

**The 24<sup>th</sup> Goff Arbitration Lecture by Mr Neil Kaplan:  
“Isn’t 700 Years Long Enough? – Time to Think Again about Costs”**

Xu Di

3 April 2019



The CityU School of Law hosted the 24th Goff Arbitration Lecture on 2 April 2019 at the Hong Kong International Arbitration Centre (HKIAC). This year, we are honoured to have **Mr Neil Kaplan CBE QC SBS**, a preeminent international arbitrator, who also delivered the 6<sup>th</sup> Goff Arbitration Lecture back in 1995, as the speaker to give a lecture again. This year’s lecture focused on the question of costs in arbitration. Renowned legal practitioners such as Matthew Gearing QC, Chairperson of HKIAC and Rimsky Yuen Kwok-keung, GBM, SC, JP among about 100 attendants participated.

The lecture was kicked off by the speech of **Dr Christopher To** (Adjunct Professor and LLMArbDR Programme Director of CityU School of Law), who introduced the speaker, welcomed all the participants and thanked them for their support for the lecture.

Mr Kaplan's lecture is titled "Isn't 700 Years Long Enough? – Time to Think Again about Costs". The crucial question he addressed in the lecture is why the English cost shifting rule is being around for 700 years in England. He explained that the cost shifting rule, that is, "costs follow the event", requests the losing party to compensate the winner for its costs. According to him, law often lags behind social change, so we should not necessarily be bound by the age of the law, but to examine it in light of current circumstances.

He then traced the historical background of the cost shifting rule and examined changes occurred to justify a reconsideration of the rule. Some of the factors he mentioned included the fact that society is becoming more complex which in term impacts on the complexity of disputes; the areas law intervenes in have increased numerously; arbitration becomes the third method of resolving disputes through entities in different jurisdictions; the fees for arbitration cases have been increased sharply, etc. He said that all these factors added to the cost and complexity of arbitration.

In the lecture, he also compared the American rule, that is, each party bears its own costs, with the English rule; reviewed various criticisms with regard to the English rule in empirical studies and gave some suggestions on how we can do better.

After the lecture, the participants raised interesting questions and interacted with Mr Kaplan in the Q & A session moderated by Dr Christopher To. Finally, **Prof Geraint Howells** (Dean of School of Law, CityU and Chair Professor, Commercial Law) gave a vote of thanks and presented a gift to Mr Kaplan in thanking him for delivering an insightful lecture.



## **Goff Arbitration Lecture:**

The Goff Lecture was instituted in 1990 by the City University of Hong Kong to celebrate the commencement of our Master of Arts in Arbitration and Dispute Resolution. The first lecture was delivered by Lord Goff of Chieveley, Lord of Appeal, who then consented to the series bearing his name. The Goff Lecture provides an excellent opportunity for discussion and exchange of views among practitioners and academics in the arbitration field. Over the years, the Goff Arbitration Lecture has gathered 23 eminent scholars to share their views on arbitration.

## **About the Speaker:**

Neil Kaplan CBE QC SBS has been a full-time practising arbitrator since 1995. During this period he has been involved in several hundred arbitrations as co-arbitrator, sole arbitrator or chairman in England and Hong Kong, but also in the USA, Canada, France, Germany, Croatia, Austria, Philippines, China, Laos, Japan, the Netherlands, Malaysia, Australia, Denmark, Sweden and South Africa.

Called to the Bar of England and Wales in 1965, Neil Kaplan has practiced as a barrister, Principal Crown Counsel at the Hong Kong Attorney General's Chambers, and served as a Judge of the Supreme Court of Hong Kong in charge of the Construction and Arbitration List. He is also past Chairman of the HKIAC and past President of the Chartered Institute of Arbitrators. He is a Governing Board Member of the International Council of Commercial Arbitration (ICCA) and a panelist of several arbitral institutions including China International Economic and Trade Arbitration Commission (CIETAC).

