

*Speech by the Honourable Mr Justice Ribeiro, Permanent Judge of the Hong Kong
Court of Final Appeal*

1 December 2018, City University Law Faculty Graduation Ceremony

Dean Howells, members of the Faculty, graduating students, distinguished guests, ladies and gentlemen,

It is an honour and a privilege to have been invited to address you on this happy and auspicious occasion. To each of you who are about to graduate, I offer my warmest congratulations.

You have every reason to feel proud today. To reach the goal of graduating from law school has taken a great deal of hard work and dedication. Your families are rightly proud of your achievements and share in your celebrations today.

The decision which a student takes to study law takes him or her on a rewarding and stimulating journey – a journey which opens one’s eyes to the society in which we live. This is because, in a community governed by the rule of law, every aspect of our lives, the way we live and interact with others, is permeated by the law.

If you were like me when beginning your study of law, you will have had only a vague notion of what the law consists of, gained perhaps from television dramas or novels. Dramatic criminal cases might have been in the forefront of your imagination.

I remember being surprised to learn in my first year Contract Law course that I was, without knowing it, entering into contracts every day: when buying a ticket on a bus, when checking out at a supermarket or when sitting down to order a cup of coffee. It was like discovering, as did Monsieur Jourdain in Molière’s famous play,¹ that I had been speaking prose all my life without realising it.

As my studies progressed, I began to gain some understanding of the sheer scope and complexity of the law: How it regulates our family relationships and our

¹ Le Bourgeois gentilhomme.

employment; decides what happens if someone is injured in an accident, and determines our rights and obligations when we rent or buy somewhere to live. The student comes to learn that in business disputes, involving a trading, banking, insurance, corporate, shipping or some other transaction, it is the law which has the final say as to who is in the right and who is in the wrong – and on what the remedy is.

Today, new forms of human interaction emerge from rapid technological advances. Developments in information technology, artificial intelligence, robotics, biotechnology, genetic and medical sciences, make it urgent for the law to develop statutes, principles and doctrines to provide a legal framework in response to the security, economic and ethical challenges they pose.

The areas I have mentioned of course merely scratch the surface. But all of you graduating today have gained a working familiarity with the complex system that is the law, as it seeks to meet society's needs.

You have studied the legal principles and processes which form the bedrock of the law and thus of our society. You have developed your analytical and critical faculties, and skills of communication, argument and persuasion. You have explored the law as a system of rules. You will have pondered the relationship between law and concepts of justice. And you will have been concerned to examine how particular laws impact upon society.

The knowledge and skills you have gained provide you with the foundations for building a successful career, whether as a legal professional or in some other domain. However, while pursuing your careers, remember that as lawyers, you have a responsibility to contribute to society in broader ways. You have an important role to play in channelling and mediating legal issues arising in our community.

One area of law that I have not yet mentioned is the area of public law – constitutional, administrative and human rights law – whose coverage has dominated the media. That is perhaps not surprising. The principle of “One Country Two Systems” as the basis for the new constitutional order established on 1 July 1997 was novel and has created challenges which have sometimes sparked sharp confrontations among different groups. It sometimes seems that Hong Kong is constantly riven by dissent.

But I believe that, on any view, the principle of “One Country Two Systems” has proved far-sighted and highly successful.

Quite apart from the economic and social benefits we have derived under the new constitutional order, we enjoy, for the first time, a well-developed system of fundamental rights entrenched by the Basic Law. Our Courts are duty bound and empowered to exercise constitutional review powers as a check on legislative and administrative action to ensure that the other branches of government act in accordance with the Basic Law and respect the fundamental rights it guarantees.

For the Courts, it is always a question of seeking the right balance between competing interests, according to law. Individuals are entitled to the full measure of our constitutionally protected human rights but those rights generally require them to respect the rights of others and the good order of our society. To ensure the continued success of our system, we must constantly work to ensure that the rule of law, safeguarded by an impartial and independent Judiciary, is preserved as a functioning reality. The existence of the rule of law is not static. It is always a work in progress. It requires the concept and benefits of the rule of law to be understood and supported by everyone. It requires the role played by our judges to be understood. That is where you, with the learning and skill sets you have acquired, have an important part to play.

It is unfortunately commonplace to hear a court’s decision criticised by one political camp or another simply because the critic does not like the result of a case. Often it is evident that the critic has not read the judgment, but that does not matter to him or her since it is not the reasoning of the judgment that he or she disagrees with, but simply the result. One commentator may lament that the decision shows that “the rule of law is dead” and that the courts have lost their impartiality and independence by ruling against certain defendants. Another critic may say that the Court has strayed much too far at the expense of society’s interests by holding in favour of certain individual defendants. Sometimes, of course, the court is criticised by both sides! That may be an indication that it has got it right!

It would be a great service to the rule of law in Hong Kong if you, with your background and knowledge of the law, help others understand how the process works and the principled basis of controversial decisions, when occasion arises.

You could explain that our courts are committed to being non-partisan and impartial. Having been exposed, especially recently, to high-profile media stories about extremely politicised processes for appointing judges in other countries, people in Hong Kong may be forgiven for assuming that the same applies here, or at least that judges can be expected to display a political bias. That is of course a misconception. Article 92 of the Basic Law lays it down that our Judges “shall be chosen on the basis of their judicial and professional qualities”. I was a member of the Judicial Officers Recommendation Commission for six years and I can testify that that is in fact how the selection of our judges works. Judges are certainly not appointed on the basis of any political inclination, one way or the other.

It would also be valuable if you might explain, whenever necessary, that judges are bound to arrive at their decisions “according to law”. Uninformed criticism sometimes assumes that the decision depends simply on the judge’s whim. But the outcome of a case is of course not determined by the personal preference of the judge. It is reached only after a process of legal analysis, applying the law as laid down by statute, in earlier decisions and in the light of the evidence and of how the parties have argued the case. It is not uncommon for a judge to state that he or she personally regrets having to arrive at a particular outcome, but that the result is compelled by the applicable law and legal analysis.

It is fully accepted that everyone is free to disagree with and criticise a decision which has been handed down. Indeed, our system of appeals recognises that a decision may be erroneous and may need correction by a higher court. But criticisms should be rationally directed at the merits of the Court’s decision. It is wholly unacceptable for judges to be personally abused and vilified as recently happened in some highly regrettable cases.

You, as graduates, well versed in how our legal system works, can play a highly valuable role in dispelling such misconceptions and educating those who have not had the benefit of your learning.

This is a time when certain sectors of our society are marked by an unfortunate divisiveness. It is especially important at such a time that every element of our legal system – the Executive, the Legislature, the Courts, the legal profession and

graduates, like yourselves, well-versed in the law – should work together to resolve conflicts applying the foundational values of the rule of law.

Today is a day for hope and encouragement. I am sure that you will rise to the challenges that our community faces and that you will make valuable contributions to our future well-being. It remains for me to congratulate each of you once again on this memorable occasion and to wish you every success in your endeavours. I hope that they will bring you and your families much personal, social and material satisfaction.