

CBFL Distinguished Visitor Lecture 2020 General Contract Law and Financial Markets: Regulation and Good Faith

21 January 2020

NUS Law (Bukit Timah Campus)



(Left to Right) Prof Simon Chesterman (Dean of NUS, Faculty of Law), Justice Chao Hick Tin, Prof Mads Andenas, QC (University of Oslo), Assoc Prof Sandra Booyen (CBFL, NUS Law) & Assoc Prof Dora Neo (CBFL, NUS Law)

Professor Mads Andenas QC, the Peter Ellinger Visiting Professor at the NUS Law School for AY 2019-2020, delivered the Distinguished Visitor Lecture hosted by NUS Law's Centre for Banking & Finance Law (CBFL) on 21 January 2020. The event was attended by over 100 academics and practitioners, including donors of the Peter Ellinger Visiting Professorship.

Professor Andenas started with an overview of the development of fiduciary duties and regulatory rules in the UK during the 1990s. He elaborated on two UK Law Commission reports that considered, inter alia, whether conduct of business rules would be damaging to financial markets, and the regulatory impact of such rules on contract law and contractual remedies. Professor Andenas then brought the audience through judicial statements made on the status of such regulatory rules in a number of mis-selling cases heard after the 2007/8 global financial crisis. He surmised that the conduct of business rules then appeared to constitute a parallel and separate regime from common law rules. As he discussed the emerging good faith doctrine in recent commercial cases, Professor Andenas argued that the good faith doctrine, and the traditional balancing exercise carried out in contract law, provides legal solutions that allow regulatory rules to be taken into account in the interpretation of financial contracts.

The session was moderated by Professor Dora Neo, Associate Professor and Director of CBFL.

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CBFL DISTINGUISHED VISITOR LECTURE

General Contract Law and Financial Markets: Regulation and Good Faith from Contested Implied Terms to 'Irreducible Core'?

Professor Mads Andenas QC
Peter Ellinger Visiting Professor
Faculty of Law, NUS



Professor Mads Andenas QC, the University of Oslo and Institute of Advanced Legal Studies, University of London, who is visiting NUS this term, was The Director of the Centre of European Law, King's College, University of London 1991-1999 and of the British Institute of International and Comparative Law 1999-2006. Earlier this year he was appointed *Grande Ufficiale of the Ordine al Merito della Repubblica Italiana* and an honorary Queen's Counsel.

'Professor Mads Andenas is considered a stellar academic and has been recommended for his work in the fields of comparative and international law, in familiarising academic and practising lawyers and the judiciary in this jurisdiction with other systems of law and by encouraging exchanges of views and approaches between common and civil lawyers. He has written many books on the subject. He has established a series of annual seminars on pressing issues as seen from European Supreme Courts. This was inaugurated by a seminar in the UK Supreme Court with the participation of a number of leading UK practitioners and judges. He was also member and Special Rapporteur in the UN Working Group on Arbitrary Detention, and contributed to its report « Basic Principles and Guidelines » (2012). This report has been referred to in UK Supreme Court judgments.' (The Lord Chancellor of England and Wales)

Tuesday, 21 January 2020 • 5.00pm to 6.00pm
(Registration starts at 4.30pm)
Moot Court
NUS Law (Bukit Timah Campus)

ABOUT THE SEMINAR

The lecture addresses good faith in contract law, and the impact of regulation on financial contracts. Much dogma and principle has been invoked to arrest the impact of good faith and regulation on general contract law. Professor Andenas deconstructs this dogmatic approach, and takes us back to the work of his judicial heroes who started out in the Commercial Court in London, Lords Donaldson, Goff, Bingham, and the recently appointed Supreme Court Justice, Lord Leggatt. Assisted by Robert Goff QC, Sir John Donaldson developed fiduciary duties in a way which could provide private law duties beyond what some considered contract and regulation on a 'strict' interpretation, permitted. Sir Thomas Bingham drew inspiration from Lord Mansfield and EU legislation. Sir George Leggatt created a new basis in legal principle and authority for good faith. With Brexit drawing closer, English lawyers are looking to the Commonwealth. It has struck against the outdated doctrines, with the Canadian Supreme Court establishing good faith as the 'irreducible core' and prompted lively judicial and academic discourses elsewhere. Much of this development relates to financial contracts. Professor Andenas argues that good faith and the traditional balancing in contract and tort law provide legal solutions for taking account of regulatory rules.

WHO SHOULD ATTEND

Academics, banking lawyers, in-house bank counsel, policymakers

PROGRAMME

- 4.30pm : Registration
- 5.00pm : Start of Seminar
- 6.00pm : Reception
- 7.00pm : End of Event

REGISTRATION



Register at: <https://nus.edu/33aqvz2>
OR scan the QR code

Closing Date:
Tuesday, 14 January 2020

For enquiries, please contact
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Public CPD Points: 1 (TBC)
Training Level: Foundation
Practice Area: Banking and Finance

Participants who wish to obtain CPD Points are reminded that they must comply strictly with the Attendance Policy set out in the CPD Guidelines. For this activity, this includes arriving punctually, not leaving the activity before it has ended, and signing in on arrival and signing out at the conclusion of the activity in the manner required by the organiser. Participants who do not comply with the Attendance Policy will not be able to obtain CPD Points for attending the activity. Please refer to <http://www.sileCPDcentre.sg> for more information.

ABOUT THE CENTRE FOR BANKING & FINANCE LAW

The Centre for Banking & Finance Law (CBFL) at the Faculty of Law, National University of Singapore, seeks to generate scholarship and promote thinking about the vibrancy, robustness and soundness of the banking sector, capital markets and other financial services. Through the research our scholars undertake and the events we organise, we seek to create and share knowledge, to engage stakeholders in an exchange of ideas, and to enhance the appreciation of legal and regulatory issues. We aim to bring greater theoretical and analytical clarity to these issues, to examine their policy impact, and to be a catalyst for ideas on how to improve banking and financial systems at the national, regional and global levels. Visit our website at <https://law.nus.edu.sg/cbfl/>.