

ABSTRACTS AND PRESENTERS

1. Eugene Tan, “A Charter for the Future?: Hopes and Prospects of the ASEAN Charter”

This paper seeks to examine the Charter of the Association of Southeast Asian Nations (ASEAN, founded 1967), promulgated in November 2007, as the legal and institutional framework for Southeast Asia’s foremost inter-governmental organization. Hailed as a legal instrument that would bind the ten constituent nation-states in the Southeast Asian region together as a community, the historic charter was signed shortly after the brutal crackdown by the military junta in September 2007 in Myanmar against protest marches.

Ostensibly the Charter has three strategic thrusts in support of the vision of the ASEAN Community. The first is to formalize ASEAN as an institution while also streamlining its decision-making processes. Secondly, the Charter seeks to strengthen ASEAN institutions. Thirdly, it seeks to establish mechanisms to monitor compliance and settle disputes. Overall, the Charter aspires to strengthen ASEAN as a regional organization while catalyzing ASEAN’s integration efforts.

The paper will consider the extent to which the Charter will help ASEAN achieve the three strategic thrusts stated above. It will also consider whether the Charter will make ASEAN a more effective, and rules-based organization. This is especially pertinent in light of the Charter’s reaffirmation of ASEAN’s longstanding policy of non-interference in members’ internal affairs and the retention of consultation and consensus as fundamental tenet of decision-making in ASEAN. Finally, it will consider whether Charter will be a driver of the creation of new norms, values, and a community protective of democracy, rule of law, good governance and the protection of human rights and fundamental freedoms.

2. Yeo Tiong Min, “Judgment Laundering”

This paper considers the doctrinal and policy arguments for and against the enforcement (through registration or common law action) of a foreign judgment on a judgment.

3. Michael Furmston - Discussion of *Transfield Shipping Inc v Mercator Shipping Inc* [2008] UKHL 48 (the ‘Achilleas’) and its impact on *Hadley v Baxendale*

4. Jack Lee, “The Dangerous Doctrine of Deference”

This paper examines if, in the course of interpreting a bill of rights, there are situations in which the judiciary of a nation with a Westminster-style constitution ought to decline to make a decision in preference to a prior choice on the matter made by either the executive or legislative branch of government.

Courts in a number of jurisdictions, including Canada, Singapore and the United Kingdom, currently apply doctrines that circumscribe their ability to subject administrative decisions and legislation to in-depth scrutiny for compliance with the standards established by bills of rights. In the United Kingdom, for instance, since the entry into force of the Human Rights Act 1998 this has taken the form of a doctrine of ‘deference’. Singapore courts frequently defer to Parliament’s policy choices when considering the constitutionality of legislation. It is submitted that by doing so, courts may not be fully appreciating that their role as a constitutional tribunal is substantively different from that of an

administrative court. The paper considers the practical difficulties of applying deference in a principled manner, and examines justifications that have been articulated in support of judicial deference. It is contended that these conceptual foundations for deference doctrines are less stable than they seem. In this respect, the common law tradition may have done more harm than good.

It is my thesis that the doctrine of deference should be jettisoned altogether. Courts should fulfil their constitutional role of ensuring that governmental actions do not contravene guarantees of fundamental liberties, regardless of the nature of such actions. It is submitted that in the course of this assessment courts may, when appropriate, accept the exercise of discretion by the executive or legislature on matters that these branches have greater expertise in. However, the judiciary must continue to be responsible for ensuring the existence of facts upon which the exercise of discretion is premised, and the ultimate decision as to whether the action violates the bill of rights.

5. Janice Brabyn - Relevant Lies

In *Yuen Kwai Choi v HKSAR* (2003) the HKCFA dealt with the issue of how a jury in a drug trafficking trial should be directed to deal with the fact, if they found it so, that Yuen had uttered a deliberate **lie** about the extent of his association with a known participant in that drug transaction **during his testimony**. In *Wong Sau Ming* (2003) the same court dealt with the circumstances in which a witness in a criminal case, whose credibility was in issue, could be cross-examined about his testimony in and the result of another case, the implication being that the witness was disbelieved, that is, had **lied in the other case** and therefore ought not to be believed in the current case. The alleged lies of Yuen and Wong are the 'relevant lies' of the title. The paper is a critique of the CFA's approaches to these two very different types of relevant lie and an attempt to place the difficulties they present with respect to relevance to issue and credit and collateral finality in context.

6. Say H Goo, Malcolm Merry and Alice Lee - Regulation of Sale of Uncompleted Residential Flats in Hong Kong

There have been many complaints in Hong Kong relating to the sale of uncompleted residential flats due to the lack of comprehensive and effective law and regulation by self-regulatory bodies (principally the Real Estate Developers Association) and government departments and agencies governing the conduct of developers and estate agents concerning sale of those flats. The lack of law and regulation has caused high volatility in price and transaction volume. It has also deprived homebuyers of protection. Related to the volatility in the market are factors such as the government land sale policy and the urban redevelopment policy. These determine the supply of flats to the market and affect public sentiment, confidence and expectation.

This paper describes the current regime in Hong Kong designed to ensure that flats are actually built and investigates current problems relating to the sale of uncompleted residential flats, the practices of developers and agents, and the perception of prospective buyers on the acceptability and fairness of the system.

7. Michael Jackson - Attempting a Strict Liability Offence: Revisiting a Lost Cause

This paper re-visits a line of HK cases since 1986 which have steadfastly taken the view that an attempt to commit the strict liability offence of exporting unmanifested cargo may be proved without proof of *mens rea* as to whether the cargo is unmanifested. This view, originally based on a literal reading of a statutory provision regarding attempts, was first criticized by the author in a HKLJ Comment in 1986, but has been reaffirmed on several occasions, despite the repeal of the statutory provisions originally relied upon and the re-enactment of attempt as a statutory offence in 1996. This paper re-examines the theoretical basis of the HK court's adherence to this view, and explores whether the Basic Law may provide an additional basis for criticising the current view.

8. Gu Weixia - Key Elements of A Valid Arbitration Agreement – Hong Kong’s Contribution to Arbitration Jurisprudence in Asia

The threshold question in considering the validity of an arbitration agreement is whether both parties intended to submit potential disputes to arbitration. If they did, then a court or arbitral tribunal should strive to honor that intention. Generally, the intention of the parties is clear from the actual words used in the contract. However, where there is ambiguity, it may be permissible to take account of extraneous evidence to see whether a “certain mutuality” has been achieved by the arbitration clause, so as to indicate common intention. Hence, two separate elements have been required to constitute a valid agreement to arbitrate in both England and Hong Kong: “mutuality” and “certainty”.

When it comes to “certainty”, while the courts in England regard it as essential for an arbitration to have a “clear seat” as the unequivocal geographical location of the arbitration designated such as “arbitration in London”, a more liberal approach has been adopted by the Hong Kong High Court in *Lucky Goldstar* allowing parties to employ “unclear seats” such as “arbitration in a third country” where the court held that the parties’ intention to arbitrate was sufficiently manifested albeit the use of “unclear seat” and arbitration could be held in any country other than the countries where the disputant parties had their places of business.

This is an important contribution to the development of arbitration jurisprudence with respect to the validity of arbitration agreements under the common law tradition which tend to give the widest interpretation of defective arbitration agreements and to grant the tribunal full jurisdiction except in cases of hopeless confusion.

9. Yap Po Jen - Under-Standing Public Interest Litigation in Hong Kong

The law on standing for public interest litigation in Hong Kong appears to be in disarray as the Courts have been vacillating between three different positions. In response to this unsatisfactory state of law, this author would argue that in deciding whether a public spirited claimant has locus standi to bring a judicial review claim against the government over the sufferance of a non-private injury, the following test should be employed by the Courts. At the threshold stage when seeking leave, aside from proving that he has a reasonably arguable case, the applicant must show that he is the appropriate candidate to bring this judicial review action. Where the injury is a generalised grievance, this means that the claimant must raise a serious issue of public importance concerning a governmental breach of duty or illegality and that he is a reasonable and effective party to bring this issue before the Court. Where the injury is not a generalised grievance but the applicant is essentially asserting a third-party claim on behalf of another, the claimant must prove that he shares a close and common interest with the actual aggrieved in the subject matter of the litigation and he is a more effective litigant than the latter in bringing suit. These same principles in deciding the appropriateness of the claimant’s candidature should also govern the rules of standing when the case goes to trial such that a claimant may still be denied standing at trial after the Court has the opportunity to examine the full record at the hearing *inter partes*.

10. Kelly Loi - Tracing The Future of Romalpa Clauses

The 1972 decision in *Romalpa* accepted that a seller of goods may effectively reserve property in the original goods and sub-sale proceeds by means of a retention-of-title clause. However, the harsh judicial climate in England subsequent to *Romalpa* has ensured the failure of attempts by sellers to extend their proprietary claim beyond the original goods, regardless of whether they claim sub-sale proceeds or new products manufactured by the buyer. Such attempts have failed because: (i) there is no right to trace into and claim either proceeds or products in the absence of an express provision vesting the products or sub-sale proceeds in the seller; and (ii) where there is such an express provision, that amounts to a charge conferred by the buyer on the seller, which is commonly void for

non-registration. Both propositions (i) and (ii) are not iron-clad; and it remains to be seen whether attempts by sellers to extend their proprietary claim to sub-sale proceeds or products may yet be invigorated.

11. Lee Mason - Frustration and *Force Majeure* Clauses: Risk Allocation and Commercial Certainty

This working paper will take a closer look at the commercial use and development of force majeure clauses, including increased usage in the commercial world as a reaction to the inadequacies of the doctrine of frustration and subsequent judicial interpretations of such clauses. In particular, the working paper will focus on attempts to include a party's own negligence as constituting a force majeure event entitling the party to vary or end its performance obligations, considering the various common law and legislative controls of such clauses and whether a different outlook should be adopted in the interests of promoting commercial certainty.

12. Johannes Chan - Remedies in Administrative Law

With the introduction of the Bill of Rights in 1991 and the Basic Law in 1997, the demarcation between constitutional law and traditional judicial review in administrative law has become increasingly blurred. In one sense, a challenge against an administrative decision for being contrary to the Basic Law is nothing more than an application of the doctrine of *ultra vires* under traditional judicial review. Yet the possibility of challenging the *vires* of the enabling legislation has considerably widened the scope of judicial review, as an administrative decision can be challenged, not just by attacking the decision itself, but also by attacking the *vires* of the source of powers. This possibility presents new challenges to the judiciary in granting remedies, as the consequences and implications could be much far-reaching. At the same time, the trend of combining constitutional challenges in traditional judicial review applications raises the question how far the existing procedure for judicial review is adequate to meet this new challenge. This paper examines how the Hong Kong courts have risen to these challenges.

13. Puja Kapai - The Need to Reconceptualise Notions of Justice for the Asian Woman

Various international and regional treaties have entered into force between state parties committed to changing the plight of women. Many governments have implemented national legislation specifically aimed at securing women's rights to give effect to this international commitment towards the protection of women's rights. Yet, thousands of women continue to be deprived of 'justice' despite their increased capacity to mobilize their governments to protect their interests. Why?

This paper argues that this is the result of a misconceived understanding of the notion of justice as understood by the 'Asian woman.' It is argued that the international and local remedies available to protect Asian women from social ills such as domestic violence, discrimination, etc. fail to do justice because the systems' goals and aims are not aligned with the Asian woman's notions of justice at all and as such, they represent a mismatch between what the system does and what it should do. Thus, there remains a gap between formal justice and actual justice as demanded by the Asian woman.

Using the framework of domestic violence legislation in a selection of Asian countries to establish the argument, the paper will illustrate this gap between the goals of legal regimes relating to domestic violence and the victims' perceptions and desires for justice, concluding that without accounting for this Asian-ness of victim women and the unique identities they represent in any given community, justice will remain a distant and unattainable dream.

14. Kelvin Low - Beyond *Bebe*: The Future of Personal Equities in Singapore

In *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR 884, the Singapore Court of Appeal sought to constrain the operation of personal equities in the Singaporean Torrens registration system. Whilst not going so far as to suggest that personal equities have been given finite statutory form in Singapore, it nevertheless opined that the Singapore courts “should be slow to engraft onto the LTA personal equities that are not directly referable directly or indirectly to the exceptions in s46(2) of the LTA.” In particular, the court questioned the reasoning of the prior Court of Appeal decision in *Ho Hon Kim v Lim Gek Kim Betsy* [2001] 4 SLR 340. Whereas it is clear that both cases are correctly decided on their facts, it is suggested that the reasoning adopted by the earlier Court of Appeal in *Ho Hon Kim* is preferable to that in *Bebe*. In particular, the latter Court of Appeal is clearly unduly influenced by a misconceived notion of personal equities, shaped by the spurious nature of the claim on the facts of *Bebe*.

15. Thomas Cheng - The Interface between Competition Law and Patent Law in Developing Countries

The intersection of competition law and intellectual property rights (IPRs) is one of the most complex areas of competition law. These two areas of law share a potentially conflicting relationship, as competition law restricts the abuse of substantial market power while IPRs may confer market power. Commentators in developed countries have proposed various ways to resolve this conflict. Some of them give primacy to competition law, while others emphasize the importance of protecting IPRs. Yet some others advocate solutions that require balancing the policy considerations underpinning these two bodies of law. While scholarship from developed countries is didactic on how developing countries should resolve this conflict, developing countries must be mindful of their own unique policy considerations. The main justification for protecting IPRs, especially patents, is to generate incentives to innovate. This justification is persuasive in developed countries, where most of the potential inventors in the world are located. It carries much less weight in developing countries, most of which possess limited capacity to innovate. In resolving the conflict between competition law and IPRs, developing countries must recalibrate the balance struck by developed countries. This paper will examine how developing countries should strike this balance as a matter of sound competition policy, taking into account both allocative and dynamic efficiency considerations.

16. Young In - Globalization and Statutory Trends in Company Law: Closing the Gap Between the Common Law and the Civil Law

Recently, several jurisdictions, including Hong Kong, have overhauled and amended their companies, financial and securities laws, and the activity in the credit markets and current financial crisis will likely spur more regulation of the commercial sector. With the promulgation of more statutes and increasing regulation, some scholars fear that the common law plays, and will play, a diminishing role in corporate law. Other scholars have argued that the perceived historical tension between the common law and regulation in such fields as constitutional law or environmental law does not preclude the continuing vitality of the common law. Such scholars highlight the interaction between the common law and regulation, which allows judges to interpret gaps in statutes, assess damages or insert flexibility in complicated cases. Similarly, I argue that common law concepts, as well as the common law approach, still serve as relevant sources of Hong Kong corporate law, as evidenced by statutory developments and case law since 1997 and 2001, which hold significance as crucial years of amendment of the Hong Kong Companies Ordinance.

17. Alex Mak - The Prospect of a Hybrid Form of ADR – Mediation-Arbitration (Med-Arb) – in Hong Kong: Experience from Countries in Asia

There is a growing popularity for Alternative Dispute Resolution (ADR) in Asia. Med-Arb is one type of

ADR models other than litigation and the common types of ADR tools e.g. pure arbitration and pure mediation. Med-Arb is essentially a combination of the technique of mediation and arbitration for resolving disputes. The presenter will discuss the legal frameworks and experience of some Asian countries and evaluate the prospect of Med-Arb in Hong Kong and its applicable fields.

18. Chan Wing Cheong - "Family Conferencing for Juvenile Offenders in Singapore: An Improvement or a Missed Opportunity for Restorative Justice?"

The restorative justice movement has caught on in many different jurisdictions around the world, including parts of Asia such as the Philippines, Thailand, Hong Kong and Singapore. The use of "family conferencing" (also called "family group conferencing") for juvenile offenders is one of the schemes often adopted under the heading of restorative justice. This paper examines the meaning of restorative justice and how family conferencing is practised in Singapore. Two studies carried out by the Subordinate Courts on the effectiveness of family conferencing are critiqued. The paper ends by making some suggestions for other Asian jurisdictions (such as Hong Kong where family conferencing has been proposed) to consider based on Singapore's experience.

19. Simon Chesterman, "Does ASEAN Exist? The Association of Southeast Asian Nations as an International Legal Person"

The ASEAN Charter, adopted in Singapore in November 2007, asserts in Article 3 that ASEAN "as an inter-governmental organisation, is hereby conferred legal personality". This paper will examine the legal status of the association. Crucially, it will examine the question of whether the whole is greater than the sum of its parts.

20. Michael Ewing-Chow and Arun Thiruvengadam, "Through the Looking Glass: An analysis of Recent trends in Judicial Reforms in Singapore and India"

Our paper focuses on a recent World Bank publication that describes and analyses a series of legal and judicial reforms undertaken by the Singaporean judiciary over a 15 year span between 1992 and 2007. The World Bank publication, authored by Waleed Haider Malik, adopts a "management-oriented" perspective to conclude that the reform process in Singapore has made its court system "more efficient" and responsive to user needs, and that the process has "much to offer other nations looking to improve their court systems." A fundamental premise of the Malik Report appears to be that the Singapore legal system is a good model to follow because it is one of the most efficient in the world. This analysis is in sharp contrast to the critique of the Singapore judiciary offered by international human rights and lawyers' bodies.

We use contemporary debates about reforming the legal and judicial system in India as a prism through which to view and analyse the Malik Report. We contend that India presents fertile ground for such an analysis because assessments of India's judicial system present a mirror-image of those offered on Singapore's judiciary. Each of these jurisdictions is perceived as possessing and lacking the systemic virtues and vices that are present in the other. After presenting an overview of these aspects, we seek to demonstrate how our analysis fits into contemporary debates about law and development more generally.

These two jurisdictions point to the vast differences in the criteria used by different people and institutions to assess judicial institutions. The dichotomy in variables that are used to measure the success of legal and judicial institutions is also reflected in the literature on the rule of law, and in the field of law and development. Our paper makes an attempt to chart these contradictions, before laying out the troubling implications of allowing such dichotomies to persist. We conclude with tentative thoughts on resolving the contradictions in future studies.

21. Goh Yihan – “Statutory Interpretation In Singapore: 15 Years On From Legislative Reform”

In 1993, the Singapore Parliament passed legislation directing the courts to prefer an interpretation that would promote the purpose or object underlying any written law. That same legislation also contained guidance on when extrinsic materials may be referred to in ascertaining the meaning of a statutory provision, as well as the type of materials which may be considered in such circumstances. This article provides an update on the 15th anniversary of the aforementioned legislative reform on statutory interpretation in Singapore, shedding light on the remarkable transformation in the approach taken by the Singapore courts towards statutory interpretation: indeed, from an initially cautious approach, the Singapore courts have now adopted an extremely expansive view of the effects of the 1993 reform. This article outlines some problems for the future, along with the attendant suggested solutions, for further consideration. It is hoped that the account provided in this article will be of interest to the particular issue of the local approach in statutory interpretation and, more broadly, to the universal and enduring problem of the proper approach towards statutory interpretation.

22. Ho Hock Lai – “Entrapment and the Principle of Clean Hands”

State entrapment is a problem. We can be clear about why it is a problem only if we are clear about what it is or amounts to. There is the related but different problem of how the criminal court should respond to state entrapment. Judicial responses vary within the common law world; they include ignoring the fact of entrapment at the trial proper and taking it into consideration only at the sentencing stage, recognizing entrapment as a substantive defence, ordering a permanent stay of the criminal proceedings on the basis that it is an abuse of process, and excluding evidence obtained in the entrapment on the ground of unfairness or public policy. This paper offers a theory in support of a stay. A criminal trial is a process of holding the executive to account on its request for conviction (condemnation) of a citizen. Where the citizen was entrapped by the state into committing the crime with which she is charged, the state lacks the moral standing to seek condemnation of her conduct.

23. Terry Kaan – "Closing Barn Doors: Fiction and Reality in the Design of Legal Protection Regimes for Electronic Medical Records"

Large-scale electronic longitudinal medical records databases and systems are rapidly gaining currency in countries around the world. These EMR systems go beyond merely replacing paper records, and open up possibilities and uses of immense interest to biomedical researchers - and to governments. In addition to patient EMR systems, most developed countries also have well-established complementary large-scale disease registries operated at the national or local government level for epidemiological and health policy planning purposes, which can be, and increasingly are, plugged into national EMR systems, with profound implications for research possibilities - and for the protection of individual privacy. Some of the most medically-advanced countries are also now engaged in a race to set up even more ambitious allied undertakings, notably genomic banks, biobanks and large-scale longitudinal cohort studies. These biobanks track not only the episodic interactions of patients with a given healthcare system, but seek to track large numbers of individuals over (ideally) entire life cycles, in which points of information and, in many cases, genetic and physical samples from participants are periodically taken from the time when they enter the system in a healthy state, to their final illness. Governments around the world have sought to address concerns of the privacy of individuals by fashioning legal regimes aimed at the protection of the data. In most cases, however, the primary assumption is that the main mischief that the legal regime must protect against is deliberate criminality. Increasingly, however, the experience around the world is that this is a misplaced assumption: the main point of failure is not a matter of insufficient robust legal protection against criminal breaches, but simple human operator error and poor database design. This paper examines recent notable failures in EMRs and similar databases, and their implications for the proper design of EMRs, disease registries, biobanks and cohort studies, and for research access.

24. Jaclyn Neo, “ Reformasi in the Courts: Restoring Judicial Restraint of Executive Discretion under Malaysia’s Internal Security Act”

In the past decade or so, the Malaysian political and legal landscape has experienced significant changes, though the significance and magnitude of those changes are not always immediately appreciated. On the political scene, the *Reformasi* movement born in 1998 was instrumental in the ruling alliance’s worst electoral showing since Malaysia’s independence in 1957, which greatly weakened the executive. A similar *Reformasi* is occurring within the judiciary and this is most prominently marked by the case of *Mohamad Ezam Mohd Nor v Ketua Polis Negara & other appeals*, which partially reformed the law on preventive detention. The reform is modest, in that the courts will only review the decisions of the police officers to detain persons without trial objectively, leaving ministerial decisions to detain under the subjective test of judicial review. However, the Federal Court’s decision has potential for wider applicability, and this, coupled with the current political climate, should inspire further judicial restraints on the heretofore near absolute executive powers under Malaysia’s Internal Security Act.

25. Tan Yock Lin, “Public Interest Sentencing in Singapore”

A familiar landscape is under examination and the focal point is the role of public interest in sentencing. Uniquely among Commonwealth countries, the public interest is a prominent feature in sentencing in Singapore. I inquire whether there is in fact a public interest principle and explain how the public interest serves as a determinant of ordinal and cardinal proportionality and figures importantly in the process of judicial benchmarking. I argue that the Singapore courts have in fact developed an enlarged and defensible role for the public interest and that the notion that there is a balancing between public and private interest is misconceived. The examples I have selected should give us rapid proofs of this uniquely Singaporean contribution to sentencing jurisprudence. If the tabulations are correct, the larger issues must also be faced. Is sentencing the preserve of the judiciary and legislature? Does the executive have a role in it? Is there a public input?

26. Tang Hang Wu, “The Networked Electorate: The Internet and the Quiet Democratic Revolution in Malaysia and Singapore”

This paper is intended to be a contribution to the literature on claims of the democratizing effect of the Internet. The paper begins by setting out the arguments and also critiques of claims of the democratizing power of the Internet. In order to test the validity of these arguments, the author will undertake a comparative study of the impact of the Internet on recent general elections in Malaysia and Singapore. The study will demonstrate that in the case of Singapore, the Internet has merely exerted some pressure on the pre-existing laws and state-imposed norms governing free speech; in contrast, in Malaysia, the Internet was a major contribution to what has been described as a 'political tsunami' during the recent general election. In this comparative study, the author will attempt to explain the reasons why the impact of the Internet has been so different in both jurisdictions which share similar laws, culture and language. It will be suggested that, in spite of their similarities, the main reasons for this phenomenon are subtle but important differences in terms of legal, social, economic conditions and also the political climate in both jurisdictions. Despite this difference, the claim made in this paper is that that the Internet, due to its evolving architecture, is beginning to generate important norms governing free expression which are capable of having an effect on the electorate. In both countries, the Internet connects individuals to become networks which in turn create powerful echo chambers which has or will ultimately strain the effectiveness of pre-existing laws and state-imposed norms governing free speech. It is also suggested that the recent events in Malaysia has inspired nascent Internet activism in Singapore which potentially may be of greater influence in future elections.

27. Teo Keang Sood, “Protecting minority’s interests in collective sales”

The paper will look at collective sales in Singapore, in particular the tension between facilitating such sales and the rights of minority owners in respect of their properties. It will also discuss how the relevant provisions deal with this and other issues and the judicial approach in this regard.

28. Tey Tsun Hang, “Press Freedom in Hong Kong and Singapore”

Despite sharing the heritage of the British-imposed illiberal but lightly enforced press control regime, Hong Kong and Singapore have taken divergent paths in charting their respective models. The first decade of Hong Kong transitional experience has been an encouraging one, without adverse legislative intrusion into its press control regime. The Hong Kong model resembles a hybrid - with libertarian elements and liberal approach to enforcement within an illiberal framework. For Singapore, with its emphasis on constructing a political and legal framework conducive to nation-building, economic progress, social and political stability, its model reflects an emphasis on the constrained, and yet constructive, role of the press in society. This paper seeks to survey the elements making up these models.

29. Helena Whalen-Bridge & Rathna Nathan, “Legal Education In Singapore and Pro Bono Legal Work: An Examination of the Basis of Pro Bono Legal Work and A Comparison of Mandatory and Voluntary Pro Bono Programmes for Law Students in an LL.B. Curriculum.”

Few would disagree that practicing lawyers should be aware of their obligations to the larger community or that they should assist in bringing about access to justice through pro bono work. Most law schools encourage students to participate in pro bono work through some combination of clinical or volunteer pro bono placements. There is considerable disagreement, though, about whether students should do mandatory pro bono work as a required part of their law degree. This paper examines the pedagogical bases for student participation in pro bono work as well as some factors influencing the Singapore context. While a mandatory requirement would increase student awareness and institutional commitment, it would not fit well with the goal of bringing about student judgment, nor would it reflect the professional ethical context of individual choice. On balance, pro bono opportunities should be available in law school, but making pro bono activities compulsory has ramifications for legal culture that need to be considered as well.

30. Kumar Amirthalingam – *Donoghue to Spandeck* – 75 Years of the Duty of Care

This paper examines the duty of care jurisprudence from the seminal decision of *Donoghue v Stevenson* [1932] AC 562 to *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] SGCA 37. For the past 75 years, courts and commentators around the common law world have searched for the perfect statement of the duty of care. While this is a valuable exercise, it is equally important to study the philosophical foundation of the tort of negligence and question the extent to which evolving social and economic conditions should influence the scope of the duty of care. The question of what role negligence ought to play in the 21st century may prove to be more illuminating than a quest for the perfect statement of a duty of care test.