

SEMINAR

The Rock and the Sand: Jurisdiction and Remedial Discretion

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Friday, 21 March 2014, 6:00 pm – 7:00 pm
Room, 723, 7/F Cheng Yu Tung Tower
The University of Hong Kong

This seminar will explore a conundrum near the heart of judicial review in both England and Hong Kong. All the judicial review remedies are discretionary, so that an individual who persuades the court that he or she has been adversely affected by an illegal decision may be denied the fruits of their victory by the discretion of the judge. This appears contrary to the rule of law. While some judges proceed on the basis that they have a free hand to do justice by wielding their remedial discretion, the UK Supreme Court in *HM Treasury v Ahmed No 2* [2010] UKSC 5 refused to suspend the operation of a remedy after having found that the decision challenged was marred by an error of law; to suspend the remedy (a quashing order or certiorari) would be to obfuscate the effect of its judgment. The seminar will consider the consequences of *Ahmed* for the CFA decision of *Koo Sze Yiu and another v. Chief Executive of the HKSAR* [2006] HKCFA 74. The seminar will be based on Professor Forsyth article with the same title published in 2013 *Judicial Review* 360 available on ssrn at:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2317277

Christopher Forsyth is Professor of Public Law and Private International Law in the University of Cambridge. He is the author of many books but particularly (with the late Sir William Wade) of *Administrative Law* (11th ed, OUP 2014) an authoritative text relied upon by courts throughout the common law world and *Private International Law* (5th ed, 2012) an authoritative text on the South African private international law. He is a regular visitor to Hong Kong and, while there, has lectured frequently to civil servants and government lawyers on administrative law. He is a practicing barrister (and has advised several governments on matters of constitutional and administrative law of the highest moment). He is a Bencher of the Inner Temple, a Recorder of the Crown Court and is authorized to sit in the Administrative Court as a Deputy High Court judge.

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