



Hong Kong Commercial
and Maritime Law Centre

香港城市大學
City University of Hong Kong

www.cityu.edu.hk

ALSA - HKCML Joint Conference: Transplantation of Foreign Law and the Creation of Unique Legal Solutions in Asian Legal Systems

14 February 2023

Claire Tang

Legal systems develop, sometimes through the borrowing of foreign laws and institutions, sometimes through developing unique solutions. Even when foreign laws and institutions are borrowed and transplanted, there is invariably adaptation and transformation. The online conference on 13 January 2023 brought together scholars who investigate the phenomena of legal transplants, the development of legal innovations, their interactions, and how they affect development of legal systems.

Panel A began with a paper by **Prof. Virginia Ho (Professor, City University of Hong Kong School of Law)** entitled “Beyond Transplants: Transnational ESG Governance in East Asia.” Prof. Ho observed how transnational actors, such as the

G20 Financial Stability Board, are developing norms for climate risk managements, and these norms are now stimulating legal reform in East Asia. These reforms often contain unique accents and contain novel elements. Interestingly, even as external norms stimulate the legal transplantations and innovations, the developments in East Asia in turn reinforce the innovations in other regions. In “Legal Transplants in Chinese Company law: A Complex Reality,” **Dr Wenjing Chen (East China University of Political Science and Law)** spoke on how Chinese Company Law transplanted legal concepts such as the derivative action and the directors’ duty of care. Noting divergence in how the transplanted rules operate in China and how they operate in the host jurisdictions, Dr Chen argued that close attention should be paid to how the rules are interpreted and applied by the judges, and that it is insufficient merely to borrow legal rules and norms. **Mr Wanqiang Wu (Shanghai Jiao Tong University, KeGuan School of Law)** gave a presentation on “Something Borrowed and Something Created: The Transplantation of Criminal Corporate Compliance in China.” Direct borrowing from major Western criminal corporate compliance models does not work for China. The same goes for criminal law and criminal procedural law. Mr Wu explored why considering the ideas, values and existing institutions of the transplant jurisdictions are necessary to create unique and suitable legal solutions. In “Adapting Traditional Chinese Legal Culture to Westernised Property Law: A Comparative Study of Mainland China, Hong Kong, and Taiwan,” **Dr Alvin Hoi-Chun Hung (Australian National University, ANU College of Law)** found that although these three jurisdictions share the same traditional culture, their legal systems are rooted in different legal traditions. He explored how this accounts for the differences and how the three jurisdictions deal with the conflict between traditional customary and transplanted western legal concepts.

Panel B started with a presentation by **Dr Elizabeth Brandon (University of Stirling, Faculty of Arts and Humanities, Law and Philosophy)** on “The use and adaptation of foreign laws for World Heritage sites in selected Asian countries.” Dr Brandon compared the transplanted legislation on World Heritage Sites in India, Sri Lank and Malaysia and analysed the tension between local needs and foreign law, and how the international guidelines in World Heritage protection legislation were tailored to accommodate local needs. In “Weak-form Judicial Review in An Implicit Way: Chinese Courts’ Strategic Responses to Fintech Regulation,” **Dr Pan Su (Shanghai University of Finance and Economic, Law School)** found that rather than reviewing the legality of P2P Regulation, Chinese judges review the applicability of the P2P Regulation. By such implicit review, Chinese courts balance the administrative power and the private autonomy protection. Finally, **Ms Marianne von Blomberg (University of Cologne, Institute of East Asian Studies – Chinese Studies, Faculty of Arts and Humanities, Chinese Legal Culture)** spoke on “Innovating Administrative Law for the Data Era or Undermining Legal Principle? The Social Credit System Through the Lens of Chinese Legal Literature.” Ms Blomberg provided an insightful analysis of the Social Credit System, an innovative data-driven regulatory system, and the potential conflicts with existing legal framework and principles.



Prof. Virginia HARPER...

Asian Law Schools Association (ALSA) & Hong Kong Centre for Commercial & Maritime Law
City University of Hong Kong School of Law, 13 January 2023

Beyond Transplant: Transnational ESG Governance in East Asia

Prof. Virginia Harper Ho, City University of Hong Kong School of Law



Wanqiang WU



上海交通大学
SHANGHAI JIAO TONG UNIVERSITY



School of Law
香港城市大學
City University of Hong Kong

Something Borrowed and Something Created: The Transplantation of Criminal Corporate Compliance in China

Wanqiang Wu,¹ *Ph.D Candidate*

¹KoGuan School of Law, Shanghai Jiao Tong University, Shanghai, China

Legal Transplants in Chinese company law, A Complex Reality (Chen Wenjing 20230113)(1) - PowerPoint

amychenecupl@sina.com

Chen Wenjing

文件 开始 插入 绘图 设计 切换 动画 幻灯片放映 录制 审阅 视图 帮助 操作说明搜索

剪贴板 新建 幻灯片 格式 字体 段落 绘图 形状填充 形状轮廓 形状效果 查找 替换 选择 编辑

1 2 3 4 5

General evolution of Chinese compa...

Legal Transplants in Chinese company law: A Complex Reality

CHEN Wenjing
Associate Professor
East China University of Political Science and Law
2023.01.13

单击此处添加备注

幻灯片第 1 张, 共 10 张 中文(中国) 辅助功能 调查 62%

Presentation Slides (Alvin HC Hung) - Saved to my Mac

Home Insert Draw Design Transitions Animations Slide Show Review View Recording Tell me

Font Size: 22

Copy Paste Format New Slide Section

Convert to SmartArt Picture Shapes Best Bet Arrange Quick Styles Shape Outline Designer MathType

1 2 3 4 5

Traditional Chinese legal culture

Today's English legal

Adapting English legal - Hong Kong

Adapting English legal - Mainland China

Adapting English legal - Taiwan

'Transplantation of Foreign Law and the Creation of Unique Legal Solutions in Asian Legal Systems': ALSA - HKCML Joint Conference

Adapting Traditional Chinese Legal Culture to Westernised Property Law: A Comparative Study of Mainland China, Hong Kong, and Taiwan

Alvin Hoi-Chun Hung
Postdoctoral Fellow, Australian National University

Upcoming paper: 'Filial Piety across Legal Systems: Analyzing the Influence of Traditional Chinese Legal Culture of Property in Hong Kong, Taiwan and China' (2023) Asian Journal of Comparative Law

Slide 1 of 10 English (United States) Accessibility: Investigate Notes Comments 140%

AutoSave On CryU Presentation slides.pptx • Saved to this PC

Elizabeth Brandon

File Home Insert Draw Design Transitions Animations Slide Show Record Review View Help

Paste New Slide Reuse Slides Reset Section Clipboard Slides Font Paragraph Drawing Editing Voice Designer

1 The use and adaptation of foreign laws for World Heritage sites in selected Asian countries

2

3

4


5

6

Click to add notes

Dr Elizabeth Brandon, Lecturer in Law
University of Stirling, United Kingdom

Pan Su



Weak-form Judicial Review in An Implicit Way: Chinese Courts' Strategic Responses to Fintech Regulation

Pan Su
Shanghai University of Finance and Economics



Innovating Administrative Law or undermining legal principles?

The Social Credit System through the lens of legal scholarship

January 13th, Hong Kong

Marianne von Blomberg & Björn Ahl
marianne@von-blomberg.com