

TRANSCRIPT – STUDENT QUESTION TO CJ - Q&A PORTION – GOFF LECTURE 2021

TIMESTAMP START AT 1:33:09

Transcription by: Jonathan Galaviz on Jan. 10, 2022

Note: transcript contains very slight edits to allow for proper phraseology and readability

LLMArbDR Student: Chief Justice, can you hear me ok?

Chief Justice: I can, thank you.

LLMArbDR Student: Thank you so much, just have a question(s).....thank you so much for spending your time with us at City University of Hong Kong, it is great to have you here.

Just a quick question that is a little bit off-topic, but I think related to what your thesis is in terms of your lecture here.

I guess first, what is your view on the future of arbitration and mediation in Hong Kong? As you know there's been some strategic challenges for the last few years in Hong Kong and I am curious to see if you have a view from your perch in Singapore as to what the future.....and what some of the positive aspects of Hong Kong's competitive position for arbitration and mediation is in the future?

And second, what is your recommendation to arbitration and mediation students in terms of their study of this topic and what are some of the things they should be paying attention to moving forward?

Chief Justice: Thanks very much. Sorry, but how do I address you?

N. Kaplan: Can you give your name please?

Student: Jonathan

Chief Justice: Thank you very much Jonathan.

In my time as an advocate – which is going back sometime – I had the great privilege of doing quite a lot of disputes work in Hong Kong in both arbitration and mediation, as counsel. I have to say, I think Hong Kong is blessed with an incredible pool of talent in both these fields.

I came across some of the most impressive mediators in Hong Kong in my time as an advocate and certainly in the field of complex

arbitration, I think some of the cases that have been dealt with in Hong Kong are probably amongst the largest that were dealt with in my time as an advocate. I am ten years at least out of date, but that informs my perspective on Hong Kong's standing as a centre, which is that I think it will remain a critically important centre – and it will remain an especially important centre because of its geographical proximity to probably the most important economy in the world, which is China.

People who have investments, projects or commercial activities in China will naturally, I think, tend, to a greater extent than anywhere else, to think of Hong Kong as the place they go to raise their money, to get their legal services, to resolve their disputes, and the Hong Kong judiciary and the arbitration centre have taken a number of very good steps in securing that in terms of arrangements with the PRC [People's Republic of China].

So, I continue to think that Hong Kong will be a critically important centre in the world of dispute resolution – not just in Asia, but in the world. I would venture to say that if anything has happened over the course of the last two decades, it is the fact that, in my view, today we have two centres in Asia [Hong Kong and Singapore] that can take their standing as reputable international centres for legal services.

Singapore, I think, has joined Hong Kong in that bracket – that's my perspective. I actually think that's a tremendously positive development – something that I think we collectively should take tremendous pride in.

That Asia will, in my view – and I have said this for a number of years – I think Asia will be the centre of economic activity in the world for the next 20-30 years at least. I think it will be a critically important centre for economic activity in Asia [Hong Kong].

If you think about it, the fact that we have two leading centres with strong courts, strong pools of lawyers and arbitrators, and dispute resolution professionals is something we should be incredibly proud of and incredibly optimistic about. Because the rule of law is what is going to secure the growth of investment looking into the next few decades. So, I would be really quite optimistic and bullish about the first point.

The second point that you talked about is something, Jonathan, that is extremely close to my heart – Cheng Han [Professor TAN Cheng Han, Dean, City University of Hong Kong, School of Law] knows this because I have done quite a lot of speaking, talking and thinking about the future of legal education.

I think that we are due for a major reset. I heard Cheng Han's opening remarks and I wanted to congratulate Cheng Han because I think the City University [of Hong Kong] is doing absolutely the right thing in developing 4-5 joint programmes, because I think that the way we think about the law – those people in Neil's [Kaplan] and my generation – we sort of thought about the law as a discrete field of study.

We sort of thought about the law as something that only lawyers knew and that was all lawyers needed to know, because that equipped them with the special knowledge from which they could solve problems in a legal way.

I think that assumption has got to be thrown out the window, because in part – coming back to the subject of my remarks this evening – in part because of the growing complexity that science has forced upon us.

Just to give you one example, and I talk about it just because it was one of the more recent things that we had to deal with. A year or two ago we dealt with a case involving algorithmic trading and contracts that were formed by algorithmic trading.

In the Court of Appeal, we had to deal with the consequences of this in the context of unilateral mistake; how do you transport the principles of unilateral mistake that were made in the context of two people sitting down and meeting, talking to one another and forming a contract. How do you transpose those principles to a field where the contract was concluded by two computers that somehow formed a communication with each other and concluded a contract?

Now, the point I am making is a large part of that was trying to understand the technology behind what was going on, and you needed to understand that in order to figure out how far you could transport those principles that were developed in a physical context into that virtual space – and that I regard as one of the simplest manifestations of the types of issues we are going to have to deal with.

My view is we really need to re-think the way we approach law school. One of the first things that I would be thinking about from the perspective of trying to sit down with a blank piece of paper and design a law school curriculum would be – things like having multi-disciplinary education. Things like infusing areas of [legal] study so that people grow up not just to know the law, but to understand how the law is going to operate in today's context. And, more importantly

perhaps, equip them with the skills to think in terms of how the law is going to operate in tomorrow's context. Because it is all going to change, and it is all going to change very dramatically and rapidly. And unless you are ready for that, you are going to be extinct, outdated, and obsolete very fast. We can't afford that.

The danger is that in most common-law countries we are still teaching law – and I limit myself to common-law countries only because I don't know enough about civil law countries – but in most common-law countries we are still teaching law essentially the way it's been taught for a couple of hundred years, maybe more.

I don't think that is appropriate anymore because the world has changed so much in the last decade, and it's going to change so much more in the next few decades that now is the time for us to rethink how we think about the law.

I also think that with greater complexity with the types of issues that we are going to face, our legal firms and our legal professionals are not going to be limited to LLBs [law graduates]. You are going to have computer scientists who do coding for lawyers. You are going to have people who understand computers and code to do discovery, and to manage documents, and to convert all of the stuff into a way in which you can use the technology to make sense of it.

You are going to need people, like logistics people to deliver a project – you are going to need computer scientists, coders. So, the way a law firm is going to look in ten years' time, my guess, is going to be quite different from what we have been accustomed to. We should be training our law students with that picture in mind.

I think this is an incredibly exciting time to be a law school educator, but the problem is I am not sure that many of our stakeholders are enthusiastically on the same page yet. The struggle is going to be getting the key stakeholders onto that page, but I think it is going to happen very fast.

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