

Hong Kong Evidence Casebook BY SIMON N.M. YOUNG [Hong Kong: Thomson Sweet & Maxwell Asia, 2004. xxvi + 930 pp. Hardcover: HK\$950/US\$122]

Professor Young is to be congratulated on a lucid and uncluttered “cases and materials” volume on Hong Kong’s Law of Evidence. Few, if any, will find fault with the skill with which he organised the material, or with the incisive “notes and questions” one finds at the appropriate places meant to “guide and encourage self-reflection”. That it will become the major tool of Evidence Law pedagogy in Hong Kong cannot be in doubt, if it has not already acquired that status already. Professor Young in fact does more than just deal with Hong Kong law. He draws heavily from the English common law, as he must from that undeniable parent of Hong Kong Evidence Law. He also makes frequent recourse to the jurisprudence of the Canadian Supreme Court, surely one of the most exciting tribunals in the English-speaking world today. The reader, or the fortunate student to whom this book is prescribed, will emerge, with a bit of diligence, with a fairly good grasp of the basics of not just Hong Kong law, but of the major thinking in the evidence law in the common law world. The path is paved for a future comparative study between the essentially “common law inspired” Evidence Law of Hong Kong, and that other major tradition of the “Code-driven” Evidence Law of South Asia, Malaysia and Singapore. Both streams speak the same language and employs the same concepts and devices, sometimes converging, sometimes diverging. Professor Young’s book lays the groundwork for this kind of comparative enterprise.

The most intriguing idea in the book, to my mind, is expressed in a few sentences in the *Preface*. Professor Young says:

Hong Kong has its share of fascinating evidence cases. Lately, the cases have acquired an aura of juridical fascination as a result of several instances where the Court of Final Appeal has expressly departed from English authorities. These cases must be studied closely because they tell a story about the history and nature of Hong Kong’s legal system. What is it about the Hong Kong system that distinguishes it from the English system so as to necessitate the application of different legal doctrines? To what extent do societal values influence the development of evidentiary rules?

As a student of Singapore and Malaysian evidence law for a number of years myself, I think this notion of a cultural or societally motivated divergence of evidence law to be a major theme of any dialogue between the legal systems of Asia and, some would say, the liberal systems of the West. What are Asians to make of Canadian or Australian statutes and cases? How are they to regard our positions? However, this

theme remains undeveloped in the book. For example, in its treatment of *HKSAR v. Wong Sau Ming* (2003) 6 HKCFAR 135, where the Court of Final Appeal refused to follow English authority in creating a new exception to the “collateral finality rule”, only one question explores this—“What was the justification for developing the common law of Hong Kong [differently] and departing from English authority?” Perhaps there is as yet too little material to dwell too much into this question, difficult as it is important. It would, of course, be unfair to say that this is a shortcoming. A pioneering work such as this cannot cover all the bases and this comment is meant only as a suggestion for developing the work, not as a basis for criticising it. More divergences are bound to follow, as it must with any independent legal system, and the time will come when Professor Young’s far-sighted words will bear fruit.

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