



## CCCL Distinguished Public Lecture: Interpretation of Contracts by Emeritus Professor Ewan McKendrick (11 Nov 2022)

15 Nov 2022

Katy Ng

Many contract disputes are resolved by reference to the terms of the contract that has been concluded between the parties. Given that many contract disputes turn on the proper interpretation of the terms of the contract, the approach taken by the courts to the interpretation of contracts is a matter of considerable significance both in terms of commercial practice and legal theory. On 11 November 2022, the Centre for Chinese and Comparative Law (CCCL) of the City University of Hong Kong's School of Law hosted a Distinguished Public Lecture to assist students and lawyers in understanding common law rules concerning the interpretation of contracts. **Prof. Ewan McKendrick**, Emeritus Professor of Law, Oxford University was invited as our distinguished speaker. **Professor Liu Qiao**, the CCCL's Deputy Director chaired the public lecture.

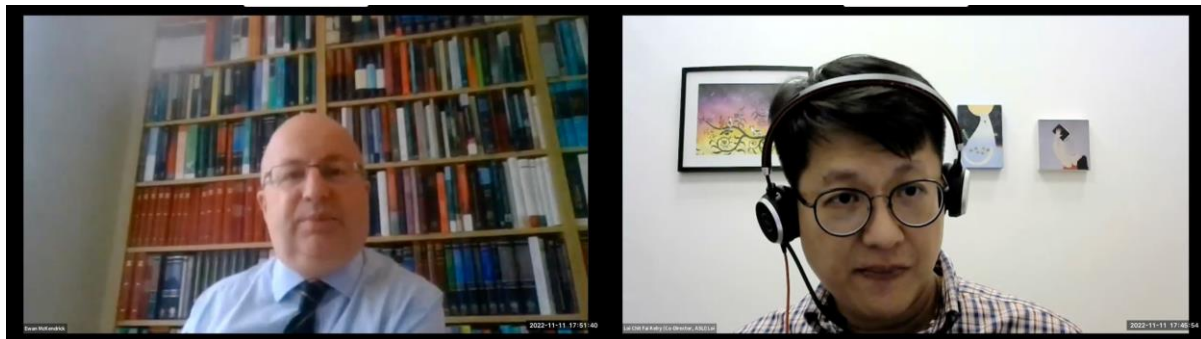
**Professor Wang Jiangyu**, the CCCL's Centre Director, delivered a welcome speech to start the public lecture.

**Ewan McKendrick**, BCL, MA, LLB (Edinburgh), QC (Hon) is a Professor of Anglo-American Law at the University of Leiden and an Emeritus Professor of English Private Law at the University of Oxford. He is a Bencher of Gray's Inn and a member of chambers at three Verulam Buildings, Gray's Inn. He was the Registrar of the University of Oxford from 2011 to 2018.

He began the lecture by explaining the relevant factors of contracts including the natural and ordinary meaning of the clause, any other relevant provisions of the contract, the overall purpose of the clause and the contract, the facts, and circumstances recognized or assumed by the parties at the time of entry into the contract and commercial common sense. He then mentioned the re-statements of the applicable principles. He emphasized that interpretation could be implied into the contract as a 'unitary exercise and also as an 'iterative' process. Under the corrective interpretation, he argued that both statements must be satisfied otherwise there is a risk that the court will be making the contract for the parties. He in addition pointed out that the precedent value of the case law is low unless the term in dispute is a term of art or is a term widely used in an industry or in a widely used standard form contract where it is more likely that the meaning given to the disputed term will apply to all contracts of that type. He also explained the demise of

the contra proferentem rule, which was replaced by a rule which requires that ‘clear words’ must be used if valuable rights are to be taken away. To explain the entire agreement clauses, he provided some background in English Law. He moved to talk about the interpretation of entire agreement clauses, liability for false statements, force majeure clauses, and hardship clauses. Ultimately, he raised some inspiring questions such as if the clause requires the parties to meet to negotiate an adjustment to the contract, is that clause enforceable?

**Associate Professor Kelry Loi**, Associate Professor at the National University of Singapore and co-director of the Asian Law Institute led a discussion session following Professor Ewan McKendrick's thought-provoking speech, in which they shared their insights. The majority of all those attending took the opportunity to express themselves, and many of them were insightful and imaginative. **Professor Liu Qiao** gave a closing remark in which he thanked all of the attendants for their contributions to the lecture's success.



Professor Ewan McKendrick and Associate Professor Kelry Loi (From left to right) °



Professor Liu Qiao and Professor Wang Jiangyu(From left to right) °