

CUHK Graduate Law Students Association Gala Dinner

on 19 March 2016 (Sat)

Speech by the Honourable Mr Justice Tang PJ

1. When I was told a few days ago that I will be speaking between cocktails and buffet and the buffet would not start until I finish, I know I should keep my speech short.

2. We are here to celebrate your sparkling decade.¹ There are good reasons for celebration. Over 10 short years you have firmly established yourself in the legal fraternity. Your graduates are sought after by leading firms and are beginning to establish themselves at the Bar. Some of you here this evening are at the threshold of your careers and others will follow soon. Knowledge-wise you have little to fear. You have been well prepared. Some of you will become commercial lawyers, some advocates. There are endless opportunities. But, I hope in your busy practice you will also find time for pro bono work. You, who have done well, should regard it your duty to help the less fortunate. You have a philanthropy committee so it is obvious that there is a strong sense of social justice here. Social justice and concern for our fellow men is an excellent foundation for legal practice. They are important characters of our law.

¹ The graduate law programme at CUHK was established in 2006.

3. I also want to take this opportunity to say a few words about the rule of law. It lies at the foundation of our society. It is the hall mark of our system under one country two systems. We are so used to the rule of law that we take it for granted. It is like the air we breathe. But it is no less important to our lives than air. Our system depends on it. It is the rule of law and the attendant effective protection of our basic human rights which distinguish our system, and make our system worth preserving. But we cannot take the continuation of the rule of law for granted. I do not expect an open or outright attack on the rule of law. Hong Kong people would not stand for that. But attacks on the rule of law can be more insidious. A nibbling at freedom of expression here, academic freedom there, or a little undermining of the rule of law. Things may be said or done which undermine our trusts in our legal system. Confucius said, without trust, the nation cannot stand. Without trust, our legal system also cannot stand. I hope that you, who are the future guardians of our system will be vigilant. Do not think that small encroachments on the rule of law or on human rights do not matter. Or that because they do not concern you directly, you should not be bothered. Just as, if the air is polluted, we all suffer, if the rule of law is undermined we all suffer too. The future belongs to you. You, the elites, have a leadership role to play. Lead by example. Stand up for genuine rule of law and effective protection of our

fundamental human rights, and the care which your family and the community have lavished on you would not have been wasted.

4. As you will be embarking on your careers soon, I will say a few words about my experience at the Bar.

5. The first few formative years are important. That is the time to build a good reputation. Make the most of every opportunity. Always be courteous but do not be spineless. You must stand up for yours and your clients' rights. If you are right and you are sure you are, stand your ground. The judge and your opponent will respect you for it. You should always conduct yourself with integrity, dignity, firmness and fairness. When these qualities are coupled with hard work, there is no reason why you should not succeed. The first few years are the difficult years. Once you get over them and have established yourself the rest come easily. The only thing I wish to say about my career, is that I have played an active part in the affairs of the Bar. I was a member of the Bar Council for many years and I was chairman in 1988 and 1990. I hope you will play your part in your professional bodies. Do not be indifferent. Do not sit on the fence. If you want our system to survive and thrive, you must do your part.

6. I also wish to say a few words about the Court of Final Appeal in response to questions which are frequently asked and were indeed asked during the cocktail.

7. As you know, there is no appeal as of right to the Court of Final Appeal. Leave is required. When an application for leave is lodged. The Registrar will consider the papers and if he thinks there is no reasonable grounds for leave to appeal, he would invoke Rule 7 of our rules and called upon the applicant to show cause before the Appeal Committee why the application should not be dismissed. Many people think the Registrar then decides. That is not so. When the applicant shows cause, the matter will be considered by an Appeal Committee of three judges. Our practice is that if one judge is of the view that the application should not be dismissed summarily, it will be set down for an inter partes hearing in the usual way. There have been occasions where leave was eventually granted and at the hearing of the substantive appeals, the appeals were allowed. So each Rule 7 case receives the careful consideration of three judges.

8. At the hearing of application for leave to appeal, before the Appeal Committee of three judges, the usual majority rule applies and the application is

decided by a majority. However, majority decisions are uncommon because in the event of doubt, they tend to be resolved in favour of leave.

9. When it comes to the substantive appeal, which will take place before a court of five. The usual composition is the Chief Justice, the three permanent judges and one overseas non-permanent judge (“NPJ”) who is a serving or retired judge from a senior court in other common law jurisdictions.

10. When we are not sitting and not too busy we have coffee together in the morning, we sometimes exchange views about the forthcoming cases. This is of course subject to hearing the arguments in due course. Sometimes even at such informal and very preliminary discussions, one can sense that there may be a difference of opinion. The overseas NPJ normally arrives a few days before the first hearing and there might be informal discussions with him. Then the actual hearing. We start sitting at 10 am and normally take a break at 11:30 am. The break is important because we tend to discuss the submissions we have heard in the morning. Sometimes, we mention points which one or more of us wish to clarify with counsel. Then after the hearing concluded, we would sit down and discuss. Sometimes on the same day, or the next day if it is late and we do not have a hearing the next day. Very often, we arrive at a consensus and the presiding judge will decide who should

write the lead judgment. And if there is no consensus, and the presiding judge is in the majority, he decides on who is to write the majority judgment. The dissentient(s) will write his or their dissenting judgments. Sometimes we are divided 4 to 1 and more rarely 3 to 2.

11. I was asked why there is usually only one judgment. That is now the usual practice in other common law countries as well because multiple judgments can give rise to uncertainty. But sometimes, even when we are all agreed on the outcome, we cannot agree on the reasons and in such cases, there would be more than one judgment.

12. I was also asked what I thought about dissenting judgments. Dissenting judgments are important for the development of the law. But sometimes one dissents on the facts. That is important too, not just so the losing side should know that one or more judges took a different view but I think the opportunity to dissent also relieves tension amongst judges. It provides a vent.

13. This is my understanding of how we work in the Court of Final Appeal and I hope it has answered some of your questions.