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7

# INTERNATIONAL BUSINESS LAW



Welcome to the academic year 2017/18 and the 7<sup>th</sup> issue of the IBL Newsletter of July 2017. Having just completed another eventful year of the IBL program, with many compulsory and elective courses offered as well as master theses successfully defended, it is time to both look back on some of the major activities as well as achievements as well as to look forward to the intake for the new academic year and the future in general. Come to the academic year 2017/18 and the 7<sup>th</sup> issue of the IBL Newsletter of July.

Rostam J. NEUWIRTH  
(Program Coordinator)



## [NEWSLETTER]

The Newsletter of the Master and Postgraduate Program in English Language in INTERNATIONAL BUSINESS LAW (IBL) offered by the Faculty of Law of the University of Macau

# TEDxTALK Event on “Force” at the University of Macau

## TEDxTalk

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On January 21, 2017, a passionate group of people of the University of Macau led by the principal organizer, Ms. Hada FONG Ha LEONG, had organized the second edition of a TEDx University of Macau event (<https://www.ted.com/tedx/events/19044>). In 2017, the principal theme of the TEDx Event was “Force”, which was described in greater details as follows:

In physics, a force is any interaction that will change the motion of an object when there is an opposition. A force can cause an object with mass to change its velocity, so as its acceleration. In a fast growing city Macau where we are surrounded by different forces from different directions in different magnitudes, under what circumstance can forces be in synchronization?

In this context, I was also happy to present a talk entitled “oxymoron – the force of an ‘open secret’” [ <https://www.youtube.com/watch?v=MUhKrij7aXMY> ], which presented the rhetorical figure of the “oxymoron” i.e. a contradiction in terms usually expressed in one word, in order to assess the principle force of language.

Interestingly, the “oxymoron” not only describes but also constitutes an oxymoron, because it combines in one word the Greek words “*oxus*”, meaning “sharp or

pointed”, and “*mōros*”, meaning “dull or foolish”.<sup>1</sup> This has also earned it the Latin denomination as “*acutifatum*” or “wise-folly” in English.<sup>2</sup> Related examples would be those of “*glocalisation*” [global vs local] or “*coopetition*” [competition vs. cooperation].

However, these contradictory terms are also often expressed in two or more words, which prompted me to coin the notion of *essentially oxymoronic concepts*<sup>3</sup> to include not only oxymora (wise-folly”) but also *contradictions in terms*, like “ignorant savant” as well as paradoxes, like “I know that I know nothing”.

These so-called “essentially oxymoronic concepts” are not only a powerful poetic tool of language that compelled poets, philosophers and artists to frequently make use of them. They also seem to pose a serious challenge to the legal mind, which is often trained in a

<sup>1</sup> See Catherine Soanes and Angus Stevenson (eds.), *Concise Oxford English Dictionary*, 11<sup>th</sup> ed. (Oxford: Oxford University Press, 2008) at 1024.

<sup>2</sup> See E.W. Bullinger, *Figures of Speech Used in the Bible: Explained and Illustrated* (London: Eyre and Spottiswooe, 1898) at 816.

<sup>3</sup> Rostam J. Neuirth, (2013). *Essentially Oxymoronic Concepts*. *Global Journal of Comparative Law*, 2:2, 147-166.



dominantly binary mode of thinking or exclusive logic. This binary approach has been aptly outlined by the legal scholar Robert M. Cover when he called law a “nomos” or normative universe, which we constantly create and maintain by “a world of right and wrong, of lawful and unlawful, of valid and void”.<sup>4</sup> Similarly, the lawyer’s mind was characterised as follows:

For the lawyer’s purpose every situation which confronts him is dealt with as falling into one or the other of two categories which are apparently supposed to be mutually exclusive and separated by a sharp boundary. Either this is a battery or not a battery, a trespass or not a trespass, etc.<sup>5</sup>



In this regard, numerous new words or so-called “neologisms” of a strongly oxymoronic but varying degree of contradiction are increasingly challenging the seemingly perfect legal world drawn in binary terms. Therefore, the apparent increase in the number of oxymora being coined and used in law and other disciplines, such as “soft law”,<sup>6</sup> “sustainable development”,<sup>7</sup> “substantive due process”<sup>8</sup> or “United Nations (management)”,<sup>9</sup> cause serious problems as to their precise classification. Their potentially disruptive effect prompted me to ask in an article published in 2013: “Can someone be guilty and innocent, or an act be lawful

and unlawful, at the same time?”<sup>10</sup> These are but a few examples of a wider linguistic trend caused most likely by an acceleration of the perception of change, an increasing complexity and diversity, as well as, paradoxically, a convergence of technologies and industries in the age of a “global village”. In this context, the challenges of the governance of global affairs in the 21<sup>st</sup> century have been outlined as follows:

To anticipate the prospects for global governance in the decades ahead is to discern *powerful tensions, profound contradictions, and perplexing paradoxes*. It is to search for order in disorder, for coherence in contradiction, and for continuity in change. It is to confront processes that mask both growth and decay. It is to look for authorities that are obscure, boundaries that are in flux, and systems of rule that are emergent. And it is to experience hope embedded in despair.<sup>11</sup>

For these reasons, it is crucial for everyone and for members of the legal community in particular to be able to identify, understand and interpret *essentially oxymoronic concepts*.



#### Further suggested readings:

Glenn H.P. Glenn & L. Smith (eds.), *Law and tNew Logics* (Cambridge University Press, 2017).

, Rostam J. NEUWIRTH (2013). *Essentially Oxymoronic Concepts*. *Global Journal of Comparative Law*, 2:2, 147-166; available at:

<http://booksandjournals.brillonline.com/content/journals/10.1163/2211906x-00202002>.

Oren Perez and Gunther Teubner (eds.), *Paradoxes and Inconsistencies in the Law* (Oxford: Hart Publishing, 2006).

<sup>4</sup> See Robert M. Cover, “The Supreme Court, 1982 Term: Foreword: Nomos and Narrative” (1983) 97(4) *Harvard Law Review* 4 at 4 [footnote omitted]; see also Walter Wheeler Cook, “Substance” and “Procedure” in the Conflict of Laws”, (1933) 42(3) *The Yale Law Journal* 333 at 333.

<sup>5</sup> Walter Wheeler Cook, “Substance” and “Procedure” in the Conflict of Laws”, (1933) 42(3) *The Yale Law Journal* 333 at 333 [footnote omitted].

<sup>6</sup> See eg John F. Murphy, *The Evolving Dimensions of International Law: Hard Choices for the World Community* (Cambridge: Cambridge University Press, 2010) at 20.

<sup>7</sup> See eg Wolfgang Sachs, “Sustainable Development and the Crisis of Nature: On the Political Anatomy of an Oxymoron”, in Frank Fischer and Maarten A. Hajer (eds.), *Living with Nature: Environmental Politics as Cultural Discourse* (Oxford: Oxford University Press, 1999) 21 at 38.

<sup>8</sup> *Duckworth v. Franzen*, 780 F.2d 645, 652 (7th Cir. 1985).

<sup>9</sup> See eg Franz Baumann, “United Nations Management—An Oxymoron?”, (2016) 22 *Global Governance* 461–472.

<sup>10</sup> Neuwirth, Rostam J. (2013). *Essentially Oxymoronic Concepts*. *Global Journal of Comparative Law*, 2:2, 147-166.

<sup>11</sup> James N. Rosenau, “Governance in the 21st Century”, (1995) 1 *Global Governance* 13 at 13 [Italics added].

# HEALTH LAW

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## WE DO IT, BECAUSE IT IS HOT



Health law is one of the “hot” topics of today’s legal discussions. For instance, questions as to the end of life decisions and euthanasia,<sup>①</sup> oocyte cryopreservation for fertility extension,<sup>②</sup> or disputes over cryopreserved embryos<sup>③</sup> have been filling newspapers and TV news.

For us lawyers, these questions raise very interesting - but also complex - legal problems, solved by rules coming from any of the traditional domains of legal knowledge (civil law, criminal law, administrative law, international law), that all together create the new field of health law. Furthermore, health law is very multidisciplinary, so, we like to enlarge the debate to other fields of expertise, such as physicians, geneticists, ethicist and so many others.

Our Faculty could not be left out of this discussion and actually some members of our academic staff have been dedicating their research to health law issues. So, we created a research circle focused on Health, Medicine, Technology and Law, composed by Assoc. Prof. Guangjian TU, Assoc. Prof. Rostam J. NEUWIRTH, Asst. Prof. Alexandr SVETLICINII, Asst. Prof. Vera Lucia RAPOSO, Asst. Prof. I-Hsuan HSIAO and Asst. Prof. Du LI.

The Faculty of Law has been organizing for the last couple of year events exclusively dedicated to health law, from international conferences to small symposiums. In some of those

events colleagues from other faculties of the University of Macau (Institute of Chinese Medicine, Faculty of Health Sciences) also participated, alongside with physicians that practice medicine on a day-to-day basis.

This year we want to go bigger and we are planning a big international event with the participation of some of the most reputed experts on health law, from Asia and abroad: the II Conference on Medical Law - Asian Perspectives on Bioethics, Medical Ethics & Medical Law.

This will be a two-days conference, to be held on 16th and 17th October 2017, which will be jointly hosted by the Faculty of Law of University of Macau and the Institute for Advanced Legal Studies.

If you happen to be around during those days do not miss this event. It would be a great opportunity to get to know some of the research being developed in our Faculty, and also a chance to meet worldwide experts in this domain. We will discuss issues such as medical liability, patient's safety, patient's informed consent, reproductive medicine, personalized medicine, genetics, the use of technology in health care, pharmaceutical products and services (authorization, marketing, competition, IP protection), conventional and traditional medicine, among many others. So, just show up and get engaged in this very hot topic.

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- ① See eg Konstantin Tretyakov, "From Therapeutic Abstention to the Right to Die? The Case of Lambert and Others v. France", Strasbourg Observers (6 July 2015), available at: <https://strasbourgobservers.com/2015/07/06/from-therapeutic-abstention-to-the-right-to-die-the-case-of-lambert-and-others-v-france/>.
  - ② See eg Yao Yao and Yang Jie, "Frozen eggs prompt intense online debate by celebrities", The Telegraph (13 Aug 2015), available at: <http://www.telegraph.co.uk/sponsored/china-watch/society/11801635/xu-jinglei-chinese-actress-frozen-eggs-debate.html>.
  - ③ See eg anielle and Andy Mayoras, "Embryo Lawsuit Between Sofia Vergara And Nick Loeb Getting Out Of Hand", Forbes (18 November 2016), available at: <https://www.forbes.com/sites/trialandheirs/2016/11/18/embryo-lawsuit-between-sofia-vergara-and-nick-loeb-getting-out-of-hand/#2e68cc403d65>





# CONGRATULATIONS TO THE GRADUATES

*of the INTERNATIONAL BUSINESS LAW (IBL) Program*



**We congratulate all the successful graduates of the IBL program  
During the academic year 2016/2017**

DANIEL JORGE MARTINS XAVIER  
NACITA CIRLENE LOURENCO CHIRINDAZ  
GUILHERME VARGAS CASTILHOS  
CHEN ZHANGCHUCHU  
ZHANG XIAWEI  
WANG JIAYE  
GUO BOCHUAN  
NG KA LAI  
DAI WEI

DAISY NOGUEIRA  
ZHANG CHENGCHENG  
ZHONG HAOJUN  
XIE MEITING  
LIAO JIEKE  
LI YAOLAO  
HE LIQUN  
HE LIQUN  
HUANG ZEYU,

Professor Jorge Godinho

# Published Volume I of Gaming Law



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Professor Jorge Godinho has launched in May 2016 the first of a three-volume comprehensive discussion of gaming law, in Portuguese, titled *Direito do Jogo* (Gaming Law). The publisher is Rui Cunha Foundation. The book is the outcome of more than a decade of teaching and researching gaming law at the University of Macau at undergraduate and master level, at the Faculty of Law and at the Faculty of Business Administration.

This first volume sets out the key interdisciplinary bases of gaming law: mainly the private law perspective (especially contractual), the administrative and regulatory angle and the criminal law approach. The graphic design of the cover intends to convey the richness and complexity of what lawyers call gaming law. The discussion reads in parts like a thesis on contract law, especially the nature and types of aleatory contracts. In other sections it reads like a thesis on the public law and policy of gaming, especially why gaming should be legal but subject to regulation. In some other sections of this first volume it reads like a detailed history of gaming in Macau.

In this manner, the volume includes extended interdisciplinary discussions on many key issues. Some of the key ideas are: gaming should be legal but regulated so as to prevent

excessive gambling; the regulation can be done in different manners, as there is not a single way to do so; the legal effects of gaming contracts, a controversial issue, need to be established on the basis of an interdisciplinary reading of the law in general and the Civil Code in particular, which cannot be read in isolation; there is also entirely new research on the history of games of chance in Macau, documenting its main phases of evolution and many detailed aspects not yet known, as well as dispelling a number of widely repeated mistakes about the history of gaming in Macau.

A second volume shall cover the regulation of legalized gaming, focusing especially on casino games of chance. A third volume shall focus on the criminal law part, including the prevention of money laundering in the gaming industry.

Professor Jorge Godinho has stated that he would be extremely happy to have translations or perhaps shorter versions published in other languages. The best strategy is to start with English, which is faster, and then move into Chinese, which would be easier to produce on the basis of the other two languages. However, such translation is a major task requiring considerable support, which at the moment seems difficult to obtain



# Ethical Coding and Autonomous Cars

*Special Lecture by Prof. Dr. Iris EISENBERGER at the Faculty of Law, Macau University, Macau on September 20, 2016*

*Dai Yihan (PhD student, University of Macau)*

At the invitation of Prof. Rostam J. NEUWIRTH of the Faculty of Law, Prof. Dr. Iris EISENBERGER, Head of the Institute of Law of the University of Natural Resources and Life Sciences in Vienna, recently delivered a lecture, titled 'Ethical Coding and Autonomous Cars', to students of the International Business Law (IBL) master program, PhD students as well as interested staff of the Faculty of Law of the University of Macau.

In view of two recent fatalities, one in the United States and one in China, the issue of autonomous or self-driving cars has gained worldwide notoriety also in the legal debate. The reason is that autonomous cars have to be programmed carefully so they can make proper ethical decisions in view of possible fatal accidents involving human life. In her lecture, Prof. EISENBERGER presented a great variety of unsolved ethical and legal questions arising particularly from the coding algorithm of autonomous cars. This problem, Prof. EISENBERGER exemplified by reference to the "trolley problem" known in ethics and moral philosophy, which constitutes a dilemma faced by a person whose decision to act or not has a different influence on the number of casualties suffered.

When applied to autonomous cars, Prof. EISENBERGER outlined that the principal question is how such cars ought to be programmed when a collision causing one or more lethal casualties seems inevitable. Apart from the technical issues yet to be solved and in addition to the ethical problems, another important question stressed in the lecture was the one of who are the major stakeholders or, more concretely, who is going to be involved in the formulation of the laws and regulations that stipulate how the cars will be programmed. For instance, should the legislative process involve society at large, or representatives of industry, of programmers, of consumers, or should it be government, the legislative or an international organization?

Based on a great number of different scenarios related to this problem, several possible regulatory approaches were presented to the participants and critically evaluated in the subsequent questions & answers session, which created a vivid debate.

In sum, the opinions voiced during the discussion varied greatly, which highlighted, first and foremost, the general level of complexity that regulatory processes have gained today. Additionally, it underscored the great importance of an early debate in parallel with the serious challenges deriving from the rapid evolution of a large number of legal problems involving novel technologies, as also the one of the proper use and legal regulation of autonomous cars on our roads poses.







# Team Teaching and Team Learning:

## Business Law in the BRICS Countries

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The term BRICS is an acronym referring to the countries of Brazil, Russia, India, China and South Africa. Originally, it was coined as “BRIC” to ponder on ways of better integrating Brazil, Russia, India and China into the arena of global economic policy making. After being joined by South Africa in 2011, the BRICS countries continued to attract great international attention in mostly economic and political but also other contexts. Since

then, the BRICS countries’ governments have qualified their institutional setting as a “dialogue and cooperation platform” organized in regular meetings being held among different levels of governments.

In 2015, the leading universities from the BRICS countries adopted the Beijing Consensus, which resulted in a decision to establish a BRICS Universities League. In 2016, they took the next step in that

direction – the establishment of the BRICS Network University. The first Forum of the BRICS Network University was held in Yekaterinburg on April 6–9, 2016. Today the BRICS Network University consists of 9 universities from Brazil, 11 universities from China, 12 universities from India, 12 universities from Russia, and 12 universities from South Africa. The law schools in the BRICS countries are increasingly being



asked by government authorities and practitioners to step up their BRICS-related legal research and education. To face that challenge, the universities are expected build synergies among BRICS legal scholars.

Even though being formally outside of the BRICS Network University, the International Business Law Program reinforced by the support from the University of Macau Multi-Year Research Grant “Global Governance through Transnational “Inter-Regime Competitions” and the BRICS Countries” has made its first step towards fostering BRICS-related legal research and education. In the spring semester 2016/17 the team of IBL instructors consisting of Rostam J NEUWIRTH (Associate Professor and IBL Program Coordinator), Alexandr SVETLICINII (Assistant Professor and IBL Associate Programme Coordinator), and Denis De Castro HALIS (Senior Instructor) have developed and taught the course LLIB 626/726 Advanced Issues of International Trade Law focused on legal aspects of doing business in the BRICS countries. The new course has featured several innovative teaching and learning methods.

First of all, the course has

been co-taught by a team of three instructors being present in classroom at the same time in order to stimulate the discussion and complement each other’s expertise on the laws of particular BRICS countries. The course also featured several invited speakers including the Director of the Global Affairs Office, Prof. Da-Hsuan FENG, who shared his views on cross-cultural communication in light of China’s “One Belt One Road”. The instructors took advantage of various educational technologies available at the University of Macau and supported by the Center for Teaching and Learning Enhancement (CTLE) and the Information and Communication Technology Office (ICTO): UMMoodle and PollEverywhere. Thank to the support of CTLE Director Prof Spencer A Benson and CTLE E-Learning Technology Officer Christopher Fulton, the class was conveniently hosted in one of the CTLE Interactive Learning Spaces – classroom equipped with video and audio recording. The AV materials generated by the course will allow to offer it next year in a blended learning format, where the students will be able to watch short video lectures before each class and

then come prepared for a more in-depth discussion. While the instructors were teaching in team, the students were learning in team also. Instead of a conventional final examination, the grading of the course was based on the result of a group project, which required students to engage in collaborate legal research. The students organized in the groups of five (each member representing one of the BRICS nations) worked on various issues of global governance that could potentially benefit from closer cooperation of the BRICS countries. This years the students have chosen the following areas for their group projects: e-commerce, agriculture, health care, and enforcement of foreign judgments. Each team has prepared a colorful presentation summarizing the experiences of each BRICS country in the respective fields and drawing the directions for future cooperation. The students have also prepared written declarations modeled after the official declarations adopted by the BRICS leaders at their annual summits. The assessment of the results was also carried out in a team: the instructors evaluated individual students’ performance while





the students provided peer review on the performance of their teammates.

The innovative teaching methods and overall classroom atmosphere has been well received by the students, who applauded the new learning format: “I will recommend this course because of the topic “BRICS” and also because in this class we have three teachers in one classroom”. The student feedback has also identified several areas for improvement: the course could be offered over whole semester in order to allow students more time for learning and independent research. Some students also found it challenging to study a large volume of materials, which could be addressed by the blended learning content that will be available in the next edition of the course.

The team teaching and team learning of the new course have received significant publicity in the university and beyond. On 9-10 April 2017 Alexandr SVETLICINII has presented the new course at

the 7th Annual International Research Exchange & Faculty Development Conference hosted by the Chinese University of Hong Kong, School of Journalism and Communication. On 19 April 2017 the instructors have presented the main features of the course at the CTLE Teaching and Learning Innovation Salon opened by VRAA Prof Lionel Ni and CTLE Director Prof Spencer A Benson. On 4 May 2017 the team teaching experience of the BRICS course has been featured in the Faculty of Arts and Humanities Spring Staff Professional Development Workshop chaired by Dean Prof Jin Hong Gang.

During the course both the instructors and the students were learning together: the instructors were complementing each other’s knowledge on BRICS countries while students were researching the new directions for BRICS cooperation in the field of global governance. This collaborative work has reinforced the studies carried

out under the Multi-Year Research Grant “Global Governance through Transnational “Inter-Regime Coopetition” and the BRICS Countries”. As a result of fruitful research collaboration with scholars from BRICS countries and beyond, Rostam J NEUWIRTH, Alexandr SVETLICINII, and Denis De Castro HALIS have co-edited the book “BRICS-Lawyers’ Guide to Global Cooperation”, which will be published by Cambridge University Press in late 2017. Each chapter of the new book discusses the actual and potential cooperation of BRICS countries in various fields including among others trade, investment, competition, intellectual property, energy, dispute resolution, financial regulation, etc. The new volume will enrich the reading materials offered to the students of the next edition of the collaborative teaching and learning course in the spring semester 2017/18.

Information is available at:

<https://ctle.umac.mo/2017/04/20/highlight-ctle-teaching-and-learning-innovation-salon/>

<https://ctle.umac.mo/2017/04/19/ctle-teaching-and-learning-innovation-salon/>

<https://fah.umac.mo/news/event-recaps/fah-spring-staff-professional-development-workshop/>



# Follow the IBL program on Facebook!



Besides the official webpage <http://www.umac.mo/fll/>, you can follow the latest news by visiting our Facebook page:

<http://www.facebook.com/pages/International-Business-Law-University-of-Macau/155143707921702>.

We believe it is a good channel to exchange and share information and ideas, so please feel free to raise questions and leave comments here.



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