means that I have to "float" between second and third year. However, all in all, it has been a most valuable year abroad, one which I would strongly recommend to all.

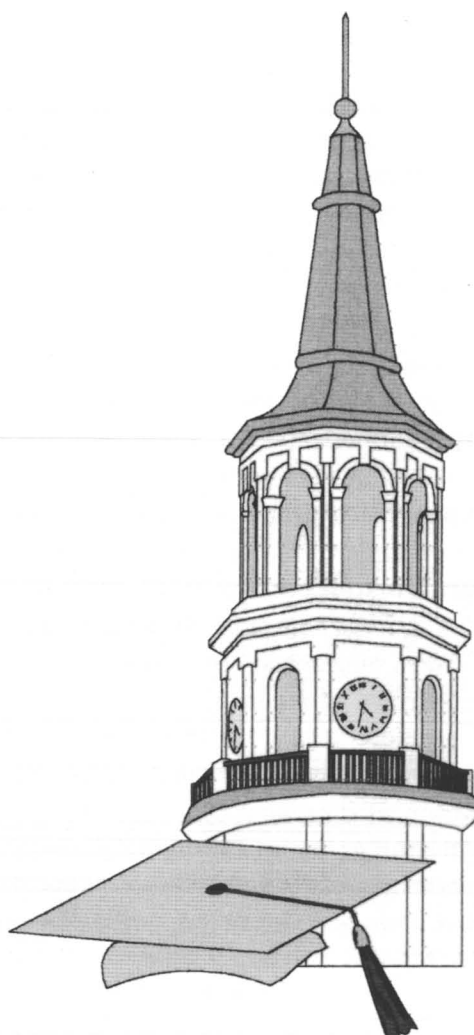
Exchange to American Law School

Teresa Kam Yuk LLB III (HKU)

Was it L.A. law, was it Devil's Advocate? was it First Degree Murder? I am not sure which one of them is my interest to American legal system. Those aggressive lawyers, which all of them are "Attorneys" (not as our solicitor-barrister practice) look tough but up to the usual expectation of a "Lawyer in the courtroom". It was funny that what I heard is, if you slipped in the down supermarket and by the time you went out of the hospital, there would be ten odd attorneys surrounded you as if you are a movie star, they asked for your signature, not for collection purpose, but to get your permission for them to represent you in the lawsuit against supermarket. How amazing would it be in the eye of old British style "learned friend"! At least it became a big illuminating things in the eyes of mine and when I knew there was the chance of exchange to US law school, there's nothing in my mind but apply for it.

"There are always laws that you don't know whatever how many ten years your study would be." This is the first advice I heard from the current when I was still a freshman. "But the legal skills," I said, "would improve and accumulate by years of years in studying and practicing." That would be my advice when I was also one of the current now. America is a common law jurisdiction which is full of creative lawyers and established advanced legal skills. Being critical and innovative in presenting legal arguments is one of the dazzling elements of a good lawyer. I

wish I am able to experience in such a salient environment in America.





Students in the Faculty have always addressed students who are either taking law as their second degree or have had more experiences in life (in terms of years) as mature students. Eric Chan who obtained his first degree of Social Science in HKU is now in the second year of his LLB. He now share his feeling with us.

Eric had previously attained a degree in the Faculty of Social Sciences majoring in politics and public administration in HKU. He then took up a job as a research assistant at the City University of Hong Kong. Although, he had always felt, even when he was in the early years of his first degree, that he was lacking something, it was till now he began to realize how useful a Law degree could be to him. He increasingly felt that politics involved some law components. For instance, the debate on legal and political affairs during the hand-over period, it became clear to him that the two are inseparable.

"This coupled with the difficulty I faced in finding a good job with a degree as general as the one I hold made me decide to take up a degree which is more specific. I figured that apart for complementing my previous studies, this would boost my career prospects as well". During his years at the Social Sciences Faculty, he took part in various debates as a member of the current affairs committee of the Students' Union and this too led him to the view that an LLB was indeed the best course for him to take.

Law and politics, although they may have various things in common, are no doubt two separate fields. In Eric's view, legal studies are comparatively more confined and technical and are not as stimulating as humanities subjects since there is less potential for debate. With Law, one is very easily confined to previously decided cases and statutes. However, with the social sciences, one is encouraged to look at things from different perspectives including the moral, ethical and philosophical. Hence, there is more room for argument.

"I felt strongly about this in my first year of law. However, as time went by, I began to realize that Legal studies could be highly interesting and stimulating as long as one looks at the mentality behind a specific area of Law and the legal system

as a whole. A good lawyer is one who can distinguish good law from evil law and should not be mechanical in its application".

Every Faculty in HKU breeds a culture of students different from those in every other Faculties. It is interesting how people perceive Law students. Generally, it is thought that they are very work-oriented and their primary goal is to do better than their fellow students. Eric agrees with this but did not fail to add that the heavy pressure upon the students makes it inevitable for them to approach things from a very narrow perspective such that they do not have the opportunity to give thought to how others may approach a certain issue. In his view, the Law course would be far better if more humanities components were added.

The competition, he says, may be a good thing as it encourages all to work harder. It also means that work will always come between a good friendship.

"As a mature student, I do sometime feel different because of my previous experience and the way I took at things. Having done my first degree at the same university, I have the already had the experience of early university life such as orientations and hall life and hence, when my fellow classmates talk about such things, I can't share their fascinations. This makes it difficult at times to fit in". All in all, being part of the Law Faculty has been a fabulous experience for Eric and he seems to be quite sure that he has in fact made the right decision in deciding to pursue an LLB in HKU.



In recent years, more and more people are coming to HKU to take LLB after having had part of their education in other countries. Charmaine Yip, Sarah Chow and Andrew Tam are year one students who have returned from the United Kingdom, the United States and Australia respectively. In the following passages, they give us an idea of what it is like to be an overseas student in a foreign land, what made them come back to take LLB, and the ups and downs of returning to Hong Kong,

留澳點滴

譚沛鋒 (I)

得事先聲明，以下所述是作者在墨爾本的體會而已，可不能信口開河的說：「澳洲就是這樣的！」

自問在當地算是「一級潛艇」，因此也就自己最熟悉的大學生活談起吧！在澳洲，只要能力勝任的話，大多數學生都不會滿足於單單攻讀一個法律學位，而會兼讀另一學系的科目，以求在畢業時能同時取得兩個學位。這類雙學位畢業生在選擇工作時，也因而有較大的彈性。短視一點來說，多懂一點知識至少能增加我們考試時大吹大擂的本錢嘛！

另一方面，校方多採取「放任」政策，要求學生較主動地學習。比方說，好些法律上的技巧如翻查案例、法律條文等，我們都是從「實戰」（即寫論文）中摸索得來的。但碰上我這樣的「懶人」，便會到今時今日依然不懂得怎樣搜集資料。

猶記得第一年踏進法律系門檻時，難題倒不是沒有的。最明顯的例子莫如一上大學便要面對大量艱澀難懂的法律名詞和法官判詞；環顧身邊同學大多操流利英語，當時那種危機感和疏離感著實令我慌了好一陣子。幸好尚不至於叫天不應，叫地不聞。單看所就讀的大學便有一所專為海外生而設的語文中心，舉凡我們有甚麼功課、論文等，均可先交到該中心的導師批閱，範圍當然只限於文法應用，遣詞用字等。其後我們亦會有一個跟導師面談討論的機會，焦點亦不局限在功課上。



筆者較喜愛澳洲的小組形式授課，一班只有三十餘人，不像香港般百多人全擠在教

室內。人數少的好處是氣氛較為輕鬆開放，學生較勇於發問之餘，講師亦較易跟學生打成一片。記得去年年終最後一課時，我們的講師大破慳囊，購買大批食物外，另加香檳兩支，一邊討論考試問題，一邊像開嘉年華會般大吃大喝。「大戰將至」的緊張氣氛剎那間化於無形。此外，那邊每一科都有多個不同小組設於不同時段供學生選擇。奇怪在這裏我們竟沒有自行揀選時間上課的自由。

論若這邊有甚麼不足之處的話，我相信是各級學生之間的疏離關係——級與級之間並沒有甚麼特別的聯繫，所以任何筆記、「貼士」等，均需靠個人關係張羅，亦因此必須盡量擴闊自己的朋友網。不過，話分兩頭，筆者亦得慚愧地承認，始終未能主動地結識一些地道的外國朋友。縱然要鍛鍊英語，兜兜轉轉也總會找來亞洲人當對手。心底裏終究有道不知從何說起的屏障——他們所喜愛的澳式足球、滑板、看書等，通通不是我的那杯茶。或許這叫文化差異吧？

說罷校園，分享一下當地的日常生活吧！老實說，也不是真的想當潛艇，只是一來沒有考獲車牌；二來若依靠當地交通工具的話，更是註定的「邊度都唔駛去」。簡單來說，甚麼火車，巴士等，一到周末周日或入夜後，班次便疏疏落落。更有甚者，有次苦候了個多小時依然未見巴士的踪影，輾轉查問後方知道該班巴士已給取消了，然而未見站內有何顯示，生氣卻又無處發洩。至於火車誤點更是常事——五分鐘為正常，十分鐘合理，紀錄時間是四十多分鐘。事實上，有車駛來已是萬幸，因為那邊的司機動輒罷工，筆者便曾險些為此而自行停課一天。

不過從以上種種令人不勝其煩的事件中，卻又可看到當地人性格可愛的一面。記得一次誤點達廿分鐘之久，筆者心裏早已把鐵路局一千人等罵了一遍又一遍，但四周的人卻處之泰然，繼續看書閱報玩填字遊戲。到得上車時，還能把誤點一事付諸笑談。見微知著，這種豁達的態度實在值得我這類急先鋒多多學習。

人、車之後，接着就是澳洲三寶——「烏蠅



酒鬼肥佬」。對於後兩者，筆者接觸機會不多，卻與三寶之首有數次交手算得上是有點認識。澳洲蒼蠅的數目論多恐怕不及大陸，但它們的可惡之處在於「揮之不去」，不論你用何種方法驅趕它們，三、五秒後又會掩至，兼之它們特愛鑽耳朵，往往會殺你我一個措手不及。其次，它們飛行時所發出的聲響可說是駭人，關上房門後，客廳中蒼蠅嗡嗡之聲竟仍清晰可聞！再加上它們生命力極強，試過把「它」成功擊落，正躊躇如何善後之際，一仰頭便又見那個「它」在空中耀武

揚威。因此，每當遇上它們，筆者是可走則走。若在蝸居中的話，則必定沉着應戰，以防中伏。

由於自行在外租屋住，因此有不少時間精力得放在打理家務上，其中最費心思的要算是三餐的問題。一如前述，由於交通不便，為免遺漏甚麼而致來回數次浪費時間，買餸前必先計劃買甚麼和多少，不過也總有拿捏不準的時候。其次怎生煮法及醃製功夫也是令人頭痛的問題。回港後，事事有兩老打點，着實有天堂地獄之別。

「在家千日好」，此之謂也。

Carpe Diem

Sarah Chow (I)

If I were doing my undergraduate degree in the States now, I will not be writing my Tort essay during Christmas holiday, wondering if I can finish the Law and Society essay before its due date and worrying about the Legal Skills' group project.



College system is more flexible in the U.S. than in Hong Kong. Depending on your pace, you can finish your degree between three and seven years. Each course carries certain "Credits" or "Units". You can graduate once you fulfil the number of units of appropriate courses required for your degree. This flexibility is quite important for some students in the U.S. since they work to pay for their tuition; some prefer to take fewer classes each semester and spend more time at work, some choose to take more classes, and sometimes purely based on personal interest. In Hong Kong, there is not much choice as to the number of units/courses you take each semester and when you can graduate.

In the U.S., students have to fulfil the General Education requirement. There is a heavy focus on the breadth of experience in the U.S. education system and there are different General Education's requirements for different majors at different

schools. For instance, my major was engineering and I have to take certain units of courses in arts, science and humanities before I graduate. I chose courses in music, logic, philosophy, even gerontology (study of human aging) etc. This is a very good way to expose myself to other aspects of life besides engineering and business. In Hong Kong, the system is much more about specialization. I hope the changes being carried out by the University now would let other students enjoy some of the benefits of general education.

Regarding culture, the U.S. and its people are very independent. When I was in college, I joined some national honor societies (Chi Epsilon and Tau Beta Pi) and other social organizations. There are also traditions which we have to observe during the inauguration. I actually had a cultural shock on the first day of school at HKU. How come everyone was wearing black and white?! Was I required to join the Law Association (no offence)? How come I was "warned" to go to the mass orientation? I was uneasy with all these requirements because I was not given a choice and I see no rationale in it besides tradition. Granted, there are still plenty of socialization and bonding activities going on in the U.S., I was willing to follow their tradition and I join them out of my own choice.

College life is more than just classes and tests. In the U.S., students developed many extracurricular interests. When I was in Los Angeles, I developed interest in camping, hiking, roller blading etc. because all these activities are easily accessible. I also got a chance to explore Alaska and spent my summer studying in England. To me, life can be getting up at six in the morning, go fishing by the



lake with a couple of friends and enjoying a hot cup of tea. Life can also be spending my Saturday grocery shopping and doing laundry. A long weekend can mean Las Vegas and Grand Canyon, when all my friends have to put up with my singing while I was driving.

There are many other differences between studying in the States and Hong Kong which I am

not able to cover further. However, each system has its own advantages and disadvantages and one system is no better than the other. The important thing is how you spend these few years. I still remember what my dad told me when I left for the States, he told me that the next four years will be the best years of my life and I should enjoy every single minute of it. I did and I believe that this is true no matter where you go to school. Carpe Diem!

Life in London

Charmaine Yip (I)



Life in London is not typical of university life in the United Kingdom, for the majority of universities in England are campus universities.

Living in London is not purely a British experience at its best, but also one of a multi-racial kind. London, a cosmopolitan capital, attracts university students from all over the world, especially Asian. There is a thriving Chinese community in London which is best represented by the sight one would have upon entering into the famous Chinatown, where the multitude of Asians in that little district and the frequency of the voices in Chinese chatter make any British person entering look like a foreigner.

The University of London, subdivided into various colleges of their own separate identities, caters adequately for their students who are living away from home in their first year. While the London colleges provide accommodation for their freshmen, the University itself also has several intercollegiate halls into which students of any college are admitted. Life in a hall of residence is rich as a cultural experience: one can meet many different people of different nationalities and thus it is possible for you

to live with an African next door, a Malaysian on the side and a Brazilian opposite ...

The hall-life may only be part of the experience of a London student, since in general he must move out after the first year. Nevertheless, these serve to highlight the degree of independence of a student in England. The independence is invariably linked to bouts of freedom of course ... and life is typically characterised by traces of alcohol, regular visits to pubs and discos and sleeping in until 4 pm due to severe hangovers ... though all such symptoms fade gradually as students get to the end of the year and suddenly it dawns to them that exams are only a few weeks away ...

There is a group of Chinese students in each London college who form a Chinese Society which cater for the welfare of students who come from Hong Kong in particular. Various activities and performances, such as the famous Variety Shows in the individual colleges are organised and attract a considerable attendance every year.

Now people must be asking: do these London students ever work at all then? Well, they all manage to achieve a formidable balance in the end, with different degrees of achievement out of the demanding law course. In fact, a fair number end up in our very own P.C.L.L. course and ultimately enter into the Hong Kong legal profession.

The exposure for law students in university in London is unique and unrivalled to all those who have had a chance to experience it. In many ways, it is different to life in Hong Kong. However, if anyone asked me as to why I have decided to come back, I could say one thing: "There is no place like home."



The Philip C. Jessup International Law Moot Court Competition

Organised by the International Law Students Association, this event gives law students opportunities to present arguments on question of international law, as if they were advocates before the International Court of Justice sitting in the Hague, the Netherlands. The contest is divided into regional and international rounds with reportedly over 1,500 students from nearly 300 law schools in the contest.

Our team, consisting of Richard Tam and Anson Wong in the third year, Bonnie Cheung and Jenkin Suen in the second year together with Jin Pao in the first year, was formed in November 1997 after a preliminary moot. Although three of us had taken papers in public international law, we were certainly not fully equipped for researching on a question extending over 10 odd pages.

Nevertheless, the complexity of the question, far from being a barrier to our research, had driven us to strive even better. With the invaluable guidance from Professor Andrew Byrnes, Professor Roda Mushkat and our co-ordinator Dr. Zhen, we managed to explore issues relating to state succession to treaties, extradition, war crimes, bank secrecy laws and reparations for breach of international obligations. Having sacrificed precious lectures and tutorials for the moot, working overnight to meet the deadline for sending written submissions, we were determined to perform our best.

Our input was rewarded in the victory over the

City University of Hong Kong in the Regional Round held in February 1998. Jin Pao, who was gifted with great skills of presentation and deep grasp of the issues, captured the Best Oralist Award. Our team was thus on the road to Washington for the international round. In the interim period, practices were organised by Dr. Zhen and Professor Mushkat, with our advocacy skills being brushed up by Professor Stephen Nathanson.

Time flew and soon we departed for Washington on 28th March. Waiting for us there was unexpected surprise. We could hardly believe in our success during the preliminary round. Having beaten opponents from South Africa, Taiwan, Czech Republic and Norway, our team was ranked fifth out of 59. We were also fortunate enough to have a third place in our written submission, i.e. the so-called "Memorial". Although it is a pity we lost by a fine margin in the run-off rounds, we were compensated with friendship and experience.

During the trip, we had opportunities to meet students from other countries. In particular, we were impressed by the hospitality of the Japanese students who had invited us for drinks in their hotel where we chatted till midnight. They told us about life at their university, how they have garnered for money for their trip (we must therefore express our sincerest thanks to the University for its generous support), life of lawyers in Japan and so on. Since Japanese rather than English was used in the law





schools there, they also found it challenging and perhaps a bit difficult in preparing for the moot. But evidently they had developed great friendship in the process, making Jessup worthwhile.

The competition is now over. Richard, as an exchange student, has already returned to Canada. Jin is now away for exchange at the National University of Singapore while Bonnie stayed at the University of Victoria for the 1998 semester. Despite this, we treasure our friendship and I hope one day, we may work as a team again.

Jenkin Suen :

"To me, Jessup is more than a moot. Through the long process, it's really an occasion for learning, friendship and devotion. Of course you pay for that, but ultimately you are paid more (certainly higher than the best lending rate). You will also feel proud to have team-mates so fluent in their presentation and sophisticated in their minds. Besides learning about law, you also learn something about human. To benefit from Jessup, I guess, you need a little bit of sense of humour and sometimes, appreciation. That's how a team works, and hopefully how your brain works. Finally, just a word of advice — take every opportunity you can to do something new, something refreshing, and perhaps something frustrating, not necessarily mooting, but anything amusing."

Bonnie Cheung:

"Many past mooters have already spoken on how invaluable an experience the Jessup Moot was. I have nothing more to say but thanks. Thanks to my team-mates. They are REALLY REALLY GREAT! Those days are the best part of my memories at the university."

Jin Pao:

"The Jessup Moot is more than just research and advocacy. It is the most intellectually challenging activity in law school. This challenge has enabled me to analyse issues more effectively, manage time more efficiently, and argue more cogently. I believe this is indeed a worthwhile activity to take up, and I urge more students to face the challenge. The benefits reaped from the Jessup are unique and will stand the test of time. You will be glad you tried."

After a preliminary moot, in November 1998, our team for the 1999 contest was formed.

They are: Joan Auyan (III)
Jennifer Cheung (II)
Perline Ko (II)
Shelly Mok (II)
Sarah Chow (I)

"This year, we feel honoured to be selected as members of HKU's Jessup Mooting Team. Our experience, up till this point, in working on the moot has been both challenging as well as rewarding. The issues raised in this year's Jessup Moot problem are cultural identity and intellectual property."

At present, they are busily preparing the applicant and respondent memorials for the competition and anticipating the Regional Round in February 1999 against the City University of Hong Kong. If all goes well, they will be representing HK in the International Round in late March. Good Luck!!



Innovations

Chinese Mooting

The Deacon's Cup Chinese Mooting Competition was held on the 10th July, 1998 at City University. It was the first formal Chinese Mooting competition held between the University of Hong Kong and City University — in the past, there had been several friendly matches between the universities.

The mooting competition was judged by Mr. Justice Pang, Mark Lin and Susan Kwan. Two of our fellow students represented HKU in the match. They were Mark H.C. Chan and Venus S.Y. Lo who are current PCLL students. They were previously grand-finalists in HKU's Law Faculty Third Year Compulsory Moots. In the competition, the winning team was City University but Mark was judged to be the runner-up mooter.

In 1999, there will be a Chinese mooting competition between HKU and CityU again. It is tentatively scheduled for Friday, 19 March — one day after the English language moot which will take place on 18 March. The competition is going to be held at HKU and most probably at the Council Chambers. Anyone interested in watching the moot should watch out for further notice.

At present, it is expected that two mooters will be selected to represent HKU from the semi-finalists of the third-year compulsory moots. This may disappoint some of the enthusiastic first-year and second-year students since although there are English voluntary moots for year-one and year-two students, the Mooting Committee has not in the past considered the possibility of adding voluntary Chinese moots to the present programme. However, suggestions to include first and second years have been made and will be considered by the Mooting committee.

We would like to give special thanks to Mr. Michael Jackson and Mr. Say Goo for their contributions to the article.

WebCT Exercise — Property Law Homepage

As a response to the building of a "Digital Campus", Associate Professor Say Goo brings along this interactive exercise for property law students.

The website features the following sections:



Interactive Exercise

- * Multiple-choice exercise based on some past tutorial questions
- * Step-by-step explanations provided
- * Guiding students to identify and analyze legal issues



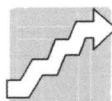
Bulletin Board

- * Allow students to post any questions or views concerning the subject



Chat Room

- * For students to chat among themselves
- * Enable students to raise more intelligent questions and engage in more sophisticated level of debate and discussion



Progress

- * Instant review of the progress you have made in completing the exercise



Say Goo's Info

- * Contains information's of the man behind the innovation

Such breakthrough receives warm welcome from the students — not only for its interesting way of presentation, but also the convenience in terms of the ease of access. Students can also set their own pace of learning and may go over the exercise time and again if necessary. In the meantime, Say Goo is currently designing another set of questions to test the students' knowledge in Property Law.



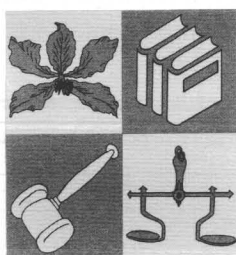
Review on the Hong Kong Student Law Review

Ever since its first publication in 1994, the Hong Kong Student Law Review has provided students of our faculty, eager in the field of research, a chance to express their views on wide-ranging areas of the law. The enthusiasm of our contributors shows the concern that students have for the law and its development in Hong Kong. The Student Law Review also provides practitioners and academics with an insight into the mentality and reasoning of current students.

Over the past five years, the Student Law Review has grown from a body consisting of only a handful of editors to the present staff of over sixty — ranging from English and Chinese editors to proofreaders, footnote checkers, fact-checkers and business managers. In 1997, with the publication of our Commemorative Edition, apart from a foreword by the Chief Justice, bilingualism was introduced to the Student Law Review whereby a short Chinese abstract was published with each article submitted.

Volume 2 • Autumn 1995

HONG KONG STUDENT LAW REVIEW



香港學生法律評論

Volume 3 • 1997

HONG KONG STUDENT LAW REVIEW
1997 COMMEMORATIVE EDITION
With a Foreword by The Honourable Chief Justice Andrew Li



香港學生法律評論

This year, added effort was made to further this development. The number of Chinese Editors was greatly increased so as to provide more detailed abstracts for the English articles and to allow the publication of full Chinese articles. Furthermore, we have had the honour of having the Secretary for Justice, Ms. Elsie Leung, to give the foreword for the coming volume of the Hong Kong Student Law Review.

With the approach of the new millennium, and the upsurge of computerization, work has also begun on the construction of a Student Law Review homepage. This will make access to information concerning the Review much more convenient and news on the publication more up-to-date.

Topics covered in the Student Law Review have been diverse and insightful, reflecting the awareness of students to controversial issues worthy of their attention and discussion. Working on the Student Law Review and submitting articles to the Review has helped many students polish their research skills and to enhance critical thinking on current legal issues. It is, thus, paramount to maintain the continued success of the Review so as to provide students a channel to express their opinions on various issues in a sophisticated, legalistic manner.



Faculty Board

As student representatives, we have now completed our one-year Term as members of the Faculty Board. The position is one of sincerity and responsibility and is a highly fulfilling experience. Over the year, we were given the opportunity to attend several meetings of different sorts to freely express ours and the views of our fellow students on a variety of matters. These included both academic and administrative affairs.

Like any other teaching member of the Board, we too are encouraged to take an active part in the debate and our views hold just as much weight as those of anybody else. Our main feeling of fulfillment comes from the fact that we could be part of the process which resulted in the formation of the rules that we as members of this university are expected to follow.

Besides attending the meetings of the Board held once a month, we have also been attending smaller meetings. In order to deal with more specific matters of importance, the faculty has set up four smaller committees under the Board. These include the library committee, the computers committee, the teaching qualities and assessment committee and lastly, the legal education and referral committee. Each of these committees includes in its membership one student representative to convey the views of the students. The committee meets once every so often depending on the urgency of the matters to be discussed.

The legal referral and education committee plays an important role in exposing the students to the reality of giving legal advice to the public through the Legal Referral scheme and the Duty Lawyers Scheme. Under the Duty Lawyers Scheme, about a hundred students had gone to one of seven district

offices to sit in on the interviews organized by the Law Society of Hong Kong.

Those students participating in the Legal Referral scheme were given the opportunity to meet with the individuals with legal problems and provide them with the legal advice they required. Both schemes ran from October to November.

Other activities included meetings with the student representatives on the Boards of other faculties and on the senate. This too was a useful experience as it enabled us to compare the ways in which our faculty differs from others and to understand how we could work with other faculties to achieve certain goals. We had also attended a number of meetings with the vice-chancellor, together with other student representatives, and were given the opportunity to discuss various shortcomings within the system and to clarify doubts we had. These meetings were no doubt highly rewarding.

With the new student representatives about to take up their office soon, we wish them all the best and urge them to be assertive and to freely express their views. At times, one is required to make a spur of the minute decision without any opportunity for consultation but one must always be open to this possibility. We hope the new student representatives enjoy their experience just as we did and encourage other students to use their representatives to bridge their views to the faculty.

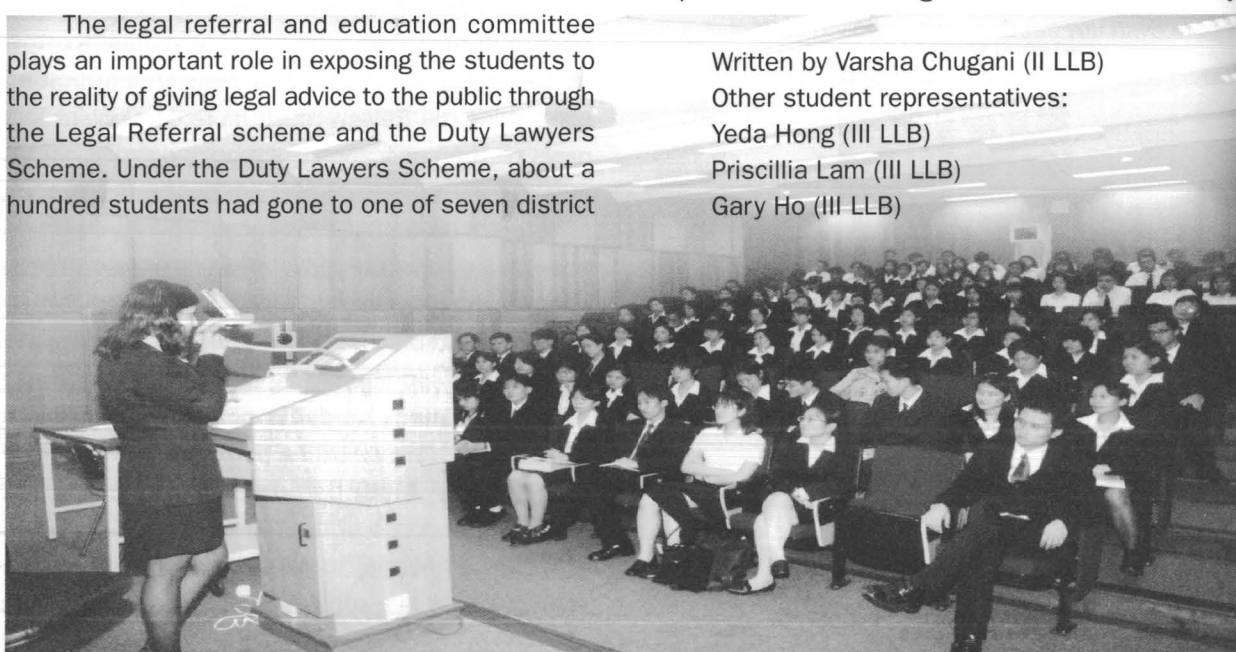
Written by Varsha Chugani (II LLB)

Other student representatives:

Yeda Hong (III LLB)

Priscillia Lam (III LLB)

Gary Ho (III LLB)





Funds





Executive Committee, Law Association HKUSU, Session 1998



| | | |
|---------------------------|-------------------------|-----|
| Chairman | Chan Chung Yuen, Selwyn | 陳頌源 |
| Internal Vice-chairman | Li Shui Jing, Susan | 李瑞貞 |
| External Vice-chairman | Wong Bun Fai, Philips | 王斌暉 |
| General Secretary | Chan Chi Hin, Jason | 陳志軒 |
| Treasurer | Chow Ka Lok, Kevin | 周家樂 |
| Social Convenor | Lau Yuk Yee, Teresa | 劉玉怡 |
| External Secretary | Chong Po Yan, Maggie | 莊寶欣 |
| Publication Secretary | Tang Kam Wing | 鄧錦榮 |
| Sports Captain | Suen Wai Yu | 孫懷宇 |
| Legal Education Secretary | Kho Wai, Thomas | 許維 |
| Welfare Secretary | Yin Ka Man, Carol | 甄嘉敏 |
| Marketing Secretary | Chu Hoi Yan, Pandy | 朱凱欣 |



Year Plan

Jan 98

Annual General Meeting
Inauguration Ceremony

Feb 98

Cruise Party — **Escapade**
Social Service

Mar 98

First Issue of Law Media
High Table Dinner
Study Skills Seminar

Apr 98

Launching of LA Homepage

May 98

Interflow Tour (Hong Kong Trip)

June 98

Interflow Tour (Singapore Trip)

Aug 98

Orientation

Sept 98

Inter-faculty Sports Competitions (Sept–Nov)
Legal Education Column (SCMP Young Post)

Oct 98

Issue of Law Directory

Nov 98

Annual Ball — **The Pantheon**
Careers Talk
Election of Exco 1999
Issue of Interflow Publication
Launching of LA Newsgroup
Legal Exhibition — **Human Rights Around You**
Mooting Skills Seminar
Second Issue of Law Media

Jan 99

Annual General Meeting
Issue of Yearbook





Report from the Chairman

During the year 1998, the Law Association progressed and matured significantly at different levels. With the introduction of the new electronic communication devices, connections with members and between members themselves have increased substantially. The short-term exchanging activities arranged by the Association or co-organized with other institutions have increased our members' chances of exposure. In turn, all functions as assured in the Year Plan were complied with as scheduled.

Followed is a summary of the work of the Association:

1. Internal Management

Envisaging the power of electronic media in prospering the flow of information to our members, the Association launched its official web-site in early April. In this way, we managed to spread all the details of the coming functions to the members efficiently. We also utilized the system of emails to release to our members all the current updates of the Association. This not only facilitated communications between Exco and members but also acted as a gateway for outsiders to have easy access to us. Furthermore, the issue of the Law Directory also served the purpose of strengthening intra-connections.

The Association also re-entered into the long-forgotten Inter-Faculty Sports Competitions. The results were encouraging as we were crowned Champions in quite

a number of items. A lot of members showed their support to the athletes by turning up during match days.

The Association also generated a number of new stocks for the members. Brand new tracksuits, sweaters and T-shirts particularly designed for the Association were favoured most by the members. Other new and old items also attracted certain interests. This shows our concern for promoting the welfare of the members in this area.

The revival of the Law Media (律呂) brood praise and support from the members and the staff and was reflected in their eagerness to submit articles to the Editorial Board. The two issues in aggregate once again allowed our members to share their opinions with other members on matters in and out of the Faculty.

In response to the request of some of the members during the summer vacation, the Association decided to implement two new functions into its already packed list of activities. These were the Mooting Skills Seminar and the Careers Talk. The two activities earned much success with the lecture halls attaining full-house during the lunch periods in which they were organized respectively.

Three functions not to be forgotten are the Annual Ball '98 (The Pantheon), the Cruise Party (Escapade) and the High Table Dinner. All three absorbed different types of members and was no doubt three of the highlights of the year.

One of the most important accomplishments of the Association last year was the revision of the entire constitution by the General and Current Affairs Committee (GCAC). This Committee is a newly established sub-committee directed by the External Vice-Chairman which is responsible for reviewing the constitution and initiating social awareness of law students within the Faculty.

The Committee spent 6 months in revising all the contents of the constitution in order to amend its erroneous areas to prepare for the efficient administration of the Association in the years to come.





2. External Communications

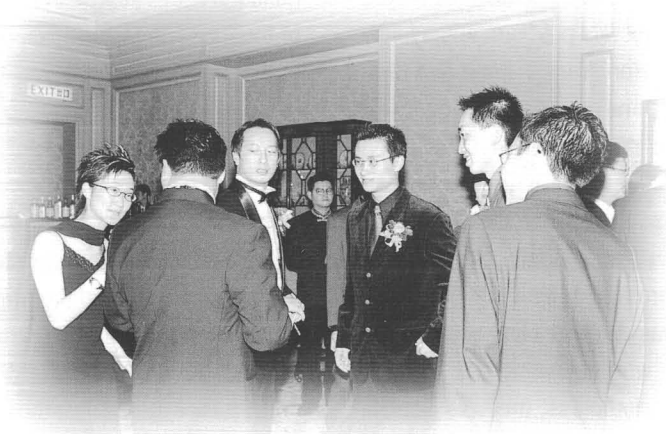
This year, the Law Association commenced official and personal contacts with a lot of organizations. They consist of professional bodies such as the Law Society and the Bar Association. We also established close contacts with other legal bodies such as the Hong Kong Young Legal Professionals Association Limited and the Hong Kong Legal Education Trust Fund. On the student body side, we entered into a close relationship with the Asian Law Students' Association, the Cambridge University Asian Lawyers' Association, the Law Club of the National University of Singapore and other societies within the University of Hong Kong. We also entered into relationships with many patrons who sponsored our activities.

Moreover, we were able to bring the Law Association to the attention of a lot of new faces both at a local and at an international level. Indeed, this is one area where we plan to strive for in the coming future to ensure that our members can broaden their personal networks by meeting people from all walks of life.

In order to achieve this objective, the Association tried to get as many members as possible to be involved in many interflow activities this year. They include the 18-day Hong Kong-Singapore Inteflow Tour '98, the Guangzhou Zhongsan University China Law Study Tour (廣州中山大學中國法律研習班), the Beijing-Hong Kong Legal and Cultural Interflow Programme (京港法律文化交流計劃), and the lunch gathering with the members from the Cambridge Asian Lawyers' Association in December. Although the programmes lasted only for a short period, all of them served the purpose of introducing our members to the law students and practitioners in many fields of the society of that particular region and thus attained the aim of learning while being brought to new practices and ideas.

In order to serve the community, the Association

led a team of law students in early February to visit the Ma Tau Wei Girls' Home for two consecutive weekends. Indeed, only one such service throughout the whole year was frankly not sufficient. Yet, concerning the amount of workload we had to administer last year, it seems fair enough to say that we had tried our very best.



As to providing legal education to the public, the Association tried out many areas last year which have reached significant results. The Legal Exhibition '98 —

Human Rights Around You (人權八達通) — involved not only law students from the University of Hong Kong but also enjoyed the assistance from a number of secondary schools and organizations. It was planned in such a way that these students would learn something in return for their highly appreciated service. Many members of the public visited the exhibition and were introduced to issues concerning human rights. Apart from that, the Association launched a weekly legal education column in the Young Post so that local students would be able to acquire some basic legal knowledge. The Association also generated legal talks to secondary schools throughout the year and achieved promising response.

All in all, the Association demonstrated its leadership and co-ordination power throughout the year to sculpture a way for the members to broaden their horizons and to strengthen their personal networks to prepare for their future careers.





Annual Ball '98 — Night To Remember

Night has fallen. The grand ballroom of the Ritz-Carlton Hotel was still brightly lit. All the young gentlemen looked tidy and smart. Their eyes kept falling on the elegantly dressed ladies. About hundred legal celebrities and law students were enchanted by the ensemble played during cocktail. Some also took this precious opportunity to chat with the guests. The Hon. Yang Ti-liang and Mrs. Yang, our Patrons, were generous in sharing their experience with us. Professor Albert Chen and Mrs. Chen were a humble and friendly couple. Having a good sense of humour, Professor Michael Wilkinson and Professor David Smith (Acting Dean of the Faculty of Law, City University) had endless interesting topics. Mr. James To (Legislative Council) who was an alumni had an insightful chat with us. Camera flash was everywhere to capture these beautiful moments. Nonetheless, this was just the preface.

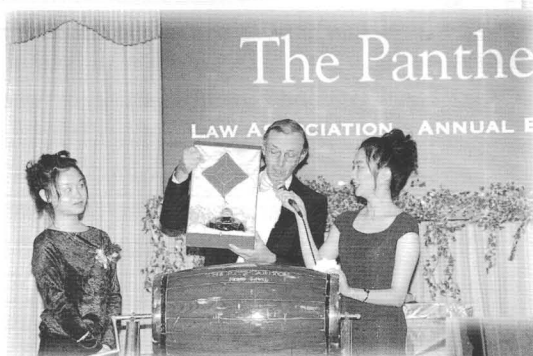
Speeches of wisdom were delivered by Mr. Yang, Professor Chen, and Mr. Selwyn Chan, the Chairman of our Association. Followed by the delicious Italian cuisine, here came the bravo shows! A whole team of about 40 HKU students marched onto the stage — they were members of the newly established HKU Orchestra.

Passions were running high under the delightful music played. Our breathe, all of a sudden, was held by the seductive voice of "Carmen". She might not be able to steal all our hearts but she had already won all our big hands. Our attention was then attracted to the lovely voice of the Law Choir which called for the great love embodied in the story of "Les Miserables".

Thereafter the beautiful pairs of the first year students filled up the dance floor. The rhythm of Waltz and Cha-cha set our toes twinkling. Meanwhile the climax of the evening — the lucky draw — arrived. Lucky winners immediately came up the stage while others shared their excitement and joy under such hilarious atmosphere. The funniest thing was that Mr. Yang drew a prize for himself. What a lucky man! Another pleasant surprise was that Mr. Say Goo got a "double" — he won both \$800 coupons for an insurance policy. Just wonder how he would dispose of his "property"?

When the music was on again, youngsters could no longer control their bodies. They sang and danced till midnight. Though not everyone got a prize, it was really unforgettable for all us.





General and Current Affairs Committee (GCAC)

The General and Current Affairs Committee was set up in April 1998. The purposes of the Committee are to promote students' social awareness, draft declarations for the Association, and review the constitution of the Association.

The Committee has altogether 11 committee members, with Professor Johannes Chan and Lecturer Mr. Benny Tai as our honorary advisors.

This year, we focused on the review of the constitution of the Association. The work has been completed in December. The proposed amendment has been passed by the Constitution Review Committee of

the Union Council and would be brought to the General Meeting of the Association for adoption.

As for arousing students' social awareness, not much work has been done this year. Nevertheless, the Committee acknowledges the importance of this very purpose. We hope the Committee in the coming years can put more emphasis on this aspect.

Lastly, a sincere gratitude should be given to our advisors and committee members for their effort, time and contribution.



High Table Dinner

High Table Dinner is an inherent tradition of the Law Association since its early days. It allows the channeling of thoughts amongst present and past students, and maintains a close tie between students and the elite of the legal profession. This year, the grand occasion took place on 18 March 1998. About 90 participants, including lecturers of the Law Faculty, legal practitioners, alumni and current law students, gathered in the Senior Staff Common Room. This was really a rare chance for students to dine in the well-facilitated Common Room, which has a marvelous view of the Victoria Harbor.

Dinner began at six o'clock in the evening. After the

Dean of the Faculty, Professor Albert Chen, had delivered the welcoming speech, Ms Audrey Eu S.C., Chairman of the Bar Association began to share her bright old days in this law school which dragged us into her sweet memories. Then Ms Sylvia Siu, President of Federation of Hong Kong Women Lawyers, introduced to us the Federation and shared her working experience with us.

During dinner, a lively atmosphere was maintained and casual chatting between the practitioners and students about issues including university life, family, legal profession, and current affairs achieved significant mutual understanding. The hours were laughed away as such, and the event ended with the singing of the Law Anthem.



◆ Ms Audrey Eu S.C. presented a souvenir from our Social Convenor



◆ Participants dressed up neat and smart



◆ Ms Sylvia Siu giving her inspiring speech

◆ Mr. Kennedy Wong sharing his experience with us





Legal Education Column — "Knowing The Law"

The debut launching of "Knowing The Law" Column on the SCMP Young Post is a new means of legal education ever done by LA. Harnessing the mass media, we hope to promote the interest and awareness of law amongst a larger scope of public. We selected secondary students as our experimental target and Young Post is, no doubt, a suitable partner for implementing the vision.

Starting from September 1998, the Column appears every Thursday on the Young Post. We started the Column

with less "legal" topics as euthanasia, to, upon maturity of the Column, more legal-related ones like rule of law, human rights, etc. The articles were written by a number of talented second-year colleagues and were proofread by knowledgeable lecturers. Their generous contribution help to make the column a success.

The response so far is satisfactory. May the Column pave the way to more mature mass media legal education in forthcoming years.

Contributors of Articles:

Athena Cheung (II)
Melissa Chim (II)
Varsha Chugani (II)
Jessica Law (II)
Roy Lee (II)
Simon Mui (II)
Michelle Poon (II)
Elaine Wong (II)
Jason Wu (II)

In defence of gay rights

Legislation, backed by public awareness, can help prevent discrimination against homosexuals, writes CHENG SAI YING

Homosexuality is a controversial issue in Hong Kong. Under the Hong Kong Basic Law, a person's sexual orientation is protected under Article 25. However, the Hong Kong government has not yet passed any legislation to protect the rights of homosexuals. This is a pity, as it is a basic human right to be free from discrimination on the basis of sexual orientation.



Legal Talk

Meeting youngsters makes one feels young — that is why the Legal Talk is the most enjoyable function of all. The topics of Legal Talk cover a large scope of legal issues, e.g. Basic Law, human rights, mass media law, etc. Having visited 18 secondary schools, from Hong Kong Island to as far as Shatin and Tsuen Wan, we found the secondary students very impressive. From the inspiring questions they raised, they showed that they did pay attention to the talk (isn't that important?) and they possessed a high degree of social awareness.

The most memorable trip was the Shatin Methodist College talk. After the talk we speakers were given an impromptu invitation to share with a matriculation class about university life. We had a good chat with those students who later became helpful co-organizer of the Legal Exhibition '98!

THURSDAY, DECEMBER 3, 1998

YoungPost EDUCATION

Bill protects freedom

Human rights in the SAR are protected but provisions for the use of emergency powers have caused controversy, writes ROY LEE

The Basic Law, which sets out the framework for the Hong Kong Basic Law, contains provisions for the use of emergency powers. However, the Basic Law also contains provisions for the protection of human rights. This is a balance between the need for security and the need for freedom.



KNOWING THE LAW

YoungPost EDUCATION

Guilty of greed or not?

Simon Mui draws attention to local lawyers' charity contributions to make a case against the profession

Simon Mui, a well-known lawyer, has drawn attention to the fact that local lawyers have not contributed enough to charity. He has called for lawyers to be more socially responsible and to contribute more to the community.

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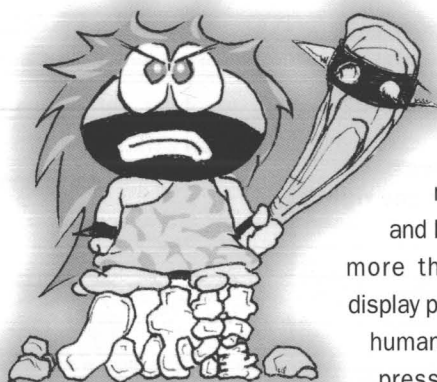
KNOWING THE LAW

KNOWING THE LAW

KNOWING THE LAW

Legal Exhibition '98 — Human Rights Around You

There were times when Mr. Chairman was asked to introduce the big functions of LA, he included Legal Exhibition 98 in the checklist every time. In fact it is true. The Exhibition is one of LA's largest project: in terms of time, money and human resources investment as well as courage, blood, sweat and tears. Blessed enough, the Exhibition turned out to be more than an exhibition.



The show set off on 8 November 98 at the Sunshine City Plaza in Ma On Shan. I said it was more than an exhibition and I meant it. In addition to more than 15 double-sided display panels — demonstrating human rights issues such as press freedom, Basic Law, police power, etc. — there

were more. An open forum hosted by radio host Mr. Ng Ming-lam, with legislators Ms Emily Lau Wai-hing, Mr. Andrew Cheng Kar-foo and City University law lecturer Mr. Anthony Law as our guest-speakers was held. The speakers and hosts enlightened the general public on human rights condition in Hong Kong. They also attracted participation of many passers-by to take part in the discussion. We all benefited a lot from the discussion, in which many current human rights issues were brought up and commented by the social elite.

There were many unprecedented elements in the Exhibition that never appeared in its ancestors organized by LA. Forum was one of them. Another was the offering of free legal advice to the locals. Assisted by the Young Legal Professional Association Ltd., many practicing lawyers were invited to the Exhibition to provide free legal advice to visitors. Not only did this service help the local community, but also law students who learned a lot in taking instructions from clients.

Unprecedented components included two on-stage



dramas performed by two co-organizing secondary schools. A puppet show performed by another secondary school proved to be the favourite of kids. We also set up two game-stalls which attracted long queue of children — all



excited about trying the game, learning the human rights knowledge and picking the prizes!

Promotional items were also very much welcome. Wearing smart uniform T-shirts, we distributed the favourite souvenirs for kids — balloons with our logo. Surprised were we to find visitors very keen on filling in answers in the quiz game forms. They carefully searched for the answers on the display panels (I saw one even checked his own copy of Basic Law for answers!), filled them in, and won the

small souvenirs. We also prepared some well-designed leaflets summarizing the essence of materials on display panels. Calendar cards of 1999 (with our logo of course) were distributed as souvenirs. Legal Aid Department, the Office of the Privacy Commissioner for Personal Data, the Equal Opportunities Commission and the Committee on the Promotion of Civic Education also showed their generosity by supplying us pamphlets and video tapes.

Lucky enough, the large-scale project was not solely borne by LA but also 5 faithful, helpful, diligent and lovely co-organizing bodies: Heep Woh College, Maryknoll Convent School, Shatin Methodist College, Ying Wa College and Junior Police Call (Western). They demonstrated their talents by staging performances

and presentaion, their diligence by digesting difficult legal materials, their organization skill by mobilizing tremendous manpower in their schools, their perseverance by enduring the hardships of the production process (we worked overnight the day before the D-Day). Without them, the Exhibition would only remain a 7-page proposal.

Having seen the various components of the Exhibition, hope it gives you a rough picture of how much effort we have invested. There were other efforts we invested which did not manifest directly in the Exhibition itself. For instance, many strong "He-Men" were recruited among us as coolies in transporting stuffs for the show. Telling you this is not to beg for sympathy, but to reaffirm that all efforts we invested serves one purpose: to arouse the concern of human rights and bring the benefit of law to and amongst the general public.

Legal Exhibition '98 is already history. Some residues stay, though. We believe the seeds of human rights and rule of law have been implanted in the hearts of members of public, and one day they will germinate. Legal Exhibition '98 is already history. But friendships yielded upon hardships shall last. Let us give a big hand to the co-organizing bodies, LA members, sponsors, other helpers and God — who made everything possible — a big hand!





Orientation 1998

The Programme which its participation rate was the highest among the activities organized by the LA and which involved the largest number of LA members — Orientation 1998.

Every one of us studying at the Law Faculty would have experienced at least the orientation programme once. Some of the freshmen may comment that it was totally ennui and no more than an opportunity for seniors to make fun of them. Some may have a more positive response, thinking that it's simply a time for fun ... Well, being the organizer this year, I have gained a different perspective.

As in last year(s), we had the orientation camp, Sports Orientation, Mass Orientation, Individual Visits, Court Visit, Talent Quest and Freshmen Nite this year. It seems so like a routine, repetitive from year to year. The organizers are so lazy to think of new ideas! Perhaps true. But allow me to offer you to look at a different angle: the orientation programmes target at the freshmen, those freshly admitted to the Law Faculty. Whatever programme we organize, it is new to them. Our main concern is to incorporate the freshmen into the university life and develop a sense of belonging to the Association. In my opinion, to offer brand-new programmes each year should not be of utmost importance. What's more important is to achieve the objectives we have laid down.



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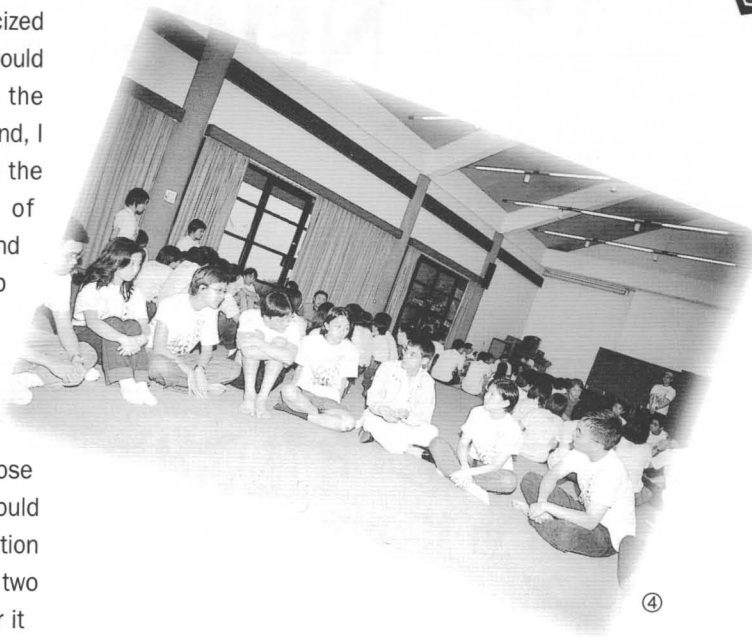
Photos

- ① Registration Counter
— freshmen recruited as members
- ② Delightful participants at O-camp
- ③ Freshmen showing their talents at TQ
- ④ Our Dean sharing his experience with us at O-camp
- ⑤ Mass Orientation at Loke Yew Hall
- ⑥ Members of staff joining us in the Freshmen Nite



Each year the orientation programme was criticized in one way or another ... I am very glad that people would share their views. It's from their comments can the organizers do a better job next year. On the other hand, I would be more grateful if we can look deeper into the orientation programme. It includes a series of programmes, each activity is not to be singled out and isolated. The overwhelming aim is to develop friendship among the freshmen themselves and with current students. It is through this series of activities could one get the most out of it. Imagine attending lectures where you know nobody, I suppose it's not a very good feeling, right? Therefore, I think for those who criticized orientation did not do its job, they should contemplate if they have participated in each orientation activity with all their heart. It's not attending one or two orientation functions and pass the judgment, rather it should be looking the entire orientation programme as a whole.

All in all, I am not defending orientation programme as flawless and there is no room for improvement. In fact, there are lots of room for improvement, and this applies to every activity organized and on our personalities as well. I hope for those who will be organizers or current students in future, do bear in mind that we are providing an opportunity for the freshmen and yourselves to foster friendship. Programmes which can allow this to happen will be much better than programmes which are innovative but not able to foster friendship. At the end of the day, orientation programme will be a fond reminiscence for all.



④



⑤

Programme Schedule

| | |
|-----------|---|
| 12-14 Aug | Registration Counter |
| 27-29 Aug | Orientation Camp at Kadoorie Agricultural Research Centre |
| 1 Sept | Sports Orientation |
| 8 Sept | Talent Quest |
| 11 Sept | Mass Orientation |
| 14 Sept | Individual Visits (4 weeks) |
| 10 Oct | Freshmen Nite |



⑥



NEWSGROUP

hku.law-assn.hk-law

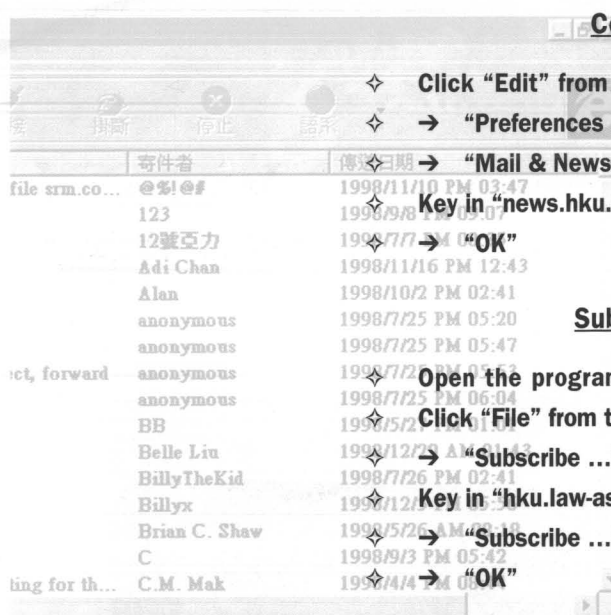
A) For Netscape Messenger

Configuring the Newsgroup Server

- Click "Edit" from the Menu Bar
- "Preferences ..."
- "Mail & Newsgroup" → "Newsgroup Server"
- Key in "news.hku.hk" for the newsgroup server and enter "119" for the port
- "OK"

Subscription to "hku.law-assn.hk-law"

- Open the program "Messenger"
- Click "File" from the Menu Bar
- "Subscribe ..."
- Key in "hku.law-assn.hku-law"
- "Subscribe ..."
- "OK"



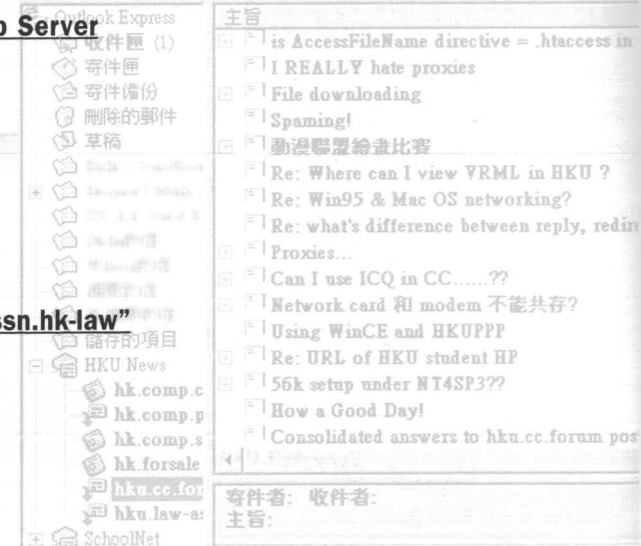
B) For Outlook Express

Configuring the Newsgroup Server

- Click "Tools" from the Menu Bar
- "Account ..."
- "Add ..."
- Key in "news.hku.hk" for the news server
- "finish"

Subscription to "hku.law-assn.hk-law"

- Click "Tools" from the Menu Bar
- "Subscribe ..."
- Key in "hku.law-assn.hku-law"
- "OK"



Note:

- Like all other newsgroups in HKU, the LA one is a local newsgroup that can be accessed only through the HKU Network, which consists of the HKU Intranet, the ACEnet, the Student Residential Hall Network, and the Dial-up Network Access (HKUPPP).
- Those who are using the HKUNAP Package can skip the configuration procedures, which is done automatically upon Installation or Re-configuration.

336 封郵件, 336 封未閱讀, 964 封未下載



Metamorphosis

The LA Printing House

Proudly Presents

A CURMUDGEON'S VIEW OF THE LAW
Peter Wesley-Smith

I've been asked to express some thoughts about my long experience of teaching law in Hong Kong. It's foolish of me to accept such an honor, but as I'm always eager to please I have written what appears below. Some of it is in my head, other portions are decidedly in my cheek. I'm not going to tell you which is which.

觸動人心

分享生命

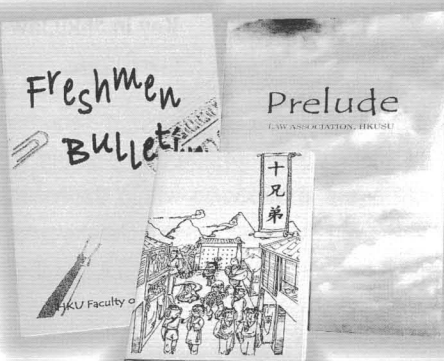


是一件不朽的記憶

一件不肯讓它消逝的努力

This was written in 1998, associated with the law schools' twenty-fifth anniversary. It appeared as part of an argument that we should be engaged in "liberal education". The argument had little or no effect on what we do here. Some of my colleagues do not seem to know what a liberal education is, some who do vehemently oppose it. In any event its achievements are less easy to examine than those of the major alternative. Students do not generally appreciate it, and believe that the process of becoming a lawyer requires a different approach. Why they believe this, and believe it so certainly from the first day they sign up, remains to me an utter mystery. This different approach — the acquisition of legal knowledge in the form of clear and unproblematic rules of the view that the common of prepositions, what Brian

Simpson called the "school-rules concept". Simpson said that this myth owed its attractiveness to the rule of law. For students, however, who believe it implicitly whether they understand the rule of law or not, it is straightforward, easily re-learned and expressed, and eliminates uncertainty and thus anxiety. The opposing view is that content, which education a



"Ten Brothers"

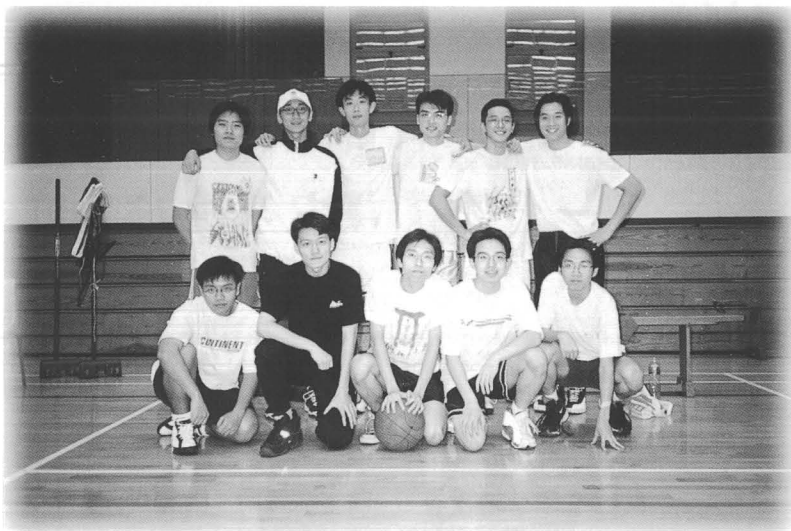
"Law Directory"





Sports Review

The common perception of a Sports Captain is one who is elite in all sports and who could play and win for the faculty. NO. That's a Superman. Then is a sports captain simply someone who organizes sports activities for LA members and arrange team practices so that there would be enough members in each sports team in order to participate in the inter-faculty competitions?



We do need a bit more out of a Sports Captain. He needs to promote a sense of sports within the faculty that would motivate even the most passive "bookworms" to play sports. Put it this way, he encourages LA members to "get sporty".

This is no easy task. This year we've organized four main sports functions for members and the response were not too satisfactory due to various reasons. There were two sports day, one for Volleyball and one for Badminton, held in January and February '98 respectively. Originally the idea of a sports day is to encourage everyone not to be shy to move their hands and legs around the court. A competition is not preferred because not everyone could play well and people who don't know how to play would not come. A sports day provides an opportunity for all members, be they amateur or "professional" players, to come with their friends and

play happily for one day. Simply for fun.

We're glad to have our Lecturer Miss Alice Lee joined us in the Volleyball sports day. But since the participation of other members was low, and also we had to concentrate on the training for the inter-faculty competitions at the end of the year, these two were the only sports day organized so far.

Learning from such experience, we organized an Inter-Year Basketball Competition in March, for Men only, oops! We learned from friends' that there are quite a lot of boys in our faculty who like to play sports and therefore the idea of a friendly game quickly came into mind. There were about 30 participants including spectators, and the whole thing ran smoothly with the players enjoying themselves after a tense yet enjoyable game. Players were all "tough but not rough".

In September there was the Sports Orientation, a brand-new element introduced solely for freshmen. It aims at introducing the different kinds of sports facilities in HKU to all freshmen so that they could do some sports on their own at leisure. A mass games section followed and the freshmen surely had fun out of it and enjoyed the day at the Lindsay Ride Sports Centre.



Who said law students are all bookworms? We have outstanding results in the inter-faculty competitions in October and November. We are champion in Men's and Women's tennis,





runner-up in Men's soccer and Women's squash, and we also had an outstanding first-round basketball match against Dental. Not to forget is that we are also runner-up in the Sedan Chair competition during the Sports Festival in November. Such results demonstrate that there are lawmates who are all-rounders. Of course, we must play tribute to all the effort the players have paid in the practices before each game. Their enthusiasm is simply marvelous.

Organizing sports functions need not involve those very "good" players. A good sports captain needs not be capable of getting the best players to represent the faculty — more importantly, he needs to promote the sense of sports within the faculty and urge everyone to try sports. It would be very important to maintain the faculty sports teams. There are students who are not good enough to get into the U-teams, but nevertheless are not residing in any halls or have not affiliated into any of the halls. Faculty team is their only resort to show their talents. Maybe they still would not play after having a "flavour" of the sports, but at least they had tried. This is far more important than victory in every match. In fact, this is the biggest challenge for a sports captain.

The most remarkable thing to notice is the support

from law-mates — especially in the soccer matches since there are many supporters. Most of them only come to support their friends playing on the field, but they are also law-mates so they are supporting the faculty at the same time. It's by urging them to come for the first time that hopefully they would get something out of the match, and perhaps start playing the sport themselves afterwards. Some supporters are regular fans. Take the soccer final as example, they were really supporting all our players, be them someone they know or not, and such experience would be a year-long reminder for all of them who witnessed the thrilling 13 penalties taken before we lost the match. Such support is the first step to motivate fellow law-mates further in the sports arena.

There is indeed much room for development for sports within our faculty. We have good players, we have enthusiastic ones, and we have supporting fans. The elements are all here. It is for our dear law-mates to motivate themselves to take a more active role.

Sports is magical — it gathers people together. But perhaps I'm taking a too simplistic view on this. The reality is much more difficult to be explained in words in a few sentences ... so why not explore sports yourselves from today onwards?





Social Service — Visit to Ma Tau Wei Girls' Home

A taste of serving the public by 20 LA members, with aspirations satisfactorily pursued! With the support of the staff, visits on two consecutive Saturday mornings (21 & 28 February 98) to Ma Tau Wei Girls' Home were arranged. Specially prepared activities including a drama, a role-play session, mass games and sharing sessions were undoubtedly the makings of a great time for both the 30 girls and the LA members.

The first thing on the agenda was to break the ice between the girls and the LA members, and it turned out that such a task was not too difficult. The first-day visit began with a series of warm-up mass games. Hearing the cry 'Oh whom does the wind blow? ...', all the participants moved first to the left, then to the right, mingling with each other in a joyful atmosphere. Although the girls were quite reluctant to join the games at first, eventually, they found the enthusiasm of the LA members too irresistible.

Closely followed was the vivid performance of a drama, which constituted part of the situational game. Several controversial issues that are likely to be encountered in daily life were dealt with, including:

- intrusion of privacy
- triad membership
- limitation of police power
- sexual harassment
- child abuse
- drug abuse
- equal opportunities
- organ transplant

We saw the girls burst into laughter and could barely bar themselves from joining as we were in the middle of the performance. Useful legal information was delivered in the process since we had a 'Counsel' to explain each issue that arose. From the girls' opinions, it could be seen that they were no less conscious about their legal rights than we did.

The visit on 28 February began with a role-play session, in which an open-ended problem was assigned to each group for a solution, followed by a role-play. There were interactions among the group members and the girls were all very competent actresses. Big rounds of applause showed that their performance was highly appreciated.

The sharing session was the most touching part since the girls were quite willing to disclose themselves to us. Though we were still strangers to them in many ways, we felt no hostility but the genuine willingness to share the deepest part in their hearts e.g. family, friends and school life. 'Life at the Girls' Home made me really homesick!' was heard most frequently. During the sharing sessions, we witnessed a remarkable shift from indifference to trust, which was very encouraging to us. When we left the girls, we were all a bit sad and lost. Although the preparation was done in the midst of worries of the response, the participation of the girls boosted our confidence in proceeding to organize future service programmes.





Mind





MACAU



淺析澳門特別行政區的法律體系

中山大學法律系副教授 鄧偉平

1999年12月20日中國恢復對澳門行使主權後，根據「一個國家，兩種制度」的政策，澳門原有的法律制度基本不變。全國性法律，除極少部分外，不在澳門適用。澳門特別行政區將形成一個相對獨立的法律體系。中葡《關於澳門問題的聯合聲明》附件一《中華人民共和國政府對澳門的基本政策的具體說明》第3條第4款明確規定：澳門特別行政區的法律體系由《澳門特別行政區基本法》以及澳門原有法律和澳門特別行政區制定的法律構成。

一、《澳門特別行政區基本法》

我國憲法第31條規定：國家在必要時得設立特別行政區。在特別行政區實行的制度按照具體情況由全國人民代表大會以法律規定。第62條第13款又規定全國人民代表大會擁有權決定特別行政區的設立及其制度。根據這些規定，第八屆全國人民代表大會第一次會議於1993年3月31日通過了《澳門特別行政區基本法》，自1999年12月20日起施行。《澳門特別行政區基本法》除正文外，尚包括附件一：《澳門特別行政區行政長官的產生辦法》；附件二：《澳門特別行政區立法會的產生辦法》；附件三：《在澳門特別行政區實施的全國性法律》，以及澳門特別行政區區旗和區徽圖案。

除《澳門特別行政區基本法》外，根據附件三的規定，下列全國性法律，自1999年12月20日起在澳門實施：

- (1)《關於中華人民共和國國都、紀年、國歌、國旗的決議》；
 - (2)《關於中華人民共和國國慶日的決議》；
 - (3)《中華人民共和國國籍法》；
 - (4)《中華人民共和國外交特權與豁免條例》；
 - (5)《中華人民共和國領事特權與豁免條例》；
 - (6)《中華人民共和國國旗法》；
 - (7)《中華人民共和國國徽法》；
 - (8)《中華人民共和國領海及毗連區法》。
- 全國人民代表大會常務委員會在徵詢其所屬

的澳門特別行政區基本法委員會和澳門特別行政區政府的意見後，可對上列法律作出增減，但應以有關國防、外交和其他依照基本法規定不屬於澳門特別行政區自治範圍的法律為限。此外，在全國人民代表大會常務委員會決定宣佈戰爭狀態，或因澳門特別行政區內發生澳門特別行政區政府不能控制的危及國家統一或安全的動亂而決定澳門特別行政區進入緊急狀態時，中央人民政府可發佈命令將有關全國性法律在澳門特別行政區實施。

二、澳門原有法律

澳門現行法律由兩大部分構成：源自葡萄牙的法律和澳門本地法律。到目前為止，源自葡萄牙的法律總體上仍然佔有較大的優勢。在澳門適用的葡萄牙法律主要有以下幾類：

1. 葡萄牙本土實施且延伸到澳門適用的法律。包括1976年頒佈並於1982年、1989年作過兩次修改的《葡萄牙共和國憲法》，以及俗稱「五大法典」中的《葡萄牙民法典》(1967年)、《葡萄牙民事訴訟法典》(1961年)、《葡萄牙商法典》(1888年)和《葡萄牙刑法典》(1886年)等。此類法律，構成了澳門法律的主體。

2. 葡萄牙專門為澳門制定的法律。包括1976年頒佈並於1979年、1990年和1996年修改過的《澳門組織章程》和1991年的《澳門司法組織綱要法》等。

3. 葡萄牙為其包括澳門在內的海外殖民地制定的法律。如1961年《稅務法》和《海外都市性不動產租賃特別制度》等。

4. 經葡萄牙批准，並延伸至澳門適用的國際公約和條約。如《公民權和政治權利國際公約》和《經濟、社會、文化權利國際公約》等。

澳門本地法律則有兩類，一類是澳門立法會制定的法律。這類法律，數量不多。據統計，自1976年澳門立法會成立至1996年止的五屆立法會，總共才制定了311部法律²。另一類是澳門總督制定的法令和規範性的批示。這類法律，數量較大。據統計，僅僅在1988年至1992年後5年間，總督就制定了432個法令。



總體而言，澳門現行的法典式法律，大多源自葡萄牙，只有刑法和刑事訴訟法典完成了本地化進程。澳門本地立法機關制定的多為單行性法律和行政法律。外來法律仍然是澳門法律的主體。

根據《關於澳門問題的聯合聲明》和《澳門基本法》的有關規定，澳門原有法律除與本法相抵觸或經澳門特別行政區的立法機關或其他有關機關依照法定程序作出修改者外，予以保留。因此，澳門原有法律將構成特別行政區法律體系的主體。有需要指出的是，

澳門原有法律與澳門現行法律是兩個不同的概念，前者僅指澳門現行法律中由澳門本地立法機關制定的法律，即由澳門立法會和總督制定的法律、法令、行政法規和其他規範性文件。在澳門實施的葡萄牙法律是葡萄牙主權的

體現，是殖民的一種表現，它不屬於基本法規定的澳門原有法律的範圍。當然，這並不等於說這部分法律將伴隨着澳門主權的回歸而消失。實際上，在澳門適用的葡萄牙法律是澳門現行法律的重要組成部分，其中有不少法律是未來澳門特別行政區所需要甚至是必不可少的。在這種情況下，將延伸適用於澳門的葡萄牙法律本地化，使之成為澳門原有法律，就成了擺在我們面前的一個十分迫切的任務。

延伸適用於澳門的葡萄牙法律，帶有深厚的殖民色彩，制定時大多沒有考慮澳門本地的實際，加上年代久遠，相當一部分法律需要現代化。因此，只有對其加以修訂，才能使其重新獲得生命力。修訂法律時應該注意掌握三個標準：

第一，要與《關於澳門問題的聯合聲明》和《澳門基本法》相銜接。凡是帶有殖民色彩的法律及其條文、用詞等，都必須刪改，以符合澳門的法律地位。

第二，要從澳門的實際出發。除了專門為澳門制定的法律外，適用於澳門的葡萄牙法律，都是根據葡萄牙的實際情況及其需要制定的。這些法律既不體現澳門居民的意志，也不反映澳門的實際情況和需要。因而它們難以被澳門居民認同和接受，在澳門實際發生的影響亦有限。只有結合澳門的實際加以修訂，使其不但在形式上而且在內容上本地化，為澳門居民所接受，才能獲得

強大的生命力。

第三，要滿足法律現代化的要求。在澳門適用的葡萄牙法律，大部分是在19世紀末和20世紀初制定的。許多內容陳舊過時，沒有伴隨包括葡萄牙在內的世界各國法律現代化而現代化。其骨幹即「五大法典」就是典型。這些法典，即使在葡萄牙也早已作修訂，為新的法典所取代。由於澳門本地立法機關沒有對這些陳舊的法典進行修訂，而葡萄牙修訂過的法典又沒有延伸到澳門適用³，以至形成澳門還在適用連葡萄牙本土都早



已廢棄的舊法典的怪現象。就連葡萄牙法律專家亦認為澳門外來法律已經僵化：「它變成了一個東方博物館，從中可以覓見仍在運行的各種遙遠年代的葡萄牙舊法律的遺迹⁴」。很明顯，這些陳舊的外來法律，內容必須更新，跟上各國法律現代化的步伐，才能發揮其應有的作用。

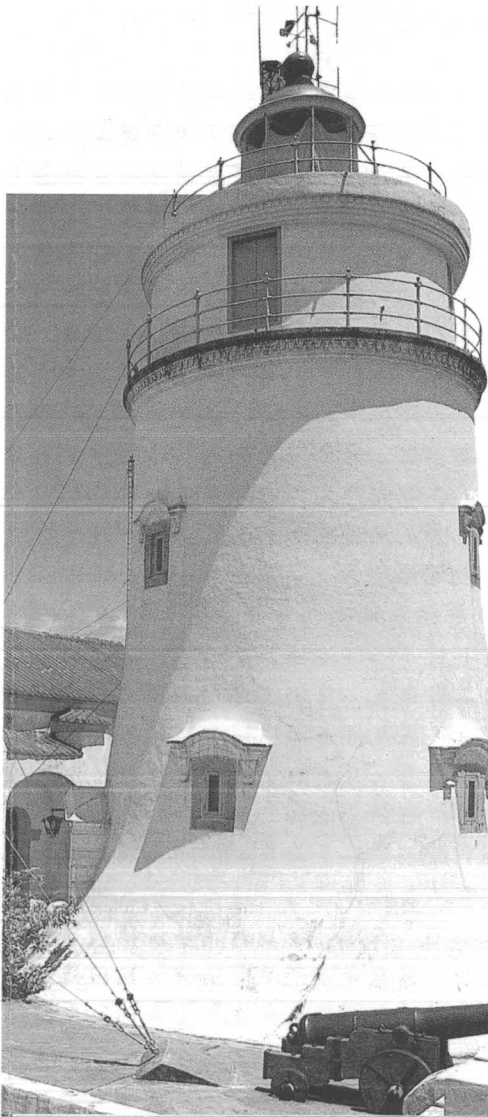
自外來葡萄牙法律本地化問題提出以來，經過各方的努力，取得了一定的成績，澳門本地立法在澳門現行法律中的比重在穩步上升，地位也在不斷提高。但法律本地化的進展總體上並不能令人滿意。在離澳門主權回歸不足一年的今天，民法典、民事訴訟法典和刑法典等結構性法律仍未能完成本地化工作，澳葡政府甚至未能就該等法典何時完成本地化工作提出一個明確的時間表，不能不說是一個遺憾。澳門政府必須端正態度，加快工作進度，盡快完成外來葡萄牙法律的本地化工作，使這些法律取得澳門基本法所指澳門原有法律身分，才能順利過渡到澳門特別行政區適用。可以想像，出於只有少數全國性法律在澳門特別行政區適用，而未來澳門特別行政區立法會立法又只能逐步進行，因此，在澳門特別行政區成立初期，在澳門特別行政區法律體系中佔最大比例的，只能是澳門原有法律。這種情況，將會在澳門特別行政區成立後相當長的一段時間內得到維持。鑑於澳門外來法律在澳門現行法律中的重要地位，法律本地化效果如何，對澳門應



有法律的過渡以及特別行政區的法律體系的形成具有十分重要的影響。

三、澳門特別行政區制定的法律

自1976年澳門立法會成立以來，澳門就形成了「雙層雙軌」的立法體制——「雙層」是指葡萄牙和澳門本地均可為澳門立法；「雙軌」則指澳門本地的立法權由澳門立法會和澳門總督分享。《澳門組織章程》明確劃定了葡萄牙主權機關、澳門立法會和澳門總督各自的立法權限和範圍。澳門特別行政區成立後，這種立法體制將會改變。除極少數的全國性法律可以適用於澳門外，其餘法律均由澳門本地立法機關制定。《澳門特別行政區基本法》明確規定：「澳門特別行政區立法會是澳門特別行政區的立法機關」（第167條），



「澳門特別行政區立法會行使下列職權：（一）依照本法規定和法定程序制定、修改、暫停實施和廢除法律；（二）審核、通過政府提出的財政預算案；審議政府提出的預算執行情況報告；（三）根據政府提案決定稅收，批准由政府承擔的債務；（四）聽取行政長官的施政報告並進行辯論；（五）就公共利益問題進行辯論；（六）接受澳門居民申訴並作出處理；（七）如立法會全體議員三分之一聯合動議，指控行政長官有嚴重違法或瀆取行為而不辭職，經立法會通過決議，可委託終審法院院長負責組成獨立的調查委員會進行調查。調查委員會如認為有足夠證據構成上過指控，立法會以全體議員三分之二多數通過，可提出彈劾案，報請中央人民政府決定；（八）在行使上述各項職權時，如在需要，可傳召和要求有關人士作證和提供證據」（第71條）。基本法雖然沒有列明澳門特別行政區立法會的立法範圍，但其含義是明顯的：在不違背基本法及法定程序的前提下，立法會有權就澳門特別行政區的所有問題立法。與目前澳門總督擁有較大的立法權的情況相反，澳門特別行政區行政長官不再行使立法權，立法權統一由澳門特別行政區立法會行使。因此，澳門特別行政區的立法重擔，就壓在了立法會的肩上。

為了保證澳門政權的平穩過渡，基本法在設計澳門特別行政區第一屆立法會的產生辦法時，在不損害國家主權的前提下，充分照顧澳門的實際情況，規定原澳門最後一屆立法會議員可以有條件直接成為澳門特別行政區第一屆立法會議員，為澳門立法會的順利過渡提供了必要的條件。然而，現在的澳門立法會，是根據《澳門組織章程》的設計而建立的，它承擔的立法任務，難以與基本法所賦予的澳門特別行政區立法會的立法權相比。澳門立法會要過渡到澳門特別行政區，並承擔繁重的立法任務，就必須改革，加強立法能力，盡快縮小其與澳門特別行政區立法會的差距。

¹ 1995年11月14日頒佈的《澳門刑法典》於1996年1月1日生效後，該法典已被廢止。但該法典第二卷第二編（妨害國家安全罪——第141條至176條）除外，該編繼續生效至1999年12月19日。

² 澳門立法成立二十週年（1976～1996）（附景），澳門立法會，1996年出版，第36～64頁。

³ 葡萄牙法律延伸到澳門適用並不是必然的，它必須同時具備兩個條件：一是法律本身經《澳門政府公報》公佈後適用於澳門；二是在《澳門政府公報》實際公佈。

⁴ Jose Magalbaes（葡萄牙國會議員，國會權利、自由及保障委員會成員）：「論澳門立法自治的形成及其範疇」，載澳門政府《行政》雜誌，1991年，第12期，第346頁。



The **Basic Law** of the **Special Administrative Region of Macau** — *Some Reflections*

Professor Yash Ghai

I Introduction

With China's resumption of sovereignty over Macau on 20th December 1999, another step will have been taken towards the re-unification of Greater China. Macau is the oldest of the territories to have been alienated to foreign rule (centuries before Hong Kong), and there is some irony that its return to Chinese sovereignty had to await that of Hong Kong. It is also surprising that Macau's transfer to China should occur after Hong Kong, because the Portuguese have been more willing than the British to return their territory to China. The reason lies in China's grand design for the unification of China, under which Taiwan would be the first to be reunited with the Mainland. If Taiwan could have been



persuaded to reunify, the return of Hong Kong and Macau would have been rapid and uncomplicated. The basis of the reunification, 'One Country Two Systems', was initially devised for Taiwan. It was only after Taiwanese resistance to reunification on the terms offered to it that it was decided to apply that principle to Hong Kong and Macau. Macau would have been the ideal place for its first application, since the Portuguese could be counted on to co-operate. However, China decided to apply it first to Hong Kong, because it feared that the return of Macau might cause collapse of confidence in Hong Kong and the flight of its financial and human capital.

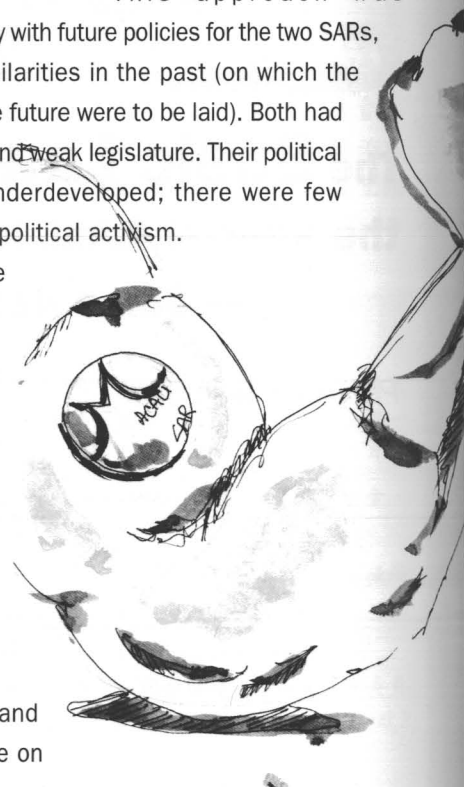
The modalities and terms of the resumption of sovereignty over Macau were inevitably influenced by those for Hong Kong. Article 31 of the PRC Constitution, which authorises the establishment of special administrative regions, allows for considerable differences in structures and policies for different special administrative regions ('in the light of specific conditions'). However, it was at one time the intention of the Chinese authorities to resume sovereignty over Hong Kong and Macau at the same time. It also seems to have been China's intention that the structure of the two SARs would be similar, unlike, for example, the greater autonomy that it realised it would have to offer Taiwan. The influence of the Hong Kong model was manifest both in the negotiations over and terms of the Sino-Portuguese Joint Declaration and in the drafting of the Basic Law. All the Mainland lawyers who served on the Hong Kong Basic Law Drafting Committee were also on the Macau Drafting Committee, as were several other Mainland members of the Hong Kong Drafting Committee. Not surprisingly, they were influenced by the approach and method adopted for Hong Kong. The number and remit

of sub-groups of the drafting committee were identical to those for the Hong Kong Basic Law. When introducing the Draft Basic Law to the Standing Committee of the National People's Congress, Lu Ping, who in addition to being the director of the Hong Kong and Macau Affairs Office, was also the Secretary-General of the Macau Drafting Committee, said (as quoted in Fifoot 1994:25).

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Both had strong executive and weak legislature. Their political systems were underdeveloped; there were few parties and little political activism.
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“Because the State's basic principles and policies towards Hong Kong and Macao are identical, in drafting the Basic Law of Macao Special Administrative Region, we took care to make it essentially identical to the Basic Law of the Hong Kong Special Administrative Region regarding the general structure and major principles. At the same time, we also paid special attention to Macao's reality to ensure that the Basic Law reflects Macao's characteristics.”

This approach was consistent not only with future policies for the two SARs, but also with similarities in the past (on which the foundations of the future were to be laid). Both had strong executive and weak legislature. Their political systems were underdeveloped; there were few parties and little political activism. Elections were unknown or subsidiary, the principle of appointment being more important. The business community enjoyed a close relationship with the government and powerful influence on policy.





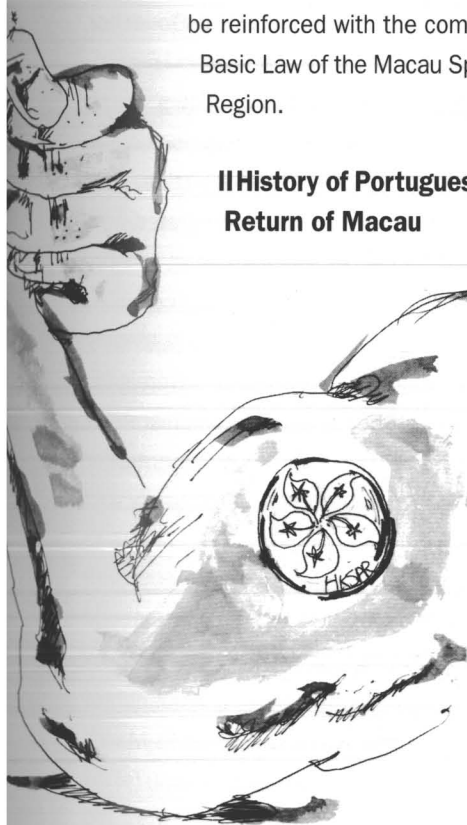
However, there were differences of history and tradition, and the pre-occupation with the Hong Kong model perhaps meant that insufficient consideration was given to the specific historical and contemporary circumstances of Macau. There appears to be some resentment among Portuguese officials that more favourable options were foreclosed by the reliance on the Hong Kong model. It is also true that certain principles and structures were imposed on Macau, following the more developed structures and localisation of administration of Hong Kong, which placed a considerable burden on Portugal in transitional arrangements. On the other hand, Portugal's negotiating position was much weaker than Britain's, and Macau has most likely achieved a higher degree of autonomy than it would have without the Hong Kong precedent. Another advantage might lie in the hindsight that can be garnered from Hong Kong's experience of transition (including ambiguities in the text of the Basic Law), and mistakes avoided. In some ways of course, as Lu Ping claimed, the constitutional arrangements for Macau do reflect the specific circumstances of Macau (as I show later). Nevertheless, the main contours of One Country Two Systems, as first applied in Hong Kong, will be reinforced with the coming into force of the Basic Law of the Macau Special Administrative Region.

II History of Portuguese Acquisition and Return of Macau

The return of Macau to China has been less complicated than that of Hong Kong because by the time the negotiations for Macau's return were initiated,

Portugal had ceased to claim sovereignty over Macau. In Hong Kong's case, the first protracted stage of negotiations was fruitless because Britain claimed and China denied British sovereignty over Hong Kong and Kowloon (Ghai 1999: Chapter 2). As is well known, it was the imminent expiry of the lease over the New Territories that had triggered off negotiations on the future of Hong Kong. It was only after Britain conceded that it would be prepared to give up claims of sovereignty if appropriate arrangements for Hong Kong's future were agreed upon, that substantive negotiations got underway. Even then Britain proposed that it should continue to administer Hong Kong on behalf of China. Deng Xiao Ping rejected this proposal on the ground that such an arrangement would be incompatible with Chinese sovereignty. It is possible that the British proposal was motivated by what was happening in Macau—the Portuguese were administering Macau even though China and Portugal were agreed that sovereignty over it belonged to China.

In the long period that Portugal occupied Macau, Portugal had indeed at one stage claimed sovereignty over it. Portuguese settlement, with the acquiescence of local Chinese authorities, dates back to the middle of the sixteenth century (Pires 1991; Alfonso and Pereira 1986). There was no formal agreement, although Portugal began to pay an annual ground rent to China in 1573, which has given rise to some speculation that the basis of Portugal's occupation was a lease. Payment was discontinued in the middle of the nineteenth century with Portugal's attempt to claim or negotiate a more secure foundation for its occupation, prompted in no small part by the British acquisition of Hong Kong. Until late in the nineteenth century, the basis of Portuguese occupation remained somewhat ambiguous — to, it would seem, no one's discomfort. As Afonso and Pereira (1986:30) have stated, referring to the divergence of Chinese and Portuguese view of the basis of the occupation, 'Since Macao's origin as a Portuguese settlement, a dualism has been shown, sometimes strikingly, in all aspects of life: in the exercise of political power, the administration of justice, religious structures, trade affairs, even the urban administration'. Chinese claimed sovereignty, including the right to levy





and collect custom duties, and to administer criminal justice. Portugal did not challenge these assertions of sovereignty, and as

Afonso and Pereira (at page 31)

conclude, 'thus was shaped a system of administration in which mediation played an important role'. As the pragmatic Portuguese realised, any attempt to change this status quo was unlikely to succeed, such was their own military weakness, so far from their primary resources of arms and administration (in Portuguese India), dependence on Chinese goodwill, and the provision of necessities.

However, towards the end of the eighteenth century Portugal began to claim sovereignty, and made regulations claiming jurisdiction over the Chinese in and around Macau. Significantly in 1822 the Portuguese constitution declared Macau an integral part of Portuguese territory, and in 1845 Portugal declared Macau a free port (thus challenging Chinese right to levy and collect custom duties). Despite Chinese resentment at these assertions of Portuguese sovereignty (and despite the assassination of the hated Governor Ferreira do Amaral, who implemented, with considerable aggression, this change of policy), China had eventually to agree to Portuguese claims of sovereignty. As

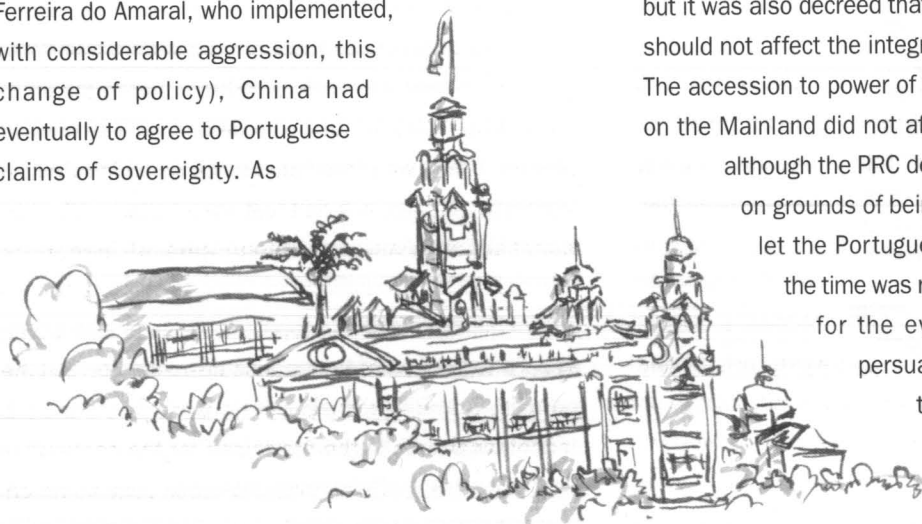
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The treaty led to a remarkable
integration of Macau into the
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administrative system.
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with the British over Hong Kong, the negotiations were complex and meandering (for example an agreement made in 1862 was sought to be renegotiated by China, unsuccessfully). Driven by the politics and the economics of the opium trade, negotiations were reopened in 1887 in Lisbon (leading to the so-called Lisbon Protocol), which was given formal recognition in the 1888 Treaty of Beijing. Under it China agreed to the perpetual occupation and government of Macau by the Portuguese, and in return Portugal agreed not to alienate Macau to another state without Chinese consent.

The treaty led to a remarkable integration of Macau into the Portuguese constitutional and administrative system. Until the middle of the nineteenth century, much

of the administration of Macau was left to local institutions, particularly the Senado which provided Portuguese settlers with a representative body with considerable policy and administrative powers. Now the rule of the Governor became dominant, Portuguese laws were applied, Portuguese courts administered justice, and

Macau's economic policies were closely integrated with the general imperial policies. In 1971 some autonomy was conferred on Macau, in common with other colonies, but it was also decreed that the exercise of the autonomy should not affect the integrity of Portuguese sovereignty. The accession to power of the Chinese Communist Party on the Mainland did not affect these developments, for although the PRC denounced the 1888 treaty void on grounds of being 'unequal', it was content to let the Portuguese rule Macau—at least until the time was ripe. China prepared the ground for the eventual return of Macau by persuading the General Assembly of the United Nations in March 1972 to delete Macau (along with Hong Kong) from the list of colonies whose





progress to independence was supervised and speeded by the UN. This made Macau a 'bilateral' matter between Portugal and China, and foreclosed prospects of its eventual independence.

A major reversal of Portuguese policies occurred in 1974 when the Portuguese Military Forces Movement staged a coup against the Salazar regime. A constitutional amendment in 1974 proclaimed the right of self-determination, with the consequent independence, of all Portuguese colonies. This amounted to the renunciation of Portuguese sovereignty over its colonies. Portugal withdrew its garrison in 1975. In further pursuit of this policy, Portugal offered the return of Macau to China. China declined this offer, preferring Portugal to continue the administration of Macau for the time being. This arrangement was formalised in a secret agreement in 1979 under which Macau was recognised as a 'Chinese territory under Portuguese administration', leaving for future negotiations the transfer of the exercise of sovereignty from Portugal to China. In pursuance of these arrangements, Portugal promulgated an Organic Statute of Macau in 1976, which recognised a high degree of autonomy for Macau. This Statute, with a few amendments, constituted an important benchmark when negotiations for the transfer of the exercise of sovereignty began in 1986. The variations from the Hong Kong model are explicable on the grounds of the constitutional scheme embodied in it. Although the Statute would be replaced by the Basic Law in December 1999, it is an instrument of considerable interest to scholars of comparative autonomy.

Thus by the time the negotiations over Macau's return started, there was no controversy over sovereignty, as there was over Hong Kong. This difference is clearly reflected in the structures of the two Joint Declarations. The disagreement over the sovereignty issue between Britain and China meant that there were two separate declarations over sovereignty, that by China claiming that it was resuming the exercise of sovereignty (art. 1), and that by Britain that it was returning sovereignty (art. 2). In the Sino-Portuguese Joint Declaration, it was possible to have a joint statement about the resumption of the exercise of sovereignty. However, the Portuguese

recognition of Chinese sovereignty (and its earlier offers to return Macau) did not prevent Portugal from challenging the Chinese timetable for the recovery of Macau, as being too speedy. It resisted the return of Macau simultaneously with that of Hong Kong, which was China's preference. It rejected the Hong Kong analogy because of the different juridical bases of occupation in the two cases (there being no time limit to Portuguese administration as there was over the New Territories lease), but more importantly because it required more time to prepare Macau to function as a special administrative region with a high degree of autonomy. Portugal had neglected to educate the people of Macau in Portuguese, which was, and is to continue, as an official language. Its legal, and particularly judicial system, was still closely tied to Portugal, and time was necessary to cut off the umbilical cord. Portugal, becoming quite anxious by then about the future of its legacy in Macau, wanted time to develop its economic infrastructure and rehabilitate its historic 'relics', ancient and imposing buildings, and to establish museums celebrating Portuguese history in Macau. But most importantly, it needed time to localise the civil service, which was dominated by the Portuguese at the higher echelons and by the Mekanese (descendants principally of marriages or liaisons between Portuguese and Chinese) at the middle levels, excluding local Chinese from any role in policy or administration. Portugal argued for a resumption date in 2007 or even later; in the end it had to accept a date 'before 200'.

By and large, the Sino-British Joint Declaration formed the basis of the negotiations for the return of Macau. There were specific points on which Portugal wanted a different solution, particularly nationality, for a substantial number of inhabitants of Macau had Portuguese citizenship (Portugal, unlike Britain, made no distinction between its citizens). Portugal also wanted special protection of Portuguese descendants and their culture. Some other provisions were deemed to be inappropriate, as in the provisions for the continuity of laws, as most of the law applied through extension from the legislature in Lisbon (Oliveria et. al. 1993). These



differences are examined below in the discussion of the Basic Law, which even more than in the case of Hong Kong, largely followed the provisions of the Joint Declaration.

III Overview of the Basic Law

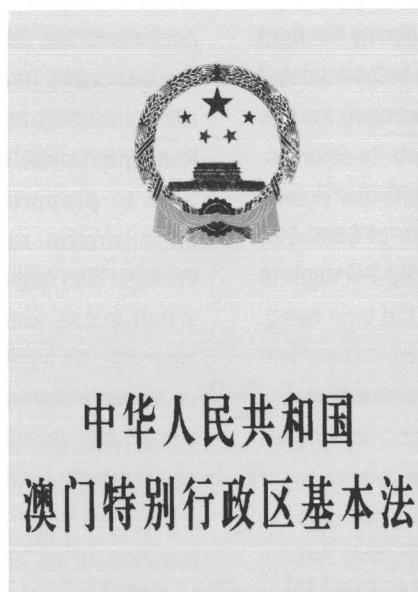
The Basic Law is based on the general principles of One Country Two Systems. In so far as the Basic Law follows the scheme and the provisions of the Hong Kong Basic Law, it is unnecessary to set them out in detail for the readers of this journal. It will suffice to refer to the major principles. The Preamble sketches in the background to the resumption of sovereignty and declares the purpose of the Basic Law to implement the basic policies of the PRC regarding Macau as established in the Joint

Declaration. Chapter I states General Principles, which as in the case of Hong Kong, foreshadow detailed provisions later in the Basic Law but in some cases are the sole authority for some rules (as for example in relation to the vesting of land and natural resources in the state and its management in the government of the SAR). The General Principles provide for the high degree of autonomy of the SAR, and the continuation of 'previous systems', particularly the 'capitalist system and way of life' (art. 5). An interesting variation from Hong Kong occurs in the article dealing with land. The principle is the same, that is, that land belongs to the state and its management is vested in the Region. This makes sense in Hong Kong where land was not alienated but leased; it makes less sense in Macau where significant parcels of land were alienated. This difference is acknowledged in the exception made for "private land recognised as such according to the laws in force before the establishment of the Macao Special Administrative Region" (art. 7) (no such exception being recognised in the only case of freehold in Hong Kong, the land where the Anglican Church

is built). Presumably all future grants of land by the SAR would be in the form of leases.

Chapter II deals with the relationship between the Central Authorities and the SAR. Following almost word for word the Hong Kong Basic Law, it retains for the Central Authorities responsibility for defence and foreign affairs,

but the Macau Basic Law makes no provision for the stationing of PLA forces, and consequently establishes no legal regime to govern their liability and jurisdiction over them, as in art. 14 of the HKSAR Basic Law (although the Central Authorities have declared their intention to station forces in Macau — and this for the maintenance of internal order, which is expressly the responsibility of the SAR government). In terms similar to Hong Kong's, the Basic Law makes provision for the application of such national laws in these areas



and other areas 'outside the autonomy of the Region' which are listed in Annex III, and sets out the legislative, executive and judicial powers of the SAR. Chapter III guarantees the rights and duties of the residents of the Region. The definition of residents and permanent residents is similar to that in Hong Kong, with one major distinction, which is of some special interest in Hong Kong in view of the litigation over rights of certain children in the Mainland whose parent has the right of permanent residence in Hong Kong. Article 24(2) states clearly that such children have the right of abode in Macau only if they were born after their parent had become a permanent resident. Rights are similar to those in Hong Kong, except that the drafting is much better, and some rights which in Hong Kong appear elsewhere, as in the right to a fair trial in the section on judiciary, are, quite logically, brought under this chapter. Two rights not specifically mentioned in Hong Kong are included: the legitimate rights and interests of women, and the care and protection of minors, the aged and the disabled (art. 38). There is no reference to the rights of indigenous inhabitants (as in Hong Kong);



instead there is a provision requiring the protection of the interests of residents of Portuguese descent and their customs and cultural traditions (art. 42). Although Portugal had not extended the international covenants on human rights to Macau when negotiations on the Joint Declaration started, it was agreed between China and Portugal that they would be applied to Macau (with some reservations as to the political structure and immigration) and the Basic Law entrenches them (art. 40) in the same way as in Hong Kong (art. 39) (Oliviera 1993).

The political structure, containing provisions on the Chief Executive, the Executive Authorities, the Legislature, the Judiciary, Municipal Organs and the Public Service, is dealt with in Chapter IV. As in Hong Kong, the political structure is built on colonial foundations of strong executives, bureaucratic dominated systems, top down administration, the dominance of the business community and co-optation of local groups. Accordingly, the general orientation is that of an executive led system, in which the Chief Executive is appointed by the Central People's Government after selection or consultation locally, and the executive is more powerful than the legislature. The members of the legislature have restrictions on the power to initiate legislation similar to those in Hong Kong, and there are similar restrictions on the accountability of the executive to the legislature. The composition of the legislature is designed to provide a privileged status and influence for the business community. Immunities of the members of the legislature are less secure in Macau; perhaps in recognition of greater criminality in Macau, immunity against arrest does not extend to 'active criminals' (art. 80) and no resolution of the legislature is necessary for the loss of seat of a member who has been convicted and sentenced to imprisonment of more than 30 days (art. 81(5)). On the other hand the legal immunity of members for statements and voting in the Assembly given in Macau (art. 79) is not expressly provided in Hong Kong. As far as concerns the third branch of the 'state', the independence of the judiciary is guaranteed, although there is no provision for a 'through train' for judges. There are other important differences between Hong Kong and Macau in the political structure which I will return to later.

The provisions on the Economy in Chapter V contain somewhat less elaboration than in Hong Kong, particularly on aviation as it was not so developed in Macau (and there was no local airline) at the time that the Joint Declaration and the Basic Law were drafted. Monetary, fiscal, and trade provisions (including the prescription to maintain a free port) are identical. But there are no obligations regarding an international financial centre, as Macau has not practised or aspired to that role. On the other hand Macau is expressly authorised to make policies on tourism and recreation 'in the light of its overall interests' (art. 118). This provision recognises the importance of tourism and gambling for the economy of Macau. Fifoot (1994:54) calls 'recreation' euphemism for gambling, quoting Lu Ping to the effect that it would be 'quite improper to have gambling mentioned in the Basic Law'! Another difference is that the Macau Basic Law expressly and unambiguously enjoins the protection of the environment (art. 119), in contrast with the rather half-hearted reference to the environment in Hong Kong ('pay regard to the environment' in art. 119). Macau is required to provide a system of compulsory education (art. 121), a provision deemed essential as the Chinese considered that Portugal had neglected education — there is no such provision for Hong Kong.

Provisions on Culture and Social Affairs (Chapter VI) recognise the rights of the non-governmental organisations (including professions) and contain guarantees of educational and religious rights. Chapter VII gives significant powers to the SAR to conduct external affairs, either on its own or on specific authorisation from the Central Government, notwithstanding that foreign affairs are the responsibility of the Central Government. As with Hong Kong, this delegation of external affairs to the SAR recognises that Macau's different economic and legal systems could not function without it.

Provisions for the interpretation of the Basic Law divide responsibility between Macau courts and the National People's Congress, with the final powers of adjudication in the Macau courts. Apart from its general powers of interpretation, the NPC must be asked to



interpret those provisions, arising in the course of litigation in Macau, which concern the relationship between Macau and the Central People's Government or the responsibilities of the latter, before the case is finally adjudicated. As in Hong Kong, there is a Committee for the Basic Law, which is to assist the Standing Committee of the NPC in the discharge of its functions which involve the interpretation of several provisions of the Basic Law which affect the relationship of the SAR to the Centre.

The power to amend the Basic Law (art. 144) is vested in the NPC; proposals for amendment may emanate from its Standing Committee, the Central Government or the SAR (in the last case through a process which requires

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The provisions for the interpretation of the Basic Law divide responsibility between Macau courts and the National People's Congress, with the final powers of adjudication in the Macau courts.

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the consent of regional deputies to the NPC, members of the Legislative Assembly and the Chief Executive). No amendment is allowed the effect of which would be to derogate from the basic policies of the PRC regarding Macau. Finally, there is provision for the Standing Committee of the NPC to declare previous laws which would not be adopted on the return of Macau if they are inconsistent with the Basic Law. There is also a provision for the continuity of previous legal rights and obligations (art. 145), but here there is an interesting contrast with Hong Kong. The last paragraph provides that previous contracts signed by the Portuguese Macau Government would not be binding on the SAR if a duly authorised body

in China declares them to be inconsistent with Joint Declaration provisions for transition. In that case they would be re-examined by the SAR government, a proviso in the nature of an escape clause. This provision was inserted no doubt due to problems that China encountered in trying to control the activities of the British Hong Kong Government, particularly regarding transactions and financing of the new airport and container port in Hong Kong. At that time China threatened to disregard contracts and franchises entered into by the Hong Kong government without the consent of the Chinese government. The Chinese view was attacked (correctly in my view) by the Hong Kong Bar Council as a contravention of the Basic Law. However, the statement had the effect that the Hong Kong government began to consult China. In the event, no contract was declared void; repercussions on the business community would have been quite serious. So it is reasonable to regard the Macau provisions as pressure on the Portuguese Macau Government to toe the Chinese line (as indeed it has interpreted more generally the transitional provisions of the Joint Declaration).

IV Differences between the two Basic Laws

I have already given some indication, in passing, of the differences between the two Basic Law. I want now to discuss some more fundamental differences, and to indicate how they reflect differences of history and politico-legal traditions of these territories. Perhaps the most important distinction lies in the future development of political structures. The position at the time of the respective transfers is not much at variance. In each case the Chief Executive is appointed by China, on recommendations of a Selection Committee, the first one being established by the Preparatory Committee. However, in Hong Kong it is provided that the ultimate aim is the election of the Chief Executive by universal franchise upon nomination by a broadly representative body (art. 45(2)). There is no such vision in Macau. But the Basic Law does permit the SAR to review the method of the selection of the Chief Executive after 2009 (Annex I, art. 7) and there seems to be nothing to prevent Macau proposing in due course that the Chief Executive should be selected by universal franchise. As in Hong Kong's case, changes may



be proposed to the Standing Committee of the NPC, by the two-thirds majority of members of the Legislative Assembly and the consent of the Chief Executive. In both cases, the approval of the Standing Committee is necessary to give effect to the proposal.

Similar teleological difference can be observed in the composition of the legislature. In respect of Macau China avoided committing itself to a legislature 'constituted by elections' as in Hong Kong (Annex I, section I of the Joint Declaration; art. 68, BL), ambiguous at that statement turned out to be. Nor is there any statement as in Hong Kong that the ultimate goal is election of all members by universal franchise (art. 68). The Macau Basic Law merely states that the majority of members of the Assembly shall 'be elected' (art. 68). The first legislature is to consist of 23 members, of which eight each are to be directly and indirectly elected and seven appointed by the Chief Executive (Decision of the NPC on the Method for the Formation of the First Government, the First Legislative Assembly and the First Judiciary of the Macau Special Administrative Region, 31 March 1993). Thereafter the numbers of directly and indirectly members increase to 10 each (in 2001) and to 12 for directly elected and 10 for indirectly (in 2005), the number of appointed members remaining constant at seven. However, Macau may review the composition in or after 2009 (i.e., in time for the election of the third full legislature after the establishment of the SAR), following the same procedure as for the selection of the Chief Executive, except that, as in Hong Kong, the Standing Committee has no veto (Annex II,

art. 3). However, it would seem that even by this procedure Macau will not be able to achieve to a fully elected legislature, as presumably amendments under Annex II must be consistent with art. 68, which, by specifying a majority of elected members, might be regarded as requiring that some be appointed. If this interpretation is right (it could be argued that the reference to majority was to prescribe a minimum number of elected members, rather than any maximum), then Macau could only achieve a fully elected legislature by an amendment of the Basic Law, unlike Hong Kong.

Thus although Macau may be able to achieve the same degree of democratisation as Hong Kong, the currently more restrictive provisions of the Macau Basic Law reflect the general lack of enthusiasm for democracy there. The conservative and status quo orientation of the political system in Macau is demonstrated by the absence, because considered unnecessary, of the procedure for double voting on proposals of members of the legislature or their amendments of government motions. In Hong Kong such a procedure requires separate voting by functional constituency members and other members, and the

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**So it is reasonable to regard
 the Macau provisions as
 pressure on the Portuguese
 Macau Government onto the
 Chinese line.**
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motion has to be supported by both votes in order to succeed. In Macau the presence of appointed members and the general lack of political mobilisation meant that this device was unnecessary to secure the dominance of the business and conservative elements.

This conservatism is somewhat surprising, for Macau achieved a measure of direct elections in 1976 under the Organic Statute, well ahead of Hong Kong, and would have increased the proportion of elected members thereafter but for the opposition of the Chinese authorities. Similarly, the Statute provided for the President of Portugal to consult with the Macau Legislative Assembly before appointing a Governor — a role given to the local assembly (consisting of a sizeable number of elected members) which the British never conceded to its Hong Kong counterpart. The Assembly could also pass a vote of no confidence in senior officials, although a resolution had no automatic consequence, being more in the way of a signal to the Portuguese President, who could and on occasion did, take remedial action. On the strength of the provisions of the Statute for elections, political parties emerged in Macau ahead of Hong Kong.

How then is one to explain the relative backwardness of the Macau Basic Law in terms of democracy? The Chinese opposition to further democratisation is clearly important (especially as the Portuguese have been less willing than Patten to take on the Chinese), but there are also internal factors. The activism of the legislature and the development of political parties owed a great deal to the rivalry between the Portuguese and the Mekanese, the latter resenting the privileged position of the former. With the decision on the return of Macau to China, the

two groups, isolated from the local Chinese residents, now poised for political greatness, began to see the commonality of their interests. The local Chinese were even less interested in democratic politics than their compatriots in Hong Kong. They preferred to operate through neighbourhood associations rather than political parties. For the most part they were pro-Beijing, a tendency reinforced by the superior position of Mainland companies in Macau, and the Mainland domination of the press. Thus when the Basic Law was being formulated, few local groups

agitated for democratic institutions, leaving such battles as were fought to the Portuguese Government (in contrast to Hong Kong where the main fight for democracy was put up by Hong Kong politicians and members of the Drafting Committee).

The second major difference relates to provisions for the legal and judicial systems. I have

already mentioned that all laws in force in Macau were to be preserved, unlike in Hong Kong where Acts of the UK Parliament and Orders in Council were excluded, requiring the localisation of any such instruments as were deemed necessary for the HKSAR. The exception in Macau was due to the reason that most of the body of the law was in the form of Portuguese legislation. Most of the legislation was also only in the Portuguese language. It was clear that although not a requirement of the Basic Law (notwithstanding evidence that Chinese view has changed), laws would have to be translated into Chinese, and preferably re-enacted as local legislation, with suitable amendments to adapt them to the circumstances of Macau (most of the codes were of ancient vintage, and had ceased to apply even in Portugal).

Even more serious was the situation of the judiciary. For a long period, there was little in the way of a local judicial system, since justice was administered by Portuguese courts, such courts as existed in Macau being

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The currently more restrictive provisions of the Macau Basic Law reflect the general lack of enthusiasm for democracy there.
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Chinese Legal Personnels receiving training as future prosecutors.

regarded as 'county courts' within the metropolitan system. The establishment of a local autonomous system was begun some years ago (though still without a single local judge), but was not sufficiently advanced by the time of the Joint Declaration to be considered a suitable candidate for the 'through train'. Consequently one of the functions of the Preparatory Committee is also the establishment of the judiciary for the SAR, none of the previous judges having any guarantee of staying on. The Macau Government has since taken vigorous steps to establish an autonomous judicial system, and plans to sever all links with the appellate courts in Portugal ahead of the transfer of Macau. An energetic programme in legal education and training, and in the translation of laws, has been undertaken. Under these circumstances, it would be possible for the Preparatory Committee to adopt the judicial system so established. Even then differences in the legal and judicial systems would remain as the most distinguishing points of contrast between Hong Kong and Macau, derived as they are from different legal traditions.

The third major difference lies in the way that the question of nationality has been handled. Unlike the parsimonious attitude of the British, the Portuguese were

liberal in the dispensation of Portuguese citizenship, and since the Portuguese law provides for only one type of citizenship, over a 100,000 residents

of Macau (more than a third of the population) enjoy the right to move to and live in Portugal. Portugal was committed to the continuation of this status (perhaps mindful of the fate of Portuguese descendants in other ex-colonies) and did not accept the Hong Kong solution whereby their status would be downgraded to merely holders of Portuguese travel documents. Since China regarded ethnic Chinese as Chinese nationals, there would be a large number of persons with dual nationality (and dual loyalty) that is not permitted under Chinese law. After hard negotiations, China compromised.

As in respect to Hong Kong, memoranda by the two sides were attached to the Joint Declaration on nationality. The Chinese memorandum is in fact in similar terms, ignoring Portuguese nationality and recognising Portuguese documents merely for travel purposes, but

the Portuguese declaration is significantly different from Britain's. Those who have Portuguese citizenship will continue to hold that citizenship and to travel on Portuguese passports. They will have the right to enter and live in Portugal. This comes dangerously close to double loyalties, of which, especially in relation to senior officials, China was so suspicious in Hong Kong (Ghai 1999: 157-8). When

after the Tiananmen massacre, Britain introduced the nationality scheme under which a significant number of Hong Kong residents could acquire full British nationality by application in Hong Kong, China not only denounced the scheme as a violation of the Joint Declaration but also introduced the concept of the right of abode in a foreign state as a disqualification from senior public posts and from a large section of the legislature.

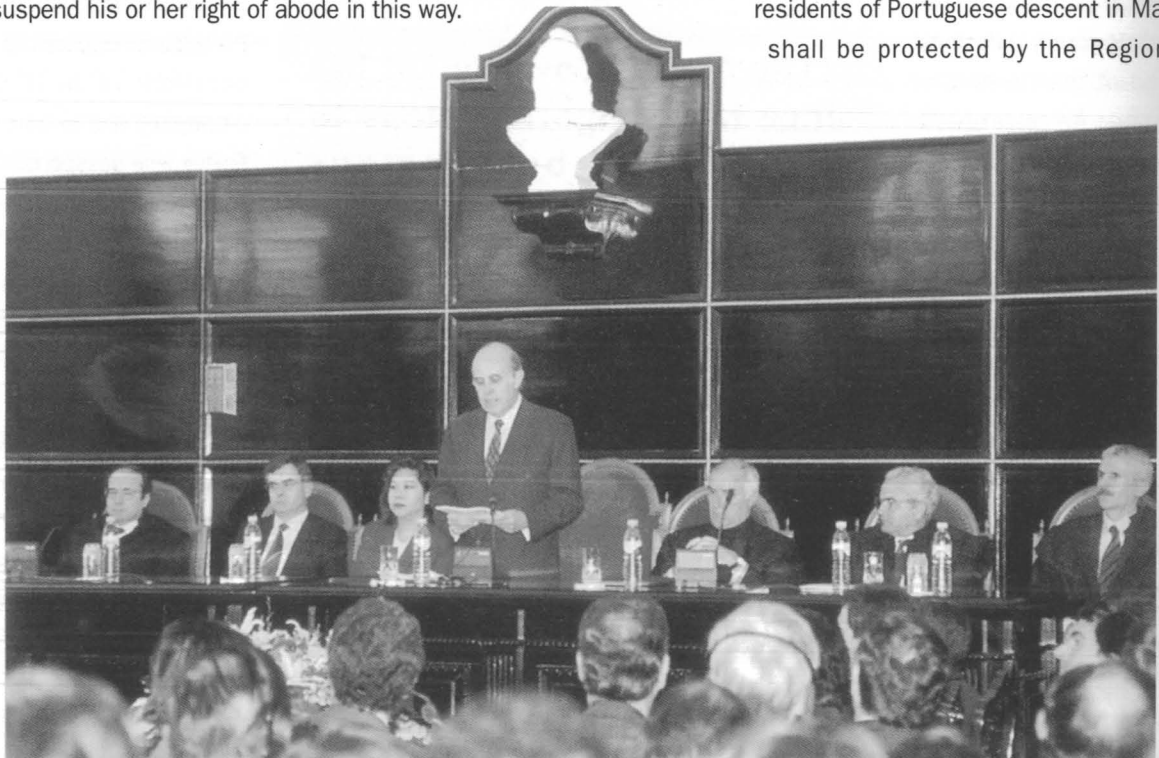


“ The Macau Government has since taken vigorous steps to establish an autonomous judicial system, and plans to sever all links with the appellate courts in Portugal ahead of the transfer of Macau. ”



Chinese reaction in Macau was more muted. Although its own memorandum on nationality espouses a different legal view from that of the Portuguese, China effectively accepted the Portuguese view. During the drafting the Basic Law, by which time it had already decided to use the right of abode in a foreign state as a disqualification for certain posts in Hong Kong, the Chinese tried to introduce a similar provision in Macau (as in the earlier Macau drafts). However, the disqualification was withdrawn in the face of Portuguese opposition, and the realisation by China of the dependence of Macau on civil servants and judges who held Portuguese nationality and were determined to hold on to it. Thus the only reference to the right of abode occurs in the disqualification for membership of the Basic Law Committee and is explicable on the grounds that the Committee is a creature of the NPC, and not a Macau institution. Even in relation to the Chief Executive, it is merely provided that he or she 'shall have no right of abode in any foreign country' during his or her term of office (art. 49). It remains to be seen how this provision would be interpreted, since it is hardly open to an individual to suspend his or her right of abode in this way.

The final major difference, perhaps more symbolic than practical, is the specific protection provided to Portuguese citizens and their descendants and to Portuguese culture. Being a small state with a language which would be somewhat isolated in East Asia, the Portuguese are more fearful of the extinction of their culture than the British had reason to be. No similar provisions exist for the British in the Hong Kong Basic Law, and indeed according to the Standing Committee of the NPC in its Decision on article 160 of that Law, any discrimination in favour of the British or Commonwealth citizens is inconsistent with the Basic Law. By contrast, in Macau there is a specific category of permanent residents which is connected to Portuguese origin. Article 24(3) makes all Portuguese who were born in Macau and have taken Macau as place of permanent residence before or after the return of Macau permanent residents (would Portuguese include 'Mecanese'?). While this provision does give the Portuguese rights not available to other non-Chinese nationals, article 24(4), which gives Portuguese the right of abode after seven years' residence, seems merely symbolic, for a similar right is extended to any person with a similar period of residence (art. 24(5)). Article 42 states that the interests of the residents of Portuguese descent in Macao shall be protected by the Region in



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accordance with law, and their customs and cultural traditions shall be respected. It is not clear precisely what these rights are (nor do I know whether there is any legislation or practice which specifies these rights, as is perhaps the case with the rights of indigenous inhabitants of the New Territories). Another provision is partially directed at the preservation of Portuguese cultural legacy. Article 125 requires the Region to protect scenic spots, historical sites and other religious relics as well as the lawful rights and interests of the owners of antiques. Nor must we discount the continuing influence of the Portuguese through the legal and judicial system, which must continue to draw its inspiration from Portugal (just as the common law in Hong Kong continues to be an effective conduit of English influence in the HKSAR).

IV Conclusion

In the conclusion I want to make a few general comments. The first comment is to raise the question as to how far the implementation of the Macau Basic Law will follow the path trodden by Hong Kong. The machinery for implementation is similar—a

Joint Liaison Group and a Land Commission (Hong Kong) or Land Group (Macau). Relations among the British and the Chinese in the JLG deteriorated rapidly after the Tiananmen Square killings and the appointment of Patten as the governor, set on speeding democratisation. Britain complained that China was moving the goal posts, and deviating from the Joint Declaration. In Macau the role of the JLG seems to be even greater, since the Chinese have shown a particular interest in the localisation of the civil service, the localisation and translation of laws, and in the development of infrastructure, especially the aviation sector. This has allowed China much greater intervention than in respect of Hong Kong, and the Portuguese may been less willing or able to oppose this intervention. As in Hong Kong, some Portuguese consider that China is moving the goal posts, especially on the localisation of

laws, nationality and the preservation of Portuguese heritage. In both instances China insisted on convergence whereby changes in the previous systems

would have to be compatible with the Basic Laws. But the irony is that while in Hong Kong the British were accused of attempting rapid and fundamental changes in the previous system (inconsistently with the Joint Declaration), the Portuguese are accused of dragging their feet and not doing enough to change the systems to accord with the Joint Declaration and the Basic Law.

This criticism, if justified, merely points to the fact that the Joint Declaration in Hong Kong was tailored to

the previous system there, and that its fundamentals, and frequently also the details, were adopted in the Macau Joint Declaration. This required a monumental exercise in structural change in Macau. In other respects too, it may be queried whether the Macau Basic Law, especially in the economic system, is really appropriate for a small and fragile economy. The recent

economic recession in East Asia has already highlighted the rigidities and weaknesses of the provisions on the economic system of even Hong Kong (despite being a major player on the world economic scene).

The similarity of the Basic Laws raises also the question of the relevance of precedents from one SAR to the other. Since Macau is behind Hong Kong in the establishment of the SAR, it is not surprising that its officials have paid close attention to the implementation of the Basic Law in Hong Kong. But because the Macau Basic Law was drafted after the Hong Kong, perhaps its language can give us some clue to the intentions of the drafters of the Hong Kong Law, and assist in its interpretation. I do not want to suggest that there is any simple way in which one Basic Law can be used in the

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The Portuguese are accused of dragging their feet and not doing enough to change the systems to accord with the Joint Declaration and the Basic Law.

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interpretation of the other — there are certainly formidable problems which arise from the different legal traditions of the two SARs. But used with some sophistication, the approach can be useful. I illustrate my point by three examples.

The Macau Basic Law is clear on the point that children born outside Macau of a Chinese national parent who is a permanent resident of Macau do not become permanent residents by virtue of that connection unless they were born after the parent had secured the right of abode (art. 24(2)). This issue has been strongly contested in Hong Kong, and has been the subject of much litigation (Ghai 1999: 162-66). If we relied on the Macau Basic Law, we could argue that there was the same intention in Hong Kong. More plausibly, one could argue that China changed its mind after drafting the Hong Kong Basic Law, and therefore the result there is different from that in Macau.

The second example is drawn from art. 50(5) of the Macau Basic Law which gives the Chief Executive the power to formulate and promulgate administrative regulations. There is no similar power in Hong Kong, and it would seem that its presence in Macau is due to a different constitutional position under Portuguese constitutional law than in Britain, whereby the executive has certain law making powers. The promulgation by the Chief Executive in Hong Kong of the Executive Order 1 of 1997 which established regulations for the organisation of the civil service was challenged as exceeding his powers, since law making powers are vested in the Legislative Council. The challenge was dismissed by the Court of First Instance (Ghai 1999: 278 and 228). It could be argued that the court was wrong, for if the Basic Law had intended to confer law making power on the Chief

Executive, it would have clearly specified so as in Macau.

The third example comes from the last paragraph of the last article of the Macau Basic Law which prescribes the criteria for the validity of pre-transfer government contracts after the establishment of the SAR (there being no similar provision in Hong Kong). China argued that the Hong Kong Basic Law had a similar effect—but one may question this view, for if it did, what was the necessity to have this additional clause in the Macau Basic Law?

Finally, I comment on the prospects of successful implementation of the Basic Law and the exercise of

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autonomy. Hong Kong's experience shows that implementation continues well beyond the transfer of territory, and controversies can continue to arise on the scope of autonomy. One can say with some reason that despite the problems that sprang from the confrontation between Patten and the Chinese authorities, the implementation of the Basis

Law and the exercise of autonomy in Hong Kong have been successful. It is not clear that the same can be predicted for Macau. The prospects of democracy and autonomy are less promising. There is less world attention; its economy is not so important externally; there is no influential and pluralistic media; there appears to be no sizeable elite committed to rights and democracy; civil society seems to be crumbling; the bureaucrats who will accede to key positions will be less experienced and confident—all factors conducing to Hong Kong's autonomy. Moreover, pro-Beijing forces dominate politics as well and commerce more effectively in Macau than in Hong Kong. One of Hong Kong's strengths has been its well established and resilient legal system; its laws have been localised for a long time; its judiciary has, for the most part, been up to the challenge of the Basic Law and the relationship to China; and the legal system was never in contention between Chinese and Britain (or the people of



Hong Kong). Ironically, in Macau, which shares with China a civil law system, the legal system has been a matter of controversy. In any event it is weak and fledgling, with no assurance of through train for judges; on the contrary there is every likelihood of massive changes, with inexperienced judges appointed to high office. To these circumstances must be added a history of greater Chinese intervention in Macau than in Hong Kong. None of these factors amounts to a foreclosure of the issue. Macau will benefit from the Mainland tolerance (and even

encouragement) of the exercise of autonomy in Hong Kong. There is still the bigger prize of Taiwanese re-unification that the Central People's Authorities want to negotiate, requiring their respect for Macau's autonomy. Finally, of course there is the commitment to and the self-interest of the Central Authorities in the success of one country two systems.

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學習中國法漫談

劉南平

這題目聽起來是蠻輕鬆的，可以漫不經心地談。但是，要談得讓學生們理解並且樂於接受，似乎並不是一件容易的事情。

首要的問題當然是，為什麼一定要學中國法？港大法學院已將《中國法律制度介紹》作為LL.B學生的必修課，這在法學院可算史無前例。

毫無疑問，必修課的開設是對香港主權回歸祖國的回應。其實，從法律知識的層面看，更多地了解內地的法律制度，也是有着實用價值的。香港所有的中大型律師行，你或許還找不到一間完全不做與大陸生意有關的法律業務的。是否喜歡一種法律制度和是否了解一種法律制度，完全是兩個不同的問題。而且，你如果不了解一種法律制度而談是否喜歡它，恐怕是太主觀了。再說，香港是中國的一部分，我們在道義上應該為自己國家的法律建設與完善做一些力所能及的事情。我想，這應該是對有遠大抱負青年的最低期望值。

其次，我想談談內地法律的特點，即大陸的法律制度為何物的問題。與香港的普通法相比，內地法律制度最大的不同是，前者是以判例法為主，後者則屬於成文法體系。與此相關的是，法官的地位也就不一樣了。在普通法系的國家裏，法官所判的案子有「前例」的地位，即法官具有一定的“造法”功能。而內地的法官一般說來是不可能起着上述作用的。另外的一個特點是，即使與其它成文法的國家相比，內地的法律條文顯得簡單和粗疏得多，這往往令許多外國投資者感到無所適從。當然，從立法技術的角度看，這是需要改進的，而且正在加以改進。如《統一合同法》草案就有四百多條，這恐怕會成為迄今為止條文最多的一部法律。還有一大特點不得不提，即法律條文變化較快。法理的常識告訴我們，法律之所以能成為法律，就是因為它有相對的穩定性。朝令夕改（有點誇張），恐怕是太難為老百姓了！當然，上述兩大特點也是有其社會原因的，因為中國正在經歷着急劇而且深刻的變化。如果法律不對社會的變化作出相應的回應，有時甚至是超前的預示安排，那麼社會改革的成果就得不到及時保障，改革的征途也會失去明確的方向。內地的《公司法》的制定就是這方面的一個突出例子。我想，隨着中國社會變遷的最終完成，即從一個計劃經濟過渡到市場經濟，從一個

一黨統治轉變為民主開放的社會之後，這些問題都會很自然地解決。

再次，談談學習中國法律的方法問題。這個問題對生長在資本主義香港的普通法學生來講，恐怕要多花一點筆墨。第一，崇尚與實際相結合的方法，不可拘限於法律上的字面意義。這方面的例子就很多了。例如，中國現行憲法（82年）規定，全國人民代表大會是中國的最高權力機關。但是，學生們會問，那麼中國共產黨的位置在哪裏？現實中黨不是最高嗎？其實，關於這一點，毛澤東時代的1975年憲法倒是講了實話，即全國人民代表大會是在中國共產黨領導下的最高權力機關。所以，如果僅僅看現行憲法的條文，是看不出這其中的奧妙的。

另外一個有趣的例子是關於內地外貿公司的法律地位問題。按照中國內地法律的字面表述，它們是代理，因為它們代理那些設有進出口權的國營企業從事外貿業務。但是，從外商（包括香港商人）的角度來看，這些外貿公司不能視為代理（agent），而是委托人（principal），是真正負法律責任的實體，因為它們在某種意義上代表國家與外商簽署貿易合同。所以，拘泥於中國法律條文的字面意義，是可能犯錯誤的。

第二，注意其他法源的研究和引證。成文法是內地法律的主要法源，但是，很多案子的解決靠成文法是不夠的，因為正如上述所講的，法律條文較粗疏，欠缺適用性。這時，就要查尋最高人民法院和最高人民檢察院的司法解釋。一般說來，從司法解釋中是可以找到答案的。這些司法解釋都具有法律效力。另外，還可查找國務院及其部委的規定。

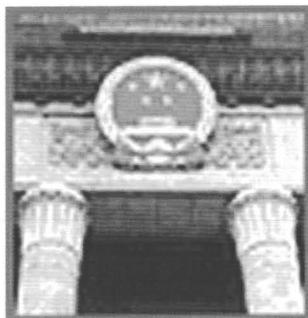
第三、注重社會調查的方法。由於兩地實行兩種不同的社會制度，而且學生們難得有機會去內地考察，這樣就有可能對內地的法律理解不夠深入和真實。只有了解到中國社會的歷史和現實，以及未來的發展趨勢，我們才可能把握中國法律的來龍去脈，運用起來也就可以得心應手。

最後，盼望同學們有一天能與我漫談你們的學習收穫和心得。



大陸新舊刑法典的比較

此文章原屬北京大學法律系代表團參加「京港青年法律交流計劃I」，就《中港兩地刑法比較》的主題而發表的講稿，由本刊編委作出了一定的刪減。因時間短促，未經原作者審閱，本編委會負上一切文責。



(I) 新刑法的修訂貨景：

「79刑法」誕生於中國大陸剛剛結束無法無天的混亂局面，社會主義法制建設重新起步的時刻。由於受立法時的社會政治、經濟、文化狀況的限制，加上立法經驗的相對不足，使得這部刑法典在觀念上較為保守，在內容上失於粗疏，以至於在很短的時間內便顯露出與社會現實生活的諸多不適應。特別是在1979年刑法典制定以後，中國拉開了改革開放的帷幕，在商品經濟和市場經濟日益發展、中國參與國際交往日益增多、社會生活各領域發生翻天覆地的變化的情勢下，各種新型的經濟犯罪、危害社會治安的犯罪亦呈現出前所未有的增長勢頭，1979年刑法典內容的不完整性和對變化多端的犯罪現象缺乏及時應變能力的缺陷，日趨嚴重。

為適應國家改革開放中的新情況、新問題和懲治防範犯罪的實際需要，中國大陸最高立法機關自1981年至1995年先後通過了25部單行刑事法律，並在90餘部經濟、民事、行政、軍事、文化、教育、環境衛生、社會保障等方面的法律中附設刑事條款（即附屬刑法規範），對1979年刑法典進行了較大幅度的修改補充。然而，由於在刑法典之外，存在如此繁多的單行刑事法律和附屬刑法規範，缺乏一個體系上的歸納，刑法規範整體零亂和不便掌握的弊端在所難免；再者，刑法典原有的一些規定可能暫時得到完善，但單行刑事法律規定的不合理內容和彼此缺乏照應的情況又隨之產生。司法實踐檢驗和理論研究均證明，為更有效地發揮中國刑法的社會調整功能，全面修改刑法，制訂出一個嶄新的中國刑法典，是勢在必行的。

自中國最高立法機關於1982年提出修改刑法典起，研究和修訂刑法典的工作歷時15年，大體經歷了這樣五個階段：第一，醞釀準備（1982-1988.2）。這一階段最高立法機關開始注意對刑法修改意見進行收集和整理。第二，初步修改（1988.3-1989.6），這一階段將刑法修改明確列入了立法規劃，初步嘗試性地草擬了《刑法修改稿》。第三，重點修改（1991）。這一階段主要是對「反革命罪」修改為危害國家安全罪進行研討、論證，第四，全面系統修改（1993-1996.12）。這一階段最高立法機關為全面系統修正刑法典進行了緊鑼密鼓的工作，頻繁擬改草案。第五，立法審議通過（1996.12-1997.3）。這一階段最高立法機關數次審議修訂草案，最後經第八屆全國人民代表大會第五次會議於1997年3月14日通過了修訂的《中華人民共和國刑法》。這部刑法已於1997年10月1日起施行。

新刑法典包括總則、分則、附則三部分，共15章，將1979年刑法典的192部條文，增加到452部，其修改幅度之大，涉及範圍之廣，在我國可謂空前。新刑法典順應了時代的要求，大大推動了我國刑事法治乃至整個法治建設的進程，從而在新中國法制史上具有里程碑的作用。

(II) 「97刑法」與「79刑法」的比較：

在整體結構上，「97刑法」保留劃分總則與分則兩編的整體框架，同時加進了「附則」。總則部分的法律條文由原來的89條增至101條；分則部分變化比較大：一是由原來的8章擴大為10章。二是增加了較多的法律條文，由原來的103條增至350條。



刑法總則內容的主要變化

(i) 「97刑法」明確規定了刑法的基本原則，即罪刑法定原則、法律面前人人平等原則、罪責刑相當原則。在「79刑法」中，不僅沒有明文規定罪刑法定原則，反而規定了與罪刑法定原則相矛盾的類推。「97刑法」在刪除類推規定的同時，在刑法總則第3條規定：「法律明文規定為犯罪行為的，依照法律定罪處刑；法律沒有明文規定為犯罪行為的，不得定罪處刑。」罪刑法定原則是近現代多數國家刑法規定的核心原則。它是刑事法律制度完備和進步的集中體現。「97刑法」總則第3條關於罪刑法定原則的規定無疑成為這次修改刑法的最顯著成果。

(ii) 關於刑法適用範圍的變化，「97刑法」將舊有規定^①作了修改，列明「中華人民共和國公民在中華人民共和國領域外犯本法規定之罪的，適用本法，但是按本法規定的最高刑期為3年以下有期徒刑的，可不予追究。」「中華人民共和國國家工作人員和軍人在中華人民共和國領域外犯本法規定之罪的，適用本法。」上述變化一方面體現了對國家工作人員、軍人犯罪從嚴處罰的精神；另一方面按一定刑期劃分應管轄之罪比按照犯罪性質劃分更具有科學性，這也是罪責刑相當原則的體現。同時「97刑法」第9條明確規定了「對於中華人民共和國締結或參加的國際條約的規定的罪行，中華人民共和國在所承擔條約義務的範圍內行使刑事管轄權的，適用本法。」這有利於履行我國承擔相關的國際義務。

(iii) 是關於正當防衛制度的變化。「97刑法」為更好地鼓勵公民行使正當防衛的權利，對「79刑法」作了較大修改：一是明確地規定出正當防衛與防衛過當的界限，便於實際操作。「97刑法」第20條2款規定「正當防衛明顯超過必要限度造成重大損害的」屬於防衛過當應承擔刑事責任，這裏增加的「明顯」二字與「造成重大損害」（「79刑法」是「不應有的危害」）的以及第3款「對正在進行行凶、殺人、搶劫、強姦、綁架以及其他嚴重危及人身安全的暴力犯罪，採取防衛行為，造成不法傷人的，不屬於防衛過當，不負刑事責任」的規定較大地縮小了防衛過當的範圍。二是對防衛的過當行為追究刑事責任時改變「79刑法」中「應當酌情或者免除處罰」的規定，即刪除「酌情」二字，在「79刑法」中規定為「應當減輕或

免除處罰」。其次，新刑法典亦確定了單位（法人）可以成為犯罪主體^②、收緊了累犯的成立條件^③及對罪犯自首、立功作更寬大的規定^④。則申明確定了單位可以成為犯罪主體，並規定了處罰原則。

關於分則內容的主要變化

(i) 是將「79刑法」中規定的反革命罪一章修改為危害國家安全罪。此罪名的變化，既符合政治、經濟和社會情況的發展變化，同時也與世界上許多國家的刑法規定接軌，即對一系列危害國家的主權、領土完整和安全的行為^⑤，明確、具體地規定為各種危害國家安全的犯罪，並規定判處與之相適應的法定刑。^⑥

(ii) 是將「79刑法」中規定的破壞社會主義經濟秩序罪修改為「97刑法」中破壞社會主義市場經濟秩序罪。由原來的15個法律條文增至92個法律條文，由原來的十幾個罪名猛增至九十多個罪名。該罪名加進「市場」二字反映出經濟犯罪的重大變化：（1）明顯帶有計劃經濟特色的犯罪行為已不復存在，故修改後刑法中予以刪除，如偽造、倒賣計劃供應票罪。根據社會主義市場經濟發展的要求，分解投機倒賣為若干種具體的犯罪，不再籠統規定投機倒賣罪名，避免因界限不清導致執法的隨意性。同時，根據十幾年來各單行法律的規定，把多種經濟犯罪移植到新刑法典中^⑦，亦增設了證券欺詐、侵犯商業秘密、虛假廣告、合同詐騙等新的犯罪行為。這些變化證明了大陸的刑事法建設密切反映社會經濟生活的現實和逐步趨向完備。

(iii) 「79刑法」規定的危害社會管理秩序罪在「97刑法」中得以更大的擴展。危害社會管理秩序罪以其包含的犯罪內容「多而雜」為特點，「97刑法」仍承襲了這一特色並增進許多新的犯罪：一是將「79刑法」規定的流氓罪這一「口袋」罪名分解為幾種具體的犯罪，以方便司法實踐中準確定罪，避免因「流氓罪」的籠統規定而招致執法隨意的弊病。二是將「79刑法」頒行以後若干個刑法決定，補充規定以及附屬刑法中規定的犯罪行為移植進「97刑法」中來，如侮辱國旗、國徽罪，盜掘古文化遺址、古墓葬罪，非法持有毒品罪，重大環境污染事故罪等。三是將「79刑法」分則其他罪章的有關具體罪名編入「97刑法」的危害社會管理秩序罪中來，如偽造證罪、聚眾



劫獄罪等。四是根據當前出現的危害社會管理秩序情況，「97刑法」還增設了多個黑社會新的組織犯罪罪名，對證人打擊報復罪，非法組織賣血罪，強迫賣血罪、盜竊、侮辱屍體罪，計算機犯罪等。「97刑法」以91個法律條文的恢宏篇幅規範了形形色色的危害社會管理秩序的犯罪行為，反映出本次刑法的修訂力求比較完備的特點。

(iv)「97刑法」將貪污賄賂罪獨立規定為分則的一章是「79刑法」中不曾有的，貪污罪原來規定在「79刑法」的侵犯財產罪中，賄賂罪規定在「79刑法」的瀆職罪中。「79刑法」適應當時的社會實際生活，將當時並不突出的貪污賄賂罪作了比較原則的規定。鑑於後來因國家政治、經濟生活發生了巨大變化，以貪污賄賂為特點的腐敗罪行日益變得突出、嚴重。「79刑法」的規定已遠遠不能適應懲治貪污賄賂罪行的實際需要，故「97刑法」將貪污、賄賂罪單列一章，增加了一些新的罪名，如單行受賄罪，隱瞞境外存款

罪、私分國有資產罪等。

(v)關於瀆職罪的變化。「97刑法」對瀆職罪的規定過於籠統，有的犯罪的法定刑規定也偏輕，不符合吏治從嚴的精神。針對「79刑法」頒行後十幾年來國家公職人員職務犯罪的新情況，「97刑法」以及23個法律條文的篇幅比較詳細、具體地規範了各種濫用職權、疏忽職守、徇私舞弊、枉法裁判等犯罪行為，並相應地提高了法定刑。修改後的瀆職罪，既體現了國家對公職人員犯罪嚴厲懲治的精神，也在很大程度上方便了司法實踐。

(vi)「危害國防利益罪」、「軍人違反職責罪」增設在「97刑法」的分則中，是修訂後的刑法分則的一個新變化。「79刑法」頒行時不曾有上述兩類犯罪的規定。後「軍人違反職責罪」的刑事處罰為單行刑及法律的規定。「97刑法」將其移植並增加「危害國防利益罪」一章，體現立法者追求一詳「大而統一」刑法的意圖。



(1)「97刑法」規定：中國公民在中華人民共和國領域外犯反革命罪等8種罪行適用刑法，犯其他罪行的需受最低刑為3年以上有期徒刑限制。

(2)總則第二章。

(3)前後罪間隔期限由3年改為5年。

(4)如第67、68條：“把犯罪以後自首，而犯罪較輕的，可以減輕處罰”改成“可以免除處罰”。

(5)分裂國家、武裝叛亂、顛覆國家政權和制度與境外機

構、組織、個人相勾結危害國家安全的，國家機關工作人員履行公務期間叛逃危害國家安全的等。

(6)“79刑法”關於這類犯罪曾有15部法律條文，20個罪名，“97刑法”修改為12個法律條文，12個罪名，其他犯罪行為分別編入危害公共安全和危害社會管理秩序罪兩章中。

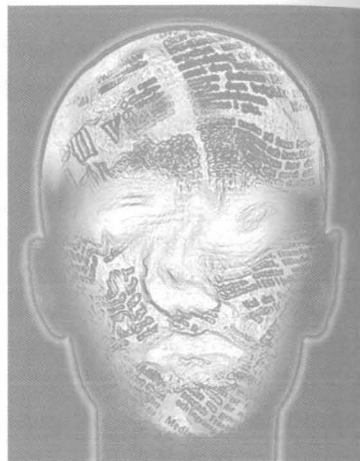
(7)如生產、銷售偽劣商品犯罪，仿害對公司、企業的管理秩序罪，破壞金融管理秩序罪，金融詐騙罪，危害稅收征管罪，侵犯知識產權罪，擾亂市場秩序。



專題探討——中文在法律之應用概況

前言：中文作為法定語言的路已走了相當一段日子，若果說1974年通過的《法定語言條例》替它奠定了基礎，而1987年的《法定語言（修訂）條例》及《釋義及通則條例》注入實質的生命力，那麼亦已是十數年的事。

再者，這課題在《律呂》中的歷史亦不短：首先有陳文敏講師的感性呼召，再有陳弘毅教授的理性分析。此番舊話重提，皆旨在從專業教育，雙語合同，書籍出版與司法應用等不同角度作客觀探討，加深各同學對此的認識。



(I) 香港大學法律學院之「中文法律應用」課程——訪問主講者何美歡女士

回顧

此中文課程最初為不計算學分之選修課，而演變成學分課程已有五年歷史——首兩年由陳弘毅教授主持，何美歡女士則於三年前開始接辦。當時此課程還未規模化，何女士面對「平地起高樓」的困難，就利用了半年的學術休假在加拿大進行研究，並確立以下目標：

1. 通過演辯及寫作練習，建立同學以流暢中文作具邏輯性、系統性論理技巧。
2. 提高同學對法律條文中英文版本所現歧義的辨別和處理能力。
3. 培養同學對中文專業應用之敏感度 (Sensitivity)，啟發將來在有關方面多下功夫。

儘管如此，何女士仍謙稱表現未如理想，甚至課程大綱也要到學期中才向同學發佈，「當時多得各同學有『問道於盲』的勇氣，與我一同探索！」

現況

經過三年摸索，課程大體已趨成熟。為求重點加強同學的練習機會，每週安排約50名選修的同學上一節大課，另外分級進行兩節的小組討論。何美歡女士坦言，在課程內容方面有自己一套的想法，「內容並非十分重要，重要的反而是基本技巧，正所謂『一理通，百理明』，懂得合同法，只要對侵權法有基本認識，同樣可以將技巧應用。」

以今年為例，課程內容約一半時間是放在香港法例中英文版本所出現的歧異。一方面與同學分析案例，一方面佈置習作，訓練如何辨別、確認歧義及建議解決方法。

對參與同學的表現，何女士表現得相當滿意：不僅是上課時積極參與，主動性亦很強，所以因中英夾雜而被罰款的同學已漸漸減少。同學在模擬上訴時的表現，不僅比受邀來「主審」法官流暢，亦沒有以英語進行時被法官即席提問至「口啞啞」的情形出現。

「在高年級的模擬訴訟中，同學表現最差的就是與法官的即席問答，同學一是聽不懂提問，以至答非所問，再就不是組織凌亂，令旁人難以掌握。」

何女士自言對同學翻譯時要求的「順、達、雅」三種元素，她只要求做到「順」和「達」，至於「雅」就未有荷求。雖然同學的中文表達能力沒有問題，但理解英語原文時仍有可以改善的地方。

「給你英文的材料，用英文答題，必要時可勉強將原文拼砌交差；換成中文答題，不能完全掌握材料的準確內容，就難做得好。所以說：英文好，譯文未必一定好；英文不好，譯文一定不會好！」

不過，何女士亦諒解同學在繁重的必修課之餘再報讀這個課程的難處，始終在時間和精神上都有額外的要求。

前瞻

面對來年的轉制，此課程將會何去何從呢？

當然，課程會務精益求精，但轉換成必修科目的限制頗多，單是人力資源的困難亦頗難克服，而且勉強同學修讀亦會減低他們的積極性。何女士亦補充說，若干年後會出現一定數目在母語教育下成長的學生，那時候相信會就此課程作較大規模的檢討。短期而言，她相信這個課程的結構和大方向毋須改變。

她指出，在將來日子中牽涉雙語條文的機會將一定大幅增加，無論是商業上的合同問題，抑或是刑法的條文釋義，作為一名專業人員必須好好裝備自己的語文能力，把住這一關。何女士更勉勵大家，長遠來看應致力爭取我們的語言權——即是在法律界使用中文的權利。她認為中華文化具五千年的悠久歷史，中文對法律專業應用的承受力不存在問題，這點台灣就是最好的例證。最要緊的是同學應廣泛閱讀和練習，提升自己的語文水平，為將來作好準備。



(II) Bilingual Contracts

Annabella Wong (Victor Chu & Co)



One of the major changes in the last decade in the practice of commercial law in Hong Kong is the ubiquitous use of Chinese. This is not so much a result of Hong Kong's return to Chinese sovereignty as the increased interface of Hong Kong with the mainland's economy in equity, debt and direct investment activities. In the run-up to the return to sovereignty, Hong Kong saw a fleet of Red-Chip and H-share companies (respectively mainland-backed and mainland-incorporated enterprises) being floated on the local bourse to tap the international funds. The mainland also saw substantial inflows of capital from or through Hong Kong to set up joint ventures and other direct investment vehicles. This array of investment activities and capital movements naturally and necessarily generate a swathe of cross-border contracts and documents between the mainland parties on one side and a foreign or Hong Kong party on the other. Some of these contracts, such as contracts to establish foreign investment enterprises on the mainland, are required by laws and regulations and the mainland government authorities to be written in Chinese, governed by the Chinese law and approved by the mainland authorities. Other contracts or documents such as corporate restructuring agreements, underwriting agreements, share sale and purchase agreements, shareholders' agreement, deeds of indemnity and so on are not usually required by the applicable laws or regulations to be in a particular language. However, they are often also written in Chinese. The reasons for this latter category of documents to be written in Chinese vary from case to case. The most common reason is that the mainland party wants to understand what they are going to sign. It is also not uncommon that all contract documentation has to be explained to the supervisory organ or authorities for the necessary internal approvals and authorisations. Such approvals and authorisations might take longer to materialise if the contract documentation is in a foreign language.

Against this backdrop, Chinese contracts governed

by the laws of Hong Kong have increasingly taken centre stage in commercial deals hitherto transacted purely in the English medium. This is where the root of the problems is. From time immemorial, practitioners in the corporate finance and securities field have kept a set of precedent agreements. These precedents have developed in tandem with the contemporary practices of the commercial world. Some clauses have been heatedly argued in courts and have been given judicial recognition. The precedents form an invaluable repository for time-honoured customary practices, bitter lessons learnt from past errors, and generally wisdom acquired from experience. When Chinese-speaking clients started to request all documentation be prepared in Chinese, the immediate response of the practitioners was to prepare the documentation in English first and then get it translated into Chinese. The result was catastrophic. What happened was that the impenetrable English became impenetrable Chinese. Whilst the clients could not understand the contract because it was in English, the clients find it even harder to understand the contract now that it is in Chinese.

It is notorious that some standard clauses in English contracts are of unrivalled complexity and are often couched in tortuous and obscure language. Examples can be given of sentences that run up to several pages long without any punctuation whatsoever. However, in view of the limited space available, the author would like to cite the following clause handpicked from a deed poll constituting exchangeable bonds as an example. *"Provided that where the events or circumstances giving rise to any adjustment pursuant to this condition 9 (d) have already resulted or will result in an adjustment to the Exchange Price or where the events or circumstances giving rise to any adjustment arise by virtue of any other events or circumstances which have already given or will give rise to an adjustment to the Exchange Price, such modification shall be made to the operation of the adjustment provisions as may be advised by the auditors to be in their opinion appropriate."* Read in English, the clause is



still fairly comprehensible. However, translated into Chinese, an ordinary Chinese-speaking person will not have the foggiest idea what this clause is about simply because the Chinese language is not meant of sentence structure commonly found in English legalese.

There is another area of incompatibility of the Chinese language with English contracts. One salient feature of English contract drafting is that a string of words with similar but different meanings will appear in a clause. Examples include, "Mr So-and-so shall sell and transfer x number of shares free from any claims, charges, liens, encumbrances, equities or adverse rights of any description on the basis of the warranties, representations, undertakings, agreements and indemnities set out in this agreement." "Mr X shall indemnify and keep indemnified Mr Y against all losses, damages, costs, actions, proceedings, claims, demands and expenses suffered by Mr Y as a result of or in connection with any breach of any warranties." To the legally-trained eyes, each of these words, albeit in the same category, carries a distinct meaning of its own and cannot be substituted by another. Yet, a single Chinese expression is wide enough to cover the whole string of words. In cases like this, instead of using one such Chinese expression, a translator will cobble together another string of interchangeable Chinese terms and expressions each of which is sufficient to cover the string of English words on its own. It is true that the translated text will then mirror the English version. However, reading the Chinese text by itself, the reader is more than ever baffled. These Chinese terms and expressions are simply repetitious and superfluous. Each new Chinese term or expression adds absolutely nothing to the one before or after it. Indeed, it is hard to distinguish one Chinese expression from another. The true intent of the clause has thus foundered in the sea of words.

There are other common English legal phrases that are inherently incapable of Chinese translation. An obvious example is "signed sealed and delivered" This is because the concept of executing contracts under seal is an indigenous common law concept. The Chinese laws do not have the same system, hence no equivalent Chinese phrase. Another example is the venerable phrase, "time is of the essence". There is simply not a direct Chinese translation of these simple words that will entail all the

ramifications recognised under the common law. In addition to these phrases, there are numerous other legal phrases or remedies that have attained their established meanings in common law but do not have their own authentic Chinese equivalent. Examples include "without prejudice communications" "anticipatory repudiation" "set-off and counterclaim" and so on. Even if we can find a Chinese phrase or expression to use, it is never certain that such reinvented phrases or expressions encompass all the niceties and nuances of the original English phrases and expressions. Then there are some very useful Latin phrases such as "mutatis mutandis" "action in rem or action in personam." The list goes on.

To tackle these difficulties in finding the right Chinese term or expression on each occasion, the first thing a lawyer should do is make sure whether a concept or an expression originates from or is used in the Hong Kong bilingual legislation. If so, one must always use the authentic Chinese terms and expressions to avoid disputes on the meaning of the words actually used. In this regard, the latest edition of the English-Chinese Glossary of Legal Terms published by the Department of Justice is an indispensable and handy reference tool. It helps alleviate the burden of proof of the meaning of a Chinese term or expression. For instance, in the English-Chinese Glossary of Legal Terms, the Chinese equivalent of specific performance" reads literally as "enforcement of performance order". There is a difference between the two phrases. As enforcement of performance can be either substitutional or specific, this general term has omitted an important characteristic of this relief, namely, the relief is to be specific rather than substitutional. Without the help of the authentic Chinese text of our legislation, it will be a Herculean job to prove that "enforcement of performance order" in Chinese is equivalent to specific performance" in common law.

Apart from consulting our statute books for authentic Chinese equivalents of the legal terms, practitioners should also consult the laws of the mainland because after all, Hong Kong is part of China. During the last decade, most common law concepts have been the subject of extensive expostulations in the works of prominent mainland scholars. Practitioners can easily find the Chinese terms and expressions of these concepts from their tomb. Although they are not binding on courts

"Latest edition of the English-Chinese Glossary of Legal Terms published by the Department of Justice is an indispensable and handy reference tool."



of Hong Kong, the meanings ascribed to the Chinese legal terms by the mainland legislative authorities or scholars are certainly of some persuasive value.

This last point about discovering the true meaning of a Chinese phrase used in a contract is actually a very real concern. So much has been said in the above paragraphs about the difficulty of finding a Chinese equivalent for an English legal term or expression. However, the real question is whether we can convert the Chinese term or expression into the intended English term or expression. As is true with the English terms and expressions, Chinese terms and expressions have their own nuances of meaning. This is on top of the fact that the Chinese equivalents of the English legal terms and phrases are far from being standardised. For instance, the Chinese translations of "fiduciary" and "trustee", "equitable interest" and "mere equity" often closely resemble each other and it is hard to tell one from another. Full convertibility of the two languages as far as legal usage is concerned is highly desirable but is, unfortunately, nowhere in sight.

Up to the time this paper goes to print, the author has not yet come across a case where the meaning of a Chinese term or expression of a common law concept is in dispute. However, if in the future disputes arise over the meaning of a Chinese term or expression of a common law concept, the fundamental tenets of contract law require us to find out the intentions of the parties. What did the parties intend the term to mean at the time of contract? As it is unlikely that the non-legally trained parties would be able to testify as to the meaning of such terms as "enforcement of performance order" or "specific performance" a set of generally accepted Chinese equivalents for such common law concepts will be of great help.

Faced with myriads of ambiguities, uncertainties and difficulties, should practitioners continue to draft contracts in Chinese? Some will argue no. These contracts are requested to be written in Chinese so that the parties can understand what they are signing. Yet, as is demonstrated above, a Chinese version of an English contract originally drafted for the common law is almost incomprehensible. An ordinary person reading, or

attempting to read, through a literal Chinese translation of an English contract, is apt to throw up his hands in despair, and give up any effort to understand what it is all about. This author once had a client going through such a Chinese contract. Having read it, he picked up his pen and struck out three-quarters of the contract. Good Chinese writing should be simple and succinct, he explained. In fact, this is no different from drafting in the English language. This author learnt a very important lesson from this lay person and happily this lay person is still this author's client.

Notwithstanding all the hurdles in the way of drafting contracts in Chinese, the author is still a firm believer in the wider use of Chinese as a working language of the law. In the long run, the language of the people must be the language of the law if the law is to serve the people.

The anomaly of having the law in a foreign language not understood or spoken by the majority of the population is an accident of history and hence will not last. How many times do we have cases where members of the unwary public found themselves entangled with contractual obligations they have burdened themselves with by signing a contract in a language they do not understand? The author is not saying that they will understand the contract if it is in Chinese, but at least if the parties are all Chinese-speaking or if the bargaining power of the Chinese-speaking party is stronger, why balk at using Chinese? If this is the wish of the client, it is a foolish lawyer who rejects this point.

No doubt we are in a state of flux and the practice of law in Hong Kong is undergoing yet another stage of transformation. Practitioners are walking on a tightrope in these times when the two languages meet and merge, in addition to the inevitable eventual merging of the two systems. Hong Kong has achieved phenomenal success in implementing legal bilingualism and authenticating Chinese texts in the existing legislation, thanks to the concerted efforts of our Bilingual Laws Advisory Committee, our Legislative Council and its Legal Services Division, and our Law Drafting Division of the Department of Justice and all other parties involved. Now, it is up to the rest of us to understand the use of Chinese so that it becomes a working language of the law.

"The language of the people must be the language of the law if the law is to serve the people. The anomaly of having the law in a foreign language not understood or spoken by the majority of the population is an accident of history and hence will not last."



(III) 書籍出版

一直以來，香港的法律書籍多以英文為主。隨着法律雙語化的發展，中文法律書籍自然成為了不可或缺的一環。可是，出版此類書籍也遇上了不少困難。就此，我們特別訪問了正在籌備《香港法律概論》一書的陳文敏教授，以了解這方面的問題。

市場分析



陳老師認為出版中文書籍的首要困難，是要找到一間願意合作的出版社，「在香港，出版學術性的書籍尤其困難因為沒錢賺嘛！不少出版商甚至要作者預先自掏腰包，一旦蝕了錢便用來賠償，出版法律書籍也不例外。」陳老師表示，只有一些較大規模的出版商（如商務印書館、中大出版社）

願意出版學術水平較高的中文法律書籍，而《三聯》最近才開始多參與這方面的出版。此外，Oxford 和 Butterworths 也是較大型而對學術性要求也較高的出版社，但它們仍以出版英文法律書籍為主，反觀那些小型的出版社出版的法律書籍在水準方面則顯得參差。「大型的出版社，例如《商務》和《三聯》，幾乎壟斷了大半個市場，對於一些已成名的作者來說，這並不是問題，但對一些新名字來說則有一定的困難。」

在審查方面，陳老師認為有些出版社對涉及一些比較政治敏感的東西，會十分着緊。陳老師更把他的親身經驗與我們分享，「曾經有一間出版社認為『香港是英國殖民地』一句不妥，而要將之改成『英國自稱香港是其殖民地，這就是其中一個好例子。』也有另一篇涉及中國人權方面的文章，因為出版社要求太多基於政治考慮而作出的修改，最後作者與編者決定與另一出版社合作。陳老師坦言，因自己的一篇文章而令整本書轉由另一出版社出版，自己也有點不好意思。不過，其他作者覺得這是學術自由的問題，因此對轉換出版社亦深表支持。」

「其實大學出版社的商業考慮較少，本來有條件提供另類出版中文學術刊物的途徑，但港大出版社的工作進步較慢、推廣工作亦欠理想，故連港大的同事也很少

在這裏出書。他們有些更寧願往中大出版社，正正反映出架構的問題。」

水平

儘管近年市面上已有不少中文法律書籍，但這些書的質素實在非常參差。陳老師說書籍的種類的確繁多，從袖珍本到漫畫都有，但內容方面則不盡準確。「稱得上較好的只有十多本，可見可信的中文法律書籍真的不多。」

學者所要面對的另一個選擇，就是究竟文章是為了讓大眾有機會看到，還是為了得到認可和肯定。有時候是兩者並存的。大學近年引進的評審制度，也多少打擊學者從事以中文作普羅推廣法律教育的工作。「個別的老師有個別的取向。有些會認為既然花費了金錢和時間，不如把文章刊登在一些會被大學研究委員會認可的刊物上。因此，現在於Hong Kong Lawyer內寫文章的同事減少了，而近兩年在報章上也很少見到他們的踪影。這個情形不只在法律界出現，其他界別亦有相同的情況，實在是制度本身的問題。」

中文的地位

一提到中文的運用，自然令人想起《基本法》第九條中定明各機關「除可使用中文外，還可使用英文」這個具爭議性的部分。陳老師指出，其實籌委會於八七、八八年間對此已作出澄清，表示這句並不代表中文具有優先地位。可惜，很多人現在仍持有這種想法。陳老師認為，目前雙語化的目標仍然不太清晰。「使用中文是一回事，中英並用又是另一回事，中英可否夾雜亦是另一回事。過渡後我們當然不



(IV) 司法應用

能沒有中文，但我認為當我們一天仍沿用普通法，便不能摒棄英文。」陳老師語重心長地說。

中文學術文章

其實除了中文法律書籍受到市場的因素影響，陳老師亦點出了中文法律文章所面對的問題。「想寫一些較有水平的中文法律文章，但香港卻缺乏有足夠水平的中文學術文章。國內雖然有較多學術期刊，但在要求、評審、編輯等各方面仍和國際學術期刊有一段距離，例如刊物並不重視註腳，有時候看完也摸不着頭腦。至於非法律專業的期刊，《九十年代》曾經是一個選擇，可是現已停刊了。《信報月刊》和《明報月刊》也是另外兩個選擇，但前者側重於經濟，後者則偏重於文學，不過它們已是較多人可以接觸而水平亦較高的刊物了。」陳老師慨嘆地說。

聽過陳老師的悉心分析後，令我們明白到目前的中文法律書籍實在需要一個更大、更自由的生存空間。這樣才能讓一些致力與大眾分享研究成果的作者能發揮得淋漓盡致，也令廣大的讀者有機會透過母語吸取法律知識。



梁家傑資深大律師與本刊編輯

在香港，中文是大部份人的母語。以往，所有的案件都是用英文審訊，當事人往往要依賴翻譯才能明白審訊內容。更有調查顯示，陪審員並未能清楚明白法官給的指示。這些都會損害當事人獲得公平審訊的權利。近年來，中文的重要性隨着政權的移交有所提高。在法例雙語化的同時，也有更多的案件使用中文進行審訊。我們為了進一步瞭解使用中文審訊案件的情況，訪問了資深大律師梁家傑，就使用中文審訊而產生的問題進行探討。期間更談到了法律系學生的語文水準，相信同學們都可以得到一些啟發。

1. 現在大約有多少案件是用中文審訊的？是以何因素決定用中文？

分開民事和刑事來講吧。

刑事方面，在裁判法院，現時有超過百分之六十的案件是用中文審訊的。主要原因是被告人的母語是中文，如果他們被判監，則會失去人身自由，對他們有直接的影響，所以要求用中文審訊多來自被告人。

民事方面的大部份中文審訊的案件都是沒有律師代表，由當事人自己發言的。

2. 用中文審訊有何困難？

困難則是要將一些用英文學習的法律觀念，用中文貼切地表達出來。這方面就需要一個適應的過程。還有就是中文法律的參考書不是很夠。

我曾經參與用中文進行的仲裁，發現用中文錄取口供，和盤問証人是更為有效。最有效的盤問是要盡量減少證人可以思考答案的機會。因為他們一有時間去思考，就會有機會堆砌一些答案出來。譬如有些人會英文，但選擇用中文進行答問，便有這種機



會。要搜集事實方面的證據，用中文進行盤問，是沒有困難的。

3. 用中文審訊是否受到當事人的歡迎？

其實在高等法院審訊的民事案件，當事人都會說英語，也能明白控方證人指控他們的證供內容。而對那些可能會被剝奪人身自由的人來說，使用自己的母語進行聆訊是他們一項很重要的權利，應受到尊重。因此，用中文進行審訊發展得很快。

4. 有沒有案件是關於中英文本法例的分歧？

在舊有的、用英文起草的條例來說，當然存在翻譯的問題。現在我們實行的是雙語立法，中英文本有同樣的地位。兩個真確本若出現不一致的情況該怎麼辦呢？就此大律師公會的 Special Committee on the Use of Chinese in Law 和立法會的有關委員會討論過。現在的趨勢是讓這些問題自然而然地在法庭出現，讓法官決定，然後逐漸形成一套解決辦法。

有人提出是否需要訂立一定的“方程式”，例如規定某一文本的釋義凌駕另一文本，或是舉凡牽涉到中英文歧異的案件，都必須要由同時能掌握中英文的法官去處理。我認為由一撮人定出某一種模式，強制日後的案件全盤接收並不是理想的解決方法。

5. 你覺得現在法律工作者是否可以應付用中文審訊？有沒有在職訓練？

正如我剛才所說，現在裁判法院約有百分之六十的案件是由中文審訊的。年輕的大律師很多時候都需要用中文審訊，那就已經是在職訓練。

大律師公會也將開設一些訓練課程，針對刑事起訴文件的起草。律政署也有培訓課程。不過我們現在可以發覺近年的法律畢業生的語文水準，不論是中文還是英文，都有頗明顯的下降趨勢。法律系學生千萬別以為現在中文審訊漸趨廣泛，他們就可以忽略英文的重要性。普通法的案例和其它的原材料都是英文的。如果英文不好，又怎能學好法律知識？

現在有一個由律政司司長梁愛詩領導的跨部門小組正在討論如何建立一個以中文為本適用於香港的習慣法，而我是代表大律師公會出席這討論的。這項工作是不能操之過急；如果以後法律工作者都能保持一定的語文水準的話，那麼在四十至六十年後，我們有可能能培養出真正的雙語法律工作者。

可以肯定的是，現今的法律學生，必須同時掌握好中文及英文，加上完備的法律知識，才可以在這大時代中扮演一定的角色！



以中文在法庭進行抗辯的情況將會漸趨普遍



Hong Kong: A High Degree of Autonomy?

Varsha Chugani (II)

How much autonomy Hong Kong is to enjoy under the "One Country, Two Systems"? The Basic Law of the HKSAR was meant to be the answer safeguarding the capitalist system with a high degree of autonomy in various aspects (Art. 2).

To ensure an independent legal system, Art. 8 makes it clear that all laws previously in force in the region shall be maintained except for those that contravene the Basic Law. Nonetheless, collapse of the "through-train" arrangement of the 1995 LegCo necessitated the establishment of the Provisional Legislative Council (PLC), which was not expressively provided by the Basic Law. Consequently, its legality was challenged right after the handover.

In the landmark case of *HKSAR v Ma Wai Kwan David* [1997] 2 HKC 315, two important questions of law were argued before the Court of Appeal. Firstly, the question arose as to whether the common Law had survived the change in sovereignty, as there had been no formal act of its adoption. The other question went to the legal competence of the Provisional Legislative Council as a body entrusted with the paramount role of law making, as there was no legal basis for it in the Basic Law.

The first issue required the interpretation of various articles of the Basic Law, in particular art. 8. The court held that, upon proper construction, the word "shall" in arts 8, 18, 19, 81, 87 and 160 can only be used in the mandatory and declaratory sense and there was no requirement, either expressed or implied for any formal adoption.

The court then went further to consider the legality of the PLC, which was created by the Preparatory Committee after two decisions of the National People's Congress (NPC). The defense argued that these two decisions were contrary to the Basic Law and hence, invalid. However, the Court held that the HKSAR courts had no jurisdiction to challenge the validity or the legality of any NPC decision as the NPC was the sovereign. Consequently, since the PLC had derived its authority as an exercise of sovereignty by the PRC, the Hong Kong courts had no jurisdiction to challenge the legality of the PLC as such a challenge would be no different from questioning the validity of an NPC decision. Besides, it further reiterated that the wording of the NPC decisions

were wide enough to authorize the Preparatory Committee to set up the PLC.

One would have thought that once a decision would be announced, the situation could only become better. However, the fears had only compounded. It seemed to suggest that the law, decisions or resolutions of the NPC could not be challenged in the HK courts even if they are inconsistent with the Basic Law or even the PRC constitution. This goes against the true spirit of the Basic Law and the promises made to Hong Kong under the Joint Declaration. What then is the scope of Hong Kong's independent legal system when the final say on the application and interpretation of laws is left to the PRC government?

Even scarier is the idea that the NPC, being supreme to the Basic Law can amend it. What then is the Basic Law? Is it a mere piece of document that exists to win over the confidence of the Hong Kong people in the Central Government? If it truly cannot protect our freedoms, then it is deceitful to us.

It also means that the procedures for amendment outlined in Art 159 of the Basic Law are meaningless and that the jurisdiction of the NPC is not confined to foreign affairs and defense matters as was once promised and that the NPC can in fact, in the name of the sovereign, legislate for Hong Kong. The implication seems to be that the remedies would lie in the PRC courts. However, the paradox is that the PRC constitution is not justiciable in the PRC courts.

The Court of Appeal justified its decision on reliance of the fact that the colonial courts too had no jurisdiction to challenge the legality or validity of any legislation enacted by the sovereign or any ministerial acts. Hence, this principle was not new to Hong Kong, having simply been preserved under Art. 19 of the Basic Law.

In short, the NPC can, by a rather informal decision or resolution, side-step all the elaborate guarantees laid down in the Basic Law, and there is no venue for challenging these decisions or resolutions. It is hardly conceivable what more would be left in the notion of "a high degree of autonomy" in light of these consequences. Only time can tell.



Another piece of legislation that the Hong Kong people have come to rely heavily on as a guarantee of their rights, is the Bill of Rights Ordinance (BORO). No doubt, this too has contributed to the success of Hong Kong. When the document was first enacted in 1991, it was made clear that it binds only the Government and public authorities and has no application to inter-citizen relations.

In the Court of Appeal decision of *Tam Hing-yee v Wu Tai-wai*, this was confirmed when it was held that the BORO repeals inconsistent pre-existing legislation when that legislation is relied upon by the Government, but the same legislation nonetheless remains in force when relied upon by private citizens. This anomaly seemed strange and hence, the Law was amended so that it applied to all legislation including that dealing with private disputes, through the addition of two new subsections. These are section 3(3) and (4). However, the addition of these subsections did not do much to heal the situation as further uncertainties have since arisen.

One problem is that these two subsections, when read along with section 7, could give rise to more than one interpretation. Either, it can be taken to mean that section 7 of the BORO prevails and so the Amendment Ordinance does not reverse the Court of Appeal ruling in *Tam v Wu*, or alternatively that the Amendment Ordinance reverses *Tam v Wu* such that notwithstanding section 7, as from 30 June 1997 when the Amendment Ordinance took effect, all pre-existing legislation inconsistent with the BORO is repealed, regardless of whether such legislation is invoked by Government or private citizens. Yet, a third possible interpretation is that the Amendment Ordinance does more than reverse *Tam v Wu* in that the new section 3(3) introduces new obligations on private citizens contrary to the original intent of the BORO.

In any case, it is felt that what the Amendment Ordinance sets out to do has in fact been achieved through other Government measures. There is therefore no need to further amend the law to make it clear. Therefore, these two subsections were subsequently repealed by the Hong Kong Bill of rights (Amendment) Ordinance 1998, which came into operation on 28 February 1998.

This has raised considerable doubts as to the status of the BORO. So, does it or does it not apply to non-governmental disputes. If the two subsections are removed, then the anomaly that arose in the case of *Tam*

v. Wu, would continue to exist and the BORO would not be consistent in its application. The question then remains whether this could have been the true intention of the legislature. If it was, then why the unfairness to ordinary citizens and the bias towards the government?

Uncertainty in the autonomy of the Hong Kong legal system can prove fatal to its smooth functioning. In order for any place to run efficiently, it is essential for the legal system to be well adapted to the needs of the people. One of the essential characteristics for the existence of the Rule of Law is that the Law should be certain and easily ascertainable by all those who are to be bound by it. After all, one can't be expected to abide by the Law if it is continually changing.

Extreme controversy as to the independence of Hong Kong's legal system has arisen with the recent trial of Cheung Tze-Keung and his accomplices. Having been charged for a series of crimes including armed robbery, kidnapping, smuggling explosives, killing and illegal arms trading that were committed in Hong Kong but planned in Mainland China, the decision was made to hold the trial in the Mainland.

Human rights groups criticized the SAR Government's refusal to seek extradition arguing that the mainland has no jurisdiction over crimes committed in Hong Kong. After all, under the Basic Law, we are guaranteed a legal system independent from that on the mainland. No doubt, this is essential as Hong Kong has unique characteristics and to have the Chinese Legal system put upon the citizens would be a total imposition of Chinese rule.

Others, however, insist that this does not undermine the independence of the local legal system and that since, the crimes were planned in the Mainland, that is where they should be tried. The fears of Human Rights groups were more compounded because of the existence of the death penalty in China which has long been abolished in Hong Kong.

As was feared, the death sentence was passed on to Cheung and three of his accomplices. However, whatever the sentence may have been, the fact remains that the Chinese government has infringed on our rights by interfering in our legal system. Where really does that leave the HKSAR? What is our status? It seems that as time goes on, more and more of our autonomy will be taken away. Is this really what we should expect?



But how has the Hong Kong Government reacted towards its new sovereign? Its response so far has been one of loyalty. Whatever the status of the Basic Law, there is no doubt that our courts have continued to respect its application to the extent that any legislation inconsistent with the Basic Law has been invalidated. An example of this can be seen in the case of ***Cheung Lai Wah and Ors. v The Director of Immigration* [1998] 1 HKC 617**. The defendant, who was claiming the right of abode in Hong Kong through her father, was an illegitimate child. Under British rule, only children born in Hong Kong and in lawful wedlock had the right of abode in the colony. However, the court in that case held that this narrow definition of the relationship of parent and child contravenes Art 24(3) of the Basic Law which focuses on birth, not status since the children of persons who have the right of abode in Hong Kong are no less their children simply because they may have been born out of wedlock. Denying them the right of abode in Hong Kong would be to deny the right of abode in Hong Kong to children who plainly come within

Art. 24(3).

On that footing, a broad meaning of the provision was taken and the right of abode was extended to all children. Our respect for the Basic Law is born from the idea that it is our constitution and is superior to all else such that it deserves our respect and obedience. However, at present, it seems that a number of the promises made to us by the Basic Law have been undermined. If this continues to be the case, the people of the HKSAR may lose their respect for their mini-constitution and the tables may turn such that Hong Kong may even become a burden on China.

Finally, in light of the above discussion, the one question that arises is 'what remains of the autonomy of the HKSAR?' Questions continue to arise and doubts continue to exist. An attempt has been made here to highlight only some of the political disturbances that have arise since the past year and a half. No doubt, this is only

a small sample of the confusion but yet, these are some of the more important issues since they go to the root of the promises made to us.

Perhaps, it is impossible to predict in which direction Hong Kong is moving. Only time can tell. It has only been a year since the hand-over. Not surprisingly, this is the time when important questions need to be answered. Possibly, the future will hold fewer doubts for the Hong Kong people. It is also yet to be seen what our mini-constitution can do for us. However, whatever the case may be, it is important for the people of Hong Kong to fight for their autonomy if Hong Kong is to remain as unique and successful as it has been known in the past.





An interview with Elaine Hui

It is obvious that all of you are familiar with the publisher "Butterworths", and can you imagine one of our alumni is working there? Elaine Hui was graduated in 1990 (LL.B.), 1991 (P.C.LL), she was now an editor of Butterworths, and below is her review to her career:

Editor: Hi Elaine, can you briefly described your main work and your life as an editor.

Elaine: My main work is editing current series of Hong Kong Cases (HKC). Also I am also involved in a long term project of preparing a bilingual legal dictionary for Hong Kong. Life can be very busy when there is a publishing deadline to meet, especially when I am dealing with HKC which has to be published according to a strict publishing schedule.

Editor: Why have you chosen this job instead of being a lawyer which is the graduates' usual career field?

Elaine: I did choose the usual law field. I have completed my training and am a qualified solicitor. And I have practised as a litigation solicitor for three years after admission. Why the change? I just think that the legal training should not necessarily confine us to the practice, with our legal knowledge, we are capable of doing something else. Before joining Butterworths I had never worked in other fields, I really had no idea how companies of other disciplines functioned, and whether I would be suitable for any other jobs. I therefore decided to explore a bit, to go outside and check out other possibilities.

Editor: Does this job have anything special that attracts you to take the more "risky road"?

Elaine: It's the other way round. This job did not lure me to move away from the usual path. I had decided to try something else first and this job happened to be available.

Editor: So are there any difficulties when you decide to change your career?

Elaine: Not on the job really. As it is not really far away from law, if anything, it is closer to law than when I

was practising. I think the real difficulties, when you decide to try some other things, are (i) that you know you are departing from the usual route, which 99% of others are taking. The question is, have you summed up enough courage to part different ways (even just for a trial period), especially when the legal field always seems to have a bright future to offer whilst you are pursuing something unknown. (ii) how to persuade others (I mean the potential employers of other disciplines) to believe that you are serious about your choice. I am kind of lucky as I landed on this job in a relatively straight-forward manner, but I suppose there are to a certain extent difficulties for companies in other fields to believe that you are serious about not taking up a legal career. It may be easier for fresh graduates, though.

Editor: But are you satisfied with your job?

Elaine: It is satisfying to be able to make contribution (however small) towards law-reporting in Hong Kong.

Editor: I bet what you learned in university have helped you a lot in this field?

Elaine: Yes, in the light of the nature of work here — you know that I am now an editor of Butterworths — I edit HKC and is involved in a legal dictionary project so what I learnt at law school and the experience I gathered during practice are directly relevant here.

Editor: Can you give some advice to our fresh graduates when choosing their career?

Elaine: With increasing number of law students graduating each year, I really have no idea whether the present market is large enough to accommodate all of them. And there is the economic downturn to consider. So not knowing the real situation, I cannot offer any useful advice. But basically I think law students should know what they really want. If they are set NOT to follow the majority, do go and try something else. For those who are not sure, then it is not a bad idea to go through the two years' training and get qualified first.



The Asian Law Students' Association (Alsa)

Selwyn Chan (II)

1. Introduction

Alsa was established two years ago after some students from Japan organized a study trip for members of elsa to their country. They got to know more about the organization and decided to form a similar one in Asia. Alsa believes that legal issues are becoming more and more important to the international sector as law has been quite effective in dealing with problems of global concern such as human rights, industry, trade and the environment. In order to provide better solutions and opinions, it is increasingly necessary to learn about foreign laws and legal systems. In addition, one also has to keep his mind open to the world. Therefore, Alsa was formed for fulfilling such demands of students from Asian countries. However, since the ASEAN Law Students' Association also serves a similar purpose for law students in S.E. Asia, Alsa only aims at Asian countries or cities such as Japan, China, Korea, Taiwan, Hong Kong, India and Tadjikistan.



At present, Alsa is a Tokyo-based organization with approximately 200 members who come from Chuo University, Tokai University, Waseda University, Tokyo International University, The University of Tokyo, Keio University and Hitotsubashi University. The Japan National Board (Alsa-Japan) now has 7 members in its council, namely the President, the Secretary General, the Treasurer and 4 other Vice-Presidents. The council is elected each year in the Annual Council Meeting. Alsa-Japan currently serves as the International Board, but an International Board with council members from its member countries/regions will be established in 2 years' time.

Activities held during the past 2 years by Alsa

(i) Forum

In March 1997, members participated in an international forum — "Do you agree with the death penalty?" — in Tokyo.

(ii) Seminar

Tax issues, territorial issues between Korea and Japan and Japan-U.S. security matters were discussed.

(iii) Study Trip

In 1996, they organized a study trip to Japan for elsa and participated in the Japan-Korea Six University Conference in Seoul.

In 1997, 20 members went to Belgium, Germany, Austria and Italy. They visited the law firm of De Bandt, Van Hecke and Lagae along with the E.U. Parliament, the Belgian Federal Parliament, the Belgian Supreme Court, the U.N. organization of I.A.E.A., the Japanese Embassy in Rome and law schools in each country.

(iv) Internship

With the cooperation of other organizations, they will start an internship programme through which members will be able to work for foreign law firms or companies engaging in legal issues. They will also offer members of other law students' organizations the opportunity for internships in Asian countries.

Report of the International Law Forum

Organizer: The Asian Law Students' Association (Alsa)

Duration: 15th - 25th Feb, 1998.

Location: Tokyo, Japan

No. of participants: approx. 100 (including foreign guests and local participants) Organizations/ universities participated:

1. International Law Students' Association (ILSA)



2. The European Law Students' Association (elsa)
3. Australian Law Students' Association (ALSA)
4. The Asian Law Students' Association (Alsa)
5. Law Association of the University of Hong Kong
6. Law Departmental Society of the City University of Hong Kong
7. Law Students' International Relations Committee of the Law Club of the National University of Singapore
8. Taiwan University
9. Politics University (Taiwan)
10. Chung Hsin University (Taiwan)

The purpose of this Forum was to introduce Alsa to guest students from countries/cities including Hong Kong and Taiwan. The other delegates from ILSA, elsa, ALSA and the Law Club of Singapore were invited to let both the participants and the guests acquire a better understanding of these organizations. Alsa-Japan hopes that Alsa-Hong Kong and Alsa-Taiwan can be set up in the near future to achieve its aim of joining other Asian countries to form Alsa-International.

Evaluation in General

1. The forum not only provided the participants (mainly the guests) with the knowledge of the Japanese continental system for comparison but also created a chance to share views over

hot legal issues. Besides, it also allowed them to experience different cultures.

2. It also served the purpose of building up friendships between delegates of different international law student bodies. With such an arrangement, worldwide communications can thus be established and maintained through emails and proposed links with the homepage of each organization/university.
3. It provided a chance for the delegates of the potential member countries to know each other. Unfortunately, representatives of China, Korea, India, etc. and the ASEAN Law Students' Association were unable to attend. Nevertheless, constructive views and suggestions on the future development of Alsa had been exchanged.
4. The chance to visit various places and government offices was an invaluable experience as most areas are not ordinarily open to citizens. Also, the unique occasion to interact with foreign lawyers and the Dean of a law school was significant in promoting intra-Asian activities on a legal perspective.

All in all, I find the forum constructive, diversified and educational and I would strongly recommend all of you to take part in the coming forum in March 1999 to experience for yourself a special encounter with law students throughout Asia.



Footprints

©



Interflow Tour '98

Organizers: Law Association, the University of Hong Kong, HKUSU

Law Club, National University of Singapore

Participants: Law students from NUS, Tokai University and HKU

With the aim of broadening the horizons of law students, the Law Association has organized several Legal Interflow Tours to mainland China and Taiwan in the past. This year, the Association has conducted, together with the Law Club of the National University of Singapore, a new joint-scheme — **Interflow Tour '98**, which comprised two parts: I) Hong Kong Trip and II) Singapore Trip. Response from members was encouraging and a special publication was issued as a conclusion to the programme. It has been distributed to all LA members so everyone could share the fruit of the programme with the participants.

Both academic and cultural exchange activities were organized during the eighteen-day programme with two major objectives:

1. To provide an opportunity for members to learn more about another legal jurisdiction and to compare it with that in Hong Kong.
2. To promote cross-cultural understanding and friendship between law students of the two places.

It was the first time the Association organized an interflow tour in the form of an exchange programme. Despite all the difficulties arising from the lack of experience, it proved to be particularly effective in fostering cultural exchange. Unlike past years, members who could not join the overseas trip could still benefit from the programme by taking part in the local trip. Through various activities and interactions with the visiting students, local participants gained insight and understanding of their own society as well as other cultures. It has been our great pleasure to have Miss Miho Ishizuka, the representative of the Asian Law Students' Association from the Tokai University, to be our guest participant of the Hong Kong Trip.

Hong Kong is a unique place with an almost intact traditional Chinese culture co-existing with Western values; Singapore, with a multi-racial background, provides a fascinating example of a diversified yet harmonious

culture. Interflow Tour '98 gave students of both lands an inimitable opportunity to learn from each other and to develop international friendship. ***Here we are going to take a look at part of the programme —***

HONG KONG TRIP (20-28 May, 1998)

Seminars & Workshop

Three seminars were conducted to introduce to the visiting students certain areas of the law in Hong Kong. There was a seminar on the Hong Kong legal system by Miss Anne Cheung, another on Constitutional Transition in Hong Kong by Mr. Benny Tai and the last one on Human Rights by Prof. Johannes Chan. Court visits and visit to polling stations of the first Legco Election of HKSAR were also arranged to allow visiting students to have a better understanding of situations in Hong Kong. During the workshop, discussions on various issues, in which students showed great interest and enthusiasm, successfully enhanced exchange of views among students.

Visit to the Stanley Prison & ICAC

Apart from attending seminars, we have also visited the Stanley Prison where the Correctional Services Department carries out its function. After an informative briefing session by the Deputy Superintendent, we were shown the exercise fields, the workshops, the kitchen, the cells for offenders of less serious crimes and finally the cells housing prisoners serving maximum sentences. As we left we were unable to suppress certain unease at having just been where all of Hong Kong's biggest criminals were gathered.

Legal Profession

In order to help participants understand the legal practice in Hong Kong more thoroughly, visits to the Hong Kong Bar Association and two esteemed law firms internationally well-known — Deacons, Graham & James, and Johnson, Stokes & Master — were organized.



Discussions and chats with practising barristers and solicitors gave law students a valuable opportunity to gain insight into the legal profession.

Fun and Cheers

Too occupied were we with the hectic schedule of visiting law-related disciplines; cruise party and sightseeing could definitely help us relax and play hard. During the harbour cruise, there were many entertaining games aside from the breath-taking view and the spectacular Tsing Ma Bridge.

A rainy Sunday marked our memorable trip to the Lantau Island. Fortunately, despite the amber rainstorm signal, the magnificent Tsing



Ma Bridge was still open for use and in no time we arrived at the Po Lin Monastery. We had an authentic vegetarian meal there and we all enjoyed the time to relax and chat with each other.

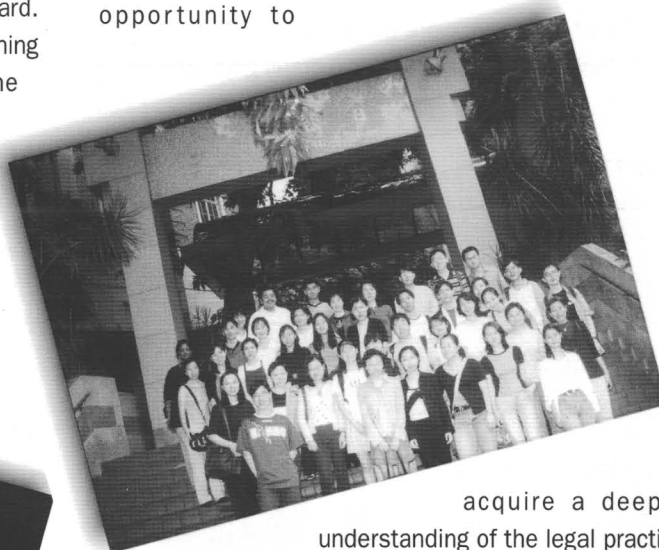
SINGAPORE TRIP (3-11 June, 1998)

Seminars & Workshop

Useful seminars on Environmental Law, Criminal Law, Alternative Dispute Resolution and Constitutional Law conducted by lecturers in NUS were given. Afterwards we visited the Supreme Court as well as the Subordinate Courts to see the legal system 'in practice'. Besides, topics such as homosexuality, traffic system, criminal law on provocation and customary law were also studied during the Workshop.

Legal Profession

Unlike Hong Kong and the UK where the legal profession is branched into that of barristers and solicitors, Singapore has a fused legal profession. Our visits were to two prestigious law firms within the territory: Baker & McKenzie and Khattar Wong & Partners. This provided us with a golden opportunity to



acquire a deeper understanding of the legal practice in Singapore, as well as a greater appreciation of the practical application of a fused legal profession.

We have also visited the Singapore Academy of Law — an organization for the whole legal profession including lawyers, judges, teaching staff of the Law Faculty of NUS etc., that we don't have a similar one in Hong Kong. It is obvious that although both practise the common law, there are still many differences between the legal fields in Hong Kong and Singapore. It is therefore important for us to learn from another legal jurisdiction and improve our own.

Visit to the Changi Prison and Changi Drug Rehabilitation Centre

Before our arrival at Singapore's maximum security institution, the general conception of Changi Prison was that it was clean and spacious; like the rest of Singapore. However, the interior was to prove very different from what it looked like from the outside. After a half-hour briefing by the Superintendent, we were first taken to the cells housing the prisoners. We then proceeded to a narrow room where mock-caning demonstration was conducted for us, it was an extremely disturbing experience for all of us especially when we think back on the gushing of the wind with every strike of the cane. At the drug rehabilitation



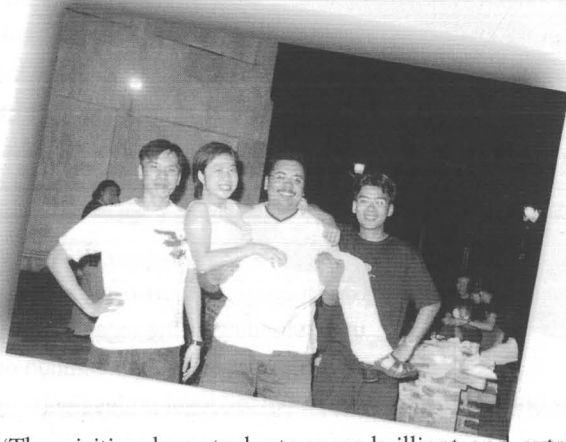
centre, we had the privilege of watching the detainees march before us in the courtyard and to tour their bunks. All in all, both places were enlightening and the tour was educational.

Visit to the SAFTI Military Institute

SAFTI Military Institute is the place where male citizens of Singapore were trained for the Armed Forces during their military service. Singaporean guys sure would

not find this place where they had spent the toughest days in life interesting for a visit, but the rest of us, including Singaporean girls and especially Hong Kong guys, were extremely excited! We have visited many spots including the residence of young soldiers and the arsenal where real guns and weapons are stored.

Afterthoughts



'All in all, the tour has achieved its aims of widening students' horizon and enriching our university life satisfactorily. I enjoyed it very much and think it is worth organizing.'

Michelle Liu (III)

'The visiting law students were brilliant and extremely inquisitive. They were attentive in all the programmes — Their attitude was a most admirable one — The Singapore trip was also an excellent experience too. The combination of education and fun — was so wonderful that I was totally fascinated — Apart from all the knowledge that I have gained, the friendship we cultivated during the Interflow Tour '98 was what I treasured most. They were so nice!'

Yeda Hong (III)



'I truly enjoyed the programs. I say this because during the limited time, we covered lots of places but yet the schedule was not too tight — I had enough time to shop and visit museums — I think we have lots of things to learn from you, so I have shared my experiences and ideas that I gained from you with ALSA people. It surely will help us grow in the future.'

Miho Ishizuka (ALSA)

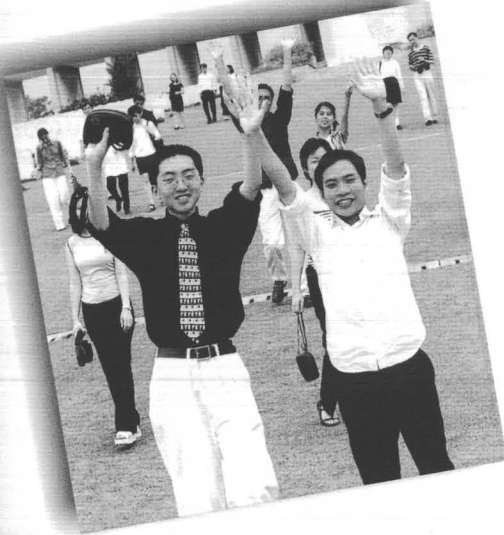
'Bearing in mind the scene of the participants busy exchanging email addresses and taking photos on the last day of the trip, I am confident that our friendships will continue to flourish in the future.'

Sharon Ng (PCLL)



'This year, the unique chance of participating and enduring the process of organizing a 18-day-tour for the Singapore-Hong Kong Trip was indeed a remarkable experience for all of us. To me, interflow activities are of utmost importance as people from different regions get the valuable chance to meet each other. The Interflow Tour '98 successfully achieved its aim in providing a marvellous opportunity for us to pick up some insights into both the situations in Hong Kong and Singapore.'

Selwyn Chan (II)



'We were truly fortunate to meet with such a friendly and jovial bunch of students. Though we are all Chinese, our cultures and lives are vastly different. It was really a great learning experience for all of us. There was a clear bond that was fostered after both trips had taken place and I am certain that these ties would prove useful for the future generations of law students in both universities.'

Shu-Chern (IV)

Cambridge Interflow Tour

Doodun (II)

Initiated by a group of enthusiastic Cambridge law students who were interested in coming to Hong Kong to pursue their future careers, a one-week tour to know more about Hong Kong's legal system, the legal profession as well as the law students was organized in mid-December.

There were about 15 of them, mostly second-year. HKU was one of their stops. Before coming to HKU, they had visited the Chief Justice Mr. Andrew Li, who was also their alumni; Martin Lee SC to know more about the life of barristers; and several solicitors' firms such as Baker & McKenzie, Herbert Smith and Johnson, Stokes & Masters.

In order to give them a warm welcome to HKU, the Cambridge visitors were first received by our PCLL lecturer, Mr. Felix Chan to share with them the university life at Cambridge. Then, we were glad to have the Chief Librarian Mrs. Sng together with her staff to 'stroll round the library' with the Cambridge students. To your surprise, they found quite a few things very impressive in the law library, namely, they felt that although our library was not as big as theirs, it was a very comfortable place to study (not to chat!). Also, they were 'shocked' to see so many PCs we had and they were so envious that we can net-surf in the library! What's more, they were so excited to notice that we had Lord Denning's autograph as they walked down the stairs.

After the very informative law library tour, we led them to a very brief campus tour before we headed to the best part of the programme — buffet lunch! During the lunch buffet, students from both universities seemed to have endless topics, from sharing university life to career prospects and indeed almost everything that came across our minds. Although we have different views on different issues, we all agreed that we have chosen the right subject to study. The programme was short but it was indeed a very fruitful interflow.



Beijing — Hong Kong Youth Legal and Cultural Exchange Project '98

Date: 26-31 December 1998

Co-organizers: Hong Kong Law Education Trust Fund
Hong Kong Youth Hostel Association

Participants: Students from the Beijing University, Tsinghua University and the University of Hong Kong



With the objective to enhance the understanding of the youth of Hong Kong and Beijing on the aspect of law and culture of the two places, various visits and seminars were organised. In particular, we focused on the comparison of the criminal law system between here and that in mainland.

Our first visit was to the Police Museum, during which we learnt more on the past and the current situation of the Hong Kong Police. Our friends from Beijing in turn enthusiastically explained the system of Police, *Gongan*, to us.

When we came to the Hong Kong Legal Aid Department (HKLAD), we were welcomed by the Chairman of the HKLAD, one of its solicitors and another officer. We saw a video which introduced the legal aid in Hong Kong. Many of our Chinese fellows were amazed by the fact that even foreigners were qualified to apply for free legal aid service! ***'It is one of the characteristics of rule of law — equality before the law. Every one is entitled to legal aid if he satisfied the means and merit test in civil case and means test in criminal case.'*** — we were proud to have the Chairman making such proclamation!

Off we go, we went to the Independent Commission Against Corruption (ICAC). Many mainland counterparts had a good impression of ICAC for its effectiveness in fighting against corruption, which still remains a major problem in mainland. On the other hand, we were informed of several newly enacted laws against corruption and the work of the Anti-Corruption Bureau in mainland.



Our next stop was the High Court and we were able to hear the trial of Sau Mau Ping Gangsters' murder case. Even we law students from Hong Kong were amazed by the scene where the room was packed with more than 2 dozens of barristers and solicitors!

The next visit was to the Pik Uk Prison. The superintendent there introduced to us the correctional services in Hong Kong and the daily operation of the prison. We were escorted around the prison, and were even experienced being locked individually in the cell to taste the prison life as well!

Our last visit was to the Law Society of Hong Kong. We met a few solicitors and were given a talk and were shown a video introducing the legal profession in Hong Kong.

Apart from visits, we also had criminal law lecture in the University of Hong Kong. In the morning, Professor Li Yahong, and another Prof. Gong Wen-dong from Peking University, delivered a lecture on common law system and introduction to Chinese legal system respectively. In the afternoon, Prof. Gong and our Professor Fu Hualing also gave a lecture on the criminal law of China and criminal justice system in Hong Kong respectively. Students took opportunities to ask questions and the learning atmosphere was very good.

Besides, we had dinner with some Hong Kong barristers. It was our greatest pleasure to have the Secretary for Justice, Ms Elsie Leung and our Chief Justice, Mr. Andrew Li to bid farewell to our Beijing friends.

I treasured the friendship we built during the past six days. Also, my Mandarin had improved a lot.

Finally, we departed each other on 31 December 1998. After the camp their courage of asking and serious learning attitude are what I admire and should learn.

Molly Kan (III)

We finally appreciate the chances of exchanging thoughts on some controversial topics for example, the student movement 1989 with the students from Beijing. They concern 'minzu' — democracy in China but they now prefer, and emphasize, a stable political situation would be more beneficial for the development of modern China.

One of the students from the Beijing University took photos of demonstration slogans when we were at Central. This impressed me a lot and I asked her why. She explained that she wanted to commemorate all these as it is forbidden for them to post banners urging for a democratic China.

I also learned that the mainland students wanted China to transform into a liberal and democratic society but they are well aware of practical problems for a drastic political reform at present stage. Perhaps the best way for them to achieve this is to learn from the democratic development in nearby regions like Hong Kong and instill the concept to fellow citizens gradually.

Not only I learned more about the differences between Hong Kong and Chinese legal systems but also I gained valuable friendship. I hope to meet all my Beijing friends very soon.

Jacky Tse (II)



是次交流表面上以讓內地學生認識香港為主要目的，為本地學生而設的安排較少。但事實上能夠與北大、清大的同學在五天多的時間「朝夕相對」，對我們本地學生而言也已是獲益良多。談到本地與內地學生之溝通，大家都是年青的中國人，我們不難從生活談到感情，從家庭談到國家，可見生長於不同地方也沒有為我們之間帶來多少隔膜。活動中的一些參觀、講座都為我們帶來不少話題。當然，我們所分享的只屬對兩地法律及體制的初步理解，談不上是高層次的學術交流。但四十多名年青人走在一起，討論的又豈會限於學術？站在我們面前的都是內地各省數一數二的高材生，他們社會觸覺甚高，了解內地情況之餘對西方文化思想也是瞭如止掌。跟他們傾談對我們了解祖國有莫大裨益。談到中國，他們都強調要先了解國情，才能對國事有不偏不倚的理解。的而且



確，就本地而言喜歡評論國事的人不少，但願意投入理解國家的人卻似乎不多。這些討論，實實在在喚起我們對自身責任的醒覺，有助我們培養愛國情操。北大一位同學說在香港感受到法治精神，而香港人則習慣充份把握時間且行事謹慎。同學能夠在這麼有限的時間內有如此體會，相信也都已對香港這地方留下一美好印象。這些都是交流的成果。



我最不能忘懷的是團中一個已婚二十四歲的內地女同學。我跟她本來並不熟稔，唯因一次巧合，我和她成了朋友。是她的坦誠叫我感動。她沒有把我當作二十歲的黃毛丫頭，放開胸懷地跟我分享她跟她丈夫的感情生活，由相識、拍拖至結婚也愉快地道出。我很感激她沒有只把我當作「裸母」看待，她願意把心底的話跟我說，把我真當成朋友。那種友誼雖短暫，可是那平白、簡單、直接卻叫我深刻未忘。

團中還有一個看似傻兮兮的男同學。雖然他年紀較長，但玩起來卻是蠻瘋的。令我留下印象的不是他玩耍時的「狂相」，倒是一天於回程時他跟我的一席話。他跟我說：「青春是美好的，所以要珍惜時光。」我很感激他對我的教誨。我從前不珍惜青春，卻因他的當頭棒喝，令我明白到珍惜美好光陰的重要性。

人生也許有很多階段，唯青年時的狂莽、任性都不能復返，只有掌握眼前時光，好好享受珍惜，才能無悔今生。

Rebecca Lau (II)



Zhongsan University Study Tour

Date : 27-30 December 1998 (4 days 3 nights)
Venue : Zhongsan University in Guangzhou
Organizer : Hong Kong Young Legal Professionals Ltd
Sponsor : Hong Kong Legal Education Trust Fund



The Zhongsan University Study Tour provided an opportunity to explore China's constitutional history, its government departments, some civil laws and criminal laws. There were about 25 participants, including practicing lawyers from private practice and also Legal Aid Department, trainee solicitors and law students from the two universities. There were altogether 7 HKU students.

We received lectures from lecturers of Zhongsan University whom most of them were also lawyers in Guangzhou. After the lectures, we discussed with the lecturers, post-graduate students and among ourselves either on the case studies provided or shared views we had on the legal issues.

On the last night, the lecturers and post-graduate students of Zhongsan University organized a party to farewell us. They performed "Miu" Tribal Dance and a student who had won the singing award sang his winning song. In turn, we together with two City University students sang two songs to thank for their hospitality. Afterwards, all of us sang the karaoke and danced together.

The lectures were informative and comprehensive, it allowed us, beginners of Chinese laws to get familiar with some fundamental principles. Also, it was a precious opportunity we could discuss the controversial "Big Spender" case and opened to some other perspectives. Furthermore, we had casual chats with the post-graduate students and visited their dormitories where we learned more about their university life and were most impressed by their enthusiasm in both studies and social activities. For instance, they danced so wildly and skillfully during the party. (Mind you, they were very good at both social dancing and disco music!) All in all, the study trip did not only broaden our horizons on some aspects of Chinese laws but also to experience social life of the students in Zhongsan University.

Susan Li (II)



As a first year student who hasn't studied PRC law, what I have learnt at Zhongshan University was really interesting. The codified system, as I see it in our first encounter, seemed to be a clearer system than our common law system. With only written codes to follow, the result of each case is seemingly easier to predict and the study of law can be much more systematic. However, after a closer look at the actual codes, problems surface. In order to deal with thousands of different cases with only hundreds of codes, the codes are written with a degree of 'ambiguity' (of course they disagree). Words like "relatively", "serious" and "major" are often seen. With no doctrine of precedent, these words have the possibility of being interpreted differently in different case and may even become the reflection of the subjective thinking of the judge. This problem is somewhat intensified with an absence of a jury system.

Martin Wong (I)

The professors and the lecturers of the Zhongshan University (ZU) are very knowledgeable and devoted. We learnt much from them. When we came across the "Big Spender" case, the academics of the ZU and the legal practitioners and law students from Hong Kong have very different points of view. The academics of the ZU said that the trial and the judgment fully complied with the PRC laws. They agreed that both the PRC and the HKSAR have jurisdictions. But according to Principle of Initial Reception (最初受理原則), Big Spender was caught in mainland China, so he should be tried in the mainland. However, some may argue that this principle should not be applied here because it is a principle to be applied between two countries, not within one country. Unfortunately, there is no relevant rules stating "extradition" procedures between the PRC and the HKSAR, resulting in many disputes here. Besides, Hong Kong people find that the conviction of blackmail against the Big Spender is unreasonable. But in PRC law, it is stated that 'preparation to commit crime' is guilty. Preparation is part of the crime. As a result, Big Spender could be convicted of blackmail in China even though the crime was committed in HK.

When we discussed the civil laws in China, the lecturer felt ashamed that China has now only 156 civil codes while European and American countries have a more

developed system. Obviously, the development of civil laws in China is only at a developing stage. But since the PRC has redeveloped her legal system for less than 20 years, it is believed that there is still room for development and improvement.

As a freshman, my legal knowledge is much limited. Luckily, the accompany of legal practitioners and senior law students has made our discussion more interesting and beneficial. The postgraduate students in ZU are very friendly and helpful indeed. They took part in our discussion, showed us around and chatted with us to let us know more about the university life in China.

All in all, the tour was very meaningful and beneficial to me. I have to thank YLP for giving me the chance to join the tour.

Tracy Lam (I)

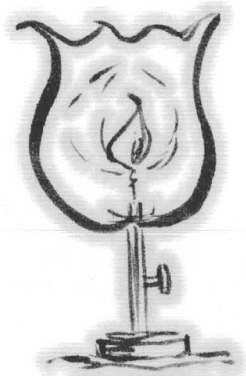
參加這次法律研習班，不單使我對內地的司法制度、民事法以及刑事法有了一個概略的認識，也從與中山大學法律系學生的接觸中了解到他們的一些想法。

記得有一次討論時我們談到精神損傷的賠償。由於內地的法律在這方面沒有詳細的條文和案例，他們對普通法計算精神損傷賠償的方法很感興趣。因為內地一切判決都是嚴格依循法律條文的規定和法院的司法解釋，所以當他們知道普通法中法官在決定賠償數額時有斟酌決定的自由時，表現得頗為驚訝。而我對內地成文法的運作也十分好奇，不斷問及如何推行和實施四百多條的刑法去打擊「包羅萬有」的刑事罪行。大家都認為各自的司法制度很大程度上是有效及公平的。雖然未能完全理解和掌握對方的制度，但都認為是殊途同歸，都是維護社會公平和公義。

Angie Li (I)



Soul





Who's Who

Getting bored with all those serious, prime and proper staff photos? Just dying to know who those cute babies below are?

We invite you to put on your thinking caps right now and spot your favourite teacher!

The reasonable boy!



Let's dance!



The animal lover!



*Har Gou
Siu Mai*

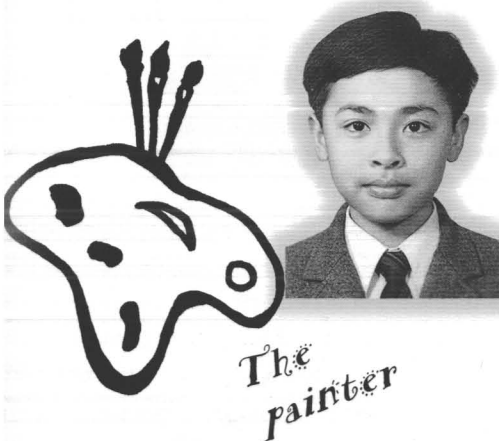
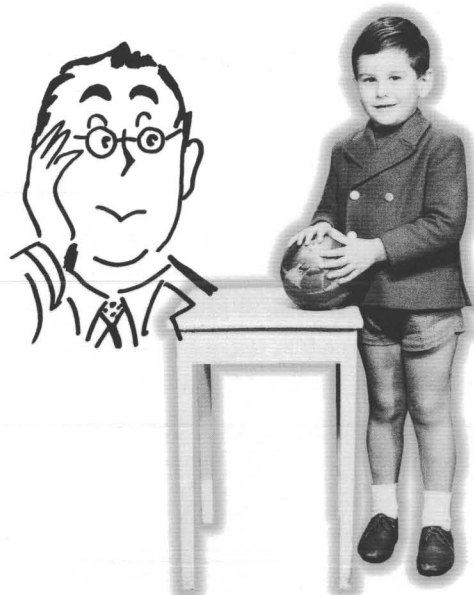


Say Goo
Peter Wesley-Smith

Rick Glotchski
Anne Carver



"A New Comer"

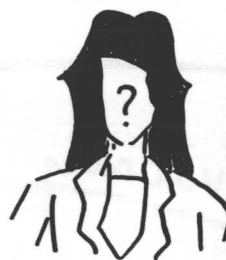


The painter

Eric Cheung
Albert Chen
Benny Tai
Felix Chan
Robert Morgan



*Hey! That
was not me?!?*



*The two below are not exactly baby/childhood photos, but they are such
great photos that we simply cannot leave them unpublished ...*



Quote of the year

*"Preparation
Participation
Practice"*

*Can't go without my
favourite TEA*



"Ain't i cool?" [Wink]



Michael Jackson
Janice Brabyn
Betty Ho
Rick Glofcheski
Roda Mushkat



Long Ago and Far Away



Jill Cottrell

I was unwise enough to comment recently in a class that it would not be so long before I retired — an observation which brought home to some


students at least, I suppose, how terribly old I am, and suggested to them that I must have something interesting to say about the experiences I have had during all those years as a teacher!

Thirty-three years ago I boarded a plane for the first time in my life, and flew to Nigeria. I had very little idea what to expect. I knew that the weather would be hot. I knew that the food would be hot (my friends and I had been adding increasing quantities of chillies to our food to get into training for Nigerian food!) I had had a few Nigerian classmates at University, but I could not imagine what life would really be like or a classroom full of Nigerian students would be like. I found that most of the students were older than I was (a slightly alarming realisation for a new teacher), but were friendly, welcoming and made me feel at home (so that in the end, instead of staying just 3 years I altogether lived in Nigeria for 10 years!)

Looking back it is not how different things were that I remember but how much they were the same. Perhaps this is because I was teaching in a University. The University of London set up little clones of itself all over the Commonwealth. The University of Hong Kong was one of these and until very recently, and still to some extent, remained similar! I had been a student of University of London student for five years, and I found myself operating in a similar structure: the subjects were the same, taught in the same order, using the identical lecture and tutorial method. And because Nigerian law was very similar to English, and there were few Nigerian textbooks (does this sound familiar?) The law I taught was much the same.

So was Nigeria just like England, but with palm trees? Of course not. The students inevitably confronted English law from a different standpoint than English students. Much like Hong Kong students, my Nigerian students were having to wrestle with curious cases which reflected aspects of English life of which most of them were ignorant. Tort cases tend to bring this home especially clearly. For William Twining it was a Sudanese student, living in a country where camels are a fact of daily life, who asked about a case in which a camel bit a visitor to a zoo "Please sir what was the animal doing in a zoo?"¹⁰ For me it was the students who did not know what I meant by a colour bar (the case was an economic tort one about a dance hall which would not allow black people in) — or even more so the students who told the others 'Like South Africa', and I had to say "Not only in South Africa I am afraid".

The politics, too, were very different. I arrived in Nigeria shortly after a regional election which was universally agreed to have been 'rigged'. Politics had become very violent because people believed that they could change nothing by voting. Things had got so bad that by the time I arrived there was a curfew every night, and it was not thought safe to travel long distances by road outside the main towns. Three months after I arrived there was a coup, and the military took over. I was in the Library when the news broke; the students stood on the tables and cheered! My personal reaction was less enthusiastic — though I had to agree that what had just happened had the keen support of the people and could be said to be in that sense democratic. But I felt that a change of government by such a means might set off developments which would be difficult to change. I was perhaps right — for nearly 30 of those 33 years Nigeria has remained under military rule and is now in the process of returning to civilian, elected government again. The government that had been overthrown had been corrupt and incompetent, and it was replaced by one which was determined to get things done. And our ineffective Vice-Chancellor was replaced by one who was also determined to get things done. We were supposed to move to a permanent campus ... sometime in the future we all thought. But the new VC and the new military governor announced in May 1966 that we would start the next



academic year in the new campus! By the following January parts of the University were in residence in the new campus, and the Law Faculty was one of the first to move, and I was the first in the Law Faculty to move. Oh how we felt we could not survive away from the facilities of the biggest city in Black Africa (Ibadan) and away from the courts. But survive we did, despite the absence of a supermarket, or any restaurants worth the name, and no cinema at all, not even one that showed films in Hindi which were, still are I suspect, the staple of the Nigerian filmgoer.

In those days education was very much an elite thing in the sense that classes were small; there were only 4 law faculties in a country with perhaps 60 million people. I had 30 students in my lectures on contract and tort, there were plenty of books in the library. There were virtually no textbooks on Nigerian law — and teaching materials were rare in the days before photocopiers when

There are too many students for the facilities — human, literary and physical. On the other hand, there are far more books on local law, and law reports series which come to life when politics revives, and fade away again when the military takes over again.

When I returned to England, people asked me whether English students were very different from Nigerian students, and I had to say they were not. I have been unable to say that certain nationalities of students are more hardworking than others. There are various stereotypes — Asian students are supposed to be hardworking, African students are supposed to be hardworking. It seems to me that some students are hardworking everywhere, some students are not, and most students manage to be hardworking when they can see the exams looming! The plight of new law students is similar everywhere; even if they are English, most students know very little of the realities of life reflected in the law

reports. I had no idea what a mortgage was, and had little acquaintance with criminals and absolutely no clue how a solicitor spent his day.^② This is partly why, perhaps, teaching in Nigeria, England or Hong Kong has been less different than you might suppose.



every set of materials had to be typed onto a stencil and run off one by one. There were no foreign exchange controls and textbooks were readily available (and some students at least bought them since they could not otherwise photocopy them!).

In the years since, Nigerian universities, like many others in Africa, have gone into a state of some decline. They still have excellent staff — some of them my students, just as my students have become judges, and lawyers, even a military governor, and a distinctly corrupt minister, I am sorry to say! But these days there is no foreign exchange to buy foreign books. There are far too few books, and out of date in most libraries, I suspect.

If I had my time all over again, would I do anything differently? Perhaps I would have studied sociology, or politics, or anthropology or something really interesting! Probably I could find something that I could do better than teaching! Or something that was really useful! I would not change the experience of living in different countries and among different cultures, or the people I have met.

^① Twining, "The Camel in the Zoo" Shivji, ed., *Limits of Legal Radicalism* (Dar es Salaam: Faculty of Law, University of Dar es Salaam, 1986) 15.

^② When I was a student there were 6 women in a class of 50, and I recall at least one surprised student in the University canteen saying "Women don't do law!"



球證奇遇記

「男人一枝花 咪當我老花……」

對「祥哥」這稱呼大家可能陌生，但對 Printing Office 那小小空間中的一扇窗有的只可能是熟悉；交功課、取 DM 每次推門而進就看見那一扇窗，但對窗後的人我們認識幾多？從窗中看出來不知又是何感受？為此我們訪問了窗後的人，祥哥——曹仲祥

工作

現任職印刷技術員的祥哥，原在當時理工學院中央印刷部門任職，於九〇年轉職法律系，一做已八年。祥哥每天的工作可不少，LLB、PCLL 及 LLM 所有科目的教材均由他一人負責分派，直到去年才有多一名助手幫他。還記得初初來到法律學院，所見的學生也是滿身書卷味、不苟言笑的學者；近幾年的學生比較主動、活躍、短短的交談加一兩句笑話，「他們是比較『放』了，有時早上見面打聲招呼，沒有期求得到什麼，只為輕鬆的一刻。」

興趣

「起初做球證也是一種偶然，抱着的心態也是做球證既可參與球賽也可收取一些『車馬費』；即使不踢足球，也可在這方面延續自己的興趣。」這樣一做就做了十二年，現時祥哥已是本港其中一位國際球證。

十多年球證的生涯，祥哥從中學到不少。無可否認球證要有好的判斷力及觀察力，而且面對近年行業年青化及體力化的壓力，也要經常保持自己在最佳狀態度；但最重要的還是決斷的性格：「做球證一定要當機立斷，尤其在本土賽事，大家操同一語

言，爭執特別多，要有『氣餒』才可壓得住場」。所以說控制球員情緒也是一種學問。

那一球與那一場球場

記憶中最深刻的一球發生在上季甲組一場賽事，後衛的一個誤傳，球證的一個盲點，形成了一個問題球，影響了一場賽事的結果，也是祥哥的一個遺憾。球證生涯中首個經驗，面對多方的壓力，也捱過了，始終相信當時自己的判斷。

記憶中最深刻的一場球賽發生在上年五月的上海，一個四個國家的四角賽；列隊的一剎那，奏起中國的國歌，感動了在場八萬多個觀眾，也感動了祥哥。「始終也是一家人」，原來祥哥也是首批回祖國擔任國內聯賽的球證之一。

最後祥哥提到做球證的一個目標，希望能在二千零二年日本、韓國世界盃擔任球證，這大概是每一位球證的最終理想吧！





Illustrated Law Report

— Olivia Wong (II)
— Yvonne Leung (II)

***R v Prince* (1974-80) All ER 881**



Facts: Prince was charged under S55 of the 1861 OAPA to have taken unlawfully an unmarried girl under 16 out of the possession and against the will of her parents. Prince was told by the girl that she was 18 and the jury found that such belief was reasonable and was held bona fide by Prince.

Held: Prince was guilty of abduction. It was a strict liability case, ie. mens rea of Prince was irrelevant.

***Roberts* (1971) 56 Cr App R 95**

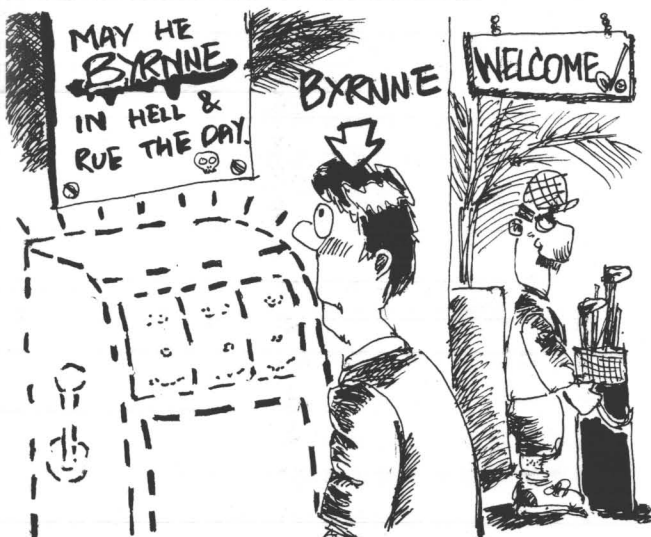
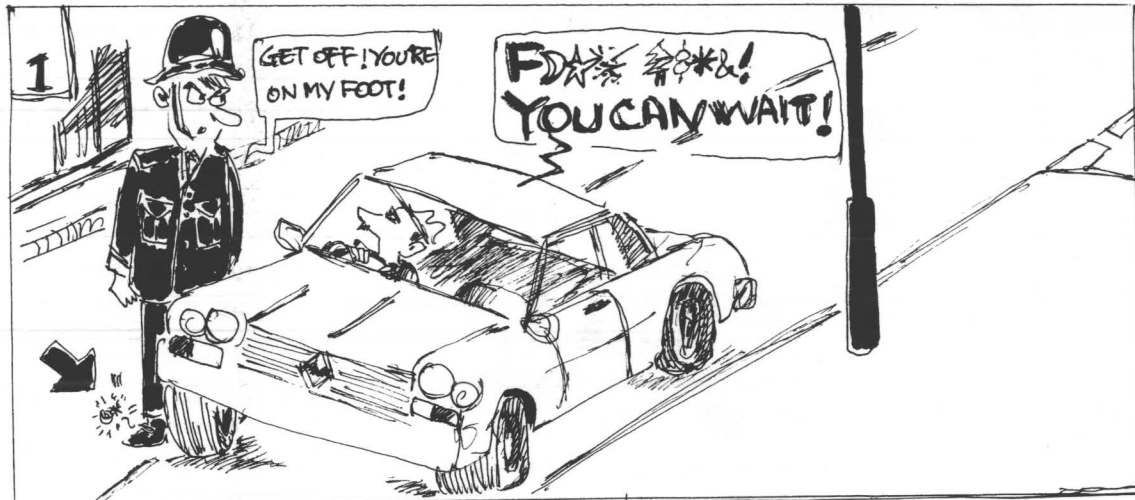
Facts: Roberts indecently assaulted the victim, who jumped out of the moving car, and sustained injuries.

Held: Roberts was guilty of assault occasioning actual bodily harm. The victim's reaction did not constitute a novus actus interveniens.





Illustrated Law Report



BYRNE v DEANE

★ IT IS NOT DEFAMATORY TO SUGGEST THAT THE PLAINTIFF INFORMED THE POLICE ABOUT A CRIMINAL OFFENCE BECAUSE RIGHT-THINKING MEMBERS OF SOCIETY WOULD REGARD THAT AS COMMENDABLE.

FAGAN v METROPOLITAN POLICE COMM.

★ WHEN AN ACTUS REUS MAY BE BROUGHT ABOUT BY A CONTINUING ACT, IT IS SUFFICIENT THAT THE ACCUSED HAD MENS REA DURING ITS CONTINUANCE ALBEIT THAT HE DID NOT HAVE MENS REA AT ITS INCEPTION

'SUIT'CASE

DONOHUE v. STEPHENSON

★ YOU MUST TAKE REASONABLE CARE TO AVOID ACTS OR OMISSIONS WHICH YOU CAN REA. FORESEE WOULD BE LIKELY TO INJURE YOUR NEIGHBOR. WHO THEN, IN LAW, IS MY NEIGHBOR? THE ANSWER SEEMS TO BE - PERSONS WHO ARE SO CLOSELY AND DIRECTLY AFFECTED BY MY ACT THAT I OUGHT REASONABLY TO HAVE THEM IN CONTEMPLATION...





司徒永輝

多人都不明白。心胸太狹窄是一般人的通病，容不下異見，又怎會有進步的可能性呢？對人不對事又是另一大弊病，兩三下便來人身攻擊，沉不住氣又如何能作理性的討論呢？所以，先培養容人的雅量，先學做一個聆聽者，耐心一點，平和一點，才能聽到別人的說話。最無聊的場面，莫過於失去常性的謾罵。有失風度之外，亦有辱上帝賜給我們表達

意見的能力。

懂得批評怎麼說也是好事。批評多少都是主觀的，但主觀不等於不理性和不講道理。不同立場亦不是無可批評的藉口或免死金牌，那些所謂立場很多時候都不過是不夠水準的另一種說法。別以為搬出觀點與角度這些虛詞便行，沒主見的人才玩這套。人們總是認為批評是為了勝過人及令人難堪，實在批評是最厚道的。批得你狠狠的，內心還是希望有理性知性的交流，大家的水平都提高了，不亦快哉？再說，自己不夠水平還懵然不知，夜郎自大而處處逞強，還上黑心之徒當面奚落譏笑，其丟臉尷尬之情，才是悔不當初呢！

又有說人與人總是以和為貴，動不動便指摘別人，尤其在朋輩和同行同事同業之間互為攻訐，於感情實有損也。要不得呀！要不得呀！我討厭這種和稀泥的模樣。做錯了事不指正，做壞了事不提點，這些不叫縱容是什麼？自己不自我要求也便算了，還憑什麼阻止別人罵它個狗血淋頭、體無完膚？我們追求美好的生活，希望每樣事都做得比別人、比自己上次做的時候好一點。我們求真求善求美，有時不免會激烈過了頭，不盡人意之時亦難免會得失了別人，但那是打緊的。我不認為那是沉重的代價，因為那些看似珍貴的東西，實在棄不足惜，而我們回頭再想時，也會發覺自己並沒有損失了幾多。

被批評者失去理性、惱羞成怒而作出的那些盲目不講道理的反擊事實上是可笑的。批評是以理服人，而絕不是聲大夾惡便算數的。這一點很

年青人應多批評，即使只是滿腹牢騷也是好的。我不是鼓勵大家每事都作過份的要求，但當我們常常抱有懷疑和批評的態度，便會發現日常生活中有很多事都是不甚稱心的。如果你覺得世界一切也很好，這證明你本身也是不夠水準。

已有很多朋友跟我說過，謂我實在太完美主義了，一些人和事若非太差便由它算吧。這個在現實生活中，有時無可奈何地也要作妥協的，但我們必須——縱使對改變現狀無能為力——表達我們的不滿。不要姑息那些得過且過的人啊！假如客觀環境不許可，或是超出當事人的能力範圍之外，我們亦無謂強求，怪也只能怪時不我予，所託非人，此乃天意。可是有些人，不知何故總不愛把事情做好，那便是工作態度的問題，非不能也，實不為也，焉能不教人大動肝火？我再強調一次「待人以寬，律己以嚴」是嚴重錯誤的。「待人以嚴，律己以更嚴」才是正確的。我待人以寬，你又待人以寬，最後大家都客客氣氣求其其，把事情弄得一塌糊塗還暗自因省了工夫拿了別人着數而竊竊偷笑、沾沾自喜，以致互相慶賀奔走相告。這成何體統？這像什麼話？我不曉得做事馬虎是否人的劣根性，但對於充滿奴性的人們，我們必須在精神上討伐他們，在生活上加大鞭策他們的力度，免得他們妨礙社會的進步，加快人類的滅亡。正是保護環境，救救地球，由我做起。

我要補充為何我說年青人應該多批評。我想這個跟火氣有關，即是說年青人有着那股血氣方



剛的衝動，比較會有話直說。人的年紀越大，做事和說話都不知怎的越會畏首畏尾，總是害怕得罪了誰而諸多顧忌。因此我們自少年時代剛懂明辨是非時便要有不平則鳴的習慣！應知道什麼是好是壞，擇善而固執。

前面提到我們批評別人是因為他們不夠水準，做人做事做得不夠好。反過來說，如果我們不是做得比別人好，我們又怎會知道他們的不夠水準？再進一步說，如果我們做得不夠好，或者進步得不夠快，被批評的便是我們了。這帶到了自省的問題。我們不是胡亂作出批評的。批評是嚴肅認真的事，決不能兒嬉隨便的。我們除了要不斷充實和提昇自己外，還要不時自我檢討和反省，時刻找錯認錯改錯，這樣才可以進步，改善生活和生命的質素。

自省的基本條件是要有良好觀察力，對人和事有着敏銳的觸覺，有樂於虛心求教，不恥下問的胸懷，能放得下成見、為人理性、勤奮，以及有認錯改過的勇氣。必須記着完美主義不只是把某一件事做妥辦好就算，完美主義壓根兒是一種態度，一種生活、工作的態度。我們必須提醒自己做每一件事都應該全力以赴，事情的結果或未令人滿意，但正是因我們曾經努力過，仔細做過每樣過程，在我們檢討得失對錯時便能更快找出來盡善盡美的環境，從而想出可行的改良改善以致更進一步的方法或方案。這樣子的自省才是有效率的。我們常看見失敗的人一臉悵然，對失敗的原因茫無頭緒，更甚者只懂得怨天尤人，卻又提不出，更枉論實行具建設性的補救措施。我毫不客氣地認為，這些人失敗和永遠原地踏步是活該的。

上文提到完美主義是一種態度。抱有這種生活態度，會幫助我們看到自己的缺點。找出了自己的缺點，我們便會不期然地產生不能容忍自己不好一點的念頭，繼而推動自己找出改進的辦法，坐言起行去實行它。這等於把批評別人的矛頭掉過來指向自己。剛才說過「待人以嚴，律己以更嚴」就是這個道理。要批別人，必先要批自己。批評別人要狠狠的批，批評自己更要狠狠的批，批得自己牙癢癢的，想還手最好是打自己幾拳摑自己三五七個巴掌，以示懲戒。做事做

得不好，無論如何只可以責怪自己，什麼是君子求諸己，什麼是小人求諸人，實在清清楚楚，不用多言。稍有上進心的都會明白這樣做並不苛刻。跟自己競勝，跟與別人比高低更需要耐力和意志，因為戰鬥不單是漫長的，而是永無止境一直繼續下去的。每天我們都在超越和擊敗昨日的自己，我們向前走，偶爾回頭看看，便會發現進步的幅度，可以是大得連自己也暗吃一驚的。再看看身旁那些不思進取的人，我們身處的高度，已經是他們畢生也不能提昇到的了！然而，別自滿，別讓進步沖昏了頭腦。百尺竿頭，請更進一步。我們在進步的同時，不要忘記有成千上萬的人也跟我們一樣在磨勵上進。宏觀一點看，越多人追求進步，社會便越能進步。但並不是所有人都是這樣想的，故此我們實在有責任把進步的信息傳播開去，而批評便是最有力有效的方法。教誨和勸勉太軟弱了，對於充滿惰性的人們來說，批評是唯一能鞭策他們上進的鞭子。別理壓迫越大，反動反抗的力量便越大的廢話。只有不知羞恥的人在知道自己遠離水準後才會不懂得急起直進，仍只願以不理性的態度假裝視而不見，置若罔聞，堆砌一大堆藉口拒絕改進。這些人，由他們吧！

自省可能是痛苦的——尤其在最初。不過，千萬不可以放過自己，否則便沒意思。我以前在給朋友的信中提到，接受自己不夠水準是十分難過和痛苦的事。每天起牀洗臉刷牙時，抬頭望見鏡中令人沮喪的自己，真是百般滋味在心頭。而人，總要向好的方向想。催眠自己麻醉自己哄自己並不介懷甚或根本並非不夠水準只是自欺欺人，但若自己天天向上，發奮圖強，那麼每天在鏡中看見的便會是新的，更好看的，更進步的自己。

整個批評與自省是一體多面的。從個人的觀點看，批評是為了辯出真理，提高自己與大眾的水準；從社會的角度着眼，理性批評與改進對改造生活環境的效果是十分顯著的。然而批評是多向的，在百家爭鳴的情況下，全民都會癖了不落後於人而力求向前。在理性與知性交流作前提下，大家都自我鞭策，事事盡力而為，從失敗中汲取教訓，借鑑別人成功的經驗，互相學習，互相進步，向完美生活邁進。

身在情長在

徐
畢

男人跟女人分開了，雖然情侶關係告一段落，唯心中的感覺依舊。

畢業了的學生離開母校，隻身走到倫敦升學，但她對母校的感情不變。

祖父失蹤了，四代兒孫登報尋人，不肯放棄一線機會。

中年男人四出奔走，逛畢廟街再往摩囉街，然後到九龍的古玩攤子；走到腿也酸了，為的是尋回年青時老師送給他的一個鑰匙扣。

他們，都在尋找失掉的回憶，失掉的感覺，失掉的情懷。縱然人去樓空，事過境遷，只要身在，情長在。

小時候的物質生活不及這一代，很困難才纏到媽媽給我買一個大娃娃。大娃娃的身形跟六歲的我差不多，手抱着枕頭，粉紅色，毛茸茸的。它跟着我「走天涯」——睡覺、做功課、溫習、看電視、洗澡、吃飯……後來，它舊了，變得破爛且髒，媽媽趁我不知便把它丟掉。發現了後，我大哭大叫。哭累了便睡。一覺醒來就像沒事人一樣。唯長大了，對它的感情依舊，懷念它毛茸茸的身軀，懷念它手裏的絲絨枕頭。這些情，至今未減。

還有，現在上環信德中心旁，從前是平民夜總會。太陽下山，萬家燈火，小販都到那兒販賣。各式各樣的小玩意、手袋、皮包；還有魚旦、甘蔗及馬蹄；街頭賣唱的歌女壓着嗓子作男聲，揮舞扇子比造手；看相的人跟外國人看掌，替他分析運程。這些時光，都隨着社會進步而失去。

還有還有，剛跟我們道別的啓德機場。幾許歡樂和淚水，都埋在時間裏；還有還有還有，大坑道的虎豹別墅呢……

對人呢？時光流逝，身在，情長在嗎？女人年華老去，母親撒手塵寰，狗兒逃離無踪，情，真的仍在嗎？

聽過如此一個故事。丈夫得知自己得了絕症，他不敢告訴妻子。他記得妻子最注重五十歲生辰，可惜他等不了。就在妻五十歲生辰那天，她的弟弟給她一份禮物和一張咭，寫着：「親愛的，祝生日快樂。」原來，丈夫在死前把預先準備好的禮物交給弟弟着他於妻生日那天交給她。他不單印證了身在情長在，更昇華至身不在情仍在的境地，把山盟海誓都戰勝。愛情，原來不單可以至死不渝，更可以死後也不渝。

也不見得只有愛情才能驚天地泣鬼神。曾經

花不盡 月無窮 兩心同



看過一個關於親情的特輯，當事人是個二十歲左右的女子，面對鏡頭，講述年幼時跟母親的種種。說着說着，女子哭了。原來在她五歲多時，母親一句話也沒留下就走掉。日復日年復年，她總希望媽媽會回來。對着鏡頭，訴說着掛念媽媽的話。縱然腦海裏媽媽的模樣兒已不再清晰，她的思念如舊，思念着媽媽的溫柔，關懷和體溫。

我比較幸運，未曾嘗過生離死別的滋味。生活裏除了家人和朋友外，還有我的狗兒。認識我的人都知道我是個狗痴，我對狗兒的鍾愛程度絕不比對我家人的遜色。若我往外頭渡宿，最掛念的必然是他；帶他看獸醫時，總被醫生罵我把他寵壞；吃飯時，更會預留一個位置在我旁；睡覺更不用說，他是唯一一個有資格跟我大被同眠的「人」。沒有飼養寵物的你也許不會明白這種情怎會真發生在人和動物身上，唯我以下所說的例子比我有過之而無不及。

那是一個從報紙看到的真人真事。她愛狗的程度絕對跟一個母親對兒子的沒兩樣。可是，狗兒患上癌症；她整整哭了三日三夜，才把他送去人道毀滅。死後，她給他「燒衣」，把他火化。她要求取回骨灰，負責人說因數條狗兒一同火化，所以取不回她的狗兒那份。可她沒有放棄，她在家中安放著狗兒的神位，早晚上香並給他誦經。姑勿論她的行為是否無聊滑稽，這條狗兒被深深的愛著卻是看得見的事實。縱使他的生命已完結，那情份卻是歷久常新。他在時，佔據着她跟前的位置；他去了，卻霸佔了她心頭的位置。在還是不在，已不是關鍵；卻是情把時間和空間都忘掉。

有看過《唐山大地震》一書嗎？作者藉它抒發對故鄉之情。地震後多年，他回到唐山，依然感受到它所受到的傷害，嗅到那陣災難深重的味道。市鎮重新發展，道路仿如從前，小孩蹦跳依舊，草木叢生似昔，唯獨是作者對那一次地震最終未能釋懷。唐山看似無恙，然而死去的人和生存着的記憶卻仍歷歷在目，傷口依然是錐心的痛。即使作者在事發時並不在該地，但只要他還在，他的唐山還在，他對老家的情也在。

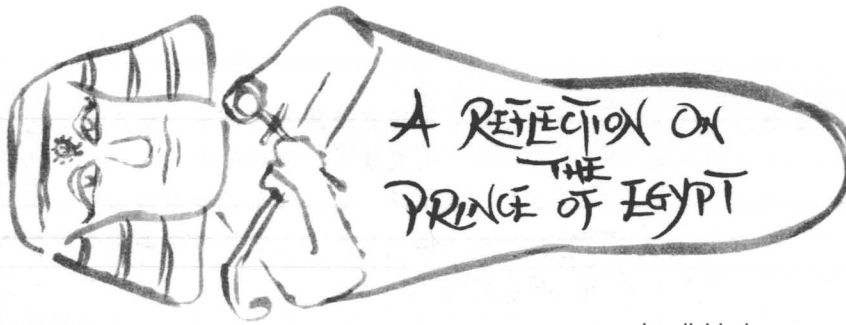
土氣吧，你也許覺得。但這種情卻也在香港出現。別以為香港人都是崇洋，吃裡扒外的；國難當前，港人可是蠻激烈的。六四事件，華東水災、雲南地震、釣魚台事件中，咱們絕不「手軟」；咱們遊行，靜坐、絕食、示威、捐獻、籌

款；且看年年皆有的慈善節目中，藝人表演走鋼索笨豬跳、吃炭飲油、劈冰吞劍、心口碎石也在所不辭；既出錢，也出力；也許事倍功半，也許徒勞無功。但如此熱心，也不過是為着對民族同胞的一份情。

曾經跟我的一位老師談「情」。她是性情中人，談話間，她說感情是傷人至深的武器。它最能使你快樂，卻同時叫你落淚。凡塵的武器只能製造外傷，只有情才能把人置諸死地，或置諸死地而後生。人們懷念的，往往不只是那個人、那條狗、那隻錶，而是其中的回憶及背後的感情。物件尚能找到替代，只有那段情是不能取而代之。我沒有特別懷念的人、事、地，但卻好像也漸次相信真有不朽的感情。相信了，也許會活得快樂一點；一瞬即逝的東西都是漂亮、短暫、璀璨的，叫人牽腸掛肚。如流星，等一個晚上，死撐着眼睛不掉下來；出現了！卻又只有那麼一刻，叫人疲累；唯有細水長流的情感，才把營養一點一滴的灌輸給我們，不叫你累，不叫你倦，不像流星般捉不住，失去那一秒就讓它挾着尾巴逃去。不一定銘心刻骨、動地驚天，卻絕對像甘露般長久地滋養着我們的生命。身在與否已不再要緊，我們，都只要那情份。

華燈在玻璃反射中閃爍，霓紅在大海倒影中搖曳；你是否也跟我一樣，固執地篤信着既虛無又實在的情呢？

來生願
待重結
結
若有緣
緣



Thomas Kho Wai (II)

Something important was left out in the recent blockbuster "Prince of Egypt".

The Israelites were delivered from the miserable slavery life in Egypt. On their journey to the Promised Land, they came to a dead end—the Red Sea. What's more, the Egyptian army was chasing them up. There was no way out. Death was up to their ears.

Before the well-known miracle—Moses put his staff in the water and divided the Red Sea—something was missed out by the movie.

According to the Bible, when the Israelites saw that Egyptians were chasing behind, they panicked and blamed Moses, "Was it because there were no graves in Egypt that you brought us to the desert to die? ... It would have been better for us to serve the Egyptians than to die in the desert!" (Exodus 14:11-12)

Red Sea can appear in our lives: some hurdles or problems which are so high and so big—which yet we want so much to overcome. We want so much to overcome them because life seems so good at the other end of this Red Sea. But it seems no way out. It is a sea. We are doomed.

Red Sea is more than a few difficult assignments or exams. It may be something which REALLY troubles your life. Bad relationships with family, lack of courage to disclose love, a bad habit that cannot be corrected, someone hard to forgive, etc.. Somewhere deep inside there is a cry, "Life would be better if these were eradicated!"

There can be different attitudes towards Red Sea. You may want to give in as the Israelites did. They would rather become slaves again than to find the way out. Should Moses listen to them, the Red Sea would never

be divided.

Or, worse of all, you lie to yourself by saying that there is no Red Sea at all when you actually have one. You may justify this misrepresentation by throwing many rocks into the Sea, rocks like "busy life", "heavy assignments", "courtship", "bright future", etc. While these rocks per se are not wrongful, it cannot solve the real problem. The Red Sea is simply too big to be filled up by these rocks.

Solution? — yes! — The staff!

With the staff, the Red Sea can be divided. There it overcomes your problem and paves the way to better life. But there is a little more than that.

Moses' staff was a symbol only. It was the symbol of faith. And after all, it was not Moses' faith per se that divided the Red Sea. It was the power of the Almighty God that precipitated the miracle! Not the faith, not the staff, not Moses, not the rocks, not the Israelites, but God the Lord!

Jesus said, "Come to me, all you who are weary and burdened, and I will give you rest. Take my yoke upon you and learn from me, for I am gentle and humble in heart, and you will find rest for your souls. For my yoke is easy and my burden is light." (Matthew 11:28-30)

Some time in life we all have to come to our Red Sea. Are you turning back to be the slaves of Egyptian again? Or are you facing the Red Sea, raising your staff, asking the Almighty God through faith to demonstrate His might?

"There can be miracles, when you believe!

When hope is frail, it's hard to kill ... "



Before I entered the Faculty of Law, I received a friendly warning from one of my friends, "It's a desolate place, with superficial people." She went on to say that, "People are friendly, but it seems that it's only skin deep. You make a lot of friends that you nod or smile to in passing, but never talk to in the three years of your study."

Marina Tong (I)



Now that I've been here for four months, in the middle of the "desolate" place, amongst the "desolate" people, I have to say that I don't agree with the statement totally. I agree that I do seem to have made a lot of friends that I nod or smile at in passing, but rarely speak to. Though on the other hand, I've also made friends that I am close with. If it then makes the Faculty a desolate place, then this is surely a desolate world.

On reflection, isn't the world full of this type of people? People that you remember vaguely that you've met but can't seem to recall a name, so you smile and nod anyway; or people where you once can match a name to, but have forgotten. So why should it be any different here? There are after all, more than four hundred people in this faculty, one can't expect to be best friends with all of them, just as you don't expect to be best friends with all the people in Hong Kong.

The one thing that I am uncomfortable with, is not the nods and smiles of new friends, but the nods and smiles of old friends that I used to be able to hold a conversation with. Upon entering university, my old friends in secondary school seem to have grown apart. Did our friendship really depend so much on us having a common environment? It's not that I don't want to tell them things, but it's not knowing where to start. Could I tell them about the joke that somebody made the other day? But hold on a minute, in order to see the funny side of it, I've to introduce them to the people involved first, then I've also got to give them a background of my daily routine, then I've got to So in the end, I end up saying nothing. Each time we meet, it seems as if we have less and less to say to each other, and wordlessly we are drifting further and further apart.

It saddens me, and I got to think, is the old Chinese saying that, "If the old ones don't go, then the new ones

wouldn't come" really true? And when we are no longer close friends, do they all disappear without a trace, no evidence of our friendship to be found anywhere except in memories?

I believe that people that pass through my life change me in some way, and I in turn change them. I have once read that when two people part, they both leave something with each other. So, when they interact with other people, they may pass it on to them, and one day they may find someone with similar characteristics as themselves, and discover that they have come a full circle. It's like: I like to eat watermelon with salt, and I got this from my cousin. One day, I may meet somebody else that eats watermelon with salt and may actually be able to draw a web connecting the three of us! It warms me to think that everyone maybe connected in some way without knowing it and one day I may meet someone and think "Gosh, she does that in a way so similar to me!"

Now I realize that even though my friends are now no longer close, they are not yet forgotten. They've all left something with me and vice versa. I've actually changed because of them. The lines in the movies, "I promise you that I will never change." is just a line that we all like to content ourselves with. In reality, I am nothing but a collage of each and every one of my friends, a collage of things that had happened.

I met with my friend again during the holidays, and she asked me, "So how's life in that desolate place?" and I asked her, "Do you feel that I've become more desolate? That's for you to answer."



Shall We Law?

Athena Cheung Sai Ying (II)

Welcome, ladies and gentlemen
A splendid evening, isn't it?
Music please

How do you do?
Are you our sort of professionals?
Do you have
A granite heart or
Eyes of a microscope?
Do you wear
A disdainful robe or
A chivalrous wig?
Can you hear
The sound of angels' wings?

Here is your silk, Sir
It is waterproof, shatterproof, proof
Against fire and bombs through the roof
Yet a bruise pride, play safe
Won't you marry it?

My learned sister, shall we dance?
A dazzling necklace indeed
Diamonds of clients' tears
I adore your head
The paper lantern inside which
Civilizations of ancient ink ignite
Would you bury it?

No? No?
What a shame
Then how can we give you
A certificate or a medal
To tell the world that you are a professional?

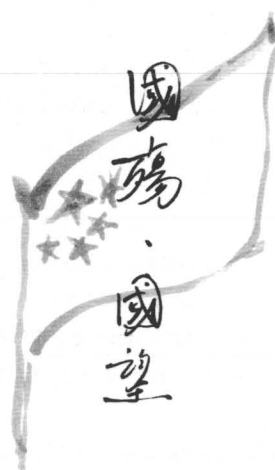
Follow me, my rag doll
To the Bar
Mondays' court, Saturdays' pub, Sundays' God
So that all the criminals shall know
'Devil's advocate'
Is thy wounded name

A really splendid evening
Once in a blue moon
Applause please
Longlive LAW
Cheers!



江流石轉古今事
豪傑志身挽悲風
安待法治植神州
奠祭酒兮黃土送

思算熟、向前看、忘掉歷史千載同
綱不移、目待張、身化長虹照兩端
軍車難報百年夢、人權民主意更濃
歲時務者比目是、橫刀仰天有嗣同



胡志恒



By the Night They Come

Dark was the night
Where Fear dared to roam,
Through many a home,
From which came a light.

There sat a young man
Long due was his sleep
But awake did he keep
With a book in his hand.

A knock at the door
In the small of the night
But strapped down with fright,
The man faked a snore.

"It is me, you fool!"
Came the voice of his friend.
"To sleep you pretend
Like the grunt of a bull!"

The man went at once
At the door he did meet
His like there to greet
Him stood Ignorance.

"Hello Ignorance!
Do you travel alone?
Will you pass by my home
Or take residence?"

"Have you room for me?
Would I be quite a crowd?
Will my snores be too loud
And your wife, angry be?"

"Fear not, for that woman
Has gone out of town,
And till she comes round,
We shall live like real men!"

"Who speaks of me foully?"
Then down came the door.
Night strewn on the floor
And in came she slowly.

"How soon it is you
Are returned from College,
My dear wife Knowledge!
Pray tell how you do!"

Without a word more
But the strength of Hercules,
One of the two men (at least)
Was thrown out the door.

.....

They say that a friend
Fear by chance came to meet
One night in the street
By the work of God's hand.

The two were entwined
And almost as one ~
A home full of fun
By night they would find.

Along the dull streets
Of Man's hollow head,
For a cool dwelling-bed
And some cold, stiff sheets

The two friends shall yearn.
Knowledge alone can expel
And undo the spell
They want you to learn.



Lennon's on My Bathroom Door

A b-day song

By Oli

(Oct-9)



I see Lennon's face
on my bathroom door
without glasses
he is Smiling Jesus
with lotus grace
warm breath of heaven
fairy-tale-berry-sweet
volatile vapor a bug's life
full-stop now a singing Beatle's plight
you are a merry
mushroom cloud
swimming freestyle on October the ninth
no need to cry
to face reality
so truly
happy birthday
to you
and bug-day
to
me

更正

在第二期《律呂》中，由杜若鴻同學所作的「夜感懷二首」經美術編輯抄寫時，有所偏差。為保原文神髓，特再刊錄如下：

夜深夢更深，追憶惹愁痕。
夢醒月還在，那堪憔悴人？



perrier

is
Perrier.
Nothing else
will do.



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