

Speech by SJ at official launch of Asian Legal History Association (English only) (with photo)

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Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at the official launch of the Asian Legal History Association (ALHA) today (March 17):

Professor Lo (Vice-Chancellor and President of the Chinese University of Hong Kong, Professor Dennis Lo), Professor Xi (Dean of the Faculty of Law of the Chinese University of Hong Kong, Professor Xi Chao), learned scholars, distinguished guests, ladies and gentlemen,

A very good morning. It is my great pleasure to address you today at the official launch of the Asian Legal History Association in Hong Kong. It is undoubtedly a momentous occasion that brings together 21 leading law schools and academic institutions from 17 jurisdictions with distinguished scholars, historians and legal professionals from across the globe. Professor Xi told me a while ago that there are 12 representatives coming from 17 jurisdictions who are with us today, so welcome to Hong Kong. This gathering does not only celebrate the launch of a new institutional platform, but also signifies our shared commitment to delving into Asia's legal history and preserving Asia's rich and diverse legal traditions as valuable resources of wisdom and inspiration. I would like to express my sincere gratitude to the ALHA for hosting its official launch in Hong Kong, as well as to all those who have contributed to the process and made the ALHA a reality.

With its Secretariat proudly hosted here at the Chinese University of Hong Kong, the ALHA is a landmark initiative that brings together the finest legal minds to explore not only how the laws and legal systems were shaped by their historical context and background but also how they might evolve or adapt to better serve justice in the course of time. It offers a unique, dedicated platform for scholars and practitioners to examine how legal doctrines and institutions have travelled, interacted and been transformed across diverse cultures and jurisdictions in Asia. This platform could also observe how these exchanges have influenced, and continue to influence, the legal reforms, governance and the administration of justice today. Through conferences, research collaborations and projects, I am sure that the ALHA will foster an ongoing cross-jurisdictional dialogue on legal history that transcends geography and ideology, thereby contributing significantly to the legal study and exchanges in Asia and beyond.

Why legal history matters

Speaking personally, I enjoy reading legal history of different jurisdictions especially when travelling overseas. This is because this would shed lights on how justice has been perceived in different societies throughout their respective legal history.

Legal history offers us not just archives or records of ancient statutes, but also serves as a living narrative of how societies, through centuries of trial and error, have sought to

regulate human relationships. Legal history can be both a mirror and compass for a legal system. It embodies and reflects the continuous evolution of values of the society and explains how our law today came to embody the values we hold dear, and what the law can become in the future. From this wellspring of wisdom, we draw practical insights that continually shape our understanding of justice, our approach to governance and our commitment to upholding the rule of law.

I believe that it is our shared passion for legal history that has brought us together today. The passion for legal history is not only a purely academic pursuit. A thorough understanding of legal history is important for practical purposes. Legal history should not be viewed as just a chronicle of the past, but it should be considered as a living force that guides our present decisions and empowers us to shape the future. Many fundamental principles and values that we rely on today, for example, natural justice, equality before the law, independent judiciary, protection of human rights, etc, are influenced by centuries of lessons and experiences from the past. Every piece of legislation is drafted in response to society's development and evolving values. Every judgment we read or deliver stands on precedents built by generations before us.

Studying legal history could help us to find ways to address present challenges. By examining how our predecessors dealt with crises through legal principles, we gain clearer insights into the complexities we are facing and are better equipped to avoid repeating historical mistakes.

I would venture to say that the study of legal history holds particular significance in Asia. As the world's largest and most diverse continent, Asia embraces a remarkable array of legal systems and traditions, ranging from civil law, common law and sharia law. Rich legal diversity is Asia's strength and characteristic. It has endowed Asia with the unique flexibility and adaptability to draw lessons from its varied traditions and address contemporary issues more effectively.

It is therefore profoundly fitting and meaningful that the ALHA has chosen Hong Kong as its base. Indeed, the development of the common law system in Hong Kong is one of the most exciting and interesting stories on legal history. Let me explain briefly.

#### Hong Kong's own unique legal history

Hong Kong is the only common law jurisdiction within China; it is also the only common law jurisdiction in the world with both Chinese and English as the official languages. I have said repeatedly that our common law system is one of the most unique and significant systematic strengths of Hong Kong under the principle of "one country, two systems". Not only that it serves to maintain the prosperity and stability of Hong Kong, it also serves to assist in the development and opening up of our country.

So where did the story actually begin? It began 183 years ago in 1843. After Hong Kong came under British colonial rule, the Supreme Court Ordinance (No. 15 of 1844) was enacted. The original formula stated that the law of England should be in full force in

Hong Kong, except where the same shall be inapplicable to the local circumstances or its inhabitants. Two years later, the Ordinance was amended to make it clear that the effective date shall be backdated to April 5, 1843. This formula of reception of the English law lasted 93 years and was only replaced in 1966 by the Application of English Law Ordinance. Section 3 of this Ordinance stated that "the common law and the rules of equity shall be in force in Hong Kong, so far as they are applicable to the circumstances of Hong Kong or its inhabitants and subject to such modifications as such circumstances may require".

It is significant to note that the importation of the English common law was subject to the exception that it may be inapplicable due to the local circumstances of Hong Kong. As explained by the Court of Final Appeal in the case of *China Field Ltd v. Appeal Tribunal (Buildings)* (2009) 12 HKCFAR 342, one of the things which that exception did was to leave some room in certain spheres for ethnic Chinese domiciled in Hong Kong to resort to the laws and customs of traditional China. Another consequence of the exception is that the Hong Kong courts had to develop what amounted to common law of Hong Kong even though it was for the most part identical to the English common law.

Before China resumed the exercise of sovereignty over Hong Kong on July 1, 1997, the final appellate court of Hong Kong was the Privy Council in England. However, as the Court of Final Appeal observed in the case that I have mentioned a while ago, the fact that Hong Kong appeals laid ultimately to the Privy Council did not hinder, rather did it assist, the proper development of Hong Kong common law. The Privy Council would in general accord the respect due to local habits and conditions. In practice, the courts of Hong Kong continued to develop the common law of Hong Kong through what had always amounted in reality to a modified application of the English common law.

In anticipation of China's resumption of the exercise of sovereignty over Hong Kong, the Basic Law was promulgated on April 4, 1990. Article 160 provides that, upon the establishment of the Hong Kong Special Administrative Region (HKSAR), the law previously in force in Hong Kong shall be adopted as law of Hong Kong except for those which the Standing Committee of the National People's Congress declares to be in contravention of the Basic Law. On February 23, 1997, the Standing Committee of the National People's Congress made a decision pursuant to Article 160. Among other things, it decided that the Application of English Law Ordinance contravened the Basic Law and hence, shall not be adopted as the law of the HKSAR.

In these circumstances, to preserve and continue the application of common law in Hong Kong, Article 8 of the Basic Law becomes very important. It provides expressly that the 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. Without this important provision, common law would have ceased to be a part of Hong Kong law.

It is also significant that, under the Basic Law, Hong Kong enjoys independent power

of adjudication; and that the power of final adjudication shall be vested in the newly created Court of Final Appeal. Accordingly, since China's resumption of the exercise of sovereignty over Hong Kong on July 1, 1997, the Hong Kong courts' development of our common law has been carried out with the Hong Kong Court of Final Appeal at the apex of the judicial hierarchy. Not surprisingly, the development of our common law has been on the increase since July 1, 1997.

To facilitate the development of the common law in Hong Kong, there are also the following exceptional arrangements under the Basic Law. First, Article 82 provides that the Court of Final Appeal may invite judges from other common law jurisdictions to sit on it; and Article 92 provides more generally that judges and other members of the judiciary may be recruited from other common law jurisdictions. On the other hand, Article 84 provides that the Hong Kong courts may refer to precedents of other common law jurisdictions.

As stated by the former Chief Justice Mr Andrew Li in the case *A Solicitor (24/07) v The Law Society of Hong Kong* (2008) 11 HKCFAR 117, and he said after July 1, 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. Bearing in mind that historically, Hong Kong's legal system originated from the British legal system, decisions of the Privy Council and the House of Lords, which is now the Supreme Court of the United Kingdom, should be treated with great respect. Their persuasive effect would depend on all relevant circumstances, including in particular, the nature of the issue and the similarity of any relevant statutory or constitutional provision. However, at the end of the day, the courts in Hong Kong must decide for themselves what is appropriate for our own jurisdiction.

An excellent example is that, in a very recent case *Samantha Jane Bradley v Sir Elly Kadoorie & Sons Ltd* (for and on behalf of itself, its current and former officers, employees and agents, including its legal representatives, Messrs Simmons & Simmons) [2026] HKCFA 2, the Court of Final Appeal recognised that there is at Hong Kong common law a tort of harassment.

Let me now give you an important number, which is 66. This is the total number of Hong Kong court cases cited or used by overseas courts between 2018 and February 10, 2026. The overseas courts include courts in the United Kingdom, Australia, New Zealand, Singapore, Canada and Dubai. The fact that courts in other common law jurisdiction found it useful to cite Hong Kong cases is a very cogent piece of evidence that the quality of the jurisprudence produced by the Hong Kong courts is extremely high and has made important contributions to the development of common law in general.

To put the matter in a historical context, after more than 183 years, Hong Kong has now developed its own unique common law system, which is highly renowned around the world and marked by its highly international characteristics. This is also why I am convinced that Hong Kong stands as an ideal base for the ALHA. We take great pride in Hong Kong's role as the bridge and home for the ALHA, where the lessons of history continue to inspire the pursuit of a fairer and more enlightened future for all.

As I stand before so many eminent scholars and experts in legal history, I would like to share with you a timeless remark by Confucius, "告諸往而知來者", which may be translated into English as "Learning the past to know the future". As we celebrate the launch of the ALHA, let us remember that to study where our laws and legal systems came from is not an exercise in nostalgia, but an act of foresight.

Once again and to conclude, I extend my warmest congratulations to the ALHA and wish it every success. I also wish you all a very constructive inaugural conference to foster meaningful dialogue and collaboration among legal history experts. Thank you very much.

Ends/Tuesday, March 17, 2026