Studies in Contract Law of Asia

Contents of Contracts and Unfair Terms

Hosted online by the Max Planck Institute for Comparative and International Private Law, Hamburg, 8 December 2020

Comparative law has a long tradition in Europe. For centuries, comparative law scholars have been studying existing legal systems, comparing them, evaluating them, systematizing and conceptualizing them, and not infrequently making them accessible in their own linguistic circles. The knowledge and insight fostered by this enduring process has been of great value at the international level, not least in harmonization projects such as those of the CISG or UNIDROIT.

Now, as we progress deeper into the 21st century, it is clear that the world does not consist only of Western countries, and certainly not only of European countries. One can hear talk of an "Asian century"; the diverse continent of Asia is undeniably moving up the global ladder in social as well as economic importance. For an export-oriented economic nation such as Germany, the Asian region is becoming increasingly important and, as a result, dealing with the legal rules that apply there has become increasingly indispensable.[1] While Western legal systems have over the course of the years been compared and contrasted in abundance and are accessible to foreigners, the situation with regard to the Asian legal systems is surprisingly quite different, despite the undeniable practical need. Although the region is home to almost half of the world's population and projects enormous economic power, there has been a complete lack of comparative and explanatory accounts of Asian legal systems – not only in Western languages, but in general. Filling this considerable gap is the stated intention of the project 'Studies in the Contract Laws of Asia'. Involving renowned legal authors, including approximately 150 Asian legal scholars, the findings of the ambitious research project will be published by Oxford University Press in six volumes. Following the first two publications realized in 2016[2] and 2018,[3] the third volume has now been published: 'Contents of

1 See, for example, the review of the 2nd Volume of the Studies in the Contract Law of Asia, 'Formation and Third Party Beneficiaries', by W. SCHARLEMANN, Internationales Handelsrecht 2020, 34.

2 M. CHEN-WISHART / A. LOKE / B. ONG (eds.), Remedies for Breach of Contract (2016).

3 M. CHEN-WISHART / A. LOKE / S. VOGENAUER (eds.), Formation and Third Party Beneficiaries (2018).

Contracts and Unfair Terms'.[4] The volume's two editors, Mindy CHEN-WISHART[5] and Stefan VOGENAUER,[6] presented the project and the research results of the just published third volume at a virtual event hosted by the Max Planck Institute for Comparative and International Private Law in Hamburg on 8 December 2021.[7] The online conference was jointly moderated by Ruth EFFINOWICZ[8] and Knut Benjamin PIßLER[9].

In a short introduction, CHEN-WISHART, who has been part of the project since its inception, traced the endeavour's beginnings, difficulties, and opportunities and also offered her thoughts on the future direction of the project. The project began with CHEN-WISHART's involvement in the drafting of the Principles of Asian Contract Law (PACL), and since then the lack of a common Asian language has proved to be one of the challenges. Nonetheless, the many opportunities presented by the Studies in the Contract Law of Asia project have made it extremely worthwhile despite various difficulties.

Following CHEN-WISHART, VOGENAUER described his experiences with the project so far and gave a brief overview of the content of the third volume. In terms of both interpretation and the review of contractual terms, path dependencies and the occasionally strong influence of the respective European parent regime could be discerned in the studied Asian legal systems, although typically in a very subtle manner. As both a summation and a call for further action, VOGENAUER observed that while the project has shed light on the legal systems studied in many respects, it has at the same time made it plainly clear that there is still a need for further research; the results of the project represent, in his opinion, a promising starting point.

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4 M. CHEN-WISHART / S. VOGENAUER (eds.), Contents of Contracts and Unfair Terms (2020). Further volumes are planned relating to: 'Validity' (2021), 'Ending and Changing Contracts' (2022), and 'Public Policy and Illegality' (2024).

5 Professor of Contract Law at the University of Oxford, Dean of the Faculty of Law there, and Fellow at Merton College.

6 Director at the Max Planck Institute for European Legal History and Legal Theory in Frankfurt am Main and Speaker for Max Planck Law; previously Chair of Comparative Law at the University of Oxford from 2003 to 2015, where he was also Director of the Institute of European and Comparative Law and Fellow at Brasenose College.

7 The presentations from the virtual conference are available for streaming at *https://www.mpipriv.de/contract-law-in-asia*.

8 Senior Research Fellow and Head of the Centre of Expertise on Japan at the Max Planck Institute for Comparative and International Private Law in Hamburg.

9 Senior Research Fellow and Head of the Centre of Expertise on China and Korea at the Max Planck Institute for Comparative and International Private Law in Hamburg as well as Professor of Chinese Law at the University of Göttingen.

After the introductory presentations of the two editors, third volume author Sheng-Lin JAN[10] as well as Moritz BÄLZ[11] spoke about the law on general contract terms in Taiwan (JAN) and Japan (BÄLZ). According to JAN, Taiwanese law is characterized by a differentiation between B2B and B2C transactions, a distinction which is expressed legislatively in three different statutory codes as well as by the Taiwanese Supreme Court's practice of judicial restraint in regard to B2B transactions and by the opportunity for consumer protection as achieved through administrative measures. BÄLZ's discussion of Hiroyuki KIHARA's contribution to the volume highlighted the recent reform of the law of obligations in Japan, which for its part allowed the author only to speculate on the future development of judicial review under the newly introduced provisions. After the reform, there are now three regimes of review, these being found in the form of general provisions in the Civil Code, consumer protection provisions in the Consumer Contract Act, and the provisions newly inserted in the Civil Code regarding general contract terms; the application and interrelation of these review mechanisms will have to be clarified by the Japanese courts.

The well-attended event ended with a discussion round and questions from the online audience.

Julian HINZ*

10 Judge of the Constitutional Court of Taiwan; until 2016, Fu Ssu-Nien Memorial Chair Professor and Distinguished Professor at National Taiwan University (NTU).

11 Chair of Japanese Law and its Cultural Foundations at the Goethe University Frankfurt/Main and Deputy Executive Director of the university's Interdisciplinary Center for East Asian Studies (IZO).

* Wissenschaftlicher Assistent, Max-Planck-Institut für ausländisches und internationales Privatrecht.