
5 March 2018, Monday ✦ 12.30pm – 1.30pm

Lee Sheridan Conference Room, Eu Tong Sen Building, Level 1, NUS (Bukit Timah Campus)

The Derivative Action in Private International Law: Towards a Choice-of-Law Framework

Speaker: Professor Hisashi Harata, The University of Tokyo

Co-presenter: Ms Samantha Tang, NUS Law

Chairperson: Professor Tan Yock Lin, NUS Law

ABSTRACT

The reality of modern corporate business is far from tidy. Complex group structures with holding companies and subsidiaries in offshore tax havens such as the British Virgin Islands are de rigeur in large multinational enterprises, and are also present in smaller, predominantly domestic concerns in jurisdictions where foreign-incorporated entities are frequently used. Transnational disputes in which shareholders seek relief against directors of foreign corporations and associated parties, whether through the derivative action mechanism (whether statutory or at common law) or other legal remedies may give rise to multiple possible characterizations. Notwithstanding the complexities, there is a tendency in jurisdictions such as the United States, United Kingdom, and Japan to view such disputes purely as the ‘internal affairs’ of one particular foreign corporation to which only its *lex incorporationis* is applicable. The judgment of *Collins J* in *Konamaneni v Rolls Royce Industrial Power (India) Ltd* [2002] 1 WLR 1269 (ChD) is an example of this tendency, whereas two Singapore decisions have gone the other way by disposing of the dispute as a derivative suit but applying only the *lex fori* without any consideration of the *lex incorporationis*. This seminar explores choice-of-law approaches that neither blindly apply the *lex incorporationis* nor *lex fori* exclusively, as well as possible reasons for applying *lex fori* to foreign corporations such as public policy, shadow ‘real seat’ doctrine, and *lex causae*.

ABOUT THE SPEAKER



Hisashi Harata is Professor at the University of Tokyo Faculty of Law, where he teaches private international law, international civil procedure, and international commercial arbitration. He specializes in private international law and comparative law, with a focus on the relationship and interaction between the Western legal tradition and Asian legal systems. His current project aims to construct a framework of transnational law that addresses problems from across a wide range of legal subfields. Proficient in French, Italian, and German, he is a frequent visitor at institutions including the former Department of Roman Law at the University of Naples Federico II, and the law schools of Cornell University, Columbia University, University of Michigan, and National University of Singapore.



Samantha Tang is Sheridan Fellow at the National University of Singapore Faculty of Law where she teaches equity and trusts, and Associate Editor of the *Asian Journal of Comparative Law*. A former corporate lawyer and current specialist in comparative corporate law with a focus on shareholder remedies in the Anglo-Commonwealth, Samantha’s publications have appeared (or are forthcoming) in journals including the *Law Quarterly Review*, *Lloyd’s Maritime and Commercial Law Quarterly*, and *Journal of Corporate Law Studies*. She won the Best Paper Prize of the Corporate Law Teachers Association Annual Conference in 2017 for her empirical work on derivative actions in Singapore and Hong Kong.

REGISTRATION

There is no registration fee for this seminar but seats are limited.

Light refreshment will be provided on a first-come, first-served basis.

Closing Date: **1 March 2018, Thursday**

For enquiries, please contact Alexandria at cals@nus.edu.sg

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