
RESEARCH PROJECTS

“Source of the Hong Kong Courts’ Power to Rule on the Compatibility of Primary & Secondary Legislation in Hong Kong with Civil Rights Contained in the Basic Law of Hong Kong”

- ✉ JHAVERI Swati Suryakant
- ☐ 28 November 2006
- ❖ Student Campus Work Scheme - Chiap Hua Chen's Foundation Fund

This research project develops a theory of the idea of “judicial power” as contained in Article 80 of the Basic Law of Hong Kong in the specific context of the courts’ power to rule on the compatibility of legislation with rights contained in the Basic Law. Since 1997, the Basic Law has provided a source of rights in Hong Kong and in recent years the courts have increasingly used those rights to rule on the constitutional validity of legislation. This includes adjudications in contexts where there has been no concrete government decision under the relevant legislation. The source of the courts’ power to exercise this form of abstract norm control is relevant to an increased understanding of the separation of powers between, inter alia, the legislature and the judiciary and the overall institutional structure that is relevant to giving effect to rights contained in the Basic Law. In carrying out such adjudications, the courts themselves have relied on the “judicial power” they have under Article 80 of the Basic law. This project evaluated this judicial justification with a view to developing a theory of the idea of “judicial power” that provides guidance on what may be an appropriate role for the judiciary in relation to such abstract normal control.

(LL06920)

Analysing Judicial Contributions to a Theory of Fundamental Rights under the Basic Law

- ✉ JHAVERI Swati Suryakant
- ☐ 1 May 2008
- ❖ CUHK Research Committee Funding (Direct Grants)

This project will investigate the HK. courts' contributions to an understanding of the fundamental rights contained in the Basic Law ("**Fundamental Rights**"). In particular, it will consider how the Fundamental Rights should be understood in terms of their: (a) *Structure* (for example, should be understood as absolute values or as qualified in a way that allows certain limitations?); and (b) *Function* (for example, what are the implications of our understanding of the Fundamental Rights on the importance and role of rights in decision-making by the different arms of government; does the courts' approach imply that rights function as 'trumps'? Or are they simply principles that must be achieved as far as possible). The above analysis will then be used to develop a theory of the Fundamental Rights that can guide both the judiciary and the two arms of government in constitutional decision-making.

(LL07827)

An Analysis of the Regulatory Framework and Feasibility of Local Medicines Production in the Developing World

- ✉ MERCURIO Bryan Christopher
- ☐ 1 June 2008
- ❖ CUHK Research Committee Funding (Direct Grants)

This research will critically analyse the idea and feasibility of shifting production of life saving, essential drugs, to LDCs as a means of improving access to and the development of such drugs. In this regard, this research will analyse and evaluate several aspects of such a production shift. For instance, first and foremost, the patent, investment and general regulatory framework of a country must be suitable in order to be able to attract such large scale investment. Next, the production facility must not only be able to produce safe and effective medicines and drugs, but it must actually produce such drugs with little to no variation. Again, the regulatory laws of a country are crucial to ensure the safety and efficacy of the output, but as important is the ability of the nation to effectively enforce its laws. Thus, not only are the laws important, but also the strength of the judiciary, police and legislature as well as other factors, such as corruption levels. The final three areas to review are the costs of setting up such a large-scale production facility, the potential market for the output and the barriers to entry to the market.

(LL07742)

The Systemic Issues in the Doha Multilateral Trade Negotiations on the WTO's Regulation of Regional Trade Agreements

✍ WANG Jiangyu • LING Bing • KONG Qingjiang* • WAN Yiting*

□ 1 September 2007

❖ Ministry of Commerce Research Grant

This project will conduct a legal analysis of the systemic issues in the WTO's regulation of the proliferating regional trade agreements. The following issues will be explored: (a) the legal relationship between the WTO and regional trade agreements; (b) the definition of certain substantive

issues including "substantial all trade", "other regulation of commerce", "other restrictive regulations of commerce"; (c) the transition periods in RTAs; and (d) the development dimension of WTO rules on RTAs. It aims to provide policy recommendations to the PRC Ministry of Commerce and the Chinese delegation in the WTO to assist China's participation in the Doha Round WTO negotiations on WTO rules on regional trade agreements.

(LL07617)

From Dongguan to Beijing: The Path of Judicial Innovation in China

✍ XI Chao

□ 1 November 2007

❖ Endowment Fund Research Grant Scheme

Traditionally, local courts in China do not assume an important role in the creation of new legal rules. There is growing evidence, however, that Chinese local courts are beginning to assume larger roles not only in applying the law but in creating it (see, e. g., Xi Chao, 2006).

Local courts in Guangdong Province have been particularly proactive in gap-filling and interpretation of vague Chinese company law. The 1993 Company Law, China's first national company law and amended in 2005, was initially designed to oil the wheels of state-owned enterprise reforms. As such, the Law has failed to provide a legal framework under which disputes involving private business entities could be effectively dealt with. This has posed a major challenge to local courts in Guangdong, where the private sector has been the robust engine of local economic development.

Many courts in Guangdong, in particular the Dongguan Intermediate Court, have gone

aggressively beyond what is allowed in the 1993 Company Law. They have unprecedentedly used legal doctrines borrowed from common law jurisdictions - Hong Kong, for example - when handling company law disputes. The local courts' doctrinal innovation has significance beyond their own jurisdictions. The Supreme People's Court has endorsed many of their innovative decisions and the new 2005 Company Law has arguably followed suit. This research, through empirical and case analysis, attempts look into two aspects in which the local courts' innovation in Guangdong has influenced the nation's corporate law reform: shareholders' derivative action and directors' fiduciary duties. Such examples of judicial law-making have recently attracted increasing attention from academic analysts and law reformers alike. This research is among the first to study the nature of local judicial innovation and the way in which it contributes to China's legal development.

(LL07751)

The Political Economy of Corporate Law in China: Corporate Board Reforms as a Case

✍ XI Chao

📅 4 April 2008

❖ United College - International Conference Grant Scheme

Increasing economic globalization has fueled lively debates on the similarities of and differences between national corporate governance systems. Central to the debates are the key questions of whether different corporate governance systems will converge towards a single and standard model, and if yes, what are the barriers to the convergence of different national systems. The board governance system, for example, is a major corporate governance difference between

countries. Board reforms have been seen in the EU, the US, and elsewhere. Functional convergence and hybrid convergence of national board systems now seem prevalent.

China's board reforms, however, present a unique pattern of change in formal board governance rules. The reform strategy was remarkable: on the one hand, the new institution of independent directors was "codified" and made mandatory for all Chinese listed companies, regardless of their size or ownership structures. On the other hand, the traditional management supervisory dual structure was preserved and the supervisory board as a monitoring organ strengthened.

The research attempts to provide a political economy understanding of why the mandatory independent director rule was adopted in 2001 and then, amid stiff opposition, codified in the 2005 Company Law, and why the institution of the supervisory board has persisted, despite its ineffectiveness and inefficiency in monitoring.

(LL07341)

Convergence or Divergence in Corporate Governance: The Rise and Decline of the UK-Style Mandatory Bid Rule in China as a Case Study

✍ XI Chao

📅 1 May 2008

❖ CUHK Research Committee Funding (Direct Grants)

The private sale of corporate control, or agreed takeover, of listed companies has been the primary form of control transaction in China. However such takeovers have in many cases presented an opportunity for the control buyer and seller to extract value from the company at the expense of the target

company's non-insider minority shareholders. One key legal development that attempts to address this issue is the adoption and adaptation of the UK-style mandatory bid rule. This research attempts to examine the forces that have interacted to shape the evolution of the mandatory bid rule in China. The research will contribute to the growing literature on comparative corporate governance by testing and developing theories – in particular, the political economy theory of corporate governance - for understanding the evolution of corporate law and governance in transition economies. It will also be of relevance to the current debates on the nature of China's post-Mao legal reform and on the role of legal transplants in corporate law reform. (LL07796)

2006-07 Film the Law Students and the School of Law : Reflections on a 4-Year Undergraduate Degree (LL06465)

✉ MCCONVILLE Michael James •
CARVER Anne Rosamunde •
SHIVE Glenn Landes (Educational Administration & Policy) •
MCNAUGHT Carmel Marie (Centre for Learning Enhancement and Research)

2006-07 The International Law and International Relations Dimensions of China's Exchange Rate Regime (SS06588)

✉ WANG Jiangyu

Please refer to previous issues of this publication for more details of the following ongoing research at the department:

2006-07 Chinese Private International Law and Sino-Foreign Business Transactions (SS06951)

✉ WOLFF Lutz-Christian

Edition Title/Investigators

2006-07 Civil Justice Reform in Hong Kong (SS06974)

✉ KELLY Elsa Mary Anne

2005-06 Strengthening Hong Kong's Constitutional Identity (CU05641)

✉ YU Xingzhong

2006-07 Regional Autonomy and International Rule of Law: The International Legal Status of the Hong Kong SAR under the One Country Two Systems Principle (CU06723)

✉ LING Bing • LI Zhaojie James* •
CHEUNG Sau Ha Deneb*

2006-07 Remediating the Environmental Harm of Historical Pollution – A Comparative Study (SS06939)

✉ ZHAO Yuhong

The following **symbols** are used throughout the Research Projects section:

✍ Investigator(s)

☐ Commencement Date

❖ Source(s) of Fund

* Name of external researcher

Name of staff who has left the University as of 1 September 2008