

**Annual High Table Dinner of the 9th Executive Committee of
the Undergraduate Law Society, CUSU, CUHK, Session 2016-2017**

28 October 2016 (Fri)

Speech by the Honourable Mr Justice Tang PJ

(Greetings)

1. Thank you for including me in this evening's event and the opportunity to speak to you.

2. Many of you are first year students. I remember what it was like when I was freshly admitted to University. I remember the exhilaration of being finally free from the shackles of school. At school one was often told what to do and what not to do. I suppose that was necessary, a child needs help and guidance. Young teenagers too. But too often we were taught at school to learn by rote and learn to memorize model answers. That may be helpful to young children but should not be carried on for too long. And certainly not at university. The age of majority is 18. One is given the vote at 18 and at 21 one can be elected to the Legislative Council. One enters university as a young adult and leaves it as a fully fledged adult, qualified to take up important positions. You must not forget that. You should regard yourself as an adult and insist that you be treated as such.

3. But is that how you are treated and how you regard yourself? You are law students and in a few years will be working in one of the most honourable and important professions. I want therefore, to speak to you about the importance of being independent in action as well as in mind.

4. As you probably know, I was in private practice as a barrister for many years before I became a judge in 2004. Since my experience was as a barrister I want to tell you how independence and the feeling of independence were fostered in a barrister when I commenced my pupillage in December 1969. The first thing I learn was that I should call my pupil master by his name. That surprised my parents, the Chinese tradition was that one should not address a teacher by his given name. But that was the tradition of at the Bar. My master was Robert Wei. I call him Robert not Mr Wei. I remember my first day as a pupil. He had a case before the Full Court, the predecessor to the Court of Appeal, and he was led by Oswald Cheung, Queen's Counsel, whom I met for the first time that day. I called him Oswald, or Ossie, as he was affectionately called. You might not have heard of Oswald Cheung. But he was then at the height of his power and was in every sense a leader of the Bar.

5. You might wonder why am I telling you this. The reason is to explain that from the first day of my professional life I was made to realize I was the equal of every other barrister. That is as it should be. Imagine this, pupillage was for one year only. If I was not made to feel the equal of every barrister on my first day, including my pupil master or the most senior member of the Bar, how could I face them in court when I am a fully fledged barrister acting for an opposing party.

6. This feeling of independence and equality is important because, if I felt inferior in any way, I would not be able to handle a difficult judge or an aggressive opponent.

7. But, this feeling of independence or equality should not only start after qualification. I think it should start as early as possible and certainly by the time one enters university. One should respect one's teachers for their important work and greater knowledge. But it does not mean that one should just accept what one was taught. It is important to remember what Han Yu (韓愈) who lived in the 8th - 9th century said in 「師說」 “On Teaching” : 「是故弟子不必不如師，師不必賢於弟子。聞道有先後，術業有專攻，如是而已。」 “So pupils are not necessarily inferior to their teachers, nor teachers

better than their pupils. Some learn the truth earlier than others, and some have special skills ... that's all.”¹

8. Another famous saying of Han Yu is drummed into our minds from an early age² : 「學精于勤荒于嬉」 “Study excels with diligence and becomes neglected with play.”³ Unfortunately, what he said immediately afterwards is often overlooked and not taught at school. I wonder how many of you know what immediately followed 「學精于勤荒于嬉」.⁴ It is 「行成於思毀於隨」 “character is built with thinking and destroyed by following.” Both sayings are important and since the first is drummed into us from childhood, this may be time to take note of the second. These citations from one of the most respected and courageous Confucians show that independent thinking is in keeping with the best Chinese tradition.

9. So respect your teachers, respect your elders, and when you are qualified as lawyers, respect judges and your opponents. Be courteous at all times. But be independent of mind. Be fearless. Do not accept dogma. Question everything. Think for yourself.

¹ www.ajpsp.com/zuoye/12672264

² “Explanation upon entering the Academy” 「進學解」

³ www.tsoidug.org/Literary/Academy_Comp.pdf

⁴ Silence from the floor.

10. When I say you should think for yourself, that is not confined to that your elders tell you, it applies as much to what your friends or contemporaries say to you. Do not take them at face value either. I must also add independent thinking does not mean you should jettison good manners or common decency. Rudeness is not independence, it is just bad manners.

11. But if you can think for yourself, you are on your way to a successful career in law. So far, I have spoken about my experience as a barrister. You might ask, what about solicitors? I don't know enough about solicitors to say very much. I can only say that there are many solicitors who are fearless and independent. People often praise barristers for their independence and fearlessness when they appeared for unpopular causes. But, remember this, behind every fearless and independent barrister there is a fearless and independent solicitor. Indeed, a solicitor often has to overcome many more obstacles to be independent.

12. When I was invited to speak this evening, I was told that you want me to say something about my experience in the Court of Final Appeal.

13. As you know, the Court of Final Appeal is made up of the Chief Justice and three permanent judges. All the local judges have had long careers at the Bar before they joined the Bench and they brought with them a life-time's habit of independence. Overseas non permanent judges as well as our local non permanent judges have similar career backgrounds. So, you have a court made up of five judges for whom independence of mind is second nature.

14. Very often our judgments are unanimous but you should not think because our judgments are unanimous, we think as a block. We don't. Many judgments are unanimous because often there is only one single correct answer. In straight-forward cases, consensus is easily reached.

15. But, for less straightforward cases, the route to consensus can be long and sometimes impossible. Indeed, there are cases which even at the leave stage (where only 3 judges would sit) there were differences of opinion, which could not be resolved. In that case, normally leave would be granted so that the difference of opinion can be fully explored before a court of five.

16. In all our cases, internal discussions take place before, during and after the hearing. How long or intensive these discussions might be depend on their complexity and whether we can reach agreement. Sometimes, we cannot

agree. But always we respect each other's independence. I believe dissent can make a court stronger and is the inevitable consequence of a court of equals.

17. So, you can be sure that every time a case comes before the Court of Final Appeal, it will receive the individual attention of every one of us.