



NUS | Law
National University
of Singapore



**Melbourne
Law School**

CHINA COMMON LAW PROGRAM 2016

21 March 2016

Peking University

Lecture Information

Melbourne Law School, The University of Melbourne

Faculty of Law, The University of Oxford

Faculty of Law, National University of Singapore

Coordinated by

Asian Law Centre, Melbourne Law School, The University of Melbourne

PROGRAM TIMETABLE

Monday 21 March

Time	Topic	Lecturer
10:00am-12:00pm	The Growth and Development of 'Legitimate Expectation' in Administrative Law	Adjunct Professor Kevin Tan
(Lunch Break)		
1:00pm-3:00pm	The 'Best Interests' of the Child Principle: Looking Beyond the Aspirations of Universal Embrace	Associate Professor Lucinda Ferguson
3:10pm-5:10pm	Freedom of Contract: The Balancing Act	Mr Matthew Bell

LECTURE INFORMATION

Mr Matthew Bell – The University of Melbourne



Matthew Bell is a Senior Lecturer and Co-Director of Studies for Construction Law at Melbourne Law School. He joined the Law School in 2005 after several years' experience as a construction lawyer with Clayton Utz in Melbourne and Clifford Chance in London. Matthew is the author of many publications in the field, including the texts *Construction Law in*

Australia and *Understanding Australian Construction Contracts* (with Ian Bailey), and his scholarship and teaching has been recognised in several awards. Matthew is Professional Support Lawyer to the Major Projects and Construction Group at Clayton Utz on a part-time basis and Chair of the Academic Subcommittee of the Society of Construction Law Australia. In 2015, he commenced PhD studies through the Centre of Construction Law at King's College London.

Freedom of Contract: The Balancing Act

Fundamentally, contracts regulate behaviours and responsibilities by agreement between individuals or groups of people. However, the law of contract does not operate in a vacuum. Rather, there has always been a dynamic interplay between the way in which parties are able to organise their affairs amongst themselves – their freedom to contract – and wider social and economic influences.

In this lecture, I will discuss the current state of this interplay in the commercial law field. I will do this by reference to the perspectives of contract theorists – particularly, those of the 'minimalist' school who subscribe to the formalist view that the role of contract law is to provide a limited, certain framework to support commerce – and recent court decisions on key aspects of commercial contracts.



Lucinda Ferguson is Associate Professor of Family Law at the University of Oxford; Tutorial Fellow in Law at Oriel College, Oxford; and Director of Studies (Law) at Regent's Park College, Oxford. She holds an MA in Jurisprudence (English Law with German Law) from Magdalen College, Oxford, a BCL from the University of Oxford, and an LLM from Queen's University, Canada.

She has published articles on the nature and justifiability of financial obligations upon relationship breakdown; children's rights, age-based rules, and designing frameworks for making legal decisions that affect children; and child protection and cultural diversity. Previously, she has been commissioned to produce research for the Law Commission of Canada and invited to talk to Canadian provincial governments on various matters relating to children's and family law, particularly the use of age-based rules in regulating children's entitlement to make legally effective decisions and the impact of the United Nations' Convention on the Rights of the Child on provincial government policy and practice.

In 2015, she was awarded a Teaching Excellence Award from the University of Oxford; and in 2011-12, the Oxford University Student Union Teaching Award for the Most Acclaimed Lecturer in the Social Sciences Division.

Outside of the University, she is an Associate Member of 1 King's Bench Walk, a leading specialist family and children's law barristers' chambers.

The 'Best Interests' of the Child Principle: Looking Beyond the Aspirations of Universal Embrace

The 'best interests' of the child is now a universal principle globally applicable to the treatment of children, whether as a result of a particular state's domestic law or international legal obligations. All countries except the United States have ratified the United Nations' Convention on the Rights of the Child, hence owe obligations under it. Numerous countries have further entrenched their obligations by incorporation and even constitutionalisation. This relationship to international law is often further complicated by earlier or independent (non-incorporating) use of the 'best interests' principle directly in domestic law, as in the English 'welfare principle'. Yet, the principle is also commonly subject to significant criticism such as that it is 'indeterminate' and has too narrow a focus.

In this lecture, I will draw on recent court decisions to examine the value of the 'best interests' principle in practice beyond the aspiration expressed by its adoption. Whilst the 'best interests' principle has been universally embraced, to what extent can it offer a universal understanding of what is 'best' for children? Should individual countries contextualise universal concerns or should there be truly local approaches to 'best interests'? Does it matter whether any particular country's obligations under the 'best interests' principle are grounded in international law, domestic law, or both? This issue turns at least in part on how courts in any particular jurisdiction understand the relationship between 'best interests' and children's rights. In individual cases, how can and should we determine by which criteria to determine the 'best' outcome for any child involved in a legal dispute? In particular, how do children's 'best interests' relate to parents' interests? What is the appropriate role for well-being indicators? Could or even must a court be free to determine that it is 'best' for a child to cry in a BMW car, rather than laugh on the back of a bicycle?



Kevin was born and educated in Singapore. He graduated with LLB (Hons) from the Faculty of Law of the National University of Singapore in 1986 and joined the teaching staff of the same faculty that same year. Subsequently obtained his LLM (Master of Laws) and JSD (Doctor in the Science of Law) at Yale Law School, being the first Singaporean to achieve the latter.

From 1986 to 2000, he taught at the Law Faculty, specializing in Constitutional and Administrative Law, Law and Government, Law and Society and International Human Rights. He resigned as Associate Professor in 2000 to start his own consultancy.

Beyond his university duties, he has been active in many organisations, serving as National Programme Commissioner in the Singapore Scout Association (1992-1995); President of the Singapore Heritage Society (2001-2011); Chairman of the Foundation for the Development of International Law in Asia (2006-2012); Council Member of the National Youth Achievement Award Council (since 1998); Singapore Red Cross Society (1999-2001); Board Member of the Preservation of Monuments Board (1998-2003), Singapore Academy of Law Legal Heritage Committee (1999-2012), Executive Director, Society of International Law, Singapore (1998-2003); Treasurer and then President of the Roundtable, a non-partisan political discussion group (1999-2002).

He has published widely in his areas of specialization and has written and edited some 30 books on the law, history and politics of Singapore. From 1998-2000, he was also Chief Editor of the Singapore Journal of International and Comparative Law and from 2000-2003 was the journal's Adjunct Editor. He is currently a director of Equilibrium Consulting Pte Ltd; Adjunct Professor, S Rajaratnam School of International Studies, Nanyang Technological University; Editor-in-Chief, Asian Yearbook of International Law and Editorial Board member, *Korean Journal of International & Comparative Law*.

The Growth and Development of 'Legitimate Expectation' in Administrative Law

The concept of 'legitimate expectation' was developed by the common law courts to ensure that administrative bodies and tribunals exercise their functions in a fair manner. In essence, the concept protects the procedural and substantive rights of individuals who relied on representations by public authorities to their detriment and prevent these authorities from rescinding their representations. The term was first used by the English Court of Appeal in the 1968 case of *Schmidt v Secretary of State for Home Affairs* but was really discussed and applied in the House of Lords decision in *O'Reilly v Mackman* in 1983. This lecture traces the growth and application of this doctrine not only in the UK courts, but also in various other jurisdictions in the Commonwealth, such as Australia, New Zealand, South Africa, and Singapore.

INSTITUTION INFORMATION
MELBOURNE LAW SCHOOL,
THE UNIVERSITY OF MELBOURNE



Melbourne Law School

Australia's first university law course began at the University of Melbourne in 1857. It combined scholarly teaching of the principles of law with preparation for legal practice. Soon, Victoria became one of the first places in the common-law world where all lawyers had to do part of their training at university. Since then Melbourne Law School has gained an international reputation for the quality of its research, teaching, faculty and graduates and has educated judges and prime ministers, practising lawyers and academics. Its former students are found in varied occupations throughout Australia and the world.

Melbourne Law School has distinguished itself further, established in its new location at University Square. This is the pivotal focus of the University of Melbourne's future to make Parkville one of the premier knowledge precincts in the world.

In this location, the Law School retains all the tradition of its first site in the Law Quadrangle, with its excellent and world renowned reputation for providing advanced education and research but is also fully equipped for the opportunities that lie ahead. The building is specifically designed to meet both future and contemporary needs of legal education, expanding and strengthening the School's position of leadership and reinforcing the high academic standards it has taken into the 21st century. The Law School building incorporates the latest technological developments and offers internationally competitive facilities that bring the Law School into the 21st century.

In 2010, the law school continues its transition to become Australia's first fully-graduate Law School. This shift, formalised in 2008 by the admission of all-graduate students to pursue the Juris Doctor (JD) degree, equates legal education at Melbourne with the dominant global approach whereby specialist education in law is anchored in a broad undergraduate experience – thus enabling ever more creative and challenging forms of learning.

A number of specialist centres have been established at Melbourne Law School, providing leadership and research in key areas:

- Asia Pacific Centre for Military Law
- Asian Law Centre
- Centre for Comparative Constitutional Studies
- Centre for Corporate Law and Securities Regulation
- Centre for Employment and Labour Relations Law
- Centre for Indonesian Law, Islam and Society
- Centre for Media and Communications Law
- Competition Law and Economics Network
- Centre for Resources Energy and Environmental Law
- Civil Justice Research Group
- Electoral Regulation Research Network
- Global Economic Law Network
- Institute for International Law and the Humanities
- Intellectual Property Research Institute of Australia
- Obligations Group
- The Tax Group

The Asian Law Centre (ALC) commenced activities in 1985 and is the first and largest Australian centre devoted to the development of our understanding of Asian law. Recent initiatives have also aimed to promote Asian interest in Australian legal systems and law.

The Centre has pioneered extensive programs of teaching and research on the laws and legal systems of Japan, China, Indonesia, Vietnam, Taiwan, Malaysia, Islamic law, East Timor and the Philippines. It has worked also in Korea, Thailand, Laos and on Islamic, traditional and customary law in Australia's region.

The Centre's objectives are

- to improve knowledge and understanding of the laws of our region;
- to support the rule of law in Asia;
- to promote teaching and research on Asian legal systems at both graduate and undergraduate levels, in Australia, Asia and elsewhere;
- to promote the development of Asian studies and Asian languages in other disciplines and to encourage links with legal studies;
- to promote the importance of comparative law in Asian legal studies and research;
- to promote exchanges of staff and students between the Melbourne Law School and Asian universities and institutions.

Asian Law Centre Staff

- Professor Pip Nicholson, Director (Vietnam)
- Professor Tim Lindsey, Associate Director (Indonesia)
- Professor Sarah Biddulph, Associate Director (China)
- Professor Sean Cooney, Associate Director
- Mr Andrew Godwin, Associate Director (Asian Commercial Law)
- Associate Professor Stacey Steele, Associate Director (Japan)
- Dr Amanda Whiting, Associate Director (Malaysia)
- Dr Farrah Ahmed, Associate Director (India)
- Ms Kathryn Taylor (Manager)

Website: <http://www.law.unimelb.edu.au/alc>



Oxford today is home to a unique combination of common law learning and comparative and international jurisprudence. Oxford holds a leading position in connecting teaching and scholarship, common law and civil law, theory and practice.

Since the 1100s, we have studied the civil law (the European legal tradition emerging from Roman Law) and Oxford was the first University to engage in the study of the common law, in the 1700s. Yet this is a very young law school: our core strengths lie in recent and ongoing growth and innovation, designed to make Oxford live up to its potential as a meeting place for ideas – and for gifted teachers and students – from around the world.

Our links with western Europe, India, Australia and South Africa, Singapore and Hong Kong are stronger than ever. We have developed new links with mainland China, Eastern Europe, and the Americas. We are running Oxford moots in 2013-14 in Hong Kong, Delhi, New York, Beijing, Zagreb, Nairobi, and Doha. We educate lawyers from all those parts of the world, in unique teaching programmes:

- The BA in Jurisprudence is taught predominantly in tutorials of two students. It is an unexcelled training in defending a legal argument.
- The BCL, the MJur (for students from civil law jurisdictions), and the new Master's in Law and Finance are the only graduate degrees in the world that are taught through tutorials.
- We have the largest research student programme in the world, with over 200 students engaged in master's and doctoral research degrees.

Oxford Law puts people together. This is one of the world's most exciting centres for legal scholarship, and for new legal ideas.

Website: <http://www.law.ox.ac.uk/>

The National University of Singapore Faculty of Law is widely regarded as Asia's leading law school. Staffed by an outstanding permanent faculty diverse in origin and qualifications, NUS Law is dedicated to building a vibrant community and creating an environment that facilitates critical thinking and reflection on the fundamental legal issues confronting our interconnected world.

Located in Singapore, which for more than a century has been a commercial hub at the crossroads of Asia, NUS Law is very much Asia's Global Law School. Since 1957 our curriculum has been infused with perspectives from other jurisdictions and disciplines. This tradition has accelerated in recent years, providing a legal education that is comparative, international, and multi-disciplinary. The Law School hosts many visiting faculty and students from every continent, offering a lively, cosmopolitan atmosphere both inside and outside the classroom.

The strength of the NUS Law curriculum lies in the broad and diverse range of subjects it offers. In addition to a rigorous core curriculum, students can choose electives in areas ranging from Asian legal studies to banking and finance, from public international law to intellectual property, or from arbitration to jurisprudence. The aim is to provide a liberal education that enables our graduates to think critically and creatively, as globally-oriented lawyers with a strong sense of their role in society.

Global, regional, and uniquely Singaporean perspectives on legal issues are all evident in the research produced by our faculty. The professors at NUS Law are not only engaged in a constant search for better legal solutions to the issues that confront all societies, but are also continually challenging accepted wisdom and conventional norms by raising new questions and problems to be confronted. Their work stretches across all aspects of law and appears in the most prestigious journals as well as books published by leading university presses around the world.

Singapore is an ideal place to study or research law, with excellent facilities and infrastructure, cutting edge legal work, and exceptional faculty and students. Singapore epitomizes all that is best in Asia, seamlessly blending old world charm with new age technology. It enjoys a geographical advantage as a natural meeting point between East and West and a perfect entry point to visit and explore Asia.

Website: <http://law.nus.edu.sg/>