

Working Paper Seminar

Title: Unconscionability as Violation of Voluntary Commutative Justice

Speaker: Dr. Jiang Hao

Date : 25 October 2018 (Thu)

Time : 9:30 am - 11:30 am

Venue : SLW Conference Room [P5401, 5/F, School of Law, Yeung Kin Man Academic Building, City University of Hong Kong]

Dr. Jiang Hao is a Visiting Fellow at City University of Hong Kong.

Abstract:

Contrary to the conventional view that the doctrine of unconscionability requires procedural defects and is based on bargaining inequality, this paper argues that, in principle, substantive unconscionability alone shall be sufficient to constitute unconscionability and so vitiate a contract. It is also my contention that Aristotelian idea of contract of exchange as an act of voluntary commutative justice explains the two sources of unfairness. They are not understood by contemporary legal scholarship, namely, economic unfairness and involuntariness.

Economic unfairness prevents gross disparity, which alone triggers unconscionability; it has been observed that when a transaction is truly stupid or one-sided, courts will set aside the contract as unconscionable. When a contract violates the autonomy of a party by hiding offensive or oppressive terms in a boilerplate, relief is given by both the Second Restatement of Contracts and European Directive. Yet, there is no doctrinal basis in our theoretical framework that justifies either one of the two reliefs.

We stand a better chance of having a coherent doctrine of unconscionability by seeing contract of exchange as an act of voluntary commutative justice as in Aristotelian tradition.

Moderator:

Dr. Zhao Liang, CityU

Guest Discussants:

Prof. Rick Bigwood, The University of Queensland

Prof. Geraint Howells, Dean & Chair Professor of Commercial Law, CityU

Prof. Alexander Loke, CityU



Dr. Jiang Hao

ALL ARE WELCOME