

Real World Goals

Convergence and Cross-Fertilisation in Commercial Law

International Law Section, Law Council of Australia

Hong Kong Chapter

The Hon Robert S French AC*

4 July 2017, Hong Kong

Mr Chow, Chief Justice Ma, ladies and gentlemen, thank you for inviting me to address you at this important time in the history of Hong Kong. My first visit was in 1984 when the Law Society of Western Australia decided it would be a good idea to hold a conference here. That was a memorable year for Hong Kong. On 19 December of that year the Joint Declaration was signed under which the United Kingdom Government agreed to return Hong Kong to the People's Republic of China (PRC) on 1 July 1997. In that Declaration, the PRC committed itself to certain basic policies, including the establishment of a Hong Kong Special Administrative Region, vested with executive legislative and independent judicial power. In Annexure 1 the PRC stated that the National People's Congress would 'enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ...'.¹ That was done on 4 April 1990 pursuant to Article 31 of the Constitution of the PRC.

Article 8 of the Basic Law provides that the law previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes the Basic Law and subject to any amendment by the Legislature of the Hong Kong Special Administrative Region. The pre-

*Non-Permanent Judge, Hong Kong Court of Final Appeal, former Chief Justice of Australia, Adjunct Professor, Law School, University of Western Australia.

¹ Annexure 1, Elaboration by the Government of the People's Republic of China of its Basic Policies Regarding Hong Kong to the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong.

1997 judicial system was continued under Article 81 save for the establishment of the Court of Final Appeal (CFA), which replaced the Privy Council as the Final Court of Appeal for Hong Kong. Relevantly to my presence here, Article 82 provides that the CFA ‘may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal.’ The CFA was established by the *Hong Kong Court of Final Appeal Ordinance* cap 454.²

A lot of water has passed under the bridge since 1997. The CFA has a well-established international reputation for the quality of its judgments and its role in maintaining the rule of law within the constitutional framework established following the return. Its judges have strong personal connections with the senior judiciaries in other common law jurisdictions.

Those connections were evident in the biennial judicial colloquium hosted in September 2015 in Hong Kong by Chief Justice Ma and other permanent members of the CFA. I had the pleasure of attending as Chief Justice of Australia, along with my successor, Justice Susan Kiefel, and another of our colleagues, Justice Virginia Bell. Also taking part were the Chief Justices of Canada and New Zealand and members of their Supreme Courts. We were joined by Lord Neuberger, the President of the Supreme Court of the United Kingdom who was in Hong Kong in his capacity as a non-permanent judge of the CFA.

That colloquium coincided with the opening of the refurbished Court of Final Appeal building. The Chief Justices of the visiting jurisdictions took the opportunity to meet with the President of the Supreme People’s Court who was in Hong Kong for the opening. That meeting led to further visitations between jurisdictions, including by an Australian delegation to Beijing which I led last year. It was the 34th foreign judicial delegation to visit Beijing at the invitation of the Supreme People’s Court. In May of this year the High Court of Australia hosted a return visit by senior Chinese Judges, including a Vice-president of the Supreme People’s Court.

The involvement of foreign judges in the CFA, the two-yearly colloquium and the many other exchanges between the Hong Kong and foreign judiciaries along with the interest of the senior judiciary of the People’s Republic of China in engaging with the judges of other countries, reflect a larger phenomenon in our interdependent world. That is the convergence

² The Ordinance was made in 1995 and came into operation on 30 June 1997.

and cross-fertilisation of legal ideas, laws and practices. I want to say something about that phenomenon this evening.

Legal convergence and cross-fertilisation between nations is facilitated in many ways including by conversations, conferences and other interactions between national judiciaries and legal professions, public officials and regulators. There is no closer exchange than that which occurs when judges from one jurisdiction sit on the courts of another. That is only possible when the Constitution of the host jurisdiction permits it. The Basic Law has made such provision. Article 82 authorises but does not require the appointment to the CFA of judges from other common law jurisdictions. The *Hong Kong Court of Final Appeal Ordinance* gives effect to that authority by providing for although, again, it does not require the appointment of such judges. The use of any such judge to sit on the Court requires his or her selection by the Chief Justice and invitation by the Court.³ Within that discretionary framework there has developed a tradition of having one non-permanent judge from another common law jurisdiction join the Court for most of its appeal sittings.

My remarks about cross-fertilisation and convergence in the field of commercial law are made with the reservation that unlike this audience, I have had no personal involvement in the transactional aspects of international trade and commerce or, for that matter, non-judicial dispute resolution in that area apart from paying hotel and restaurant bills, and ordering books online.

There have been a number of judgments of the High Court of Australia in recent years of significance to transnational transactions. They have been concerned with the enforcement of international commercial arbitration awards,⁴ the recognition and enforcement of foreign judgments,⁵ freezing orders in support thereof⁶ and foreign State immunity and its application to State-owned enterprises.⁷ More recently, the High Court delivered a judgment in relation to market definition in a case concerning alleged price fixing by airlines supplying international air cargo services in and out of Australia.⁸

³ *Hong Kong Court of Final Appeal Ordinance* cap 484, s 16(1)(c).

⁴ *TCL Air Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia* (2013) 251 CLR 533.

⁵ *Firebird Global Master Fund II Ltd v Republic of Nauru* (2015) 258 CLR 31.

⁶ *PT Bayan Resources TBK v BCBC Singapore Pte Ltd* (2015) 258 CLR 1.

⁷ *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission* (2012) 247 CLR 240; *Firebird Global Master Fund II Ltd v Republic of Nauru* (2015) 258 CLR 31.

⁸ *Air New Zealand v Australian Competition and Consumer Commission; PT Garuda Indonesia Ltd v Australian Competition and Consumer Commissioner* [2017] HCA 21.

A number of Australian judges and academics, including three serving members of the High Court and myself are members of the American Law Institute (ALI) which produces Restatements of the common law in areas of significance to commercial law, including international trade and commerce. At the Annual Meeting of the ALI this year, a draft on the Foreign Relations Law of the United States was considered, including a section relating to foreign State immunity and a Draft Restatement concerning international commercial arbitration. In Australia, the Council of Chief Justices of Australia and New Zealand has examined the use by Australian courts of the ALI's Transnational Insolvency: Global Principles for Cooperation in International Insolvency Cases. Australia adopted the UNCITRAL Model Law on Cross-Border Insolvency with the enactment in 2008 of the *Cross-Border Insolvency Act 2008* (Cth). The purpose of consideration of the ALI Principles was to determine whether further benefits might be derived from their adoption. That is an ongoing work under consideration by the Harmonisation of Rules Committee of the Council of Chief Justices in Australia. Closer to home, the Asian Business Law Institute, established in Singapore in 2015, has a number of projects concerned with convergence in law and practice relevant to international trade and commerce. The members of the Institute are Australia, China, India and Singapore. As is apparent, there is a lot going on in our region relevant to the convergence of law and practice affecting international trade and commerce.

Convergence is not just about harmonisation or uniformity. It covers a spectrum of measures which includes the adoption by different jurisdictions of laws or practices which are at least compatible or reflect common general standards. To a greater or lesser extent it involves legal change. Legal change in any country, whether by legislation or by the way in which existing law is administered, is often a function of history, culture, economy, social conditions, and the nature and distribution of societal power. Even with apparent textual uniformity between the laws of different countries it is not safe to assume operational uniformity. Their interpretation, administration and enforcement may differ significantly.

By way of example, Professor Peter Yu, in a paper published in 2014, pointed to differences between the enforcement of intellectual property regimes in the Asian region. Enforcement, he argued, depends upon the existence of an enabling environment with 'a consciousness of legal rights, a respect for the rule of law, an effective and independent judiciary, a well-functioning innovation and competition system, sufficiently developed basic infrastructure, established business practices and a critical mass of local stakeholders.' Given the varying levels of economic development and organisation, political practices and

structures of government in Asia, it was understandable that the levels of intellectual property enforcement across the region varied significantly.⁹

Chief Justice Bathurst of the Supreme Court of New South Wales, made a similar point in 2012 when he commented on a proposal for codification of Australian contract law. He did not accept the argument that Australia would be more aligned with its trading partners by virtue of such codification. He said:

A legal system is more than substantive rules of law. Trading partners such as China differ markedly from Australia in terms of their legal history, institutions, and procedural rules, not to mention language. It should not be assumed that aligning Australian and Chinese law in areas such as the availability of a hardship defence, or the requirement for consideration, would meaningfully harmonise two systems of laws with such different contexts and historical roots, ensure consistent interpretations of a contract in a given factual context, or make China's legal system understandable or navigable to Australian businesses.¹⁰

The problem is less acute where modest convergence is pursued in the development of transactional models and statements of principles and standards which can be adapted to local conditions. An organisation worthy of particular mention in that context is the International Institute for the Unification of Private Law (UNIDROIT). UNIDROIT was set up originally in 1926 as an organ of the League of Nations and re-established in 1940 pursuant to a multi-lateral agreement known as the UNIDROIT Statute. There are 63 member countries, of which Australia is one. Amongst its membership from our region are China, India, Indonesia, Japan and Korea. The United Kingdom, the United States and Canada are also members. The function of UNIDROIT is to study needs and methods for modernising, harmonising, and coordinating private, and in particular, commercial law as between States and to formulate uniform laws, instruments, principles and rules to achieve those objectives. Its work has given rise to many important international instruments including Conventions relating to uniform laws for the international sale of goods, international wills, financial leasing, factoring, franchise disclosure and international securities. Of particular importance are its published Principles of International Commercial

⁹ Peter K Yu, 'Clusters and Links in Asian Intellectual Property Law' in Christoph Antons (ed), *The Routledge Handbook on Asian Law* (Routledge, 2015) 148, 151.

¹⁰ The Hon T H Bathurst, Submission No 55 to Attorney-General's Department, Review of Australian Contract Law (2012) 11.

Contracts, in the preparation and revisions of which, former Australian Federal Court Judge and distinguished legal academic, Paul Finn, had a close involvement.¹¹ The Principles have had a significant impact on contract law globally. They are accessible in many languages including Chinese, Arabic, Korean and Japanese, and are taught in all major law faculties in civil law and common law jurisdictions. They have been described as providing:

an actual formulation of the norms of the modern *lex mercatoria* in concrete, black letter wording, which can be cited and argued about by practitioners, and applied by judges, around the world, particularly to fill gaps in the law applicable to transnational contractual disputes and international uniform law instruments.¹²

Some prospective areas of convergent legal change attract particular sensitivities because of their effects on concentrations of societal power.¹³ Laws which affect substantial commercial interests are obvious candidates. Loud and forceful special pleading is not unusual in such cases. Despite challenges of that kind, the obvious importance of effective and efficient engagement in global markets has led to considerable movement in most jurisdictions in our region. Competition law is one example.

There has developed over the last 20 years a general recognition by countries of the Asia region of the importance of competition law to their economies. It was reflected in the Leaders' Declaration of APEC Principles to Enhance Competition and Regulatory Reform made in 1999. The Declaration did not contemplate a harmonised approach within the Member States. Nor did it prescribe the institutional arrangements that States should put in place to support competition law. It was more an aspiration to convergence.

The 2010 ASEAN Regional Guidelines on Competition Policy¹⁴ on the other hand were more detailed. They proposed that Member States should recognise the role of the judiciary in the enforcement of competition law, including by direct access to the judicial

¹¹ Paul Finn, 'The UNIDROIT Principles: An Australia Perspective' (Speech delivered at the UNIDROIT Principles of International Commercial Contracts: What Do They Mean for Australia? CLE Seminar, Sydney, 25 June 2008) 8.

¹² William Tetley, 'Uniformity of International Private Maritime Law: The Pros Cons and Alternatives to International Conventions – How to Adopt an International Convention' (2000) 24 *Tulane Maritime Law Journal* 775, 794–5 (footnotes omitted).

¹³ See for example the observations of O Kahn-Freund, 'Uses and Misuses of Comparative Law' (1974) 37 *Modern Law Review* 1, 12.

¹⁴ Association of Southeast Asian Nations, *ASEAN Regional Guidelines on Competition Policy* (August 2010) 6.1.4.
www.asean.org/archive/publications/ASEANRegionalGuidelinesonCompetitionPolicy.pdf.

authority and by review of administrative actions.¹⁵ They recommended recourse for allegedly infringing parties to at least one appellate body, independent from the regulator and the government.¹⁶ Judicial review of decisions of the competition regulator was contemplated but not mandated.¹⁷ So too was the creation of specialised courts or specialised sections within courts with exclusive jurisdiction to hear competition cases,¹⁸ as well as provisions for intervention by the competition regulators.¹⁹

The mix of an administrative regulator with a specialist appeal or review tribunal and court-based judicial review, appeal and enforcement processes is reflected in a number of countries in our region and, in particular, Australia and Hong Kong. There are also core concepts in competition law which enable the courts and regulators of one jurisdiction to draw upon the decisions and practices of others. In this respect, I suspect that as Hong Kong's competition law is fleshed out it will find the extensive body of Australian case law developed in the High Court and the Federal Court of Australia, as well as its Competition Tribunal, to be a useful resource. It will also, no doubt, derive assistance from relevant aspects of competition law jurisprudence in Europe, the United States and New Zealand.

It seems likely that the Belt and Road initiative of China will provide its own impetus to convergence and cooperation between jurisdictions. The Law Society of Hong Kong, in May this year, held a conference the title of which reflected that possibility — ‘The Belt and Road: A Catalyst for Connectivity, Convergence and Collaboration’. The Secretary for Justice, delivering the keynote address, made particular reference to changes to Hong Kong's Arbitration Ordinance based on the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration which he referred to as ‘widely adopted by the major economies, which are trading partners with the [Belt and Road] countries’.²⁰ In that context he also referred to amending legislation relating to the arbitrability of intellectual property rights disputes and third party funding of arbitration and mediation. Other areas of obvious significance for the reduction of cross-border transactional costs lie in the fields of corporations law, financial services regulation and transnational insolvency.

¹⁵ Ibid 7.1.4.

¹⁶ Ibid 7.1.4.1.

¹⁷ Ibid 7.1.4.2.

¹⁸ Ibid 7.1.4.3.

¹⁹ Ibid 7.4.4.4.

²⁰ The Hon Rimshey Yuen SC, ‘The Belt and Road: A Catalyst for Connectivity, Convergence and Collaboration’ (Keynote Speech delivered at the Conference of the Law Society of Hong Kong, 12 May 2017).

The pace of development in the financial services area is illustrated by the work of the International Organization of Securities Commissions (IOSCO). The China Securities Regulatory Commission of the PRC, the Securities and Futures Commission of Hong Kong (SFC) and the Australian Securities and Investments Commission (ASIC) are all members of its Board. According to the IOSCO website its current chairman is Mr Ashley Alder, the Chief Executive Officer of SFC. Last year it was Mr Greg Medcraft, the Chairman of ASIC.

IOSCO's focus on digital disruption, cyber resilience and Fintech, indicates the rapidly changing character of international financial markets. Like other associations of regulatory bodies and industry associations, it is trying to develop international standards for the identification of comparable securitisations, regulation of cross-border activities, the financing of small to medium enterprises and liquidity management and custody in collective investment schemes. That class of activity is one of a range of mechanisms which are instrumental in driving convergence of business law and regulatory practice. IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information first adopted in May 2002 and last revised in 2012, provides for its signatories to provide one another with 'the fullest mutual assistance possible' to facilitate the performance of their functions within their respective jurisdictions.

On 13 June 2017, the Australian and Hong Kong securities regulators, ASIC and the SFC, signed a bilateral Cooperation Agreement enabling them to refer innovative fintech businesses to each other for advice and support through ASIC's Innovation Hub and the SFC's Fintech Contact Point. Importantly, in the ASIC media release it was said:

The agreement also provides a framework for information sharing between the two regulators. This will enable ASIC to keep abreast of regulatory and relevant economic or commercial developments in Hong Kong and to use this to inform Australia's regulatory approach.²¹

The Agreement foreshadows the transnational regulatory challenge of financial technologies designated 'fintech', which is defined in the Memorandum, with prudent breadth, as 'a variety of business models and emerging technologies that have the potential to supplement

²¹ Australian Securities and Investments Commission, 'Hong Kong and Australia, Seal Agreement on Fintech Cooperation' (Media Release, 17-183MR, 13 June 2017).

or disrupt the financial services industry.’²² It is in that area that terms such as ‘encrypted currency’, ‘bitcoin’, ‘blockchain’ and ‘artificial intelligence’ are deployed.

Relevantly, Fintech HK, a local website, lists 75 fintech start-ups in Hong Kong, including loan broking, peer-to-peer lending and crowdfunding platforms. Crowdfunding is not yet the subject of a general regulatory scheme in Hong Kong, except perhaps where it moves into the territory of collective investment schemes. In March this year the Financial Securities Development Council in Hong Kong released a paper on regulatory possibilities in the field. There is no doubt that this is an area in which those establishing regulatory arrangements will need to pay close attention to their compatibility with arrangements in other countries.

Private sector activity promoting convergence is reflected in the latest edition of *Financial Reporting Standards* adopted by the Hong Kong Institute of Certified Public Accountants. One of its stated objectives is to achieve convergence of the Hong Kong Standards with International Financial Reporting Standards. The Hong Kong Standards have statutory support. They are made pursuant to section 18A of the *Professional Accountants Ordinance* cap 50 and are to be observed by members of the Institute.

Beyond cooperation and information sharing, an important mechanism for convergence is mutual recognition of the decisions of foreign regulators and standards set by foreign regulators. Its utility in relation to financial services has been acknowledged for many years.²³ Mutual recognition is perhaps the most advanced cooperative arrangement short of full market integration with a single regulator. It may be bilateral or multilateral. Significantly, it involves an effective transfer, at least in part, of regulatory authority from a host jurisdiction to a home jurisdiction. It rests upon a judgment by the host jurisdiction about the equivalence or at least acceptability of the home jurisdiction’s regulatory system.

A recent important example of a mutual recognition mechanism still under development is the Asia Region Funds Passport²⁴ proposed under a Memorandum of Cooperation (MOC) signed last year between Australia, Japan, Korea, New Zealand and Thailand. It has arisen out of an APEC process in which Hong Kong and Singapore were

²² Cooperation Agreement, cl 1, Definitions, ‘Financial technologies’ or ‘Fintech’.

²³ K Henry, ‘Mutual Recognition of Financial Services Regulation: Opportunity and Challenges for Australia’ (Address to the Australian Securities and Investments Commission Summer School, *Our Financial Markets: The Big Issues*, Melbourne, 20 February 2008).

²⁴ *Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport*, signed 28 April 2016 (entered into force 30 June 2016).

also involved. It incorporates a kind of mutual recognition linked to regulatory convergence measures in relation to collective investment schemes. The MOC came into effect on 30 June 2016. The Asia Region Funds Passport is defined in cl 4.1.a of the MOC as:

the arrangements established by this MOC to allow collective investment schemes that are established and regulated in one Participant's economy to be offered to investors in another Participant's economy.

Under the Passport arrangements participants will endeavour, within specified time frames, to make necessary legislative or other arrangements to give effect to what are called the Passport Rules so that they are enforceable and once the arrangements are made, endeavour to maintain them on an ongoing basis.²⁵ The Passport Rules²⁶ are designed to have an ambulatory application across different regulatory regimes in each of the participating economies.

The legal character of collective investment schemes is defined for each of the participants by reference to their domestic laws on the topic.²⁷ The MOC provides for a combination of convergence of relevant provisions of those laws while accommodating a degree of diversity coupled with a mutual recognition process based on the confidence generated by the agreed common rules.

The statutory regulation of trade and commerce is an aspect of public law, as is the regulation of corporations and trade and commerce generally. Public law has to do with the exercise of official power by ministers, and public authorities including regulators. Such powers encompass the grant or withholding of permits, approvals and licences to do a whole variety of things in the field of trade and commerce including, in particular, the financial services sector. Public law embraces the constitutional and legal frameworks within which official decisions may be subject to challenge either on the merits or on questions of law and process. It lies at the heart of the idea of the rule of law.

²⁵ MOC, cl 5.2.

²⁶ See MOC, Annex 3.

²⁷ *Corporations Act 2001* (Cth), *Investment Trusts and Investment Corporations Act* (Japan), *Financial Investment Services and Capital Markets Act* (Korea), *Financial Markets Conduct Act 2013* (NZ), *Securities and Futures Act* (Singapore), *Securities and Exchange Act* (Thailand).

Countries with strong public law regimes underpinning a concept of the rule of law are likely to be more attractive to investors than those with weak public law regimes and unfettered official discretions. Some degree of convergence in public law may be encouraged by the growth of trade agreements and investment treaties. Under many such agreements non-State investors can raise contentions that State action, legislative, judicial or executive, including regulatory action, constitutes a breach of the agreement. The mechanism of investor-State dispute arbitration may be invoked if it is available under the agreement. Common standards for regulatory regimes and public law constraining the unlawful or irrational exercise of official power by parties to such agreements may reduce the risk of breaches of treaty provisions requiring fair and equitable treatment, and non-discrimination in relation to non-State investors. That being said it is necessary to acknowledge the reality of legal diversity generally, and particularly in the area of public law given its intimate connection with domestic constitutional frameworks, statutory regimes, and local legal cultures.

Cooperative activity directed to specific convergence projects is an important mechanism for reducing the transaction costs of cross-border trade and commerce. The Asian Business Law Institute, mentioned earlier, aims to make proposals for the further convergence of business law among Asian countries. The first project accepted by the Institute relates to the recognition and enforcement of foreign judgments. It involves a collation of information about law and practice in the region with a view ultimately to promoting convergence where there are important differences.

Finally, let me make a point about the common law. Hong Kong is a common law jurisdiction among a number of common law jurisdictions around the world. Absent the unifying authority of the Privy Council, the common law of the former British colonies including Hong Kong, Australia, Canada and New Zealand is not defined by that of the United Kingdom. That being said, most of the commercial law of those jurisdictions is affected significantly by the content of the common law in each place. There are divergences. They reflect local conditions and perspectives. In a recent collection of essays on the Common Law of Obligations, Professor Paul Finn attributed divergence from the English common law in that area to its unduly formal approach to traditional doctrines that

were seen as productive of injustices.²⁸ The response in Australia, Canada and New Zealand was to develop standards of conduct informed by community standards. That response affected unconscionable dealings doctrine, the emergence of equitable estoppel, the expansion of fiduciary law beyond the protection of economic interests, the acceptance of the remedial constructive trust, the development of the remedy of equitable compensation and the uncoupling of compensation and liability. An interesting example applicable to small polities with a high population density such as Hong Kong and Singapore is the development in both of a tort of harassment and in Singapore an extension of the right to support from adjoining land to include buildings on the land notwithstanding the old House of Lords decision in *Dalton v Argus*.²⁹ The development of the common law responds to the conditions of the domestic jurisdiction.

Ultimately, convergence of the common law with respect to trade and commerce must depend upon the public judgments of domestic courts. Unlike private arbitration the courts have a special and constitutional role. In publishing their judgments they determine the law and also facilitate the flow of information about legal questions and their domestic resolution. They can thereby contribute to the development of the law on similar questions arising in other national jurisdictions. The Chief Justice of New South Wales made the point in an address in Singapore in 2013 when he observed that the lack of transparency in arbitration can act as a counterweight to legal convergence in the development of transnational commercial law.³⁰ Lord Neuberger made a similar point in a speech he delivered at the Chartered Institute of Arbitration Centenary Conference in Hong Kong in March 2015.³¹ And in a speech given in March 2016, Lord Chief Justice Thomas in similar vein made specific reference to the effect of arbitration on the role of the commercial courts in the United Kingdom.³² It is important, of course, that the judicial process offers commercial disputants in appropriate cases benefits which equal or exceed those of arbitration in speed, efficiency, economy, neutrality and expertise.

²⁸ Paul Finn, 'Unity, Then Divergence: The Privy Council, the Common Law of England and the Common Laws of Canada, Australia and New Zealand' in Andrew Robertson and Michael Tilbury (eds), *The Common Law of Obligations, Divergence and Unity* (Bloomsbury, 2016).

²⁹ (1881) 6 App Cas 740 (HL).

³⁰ Bathurst CJ, 'The Importance of Developing Convergent Commercial Law Systems, Procedurally and Substantively' (Speech delivered at the 15th Conference of Chief Justices of Asia and the Pacific, Singapore, 28 October 2013).

³¹ Lord Neuberger, 'Arbitration and the Rule of Law' (Speech delivered at the Chartered Institute of Arbitrators Centenary Celebration, Hong Kong, 20 March 2015) 12 [24].

³² The Right Hon the Lord Thomas of Cwmgiedd, 'Developing Commercial Law through the Courts: Rebalancing the Relationship between the Courts and Arbitration' (Speech delivered at The BAILII Lecture 2016, London, 9 March 2016).

Conclusion

There are many dimensions to the topic of convergence and cross-fertilisation in relation to commercial law. Hong Kong and the countries of the region are at the wave-front of much of what is happening in that area at this time. It is an interesting time to be in Hong Kong and not just because of the anniversary of the events of 1 July 1997.