

## **Speech by SJ at HKU Faculty of Law 208th Congregation (English only)(with photos)**

Following is the keynote address by the Secretary for Justice, Mr Paul Lam, SC, at the HKU Faculty of Law 208th Congregation today (November 27):

Provost and Deputy Vice-Chancellor Professor Y C Richard Wong, Dean of the Faculty of Law Professor Hualing Fu, learned professors and teachers, distinguished guests, graduates and students, ladies and gentlemen,

It is a great honour to be asked to say a few words at today's congregation. I would like to begin by offering my warmest congratulations to all graduates.

### ***Similarities between you and me***

Seeing all of you today on this special and important occasion reminds me of a very similar scene 31 years ago back in 1991. I was wearing the same Bachelor of Laws degree graduation cap and gown like many of you though the venue was different: it was at the Hong Kong Coliseum in Hung Hom. I was as excited as you because I had accomplished the greatest achievement in my life by then. But at the same time, I was also somewhat anxious and confused as to what lied ahead. There were of course some personal reasons: I came from a rather humble background; and although I was very interested to join the Bar, I was worried whether I could survive. But there were also other important reasons relating to the situation of Hong Kong at that time. The Basic Law was promulgated in 1990. The late 80s and early 90s were a critical stage in Hong Kong's transition from a place under the colonial rule of the

British to a special administrative region of the People's Republic of China. Owing to events taking place in the Mainland in 1989, there was a deterioration in relations between Britain as well as many other western countries and China. There was a confidence crisis in Hong Kong. Many of my relatives, friends with their families, decided to leave. As recorded in Chapter 5 of Mr Christopher Munn's book, "*A Special Standing in the World: The Faculty of Law at The University of Hong Kong, 1969-2019*" (2019), the number of HKU applicants putting down law as their first choice dropped from 826 in 1989 to 514 in 1990, 437 in 1991, and 392 in 1992; and a survey of solicitors, barristers, government lawyers, and articled clerks in November 1989 found that 63% of the 1,687 respondents planned to leave Hong Kong before 1997 (pp. 135-136, fn. 14 &15). At that time, the principle of "one country, two systems" had not yet been put into practice; and it was unclear whether the common law system could indeed survive under this principle. Yet, notwithstanding the anxiety and confusion, I soldiered on. Time flies. There were of course ups and downs in my life and career. But in any event, 31 years later, I am very lucky to be able to speak to you here today.

I suspect that some of you may feel anxious and confused because of strikingly similar reasons. Owing to geopolitics, there are now serious tensions in the relationship between China and many Western countries. Hong Kong people have very different views on recent developments in Hong Kong, including those relating to our legal system. We read from the news that, apparently, many people have intended, or decided to leave; and some had already left. Having said all these, I firmly believe there are good reasons why you should feel more optimistic now than how I felt 31 years ago.

## *Opportunities abound if climb high and gaze far*

Not too long ago, we celebrated the 25<sup>th</sup> anniversary of Hong Kong's return to the motherland on July 1, 2022. It is most telling and significant that President Xi had unprecedentedly mentioned the common law twice in his speech delivered in Hong Kong on that day. First, he acknowledged that, since Hong Kong's return to China, *"its previous laws including the practice of the common law have been maintained and developed"*. Second, he said that *"The central government fully supports Hong Kong in its effort to maintain its distinctive status and edges"* and, among other things, *"to maintain the common law"*. Further, apart from confirming that the principle of "one country, two systems", he mentioned that, under this principle, *"The executive and legislative branches check and balance and co-operate with each other while the judiciary exercises its power independently."* In response to President Xi's urge that Hong Kong shall seize the opportunities offered by China's development and actively dovetail itself with the 14<sup>th</sup> Five-Year Plan (2021-2025) and other national strategies such as the development of the Guangdong-Hong Kong-Macao Greater Bay Area and the Belt and Road Initiative, in the Chief Executive's 2022 Policy Address dated October 19, 2022, the Chief Executive announced that Hong Kong will develop to become a centre for international legal and dispute resolution services in the Asia-Pacific Region. The Central Authority has also announced very recently that the International Organization for Mediation Preparatory Office will be set up in Hong Kong early next year.

Although opportunities abound, they always come with challenges. President Xi also said on July 1, 2022 that *"We must give special love and care to young people. Hong Kong will prosper only when its young people thrive..."*. Guidance and

assistance will certainly be available. But no one can give, let alone guarantee, you success. You must decide on your own destination and walk your own path. While, understandably, you would need to focus on personal considerations in designing your own career path, I would advise you to “*climb high and gaze far*”, in Chinese 登高望遠. Opportunities are strange creatures: they are shy, elusive and fast-moving. Only those who climb high enough and look far enough will be able to see them. And, of course, upon seeing them, you will need to run fast in order to catch them before they fall into the hands of others. I would encourage you to look at the bigger picture: not just what you can do for yourself or your beloved ones, but also what you can do for Hong Kong and our country.

### ***Role of lawyers in maintaining and promoting the rule of law***

There is no doubt that the common law system can be maintained in Hong Kong and that Hong Kong may enhance its status as an international legal centre if and only if the core value of the rule of law is reinforced and consolidated. We are extremely fortunate that Hong Kong has been, and is still, a place where there is a high degree of the rule of law; and the rule of law continues to be one of the most important, if not the most important, bedrocks of its success. However, we must not take things for granted. I am sure that each of you will have a different career plan but I suppose most, if not all, of you will become lawyers soon no matter whether you intend to join the Bar; or become a solicitor, an in-house lawyer, an academic lawyer or a government lawyer. Some of you may even be lawyers already. Today is the pertinent moment to reflect on the role of lawyers in the maintenance and development of the rule of law.

This may seem an easy question because it is plain and obvious that our legal system cannot function properly or at all without lawyers. An essential element of the rule of law is access to justice. Without lawyers, there cannot possibly be any meaningful access to justice. That said, it does not follow that the mere presence of lawyers, by itself, can, as a matter of course, result in the rule of the law.

To begin with, we must be mindful of the fact that many people dislike or even hate lawyers. In Shakespeare's Henry VI, Part II, one of the characters said "*The first thing we do, let's kill all the lawyers.*" It is therefore of crucial importance to establish, maintain and enhance people's trust and confidence in lawyers. How then can this objective be achieved? I would venture to suggest that, as a bare minimum, this would require all lawyers to possess two essential qualities, namely, ability and integrity, both as a matter of fact and as a matter of perception.

### ***The meaning and importance of ability***

The importance of possessing sufficient ability is self-evident. Lawyers are, in a sense, technicians providing services to fellow citizens. The services that they provide are different types of legal service, contentious or non-contentious; and the tools that they use are legal knowledge of different areas. There is a Chinese saying “工欲善其事，必先利其器” - if a workman wishes to do a good job, he must first sharpen his tools. Obtaining a law degree only means that you have acquired some basic tools. In a fast-changing society like Hong Kong, the legal services on demand are becoming more diversified on the one hand, but also more specialised on the other hand. It will be imperative for you to sharpen your existing tools and, at the same time, to acquire

new tools continuously. Failure to provide reasonably competent service and to discharge professional duties in a reasonably competent manner will lead to serious consequences. First, it will inevitably impair the lawyer's own career prospect. Second and more importantly, putting aside that the client will be deprived of the chance of enforcing or defending his legal rights and interests in a way that he reasonably expects, he will naturally feel disappointed and aggrieved, and is likely to lose faith in lawyers. Lastly, although incompetent lawyers may be the exceptions and their failure in discharging professional duties may be isolated incidents, if and when these matters come to the attention of the general public, there is a real and substantial risk that other people may start to have doubts and misgivings about lawyers in general.

### ***The meaning and importance of integrity***

Lawyers are, of course, not mere technicians. This takes me to the importance of integrity. Integrity is more difficult to define and explain than ability. Put it simply, integrity is the practice of being honest, and showing a consistent and uncompromising adherence to strong moral and ethical principles and values. In particular, lawyers are bound to observe ethical principles and values as embodied in the relevant professional codes of conduct.

Hence, in order to be honest, a lawyer should not lie to the court or to his client, and he also should not put himself in a position of conflict of interests with his client. You may think it is easy and axiomatic to be honest. But I wish to warn you that, if and when you are tested, which I am sure you will be in the course of your career, to resist the temptation of compromising your integrity is likely to be much harder than you imagine. Take an example: assuming that you are acting for a major client and you

discover that there is a judicial precedent which is little known but fatal to your case, would you tell your client and the court when there is little chance that the authority will be discovered by your opponent or the court on its own motion and, at the same time, disclosure would result in losing the litigation and likely your client who would find it very difficult to understand why you make the disclosure? Whether you can stand firm on those occasions will be the true test of your integrity.

To maintain independence of the legal profession is also an essential element of the integrity of lawyers. Mr Justice Bingham, in his landmark text on the “*Rule of Law*” (2010), said that “*Scarcely less important than an independent judiciary is an independent legal profession, fearless in its representation of those who cannot represent themselves, however unpopular or distasteful their case may be*” (p. 92). There is no universal definition of independence in the present context. In my view, it requires a lawyer to discharge his professional duties free from any external or internal interference due to extraneous and irrelevant matters. External interference may include improper pressures exerted, or inappropriate advantages offered, by third parties. A lawyer must have the courage and determination to resist any such external interference. Internal interference is more subtle, and refers to personal favour or prejudice, but mainly prejudice. For example, your client or potential client has committed an act which you strongly disapprove of; or simply because he belongs to a political association you dislike. You might feel that somehow he does not deserve to receive the best possible service from you; and there is a risk that, either consciously or subconsciously, you work not as hard as what you do in other cases. No one can tell whether the quality of your professional service has been adversely affected by personal prejudice. But honesty requires not only to be honest to the others but also to

be honest to yourself.

People of integrity have the propensity to make people feel at ease and believe that they are trustworthy and respectable. However, in most cases, lay persons who lack legal knowledge and unfamiliar with the professional codes of conduct would not be able to judge independently whether a particular lawyer is competent or not, or whether he is honest or not. They might rely on the lawyer's general reputation, which is very often mixed and unreliable. It is much more likely they will judge a lawyer by reference to his general behaviour. They will pay attention to his attitude and demeanour. There is where the distinction between reality and perception blur and overlap. It is now often said that perception is reality. Indeed, perception should reflect the reality.

What then are the typical hallmarks of persons who are perceived to be and are in fact those of integrity? I do not profess to be able to compile an exhaustive list of these hallmarks. But there are at least two which I feel to be essential. First, sincerity. A sincere person is one who deals with others genuinely and in a straightforward manner as far as possible. Second, humility. In other words, to be humble. You must be very proud of your achievements. You belong to a small privileged group who possess legal knowledge and are likely to lead a better life than many others in society. While lawyers play a unique and significant role in society, it does not mean that their contribution to society must be more valuable than others. Furthermore, it is likely that we are indeed ignorant of many things outside our legal expertise. Television dramas or movies very often portray lawyers as middle-classed professionals who dress expensively; go to high-end bars and restaurants; and speak in cocky, aggressive and self-righteous manner. This is certainly untrue in fact but we must ask ourselves why



lawyers are commonly portrayed in this way.

Lawyers ought to show honesty, sincerity and humility not just when they are acting in their professional capacities but also in their daily lives. Indeed, it is far more likely that you will reveal your true self in your daily activities, and your daily encounters with other people. Owing to our legal training, we may be obsessed with the insistence on legal rights, the need for evidence to prove a fact, and the importance of logical and rational thinking. However, as human beings, we should show empathy and compassion to others, and not behave in any way which seems to suggest that lawyers are a different, let alone superior, type of human beings. After all, maybe we are just very lucky in two senses. First, we are lucky in that we live in a society where there is the rule of law, and lawyers are necessary and highly regarded. Second, we are very lucky being the small number of people in society who have the chance to receive legal education and training.

People's perception of a particular lawyer will determine his reputation. It will be wrong and dangerous to think that the reputation of an individual lawyer may or will not matter much to the overall reputation of the legal profession. Collective reputation of the legal profession is made up of, or the sum total of, the reputation of individual lawyers. The collective reputation of the Hong Kong legal profession will in turn decide people's degree of trust and confidence in our legal profession and the legal system as a whole.

### ***Concluding remarks***

What I just said is not intended to be a lecture on some authoritative rules and

principles. Rather, they are matters that have been guiding me all along my life and career, even though I may not have been able to follow them all the time. You are my junior alumni, 師弟師妹, and I wish to share these tips with you. I do this because it is no exaggeration to say that the future of the rule of law of Hong Kong is very much in your hands.

With this note, I wish to congratulate you and your beloved ones again on your achievements. But mind you, this is just the beginning of a long, exciting and promising journey. Armed with an unshakeable faith in the rule of law, if coupled with ability and integrity, I am confident that you all will reach your destinations, and gain the trust and respect you deserve from others, somehow someday in future.

Thank you very much!