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Proceedings Report: The 4th Asia Pacific Journal of Private International Law Colloquium

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The 4th Asia Pacific Journal of Private International Law Colloquium, a biennial event, was held at the Singapore Management University on 28 November 2014 and convened by Associate Professor Adeline Chong. The one-day proceedings boasted a strong programme and facilitated discussions between private international law specialists from both civilian and common law jurisdictions.

The keynote address was given by Professor Anselmo Reyes from the University of Hong Kong. Professor Reyes is also the Representative of the Asia-Pacific Regional Office of the Hague Conference on Private International Law. He shared with the audience his reflections on the role of statements of principles in the context of resolution of civil disputes. In particular, he predicted that as commercial dispute resolution becomes increasingly transnational in its focus, commercial parties will favour adopting statements of principles, as opposed to choosing national laws to govern their disputes. This generated a vigorous discussion on the feasibility of adopting principles of law that touched on, amongst other matters, the experience of the European Union as well as reflections on parties' recourse to *lex mercatoria* to resolve disputes.

Associate Professor Elsabe Schoeman from the University of Auckland spoke next on the operation of "statutory packages" of compensation in cross-border personal injury cases, an issue that was brought into sharp focus in the UK Supreme Court decision of *Cox v Ergo Versicherung AG* [2014] UKSC 22. In that case, both the *lex fori* and *lex causae* contained statutory regimes of compensation that were potentially applicable to the dispute. Professor Schoeman's presentation highlighted pertinent questions that are still relevant to the common law private international rules: should "statutory packages" be treated as complete and inseparable or can they be split up; and should the forum court approach the matter on the rather unsure basis of substance-procedure characterisation?

This was followed by two presentations by civilian lawyers who provided a broad overview of the private international law principles of their respective

countries. Professor Guo Yujun (Wuhan University) presented a co-authored paper that was focused on the empirical analysis of the Chinese courts' interpretation and application of the People's Republic of China on the Applicable Law to Civil Relations with a Foreign Element which came into force on 1 April 2011. Drawing on the empirical data, Professor Guo highlighted various issues with the PRC's practice. By way of a comparative study, Professor Koji Takahashi's paper outlined key features of the Japanese statutory rules of international jurisdiction. Of particular interest is the Japanese rule on finding jurisdiction over persons "doing business" in Japan which allows the Japanese courts to assume jurisdiction over a defendant who has no fixed place of business in Japan. Professor Takahashi explained that this provision is crafted to cover electronic commerce, so as to enable Japanese courts to find jurisdiction over defendants who are doing business in Japan by Internet.

Professor Mary Keyes from Griffith University brought the audience's attention back to doctrinal issues with her presentation on waiver of jurisdictional rights. Her presentation was indeed very timely as the issue on waiving the right to contest existence of jurisdiction (one of the matters discussed by Professor Keyes) was recently raised before the Singapore Court of Appeal in *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 (discussed previously in this entry). The Singapore Court of Appeal applied the test for waiver in such a context as enunciated by Cave J in *Rein v Stein* (1892) 66 LT 469 at 471. On this issue, Professor Keyes pointed out that this oft-cited test provides limited guidance on the issue of waiver of jurisdictional rights. She offered an important question for ponder: what is the law that governs the question of waiver of jurisdictional rights: *lex fori* or some other law? This is certainly not a straightforward inquiry.

Focusing on a different aspect of jurisdiction, Professor Yeo Tiong Min SC (*honoris causa*), Dean of the School of Law, Singapore Management University, presented a thought-provoking paper on the law governing choice of court agreements. In essence, Professor Yeo considered the possibility that the choice of court agreement is governed by a different law than the proper law of the (main) contract, in light of recent developments in dispute resolution agreements. The audience was divided on this issue, with a majority favouring the view that the law of the main contract ought to also govern the jurisdiction agreement.

No less controversial and thoughtful was the presentation by Professor Tan Yock Lin from the National University of Singapore, who kick-started the afternoon session by exploring the role of good faith in various areas of conflict of laws where party choice is acknowledged. This was met by an intense debate on the purpose and necessity of the doctrine in private international law. Following on the theme of new thinking, Professor Beaumont spoke on lessons that can be gleaned from recent European developments based on a co-authored paper with Lara Walker. In particular, he argues that the substantive defences against recognition or enforcement of judgments in civil and commercial matters could be reduced to public policy and irreconcilable judgments. The proposed "reductive" approach drew many questions and comments from the audience.

Associate Professor Adeline Chong then addressed the audience on the issue of whether the US class action judgment has preclusive effect against parties who did not participate in the US court proceedings at common law. She outlined how the common law recognition and enforcements rules are applied in this context, offering some insightful conclusions as well as thoughts for further consideration. As more jurisdictions implement class action/group litigation procedures, this issue will be increasingly important. Therefore, although Professor Chong's paper was focused on US class action judgments, it will be an important contribution to the research on class actions in general.

The one-day event concluded with the presentation by Professor Leon Trakman of University of New South Wales. His paper examined the concept of domicile in common law, a topic that is of great significance but shrouded in some uncertainty. His paper aims to propose a more balanced test in the determination of domicile, providing clarity to the common law concept.

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