



## Introduction to HKU Law Series (X) Professor Hui Jing

### ***Trusts law***

#### **What do you find most exciting about trust law?**

What I like most about trust law is its logic and flexibility. Trust law is rooted in equity. Because of this historical root, ideas such as fairness, justice, and conscience inform the creation and development of trusts. These ideas support the flexibility of trust law in structuring property management plans.

I also find trust law to be logic-based. Interpreting trust law is like doing math in high school. When dealing with a specific trust scenario, what you need to do is choose the appropriate rules and apply them. This process is challenging, but once you figure everything out, you can get a strong sense of satisfaction. Applying trusts law is like performing mental gymnastics.

#### **Trusts law is often perceived as technical and complex. Do you see it as a problem?**

I don't necessarily see it as a problem. Every branch of law, like contract law, property law, and tort law, has its technical aspects. Trust law may be seen as particularly challenging, complex, and technical because each topic can involve multiple trust rules, which can sometimes contradict each other. Additionally, interpreting and applying trust law requires understanding other areas, such as property law and tort law. That's why we typically schedule trust law as a third or fourth-year subject for our law students.

That said, technical rules exist for a reason. Take the registration of trust as an example. Those technical registration rules adopted by a particular jurisdiction reflect how it balances the interests of beneficiaries and third parties engaging with the trustee. These rules also address the deeper, conflicting goals of privacy of trusts and transaction transparency. The technical and logic-based nature of these rules ensures consistent application and coherent interpretation, which are essential for achieving these goals.

#### **Your PhD Thesis on Chinese charitable trusts was awarded the Harold Luntz Graduate Research Prize for Best PhD Thesis at Melbourne Law School. The book derived from it, *The Governance of Chinese Charitable Trusts* (Cambridge University Press, 2023), recently won the Research Output Prize at HKU. How do you understand the governance of Chinese charitable trusts?**

I believe the governance of Chinese charitable trusts should not be understood solely from a legal perspective. Instead, it should be understood in light of China's particular social, economic, and political circumstances.

Following this understanding, the governance of Chinese charitable trusts can be understood from three dimensions: legal, administrative, and contractual. The legal dimension relates to the legislative framework for charitable trusts, specifically how Chinese legislators expect the settlor, trustee, and beneficiary to interact in the creation and administration of a charitable trust. This relates to the



governance of charitable trusts in theory. The administrative dimension is intertwined with the contractual dimension, as both focus on how charitable trusts are governed in practice. The administrative dimension refers to the role of regulators in supervising the creation and administration of charitable trusts. The contractual dimension pertains to the contractual tools that charitable trust parties have adopted in allocating their risks in the creation and administration of charitable trusts. Together, these three dimensions constitute the unique governance structure of Chinese charitable trusts.

### **Why did you choose to combine doctrinal and empirical methodologies for this research?**

In the first stage of my study, I aimed to apply the doctrinal method in legislative provisions related to charitable trusts, trying to understand how all the parties involved interact within the legislative framework. I thought this approach would be sufficient, as charitable trusts are relatively new in China, having been introduced by the legislature in 2016.

However, since my core thesis revolves around the governance of Chinese charitable trusts, I realized that "governance" needs to be understood from both theoretical and practical perspectives. This realization led me to explore Chinese charitable trusts from a practical perspective. I adopted the method of semi-structured interviews. I interviewed regulators, trust law scholars, and trust managers. Over the course of four months, these interviews provided me with a nuanced understanding of the significant variations between the eastern coastal areas and the western undeveloped areas regarding the creation and administration of charitable trusts.

### **What modifications did you make to your thesis when turning it into a book?**

I completed my thesis in 2020, and when I decided to publish it as a monograph in 2021, I realized that the landscape of Chinese charitable trusts might have evolved over that year. To account for these developments, I conducted additional interviews with regulators and trust lawyers to understand how Chinese charitable trusts had progressed during that time. Since charitable trusts are relatively new in China, there has been a strong motivation among the general public to use them for charitable causes. I wanted to investigate the key motivations behind this public interest, as well as the regulators' support for the use of charitable trusts. I incorporated these insights and data into the monograph, reflecting the latest developments and a deeper understanding of the field.

### **What are the main challenges currently facing Chinese charitable trusts?**

The challenges facing charitable trusts can be understood on both practical and theoretical levels. Practically, the fundamental challenge lies in the ambiguities associated with the taxation policies for charitable trusts. Unlike other charitable organizations, such as foundations and associations, it is unclear what kind of tax privileges are afforded to charitable trusts and how these can be implemented. If I am a settlor creating a charitable trust and appointing a trust company as my trustee, I would provide the charitable fund to the trustee. However, under the current legislative framework, I am unable to receive any tax benefits because the trust company, acting as the trustee, cannot issue a tax deduction certificate to me. This lack of tax incentives significantly discourages the general public from using charitable trusts to engage in charitable activities.



Theoretically, the challenges arise from the ambiguities within the legislative framework governing charitable trusts. There is a lack of clear understanding regarding the role of each party involved in the governance structure of charitable trusts. Take the role of beneficiaries as an example. In common law jurisdictions, the purpose nature of charitable trusts suggests that the concept of beneficiaries is a pseudo-concept. However, while Chinese law has adopted the charitable trust model, it has simultaneously introduced the concept of beneficiaries within this context. This raises several questions: What does the concept of "beneficiary" mean in the context of charitable trusts? Should it be understood in the same manner as it is in private trusts? Chinese trust law grants a wide range of rights and powers to beneficiaries. Should these rights and powers extend equally to beneficiaries of charitable trusts? The law remains silent on these issues.

**In light of those challenges, do you think more legislation is a viable solution?**

At the current stage, I cannot say whether legislation is the most feasible way to address these problems. Legislation is a double-edged sword: it provides certainty and binding force, but the legislative process is often time-consuming. Moreover, poorly crafted legislation could exacerbate the issues we have identified.

Instead of focusing on whether legislation is the most feasible approach, I believe our top priority should be to clearly identify and analyze the problems first. We have invested significant effort in passing the Chinese charity law and introducing the charitable trust model. At this stage, we should concentrate on evaluating the advantages and disadvantages of the charitable trust model and its potential contribution to the development of charitable causes in China.

Only after gathering sufficient empirical evidence on these aspects can we consider possible solutions. We need more empirical evidence to determine whether legislation is a feasible method, and if so, what kind of legislation can effectively facilitate the creation and management of charitable trusts.

**You recently wrote about donation-based crowdfunding platforms in mainland China and Hong Kong. How did you become interested in this topic? What do you consider to be the potential contributions of trusts law on this topic?**

We see many scenarios that involve crowdfunding platforms in everyday life. For instance, bankrupt patients in need of medical treatment can launch donation-based campaigns, share their stories, and receive contributions from the public on those platforms. The donations collected are then directed to the patients for their treatments. Despite its wide use, donation-based crowdfunding platforms have not been thoroughly studied by scholars and practitioners.

These platforms involve many parties, and the interactions between them are theoretically significant. Studying these interactions can lead to valuable observations, such as the methods used to regulate these



platforms and the advantages and disadvantages of each method. As a trust lawyer, I am interested in whether trust law could offer a unique framework for regulating crowdfunding platforms.

The potential contribution of trusts law lies in the use of the trust's internal governance mechanisms. In trust law, trustees are subject to onerous duties, such as the duty of good faith, the duty of honesty, and the duty of loyalty. Imposing these duties on crowdfunding platforms can compel them to manage charitable donations properly. Meanwhile, characterizing the potential donees as beneficiaries can equip them with rights and powers that trust law grants to beneficiaries. For example, the donees can initiate litigation against the crowdfunding platforms if they misappropriate the trust fund.

### ***The Craft of Comparative Research***

**Comparative law between common law and civil law traditions forms an important aspect of your work. Does the vast gap between the two legal traditions present an obstacle to doing comparative research?**

I'm working on trust and property law, so I'm more confident discussing this topic from the perspective of these two subjects. Based on my observation, the distinction between civil law and British common law regarding trust and property law is not as significant as we thought. Trust and property law are private law subjects that deal with the interaction of people in daily life. In this regard, there are some fundamental ideas shared between the two types of jurisdictions.

As I mentioned previously, these include the certainty of transactions, transparency in information disclosure, and balancing the interests of different parties. Both jurisdictions have the motivation to implement these ideas. Accordingly, when dealing with a specific scenario involving the application of trust law and property law, the two jurisdictions will generally achieve similar results, albeit through different legal methods.

**If the distinction between different legal traditions does not present an insurmountable obstacle, what, then, is the major challenge you face when conducting comparative research?**

The fundamental challenge lies in the fact that, as human beings, we are often tempted to directly borrow legal mechanisms from one jurisdiction and apply them to another. However, the key here is that many legal mechanisms should be understood in light of a country's unique social, economic and political circumstances. The experience of a mechanism in one country cannot be directly applied to another. What we need to do is appreciate the uniqueness of a legal mechanism in one country, identify the function behind the legal mechanism, and consider how these functions can be implemented in our home country. This is the essence of comparative research.

**Building on that, can you summarise the purposes of comparative research?**

Through comparison, we can understand the rationale behind our own legal mechanisms and better appreciate the uniqueness of the legal mechanisms designed by our own legislature.



Additionally, comparison allows us to identify areas where our legal mechanisms can be tested and modified. We incorporate many mechanisms, but we may underestimate the problems that the implementation of these legal mechanisms may cause. Comparative research allows us to see the problems that overseas jurisdictions have already encountered and dealt with, thereby providing insights into the understanding of our own legal mechanisms.

**More specifically, what lessons can we learn from the transplantation of common law trusts into civil law jurisdictions?**

Whenever we discuss legal transplantation, we adopt a functional approach. That is, we focus on the function that the legal mechanisms in issue aim to serve. In common law jurisdictions, we often say that the trust is the most distinctive invention by English lawyers. The distinction between legal and equitable titles in relation to trust property supports the flexibility of the trust structure, making various asset-management plans feasible.

However, the concept of equity is unfamiliar to civil law. Civil lawyers may find it difficult to understand. Despite the absence of the concept of equity, civil law lawyers have still introduced and established the trust law mechanism. Why? Because their focus is not on the specific legal rules but on the function that these rules serve. Functional analysis is crucial in the process of legal transplantation. It allows us to understand the substance of the legal mechanism in common law trusts. What we need to do is create mechanisms that can facilitate and implement the functions supported by common law trusts, without necessarily transplanting the specific legal rules.

**Is there any commonality between trusts law from different legal traditions that can better facilitate the dialogue between them?**

One candidate for comparison might be the concept of “beneficial ownership”. In British common law, beneficial ownership is often taken for granted and is considered fundamental to understanding an express trust. However, according to my observation, the concept of beneficial ownership is not as significant as we thought. While it works well with fixed private trusts, it does not work well with discretionary private trusts, charitable trusts, and non-charitable trusts.

Instead, the idea of due administration is a common thread running through all kinds of express trusts. Through my comparative research, I have observed that the idea of due administration is manifested in civil law jurisdictions through the mechanisms of trust fund independence and patrimony. The implementation of these mechanisms in civil law jurisdictions bridges the conversation between civil law and British common law regarding the creation and administration of express trusts.



**Based on your experience, what advice would you give to students from a civilian law background on learning and conducting research related to common law for the first time?**

In my view, the core of studying common law mechanisms requires understanding the significance of the case law system and appreciating the legal reasoning of common law judgments. So I want to say something about how to read common law judgments. First, it is crucial to thoroughly understand the facts of the case, as they provide the context for the legal issues at hand. Secondly, identify the legal principles and precedents that the court relies on, as these will guide the interpretation and application of the law. Pay close attention to the reasoning process of the judges, including how they distinguish the current case from previous ones and how they justify their conclusions. Finally, consider the broader implications of the judgment for future cases and the development of the law. By following these steps, students can gain a deeper insight into the common law's approach to legal problem-solving.

### ***Service***

**As the Director of LLM in Chinese Law, what key considerations guide you in designing the degree syllabus?**

There are multiple considerations. The first is to equip our students with a wide range of perspectives. We avoid merely teaching Chinese law in English. Instead, we incorporate a variety of comparative law courses into the syllabus, covering areas such as comparative commercial law, comparative criminal law, and comparative property law.

The second consideration involves common law education. By leveraging the common law tradition of Hong Kong, we include numerous common law teaching components in the syllabus, such as case law studies and moot courts. These components aim to provide students with a practical, real-world understanding of Chinese legal practice.

The third consideration is for students who may wish to pursue a PhD after their master's studies. To help them gain research experience, we include courses such as *Dissertation*. Students can select a topic they are interested in and find a faculty member to supervise their work. This course can last one semester or one year, depending on the student's time commitment and the complexity of their research topic.

**In your view, what are the advantages of pursuing an LLM in Chinese Law at HKU Law?**

There are many advantages. The first is that the Chinese law program is associated with our Philip K.H. Wong Centre for Chinese Law. All members of our Centre have cross-jurisdictional training, and their research areas are broad, covering both doctrinal and interdisciplinary studies. Their involvement in teaching ensures that our students are exposed to cutting-edge research and diverse viewpoints.

The second advantage is HKU's strategic location in Hong Kong, which provides an excellent vantage point for studying Chinese law. Hong Kong seamlessly blends common law traditions with its proximity to mainland China, creating an ideal setting for this program.





The third advantage is the annual influx of visiting scholars from around the world who specialize in Chinese law. We leverage their expertise by inviting them to give lectures, participate in roundtable discussions, and conduct workshops for our Chinese law students.

### ***Relay Questions***

**We invited the last interviewee (Prof Scott Veitch) to raise a question for you. His question is, ‘What matters most to you academically?’**

There is no one single most significant aspect of being a scholar for me. I love conducting research. Examining trust law, property law, and charity law from both Chinese and common law perspectives provides endless opportunities for discovery and insight. Contributing to the body of private law scholarship in a meaningful way is a goal I am in pursuit of.

In addition, being a scholar also involves mentoring and educating students. Working with students is very rewarding. I get to see them resolve difficult legal problems, making progress little by little. Once they succeed, their sense of satisfaction becomes my fulfilment as well. I believe teaching is a reciprocal process between the teacher and the student. It’s an important aspect of my academic life.

**What would be your question for the next Introduction to HKU Law interviewee (without knowing who that is)?**

My question is, how do you see legal education evolving in the next decade?

***Interview hosted by Yiran Shi on March 6, 2025; filmed and edited by CHE; coordinated by Dr Yang Lin***