

Editorial (Centre for Asian Legal Studies)

On behalf of the Centre for Asian Legal Studies, we are delighted to announce the launch of the CATPLI Writing Project in collaboration with our partners, Thammasat University Faculty of Law (“TU Law”) and the *Singapore Law Review* (“SLR”). It is hoped that the nine articles, written by faculty members and law students from the National University of Singapore’s Faculty of Law (“NUS Law”), East China University of Political Science and Law (“ECUPL”), and TU Law will serve to inspire the next generation of law students to not just explore the laws in their own jurisdiction, but in neighbouring ones as well. The increasing regionalisation of the world order makes this goal imperative – Singapore’s future is closely tied to our neighbours’, and it is already the case that our closest trading partners come from the region. Such trade flows are only expected to increase in the future. It is thus important for law students to be able to not only “work comparatively”, but to also understand the perspectives taken by lawyers from other jurisdictions.

The Centre for Asian Legal Studies – Thammasat University Faculty of Law Peer Learning Initiative, or more commonly known as CATPLI, was founded in 2021 and formally launched on 20 January 2022 as a “student-led project with the long-term goal of promoting direct knowledge exchange and academic collaboration between the students of both faculties”. Initially, it was conceived to be a platform for the organisation of workshops where NUS Law and TU Law students can discuss the similarities and differences between how Singaporean and Thai laws responded to the same factual issues. Thus, CATPLI’s first workshop was titled “An Introduction to the Basics of Singapore Contract Law”, with Singaporean contract law serving as the basis to promote “meaningful discussion of some of the doctrinal differences present in the contract laws of both jurisdictions, thereby fostering a deeper sense of appreciation for each jurisdiction’s approach to contract law”. As Associate Professor Munin Pongsapan, then Dean of TU Law and CATPLI’s Project Supervisor, supportively stated, CATPLI “will be of great inspiration to Thai law students in their studies: a comparative approach always leads one to reconsider and re-examine one’s own law[s] from a new perspective”.

The success of CATPLI’s inaugural workshop, in which 30 Thai law students from five Thai universities participated, showed that such a workshop was viable, and led to much curiosity amongst the project’s leadership as to how far such a collaboration could go. These, in turn, resulted in two further developments. The first was an agreement between both institutions that a second CATPLI workshop should be organised for 2023. This workshop was titled “An Introduction to the Basics of Singapore Company Law” which was similarly carried out successfully with 56 Thai participants. The second, and most consequential decision for our present purposes, was the creation of the CATPLI Writing Project. The CATPLI Writing Project sought to, as its overarching aim, promote student scholarship amongst Asian students and to serve as an academic platform for student contributors to showcase their legal research, thinking, and writing skills.

The outcome has been an unqualified success. The students in this project have all been ably guided by professors from NUS Law, TU Law, and ECUPL, with each article passing the usual blind review process undertaken by the SLR on all submissions. Additionally, two faculty members, one representing each constituent institution forming CATPLI, have kindly agreed to contribute an article. These articles are now what we turn to.

I. OVERVIEW OF THE PIECES

There were three articles submitted by NUS Law students, showcasing a myriad of methodologies and skill sets. Johan Ding’s fieldwork, in particular, seeks to shed light on the law and practice of the Small Claims Tribunals (“SCT”). In this regard, Johan was authorised by the State Courts to observe a total of

eight consultation sessions and three tribunal hearings. In his article, Johan demonstrates that despite being statutorily permitted to dispense “informal justice”, the SCT does not, in fact, deviate substantially from the adversarial nature seen in ordinary civil process. This lack of deviation, he argues, strikes an appropriate balance between fairness, in terms of predictability and certainty of outcomes, and promoting access to justice. As a recognition for his outstanding research, Johan was recently awarded the university’s Outstanding Undergraduate Researcher Prize (“OURP”).

Following Johan’s article are two doctrinal pieces written by Alden Ng and Law Yan An. In his article, Alden examines South Korean primary material on the default prospective effect of a decision of unconstitutionality in South Korea. He engages in a comparative doctrinal analysis of civil and common law views on prospective overruling. Tracing the civil law trend for prospective effect to the jurisprudential concern for legal stability, Alden illustrates how South Korea’s legislation implementing said prospective effect paradoxically does the very opposite. Finding the case law band-aid over the issue unsatisfactory, he proposes reform and speculates on the paradox’s cause. Like Johan, he was awarded the OURP for his excellent research.

Yan An explores the evolution of private nuisance in Singapore and provides suggestion for its development. In particular, he argues that despite significant strides, the current standard of “unreasonable interference” is unhelpful. Instead, he proposes a test that balances landowners’ rights based on reciprocity, tailored to Singapore’s legal landscape. Notably, the United Kingdom Supreme Court’s decision in *Fearn v Tate* is discussed, and he draws inspiration from the minority judgment while cautioning against the majority’s approach.

A fourth article was submitted by Sha Runhe, a LLB graduate of ECUPL. She was an exchange student at NUS Law in AY 2021/22. Her article impressively engages with fundamental issues in data protection law and policy, the resolution of which is made complicated by China’s unique political environment. She examines the practices of the European Union’s General Data Protection Regulation (“GDPR”); in particular, the GDPR’s “adequate protection” certification. Her thesis makes a single, yet effective, argument – that to avoid being isolated from the global data system, China should “pursue a balanced approach” between economic dynamism and national security. In this regard, Runhe advocates for the implementation of the “adequate protection principle” to establish a safelist system and a mutual recognition mechanism.

A total of three articles were contributed by TU Law students. The first, by Nawinda Klumsombut, deals with the issue of merger control in the digital age. In particular, Nawinda makes the argument that current notification thresholds under Thai competition law are ineffective in dealing with the issue of killer acquisitions in the digital economy. She thus argues that a new “transaction value notification” threshold, similar to the one recently implemented in Germany, should be added to the Trade Competition Commission of Thailand’s armoury to protect innovative Thai start-ups from the predatory practices of major digital platforms.

The second article, written by Tanyapat Chaiseri, centres around the application of the principle of pre-contractual liability in the context of Thai state administrative contracts. Here, she examines the problem that arises from the legal lacuna in Thailand where pre-contractual liability is not recognised, and analyses how the state and private parties should be fairly compensated in a situation of pre-contractual breaches. She then argues for the application of contractual and tortious liabilities at different stages leading up to the formation of an administrative contract, and ultimately suggests a long-term solution of amending a related legal provision to specifically include pre-contractual scenarios.

The final article was written by Arada Vanapruck, where she illustrates the conflict that exists in the jurisprudence of Thai administrative courts in balancing the principles of legality and legitimate expectations. Through a thorough dissection of the Ashton Condominium Court case, a landmark real estate administrative case in Thailand, Arada navigates the complexities of balancing such principles by looking into various mechanisms and approaches by the courts. With the Thai Supreme Administrative Court's decision to adhere to the prevailing dominance of the principle of legality, Arada makes an argument for a shift in the jurisprudence for a more equitable balance between the two principles so as to protect the rights of those who relied on administrative acts in good faith.

Finally, the seven students' articles are anchored by guest contributions from Professor Andrew Harding and Dr Keerakiat Pratai, from NUS Law and TU Law respectively. Professor Harding's work examines Southeast Asian experiments in violent-conflict resolutions by means of the creation of territorial autonomy. In the cases examined, he observes that there are still ongoing attempts to find a compromise between adherence of a minority community to the nation-state and recognition of deep differences in ethnicity, culture and religion between the minority and majority communities. His article ultimately finds that success in achieving resolution depends on addressing many issues of detail that throw into questions the principles upon which the overall governance system of the nation-state is based, and even its capacity and willingness to achieve a balance form of territorial autonomy. On the other hand, Dr Pratai's work chiefly makes the argument that statutory general anti-tax avoidance rules should be enacted in Thailand, so as to provide clear rules for both the taxpayer and the tax authority on what tax arrangements are acceptable, and those that are unacceptable; as well as delineate the scope of the tax authority's power to disregard, vary, or adjust impugned arrangements, and the tax consequences flowing thereon. The CATPLI Writing Project is thankful for their unwavering support, and for taking valuable time out of their busy schedules to write their guest contributions.

II. CONCLUDING REMARKS

If the CATPLI Writing Project and, indeed, CATPLI as a whole has demonstrated anything, it should be that the region's law students are capable of achieving endless possibilities when there is sufficient institutional support. In this regard, we would like to thank the following people for making this high-level collaboration a success: Associate Professor Jaclyn Neo, Director of CALS and CATPLI's Project Supervisor; Associate Professor Munin Pongsapan, CATPLI's Project Supervisor; NUS Law's Professor Andrew Harding, Professor Christian Witting, Associate Professor Ardavan Arzandeh, Associate Professor Helena Whalen-Bridge and Benjamin Wong; TU Law's Assistant Professor Amnart Tangkiriphimarn, Assistant Professor Lasse Schuldt, Dr Benjawan Tangsatapornpan, Dr Kanoknai Thawonphanit and Dr Keerakiat Pratai; ECUPL's Associate Professor Dai Yi Han; Bangkok University's Dr Kitjapat Kesiranon; the State Courts of Singapore; the Thammasat University Comparative Legal Studies; Chloe Kho, SLR's Chief Editor; and Choi Young Jae, SLR's Deputy Chief Editor (Journal). Just as how it takes a village to raise a child, much of this project's success can be attributed to the patience and kindness of these individuals. Our students were indeed standing on the shoulders of giants.

The learning of comparative law should be *fun* and, at CATPLI, we seek to do just that. As Associate Professor Christian Hofmann, former Deputy Director of CALS, notes, "[t]he students involved [in CATPLI] rediscover the intricacies of their own legal systems by explaining its principles to their peers, are instructed by people their own age, and forge friendships that can serve as a foundation for future academic and professional collaborations". Additionally, as Associate Professor Jaclyn Neo, Director of CALS and CATPLI's Project Supervisor, once observed at the opening ceremony of CATPLI's inaugural workshop, the learning of comparative law should advance our *mutual understanding* and *respect* for one another. Through the CATPLI Writing Project, we hope that our students had a fun time researching on their chosen topics,

while at the same time developing a deeper understanding and appreciation for how the law reacts to certain contemporary issues. We take this opportunity, once more, to congratulate each and every student who has successfully published in this special volume of the SLR, and trust that readers unearth nuggets of knowledge on various aspects of Singaporean, Thai, Chinese, and Korean laws. Happy reading!

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Academic Year 2023-2024

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