

The Hochelaga Lectures 2017

The Hochelaga Lectures commemorate the life and interests of the anonymous donor's father. Previous Hochelaga Lecturers have included Chief Justice Beverley McLachlin PC CStJ; Professor Gareth Jones QC; Professor Andrew Burrows QC; Professor Lawrence Lessig; Professor Martha Nussbaum; Professor K. Anthony Appiah; Judge Raul Pangalangan; Professor Madhavi Sunder; Professor Mindy Chen-Wishart; Professor Bruno Zeller; Justice Peter Roth; Chief Justice Diana Bryant AO; Justice Victoria Bennett; Judge Huang Yongwei; Lord David Pannick QC; Professor Charles Mooney Jr; and Chief Justice James Allsop.

Investment Treaty Arbitration Claims over Tobacco Packaging Regulation: Running out of Puff?

Professor Luke Nottage

*Professor of Comparative and Transnational Business Law
University of Sydney Law School*

MONDAY 17TH JULY 2017, 18:00 – 19:00

**ACADEMIC CONFERENCE ROOM, 11/F, CHENG YU TUNG TOWER,
CENTENNIAL CAMPUS, THE UNIVERSITY OF HONG KONG**

In 2015 an arbitral tribunal unanimously rejected the claim brought by Philip Morris Asia against Australia under its investment treaty with Hong Kong, regarding plain packaging legislation, on the jurisdictional ground that forum-shopping constituted an abuse of right under customary international law.

This lecture examines this outcome from the perspective of four commonly-raised concerns about the investor-state dispute settlement (ISDS) procedure: delays, costs, transparency and "regulatory chill". It then compares the 2016 award on the merits finding against Philip Morris in a (much smaller) claim under the Uruguay-Switzerland treaty. That tribunal (including Australia's pre-eminent international lawyer) held that the (less invasive) tobacco advertising regulations did not result in a denial of justice or violation of fair and equitable treatment (by majority), nor indirect expropriation (recognising that bona fide public health measures are an essential manifestation of a state's "police powers" under customary international law). Finally, the lecture considers some of the implications of this (curiously little-reported) decision for regional treaty practice, including the ongoing (ASEAN+6) Regional Comprehensive Partnership negotiations as well as the exclusion of tobacco control measures from ISDS under the Trans-Pacific Partnership (signed on 4 February 2016) and the Singapore-Australia FTA (as amended on 13 October 2016).



Professor Nottage is Professor of Comparative and Transnational Business Law at the University of Sydney Law School. His interests are in arbitration, consumer law and corporate governance. He focuses on particular on Japan and the Asia-Pacific. He is a Co-Director of the Australian Network for Japanese Law (ANJeL) and an Associate Director of the Centre for Asian and Pacific Law at Sydney University.



Refreshments will be served after the lecture.

For registration, please visit https://hkuems1.hku.hk/hkuems/ec_hdetail.aspx?guest=Y&ueid=50480.

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