

The fine print doctor

SMU Assistant Professor Gary Low marries insights from psychology and law to improve the drafting of consumer and contract law.

By Dora Yip
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Photo: Cyril Ng

AsianScientist (Jan. 12, 2015) - By Dora Yip - Do consumers think about legalities when they make a purchase? Most likely not, if the purchase goes smoothly. But when something goes wrong—such as when a product turns out to be faulty—consumers tend to seek legal recourse. How should the law function to protect consumers before and after their purchase?

And should such laws apply to individual countries, or should there be a set of common laws for countries belonging to the same political or economic zones like the European Union (EU) or Association of Southeast Asian Nations (ASEAN), especially if there is a desire for greater economic integration?

By marrying insights from psychology and law, Assistant Professor Gary Low from the Singapore Management University (SMU) School of Law aims to answer these questions.

“Psychology examines the human condition: what makes us tick, and why we behave in certain ways,” he explains. “I use that to evaluate how the law should be shaped to elicit certain behaviours.”

Common law in the European Union

A classically trained lawyer, Professor Low practised shipping law before entering academia. His PhD thesis focused on European contract law, exploring whether and (if so) how it should be organised. The field was crowded with doctrinal and comparative writers at the time, but when he

first started on his research, no one was writing from the perspective of psychology. His supervisor encouraged him to delve deeper, which led to a six-month stint at Cornell University that had him collaborating with one of the leaders of this field.

His thesis on European contract law saw him evaluating the pros and cons of proposed EU legislation to develop a set of common contract laws for its 28 member states. Currently, each member state has their respective national contract laws. In the past ten years, much debate has centred over whether to introduce a common EU-wide contract law to replace or complement its national counterparts. His research will soon be published in a book (Edward Elgar, 2015) that will explore its merits from the perspective of consumers and businesses.

From a consumer standpoint, contract laws only come into play when something goes wrong. Using available statistics, Professor Low looked at transnational transactions (e.g., when an Englishman buys an item from a French website) to see how often people needed to resort to legal recourse.

“I concluded that the necessity to have a common law is much reduced if the reason for having those laws is only to give people confidence that everything is going to be okay,” he says.

For businesses, on the other hand, Professor Low found that whether or not a common law would be favoured depends in part on the size of the company. Multinational companies that operate across the EU will likely want a common EU law to reduce the costs associated with having to comply with 28 different national laws. Yet, smaller firms that operate either domestically or in a few markets may not find a common law necessary, as their costs are lower.”

“The same parallel might exist in ASEAN, where current discussion around ASEAN integration argues for harmonising a common law across all 10 ASEAN member states,” he explains. “Small and medium enterprises may be concerned that a level playing field will give bigger firms an advantage,” Professor Low explains. “As such it may not be in everyone’s interest to have a harmonised contract law.”

Consumer law in Singapore

Now based in Singapore, Professor Low has turned his attention to commercial laws in the region, a relatively unexplored area with much potential for research.

“While research into consumer law is quite advanced in the US and Europe, in the case of Singapore, the focus to-date has been on other areas of the law,” he says.

One compelling question that Professor Low hopes to answer concerns why consumer law is still in its nascent state in Singapore.

“We have distinct laws to protect discrete sectors, yet unlike most other developed legal systems, we don’t yet speak of ‘consumer law’ as a coherently organised field in its own right. Why is this so?” he asks.

This begets the question of who the consumer is, notes Professor Low. His hypothesis is that Singapore’s consumer legislation is based on a neo-classical economic model, which assumes that consumers are “rugged individuals”—perfectly rational people who are well-informed and require minimal levels of protection.

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Does anyone read the fine print?

“Rugged individuals” or not, Professor Low argues that there is a more empirically based, accurate model of human behaviour on which consumer law should be premised, one that acknowledges that the human mind is limited when it comes to processing and perceiving information.

“How much information is being presented to us, as well as how the information is packaged really do make a difference,” he notes. “Therefore, it matters how contracts are drafted. Contracts can be very long, so what sort of information do you want to identify and bring to the consumers’ attention? Just look at the iTunes end-user agreement. We just click the cross to make it go away. We don’t read the terms and conditions.”

Professor Low’s work naturally lends itself to collaboration with colleagues from other disciplines. He is in the preliminary stages of working with overseas colleagues using functional Magnetic Resonance Imaging (fMRI) techniques to determine how the brain reacts when faced with decisions involving the law.

He hopes that his applied research findings will gain traction with a wider audience, including policy makers. “I hope they take what we say into account when they make policies and legislation, otherwise what we do is confined to journals and conferences. That is the point: to make a difference.”

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