Speech by the Hon Rimsky Yuen SC
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"*The Development of Common Law in Hong Kong: Past, Present and Future*"

Chancellor [Lord Patten], Principal [Dame Elish], Mr. Edwin Mok, Professors, Students, Distinguished Guests, Ladies and Gentlemen,

1. First of all, let me express my utmost gratitude for giving me the honour and privilege to deliver this Dr Mok Hing Yiu Memorial Lecture. I feel very humble standing in front of so many distinguished jurists, professors and experts. My special thanks go to the Principal, Dame Elish, and Mr. Edwin Mok, and also the relevant staff members of St Hugh's College, whose assistance makes this event possible. Needless to say, my thanks also go to the Mok family for their generous contribution which makes this lectureship possible.

2. The topic that I have chosen for this occasion is "*The Development of Common Law in Hong Kong: Past, Present and Future*". I chose this topic for various reasons.

3. First, a common law legal system has been put in place in Hong Kong for over a century. It is no exaggeration to say that common law has become one of the key characteristics of Hong Kong.

4. Second, common law is no doubt one of the key factors which have facilitated Hong Kong's transformation from a small fishing village to an international financial and commercial centre. Viewed from this angle, common law plays an important role in the history of Hong Kong.

5. Third, notwithstanding the resumption of exercise of sovereignty by China over Hong Kong in July 1997, the Basic Law of the Hong Kong Special Administrative Region ("HKSAR") provides for the continuation of the common law system under the 'One Country, Two Systems' policy. Such an arrangement puts the HKSAR in a unique position (in that the HKSAR is part of China and yet has a legal system which is different and distinct from that of the Mainland).

6. Fourth, in my view, in order to maintain the sustainable development of the HKSAR, it is in the interests of all parties concerned to continue the HKSAR's common law system, so as to (among others) ensure the continuous upholding of the rule of law[1], as well as for the purpose of reinforcing the confidence of the business community (both local and international).

7. Fifth, whilst the HKSAR is a small city with a small population, it does, and can, have a role to play in the future development of the common law system, especially together with other common law jurisdictions.

What is Common Law?

8. I have by now made various references to the expression "common law". What then is "common law"? Or what do I mean when I refer to the "common law"?

9. Different jurists or scholars have provided different definitions of 'common law'. One has described the common law as "essentially a mode of judicial and juristic thinking, a mode of treating legal problems rather than a fixed body of definite rules'[2]. Another referred to it as 'not merely rules of action which we have modified to serve our needs, but ways of acting which were sanctified by history"[3]. Further, the expression

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[1] As explained by the Chief Justice, Ma CJ, "The foundation of the common law can be summarized in one concept: the rule of law." See the Chief Justice's speech entitled "*In Praise of and Old, Honourable and Distinguished Friend: The Bar*", delivered at the 2016 Presidential Address of the Bentham Association (at para. 5).

[2] See: Roscoe Pound, *The Spirit of the Common Law* (Boston: Beacon Press) (1921), p. 1.

[3] See: AL Goodhart (ed), *The Migration of the Common Law* (London: Stevens, 196)) 15 (reprinted

"common law" has been used to connote different meanings in different contexts. This occasion is certainly not an occasion to go into the detailed historical development of common law, or to search for a universal definition (if there be any). Instead, for the present purpose, it would be sufficient to point out that I use the expression "common law" to mean the common law legal system, just as one describes the legal system of England, Australia and New Zealand.

10. The very essence of the common law system is that judges, or judicial officers, resolve disputes, on a case by case basis, by making reference to precedents and by resorting to legal reasoning. In other words, the common law system that we very often refer to has the following key characteristics[4]:

    (1) The common law system is a system to enforce the law, especially by resolving disputes, so as to do justice.

    (2) In so doing, judges refer to relevant precedents as well as resort to legal reasoning. Indeed, judgments setting out the reasons and approaches adopted by the judge in resolving the dispute is a key characteristic (as well as, if I may add, a key virtue) of the common law system.

    (3) By adopting such a principled approach to resolve disputes, the common law system facilitates the resolution of disputes by finding a solution that best suits the facts of the specific case before the court, and a solution that balances conflicting interests and considerations.

Reception of Common Law in Hong Kong: The Colonial Era

11. To trace the adoption and development of common law in Hong Kong, the natural starting point is the reception of English law

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from Law Quarterly Review, January 1960).

[4] Such characteristics can also be viewed as the strengths of the common law. See the discussion in William Gummow, "The Strengths of the Common Law", (2014) *HKLJ* 773.

in Hong Kong[5].

12. Hong Kong formally became a British colony as a result of the Royal Chater dated 5 April 1843. However, the British first formally occupied the island of Hong Kong as early as on 26 January 1841 (pursuant to the non-ratified *Treaty of Chuenpi*). The first official act by Captain Charles Elliot, the Chief Superintendent of Trade and Plenipotentiary, was the issue on 29 January 1841 a proclamation (albeit dated 2 February), which stated, among others, that, pending Her Majesty's further pleasure: (1) government should devolve upon the Chief Superintendent; (2) natives of China should be governed according to the laws and customs of China, every description of torture excepted; (3) all offences committed in Hong Kong by non-Chinese should fall under the cognizance of the criminal and admiralty jurisdiction then existing in China; and (4) all British subjects and foreigners in Hong Kong should enjoy full security and protection according to the principles and practice of British law.

13. A second proclamation (interestingly dated 1 February 1841) was issued the following day, which promised the Chinese inhabitants of Hong Kong protection and the free exercise of their religious rites, ceremonies and social customs, and pending Her Majesty's further pleasure they were to be governed according to the laws, customs and usages of the Chinese (every description of torture again excepted) by village elders under the control of a British magistrate.

14. These two proclamations gave rise to (what has often been described as) a dual system of law first put in place in Hong Kong. Although the authority of Captain Elliot had been

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[5] For further discussions on this topic, see: (1) Peter Wesley-Smith, "The Reception of English Law in Hong Kong", (1988) *HKLJ* 183; (2) D.M. Emrys Evans, "Common Law in a Chinese Setting – The Kernel or the Nut?" (1971) HKLR 9; (3) Peter Wesley-Smith, *The Sources of Hong Kong Law* (HKU Press), Chapter 6; (4) BH McPherson, *The Reception of English Law Abroad* (Supreme Court of Queensland Library 2007), pp. 324-325 [Note: For those who are interested in a structured discussion of reception of English law in overseas jurisdictions, this book makes very interesting and enlightening reading]; (5) *China Field Ltd v Appeal Tribunal (Buildings) (No. 2)* [2009] 5 HKLRD 662, per Bokhary PJ at para. 8 to 11, and per Lord Millett NPJ at para. 73 to 81.

doubted, this "dual system of law" apparently formed the basis of the application of English law until 1844[6].

15. As noted above, Hong Kong formally became a British colony on 5 April 1843. The Chater of the same date established in Hong Kong a law-making body: the governor, acting by and with the advice of the Legislative Council. This legislature first provided for the wholesale reception of English law in 1844 through the Supreme Court Ordinance (No. 15 of 1844). The original formula stated that the Law of England should be in full force in the Colony of Hong Kong, except where the same shall be inapplicable to the local circumstances or its inhabitants. There as at that time no mention of a date of reception, although this was supplemented two years later when section 5 of the Supreme Court Ordinance was amended to read as follows:

"*[S]uch of the laws of England as existed when the Colony obtained a local legislature, that is to say, on the 5th day of April, 1843, shall be in force in the Colony, except so far as the said laws are inapplicable to the local circumstances of the Colony or of its inhabitants, and except so far as they have been modified by laws passed by the said legislature.*"

16. This formula of reception of English law lasted 93 years, and was only replaced in 1966 by the Application of English Law Ordinance 1966. Section 8 of this Ordinance stated that "the common law and the rules of equity shall be in force in Hong Kong, so far as they may be applicable to the circumstances of Hong Kong or its inhabitants and subject to such modifications thereto as such circumstances may require,' save to the extent that they may from time to time be modified or excluded by applicable legislation. Section 4 applied Acts of Parliament as set out in the Schedule, which contained a total of seventy pre-1843 Acts of Parliament which applied either wholly or partly to Hong Kong.

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[6] It is pertinent to note that these two proclamations also formed the basis of the continuation of the Chinese customary law, as was from time to time referred to in subsequent Hong Kong decisions (although such a view is not free from challenges).

17. Pausing here, it may be pertinent to note two points. First, the date of reception (i.e. 5 April 1843, as was formally contained in the reworded section 5 of the Supreme Court Ordinance) was removed. Some suggested that this removed the difficulty of ascertaining the common law in 1843 (which sometimes could be a difficult task, especially when one might have to consider the impact of English statues on English common law), others suggested that this had the effect of bringing the common law applicable in Hong Kong up to date. Second, whilst the expression "common law" is not defined in the Application of English Law Ordinance, section 3 of the Interpretation and General Clauses Ordinance 1966 defined "common law" as "the common law of England (though likewise there was no reference to any particular time).

18. In short, the Application of English Law Ordinance (together with the definition of "common law" as contained in the then Interpretation and General Clauses Ordinance) provided the legal framework for the reception of English law in Hong Kong until it was repealed in 1997. Within this framework, the courts of Hong Kong applied English common law decisions when deciding cases. A survey of the court decisions decided before 1997 (and especially in the early colonial days) reviews one salient feature, namely, the Hong Kong courts relied primarily (though not exclusively) on English common law decisions (as opposed to common law decisions made in other common law jurisdictions).

19. Another important aspect in the reception of English law in Hong Kong is the role played by the Judicial Committee of the Privy Council[7]. The judicial function of the Privy Council is

[7] For discussions on this area, see: (1) Oliver Jones, "A worthy predecessor? The Privy Council on appeal from Hong Kong, 1853 to 1887", contained in Simon N.M. Young and Yash Ghai (ed), *Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong*, Chapter 4 (at pp. 94-118); and W.S. Clarke, "The Privy Council, Politics and Precedent in the Asia-Pacific" (1990) 39 *ICLQ* 741. For the sake of completeness, I should also mention that although the House of Lords was technically not in the same position as the Judicial Committee of the Privy Council (since technically the House of Lords was not part of the judicial hierarchy for the purpose of the Hong Kong legal system before 1 July 1997), decisions made by the House of Lords were regarded as highly persuasive and thus also had significant influence on the development of common law in Hong Kong. See, e.g., *Solicitor (24/07) v Law Society of Hong Kong*

based on the Judicial Committee Act 1833 (Imp), read together with the Judicial Committee Act 1844 (Imp). Such a final appellate framework was recognized and effected in Hong Kong by two Orders in Council, which set out the avenues through which appeals from decisions made by Hong Kong courts could be heard before the Judicial Committee.

20. Whilst the independence of the Judicial Committee of the Privy Council (or more specifically the Board, to which the judicial function was delegated) has never been in doubt, it has been suggested that one of the Board's desires was to achieve legal uniformity among the jurisdictions from which appeal went to the Privy Council. Such a desire to uphold legal uniformity had been proclaimed by several of its most prominent members, including Lord Atkin and Lord Westbury LC[8]. However, whilst such a desire to achieve legal uniformity did affect the development of common law in Hong Kong, it did not affect the quality of their decisions, nor did the Board fail to appreciate the need to apply the common law so as to 'meet the changing circumstances and patterns of [Hong Kong] society'[9].

Development of Common Law after 1997

21. What I have said so far concerns the development of common law in Hong Kong before 1 July 1997. Such a discussion is not solely for historic interest, and I will come back to it a bit later[10].

22. Moving on, if I may, to the development since 1997. As you know, Hong Kong became the HKSAR on 1 July 1997 upon China's resumption of exercise of sovereignty over Hong Kong pursuant to the 'One Country, Two Systems' policy. The Basic Law of the HKSAR, which was enacted by the National People's Congress of the PRC pursuant to Article 31 of the PRC Constitution, provides the constitutional and legal basis for the

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(2008) 11 HKCFAR 117, per Li CJ at para. 15.

8 See: Oliver Jones, *ibid.*, at pp. 96-97.

9 *de Lasala v de Lasala* [1980] 1 HKLR 332, per Lord Bridge at p. 334.

10 See paragraph 25 below.

implementation of the 'One Country, Two Systems' policy in Hong Kong.

23. One of the fundamental themes of the Basic Law is continuity, including continuity in respect of the legal system[11]. Several provisions in the Basic Law are important in this regard.

24. The first one is Article 2, which provides that the HKSAR enjoys (among others) independent judicial power, including that of final adjudication, in accordance with the provisions contained in the Basic Law.

25. The second one is Article 8, which provides that "[t]he laws 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 contravene [the Basic Law], and subject to any amendment by the legislature of the [HKSAR]. Pausing here, apart from the reference to "common law", "rules of equity", etc, you would notice that Article 8 starts off by referring to the "laws *previously in force* in Hong Kong". [emphasis added] In other words, it refers to the laws existing in Hong Kong as at 30 June 1997[12]. This is why I mentioned earlier that the effect of the Application of English Law Ordinance is not entirely historic, as it remains relevant when one seeks to ascertain the laws in force in Hong Kong as at 30 June 1997.

26. The third one is Article 18, which provides that "[t]he laws in force in the [HKSAR] shall be [the Basic Law], the laws previously in force in Hong Kong as provided for in Article 8 [of the Basic Law], and the laws enacted by [its] legislature". Article 18 goes on to stipulate that national laws of the PRC shall not be applied in the HKSAR, except for those listed in Annex III to the Basic Law. Apart from setting out the procedure to be followed before a national law can be extended

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[11] This theme of continuity is recognised, if not emphasised, by the courts. See, e.g., in *HKSAR v Ma Wai Kwan, David* [1997] HKLRD 761, per Chan CJHC (as he then was) at p. 772 I – J.

[12] See: (1) Yash Ghai, *Hong Kong's New Constitutional Order*, 2nd edn., pp. 361-364; and (2) Peter Wesley-Smith, *An Introduction to the Hong Kong Legal System*, 3rd edn., (Oxford University Press), p. 42.

to the HKSAR, Article 18 confines the types of PRC national law that can be extended to the HKSAR to "those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the [HKSAR].

27. The fourth one is Article 84, which provides that the courts of the HKSAR shall adjudicate cases in accordance with the law applicable in the HKSAR as prescribed in Article 18 and "may refer to precedents of other common law jurisdictions".

28. Against this constitutional background, not only does the HKSAR continue with its common law system, common law in the HKSAR experiences healthy development in the past 20 years since 1997. Rather than discussing the development by reference to specific areas of law, I would, for the present purpose, highlight the following three key features in the development of common law in the HKSAR since 1997.

29. First, for want of a better articulation, I would venture to suggest that the HKSAR has happily "joined" the extended family of the common law. As noted above, prior to 1997, the common law applied in Hong Kong was defined as the common law of England. After 1 July 1997, Article 84 of the Basic Law expressly allows the HKSAR courts to "refer to precedents of other common law jurisdictions". In other words, Article 84 of the Basic Law does not confine the courts of the HKSAR to English common law. Besides, the definition of "common law" in section 3 of the Interpretation and General Clauses Ordinance has since been amended to read as "the common law in force in Hong Kong".

30. Such a change is not without significance[13]. Lord Millett, sitting as a Non-Permanent Judge ("NPJ") of the Court of Final Appeal ("CFA"), when discussing the development of common law in

[13] The significance is not confined to the consideration of precedents decided in common law jurisdictions other than the UK. One noticeable significance, among others, is that certain cases decided by the CFA are being regarded as leading authorities in the respective areas of law, and are frequently cited and considered in other common law jurisdictions including the UK, Australia, New Zealand, Singapore and Malaysia. See paragraph 38 below.

Hong Kong, observed as follows in *China Field Ltd. v Appeal Tribunal (Buildings) (No. 2)* [2009] 5 HKLRD 662:

"*… … The language of the 1966 Ordinance was appropriate when Hong Kong was a British colony and Hong Kong judges were obliged to apply an occasionally modified version of English law. This is no longer the case. Just as Australian and New Zealand judges apply and develop their own versions of the common law, so in future our judges must develop the common law of Hong Kong to suit the circumstances of Hong Kong. It is well recognised that the common law is no longer monolithic but may evolve differently in the various common law jurisdictions.*" [at para. 78]

"*… … It is of the greatest importance that the courts of Hong Kong should derive assistance from overseas jurisprudence, particularly from the final appellate courts of other common law jurisdictions. This is recognised by art. 84 of the Basic Law.*" [at para. 79]

31. The second key feature, which is very much related to the first one, may be described as the internationalization of the common law in the HKSAR. By this, I mean that the courts in the HKSAR are no longer confined to common law jurisprudence. Instead, references are repeatedly (and on some occasions, extensively) made to European and international jurisprudence, including cases and materials of the European Court of Human Rights, the European Human Rights Commission, observations by the United Nations Human Rights Committee, as well as jurisprudence of the United States of America and Canada (which they also have constitutionally entrenched Bills of Rights)[14].

32. This trend of internationalization, which is particularly obvious

[14] In this regard, see also: (1) PY Lo, "An Internationalist, Consequentialist and Non-progressive Court: Constitutional Adjudication in Hong Kong (1997-2009), Vol. 2:2, *CityU of HK Law Review* (Winter 2010), 215; (2) PY Lo, *The Judicial Construction of Hong Kong's Basic Law: Courts, Politics and Society after 1997* (HKU Press), para. 32.4 (at pp. 478-483). For an example of judicial observation, see: *Lam Siu Po v Commissioner of Police* (2009) HKCFAR 237, per Ribeiro PJ at para. 62.

in the context of human right cases, first started after Hong Kong enacted its own Bill of Rights in 1991, but the trend gathers further and significant moment after 1997. One of the propelling forces is Article 39 of the Basic Law which provides as follows:

"*The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.*

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article."

33. In *R v Sin Yau Ming* (1991) 1 HKPLR 88[15], Silke VP observed as follows (at para. 65):

"*In my judgment, the glass through which we view the interpretation of the Hong Kong [Bill of Rights] is a glass provided by the [ICCPR]. We are no longer guided by the ordinary cannons of constructions of statutes nor with the dicta of the common law inherent in our training. We must look, in our interpretation of the Hong Kong Bill, at the aims of the Covenant and give "full recognition and effect" to the statement which commences that Covenant. From this stems the entirely new jurisprudential approach ...*"

34. In *Solicitor (24/07) v Law Society of Hong Kong* (2008) 11 HKCFAR 117, the then Chief Justice Andrew Li explained as follows (at para. 16):

[15] This is a case which was decided shortly after the introduction of the Hong Kong Bill of Rights, and the observations made by Silke VP as quoted above illustrates the change of approach adopted by the Hong Kong Courts.

"*After 1 July 1997, in the new constitutional order, it is of the greatest importance that the courts in Hong Kong should continue to derive assistance from overseas jurisprudence. This includes the decisions of final appellate courts in various common law jurisdictions as well as decisions of supra-national courts, such as the European Court of Human Rights. Compared to many common law jurisdictions, Hong Kong is a relatively small jurisdiction. It is of great benefit to the Hong Kong courts to examine comparative jurisprudence in seeking the appropriate solution for the problems which come before them. This is underlined in the Basic Law itself. Article 84 expressly provides that the courts in Hong Kong may refer to precedents of other common law jurisdictions.*"

35. In the same vein, Sir Anthony Mason (a NPJ of the CFA), writing extra-judicially, explained that apart from the continuum of evolutionary development of the common law that Hong Kong judges partake by referring to judgments from other common law jurisdictions, the international law dimension of human rights protection and the practical approach of reading judgments from abroad for 'judicial wisdom' carries additional attraction[16]. Sir Anthony observed as follows:

"*It is important that the [CFA's] decisions should be seen to conform to internationally accepted judicial standards. Indeed, for Hong Kong there is a double attraction: Hong Kong's reputation as an international financial centre depends upon the integrity and standing of its courts. Further, in the context of Hong Kong's relationship with the central government in Beijing, it is important that the decision of the Hong Kong courts reflect adherence to the rule of law in accordance with internationally adopted judicial standards.*"[17]

36. As a result of this internationalization process, the HKSAR courts have made significant landmark decisions in the

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[16] See also: PY Lo, *The Judicial Construction of Hong Kong's Basic Law: Courts, Politics and Society after 1997* (HKU Press), para. 32.4 at pp. 478-483.

[17] Sir Anthony Mason, 'The Place of Comparative Law in Developing the Jurisprudence on the Rule of Law and Human Rights in Hong Kong' (2007) 37 *HKLR* 299, at pp. 302-303.

protection of human rights. Examples include: (1) the use of proportionality analysis in examining whether restriction of freedom of assembly is constitutional[18]; (2) the formulation of the "justification test" for the purpose of deciding whether there was any breach of the right to equality under Article 25 of the Basic Law[19]; and also (3) the power to adopt remedial interpretation when a legislative provision faces challenges of constitutionality[20].

37. Before I move on to the third key feature, it is worth highlighting two factors which are relevant to, or which may partly explains, the first and second features discussed above[21].

38. The first is Article 82 of the Basic Law, which expressly allows that judges from other common law jurisdictions may be invited to sit on the CFA. As I have said on other occasions, this is a unique formula which enhances cross-fertilization of judicial wisdom, and which has proved to be a success. Not only does the continuous participation of overseas judges assist in enhancing the expertise and quality of the work of the CFA, it also serves as a strong testimony of the judicial independence of the Hong Kong Judiciary[22]. Indeed, as I have observed on some other occasions, decisions by the CFA in a number of areas are now being regarded as leading authorities in the respective areas of law, and are often considered and cited in common law jurisdictions beyond the HKSAR, as well as used as precedents to illustrate legal principles in leading law textbooks[23].

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18 *Leung Kwok Hung v HKSAR* (2005) 8 HKCFAR 229.

19 *SJ v Yau Yuk Lung* [2007] 3 HKLRD 903.

20 *HKSAR v Lam Kwong Wai* [2006] 3 HKLRD 808.

21 For an interesting comparative analysis in this area, see: David S. Law, "Judicial Comparativism and Judicial Diplomacy", (2015) 163 *University of Pennsylvania Law Review*, 927 (at pp. 986-997). I should add that, apart from the two factors discussed in paragraphs 38 and 39 above, the legal aid system implemented in the HKSAR is not irrelevant. This is because the applicants in many of the important constitutional or human right cases are funded by legal aid.

22 See also: Lin Feng, "The Expatriate Judges and Rule of Law in Hong Kong: Its Past, Present and Future", Working Paper Series No. 1 (May 2016) (Centre for Judicial Education and Research, City University of Hong Kong).

23 See: (1) P.Y. Lo, "Impact of jurisprudence beyond Hong Kong", contained in Simon N.M. Young and Yash Ghai, *Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong* (Cambridge University Press), Chapter 22 (pp. 579-607); and (2) PY Lo, "The Impact of CFA jurisprudence beyond Hong Kong", (Aug 2010) *Hong Kong Lawyer* 36.

39. The second is the relatively liberal policy adopted by Hong Kong in respect of the admission of overseas counsel on an *ad hoc* basis. During the period from 2012 to 2106, a total of 163 applications for admission of overseas barristers (primarily London silks) were allowed by the HKSAR Court. These overseas counsel, which were admitted on the basis of their specialist expertise, provided an additional source of legal wisdom which facilitates the consideration of jurisprudence from other common law jurisprudence as well as international jurisprudence.

40. If I may now turn to the third feature of the development of common law in Hong Kong after 1997. Put shortly, notwithstanding the first and second features discussed above, the development of common law in Hong Kong maintains its unique and appropriate path when circumstances require. In this regard, Lord Millett, sitting as a NPJ of the CFA, observed in the *China Field* case (above) as follows (at para. 81):

"*On the resumption of the exercise of sovereignty by China the Privy Council ceased to be the final appellate court of Hong Kong and its place was taken by this Court [the CFA]. The jurisdiction to ascertain, declare and develop the common law of Hong Kong formerly exercisable by the Privy Council is now exercisable by this Court. It will continue to respect and have regard to decisions of the English courts, but it will decline to adopt them not only when it considers their reasoning to be unsound or contrary to principle or unsuitable for the circumstances of Hong Kong, but also when it considers that the law of Hong Kong should be developed on different lines.*"

41. A recent example of such development took place in the area of the law of joint enterprises (a basis of liability in criminal law which is also described as "parasitic accessory liability). In the decision of *R v Chan Wing Siu* [1985] 1 AC 168, the Privy Council laid down the principle of joint enterprise, and the principle has since been adopted in various common law jurisdictions. In 2016, the UK Supreme Court decided in *R v*

Jogee [2016] 2 WLR 681 that the Privy Council decision of *Chan Wing Siu* was wrong. However, when the same issue of joint enterprise came to be considered in Hong Kong, the CFA in its decision in *HKSAR v Chan Kam Shing* (2016) 19 HKCFAR 640 declined to follow the UK Supreme Court decision in *Jogee*, and continued to uphold the approach expounded in *Chan Wing Siu*. For the present purpose, I have no intention to examine whether the UK Supreme Court decision is correct, or whether the Hong Kong CFA decision is better. My point, rather, is solely to illustrate that the path of the development of common law in Hong Kong may take a different turn when it is appropriate and in the interest of the HKSAR to do so[24].

Concluding Remarks

42. To conclude, the past 20 years since 1997 have witnessed a period of healthy development of common law in the HKSAR. With the constitutional guarantee enshrined in the Basic Law of the HKSAR, and the high quality of our independent Judiciary as well as our legal profession, I have every confidence that common law, together with its underlying spirit of the rule of law, will continue to grow from strength to strength in the years to come.

43. Besides, the HKSAR will maintain its link with other common law jurisdictions and also the international community, so that judicial dialogue and cross-fertilization can continue in the mutual interests of all jurisdictions concerned. Needless to say, the HKSAR will continue to welcome exchanges and interflows with the English legal and judicial communities.

44. On this note, it remains for me to again express my gratitude for giving me this honour to address you, and to wish you all a nice evening. Thank you.

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[24] For examples in the civil context, see the lecture entitled "Developing Common Law in Hong Kong" given by Tang PJ as part of the Common Law Lecture Series 2015 (27 October 2015).