THE ADVOCATE

SPRING 2017

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Gig Economy

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Who We Are

The Advocate is an online legal publication produced by the Queen Mary Pro Bono Society. Comprised of a team of passionate and dedicated students, The Advocate shares the voices of our fellow students by publishing written and visual content pertaining to the law.

Our Aims

We aim to encourage students to engage with current legal affairs and issues and express their opinions on them. Through the use of written and visual mediums, we endeavour to increase the accessibility of our content, thereby allowing our students' voices to be heard by a wider audience and encouraging them to be advocates in their own right. By sharing our students' opinions, we hope to foster greater legal awareness amongst our student body and beyond.

What We Do

The Advocate publishes articles written by students on current legal affairs and pressing legal issues. Emails will be sent out specifying submission deadlines to all law students each quarter. We encourage interested parties to submit their articles that require development to our email theadvocate@qmprobono.org.

Contact us

If you are interested in directly sponsoring The Advocate, or being featured here, please do contact **president@qmprobono.org** and **theadvocate@qmprobono.org** to arrange a meeting.

Editor's Note

Welcome to the Spring Issue of The Advocate. This issue includes a range of articles written by our regular writers as well as external contributors. We have included a special write-up on advice for law students applying for vacation schemes and training contracts, with special insight from BLP's Senior Graduate Recruiter, Diana Ly, as well as one of our very own law students. Other noteworthy articles include a comment on the legality of France's plastic ban, a critique on the universality of the Universal Declaration of Human Rights, an exciting insight into the death of trademarks, and a case brief on the recent Miller UK Supreme Court judgment. The Advocate would like to specially thank Ms Diana Ly for her insight and contribution as well as all student contributors for their submissions. We hope you enjoy reading our publication!

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Case Brief: R (Miller) v SS for Exiting the European Union

Devolution, prerogative powers and Article 50

By: Ze-Eie Wong

Facts

On 24th January 2017, the UK Supreme Court handed down its judgment in *R (Miller) v Secretary of State for Exiting the European Union.* This case concerned an appeal made by the Secretary of State for Exiting the European Union against a decision that the Government could not notify of the withdrawal of the UK withdrawal from the European Union (EU) pursuant to Article 50 (2) of the Treaty on European Union (TEU) without Parliamentary approval. Following the enactment of the European Union Referendum Act in 2015 and the subsequent referendum of June 2016, where a majority favoured leaving the EU, the Government stated that prerogative powers would be used to trigger Article 50 of the TEU.

Article 50 of the TEU provides for the procedure by which Member States can withdraw from the EU. Prerogative powers are the residual discretionary powers which are "left in the hands of the Crown and can be exercised by the Crown or by his Ministers". In the precursor to this appeal, the Divisional Court held that because prerogative powers could not be used to change domestic law, ministers could not serve notice without statutory authorisation. Devolution questions were raised on a further appeal against a decision that the constitutional arrangements for Northern Ireland did not affect the Government's power to give notice under Article 50 (2) of the TEU.

Points of law raised

The first issue in this appeal was whether a formal notice of withdrawal pursuant to Article 50 (2) of the TEU could lawfully be given by ministers without prior legislation passed in both House of Parliament and Royal Assent. This related to ministers' ability to effect changes in UK law by exercising their powers at the international level.

A second issue was whether it was possible for formal notice of the UK's withdrawal from the EU Treaties to be given without first consulting or obtaining the assent of the devolved bodies.

The Secretary of State for Exiting the European Union argued that entry and withdrawal from treaties was based on existence of prerogative powers of the Crown. Thus withdrawal from the EU treaties could be initiated by the Government using its prerogative authority and without enacting any legislation. It was also argued that relying on prerogative power would not contravene the intention of Parliament when it enacted the ECA, because Parliament's intention was that EU law, and rights conferred by it, would take effect in the UK in so far as the UK remained in the EU. The argument against the Secretary of State was that ministers could not trigger Article 50 of the TEU until there was an enactment of a statute allowing them to do so. Relying on the principle that Parliament's legal powers are constitutionally superior to the prerogative powers of the Government, and that the latter

must therefore yield to the former, it was argued that the EU law rights conferred upon people in the UK by the European Communities Act 1972 (ECA) could only be taken away by Parliament itself and not the Government.

Outcome of the case

The majority of the Supreme Court held that an Act of Parliament had to be enacted before Article 50 of the TEU can be triggered. On the devolution issue, it was unanimously held that there was no legal requirement that the devolved legislatures of Scotland, Wales or Northern Ireland be consulted about or assent to the triggering of Article 50.

Analysis

On the first issue, the Supreme Court held that EU law had become a part of UK law through the conduit of the ECA and accordingly has a constitutional character. This rendered the issue of withdrawal from the EU treaties not one of foreign relations. It followed that it could not be removed through the use of prerogative powers. Reference was also made to Parliament's intention for enacting the ECA. When Parliament passed the ECA, it endorsed and gave effect to the UK's membership of the EU intending for UK to be a member of the EU. It was not Parliament's intention for the Government to be able to unilaterally withdraw the membership of the UK from the EU. The introduction of Article 50 of the TEU operated only on the international sphere and the Secretary of State could derive no domestic authority from the fact that the treaties included provisions for universal withdrawal. Further, the enactment of the European Union Referendum Act made no provision for the consequences of either outcome of the referendum. Where the implementation of the referendum result required alteration of domestic law, and there was no statutory legislation providing for this change, it followed that the only constitutionally permittable way to effect such change was through Parliamentary legislation. In this respect, the Supreme Court added upon the judgment of the Divisional Court.

With regards to the devolution issue, there was unanimous agreement that the law does not enable devolved legislatures in Scotland, Wales or Northern Ireland to block the withdrawal of the UK from the EU. Under the Sewel Convention, the UK Parliament may not legislate on devolved matters without the consent of the devolved legislature affected. The withdrawal of the UK from the EU heralds a change to the power of devolved bodies. While compliance with EU law is required of the devolved bodies at present, the situation will be different after UK leaves the EU. This raises the issue of whether the legislation the UK Parliament will now have to enact authorising the triggering of Article 50 of the TEU warrants the application of the Convention. In its judgment, the Supreme Court was careful to state that while there could be recognition of political conventions in the context of deciding a legal question, the role of the judiciary was not to be an authority on the scope or operation of political conventions, thus reinforcing that political matters ought to be resolved within the political sphere.

Evaluation

This judgment advances questions on the relationship of the prerogative with legislation and on a broader scope, raises the issue of how parliamentary supremacy applies to the Crown's prerogative powers. It is well-established that the legislation takes precedence over prerogative powers. What

was challenging about Miller, however, was deciding whether this principle was engaged by the triggering of Article 50 of the TEU. In the judgement, the majority of the Supreme Court stated that the ECA was the source of EU law taking effect in the UK. At the same time, it was contended that EU institutions are themselves a source of UK law, such that EU law is an independent and overriding source of domestic law. What is perhaps notable is that absent in the judgement is any decisive statement on the tension between considering EU law a source of UK law and having that status be dependent on the ECA, and how the two might be reconciled.

Conclusion

It is thus unequivocally clear that the Government cannot trigger Article 50 of the TEU through the use of prerogative powers and that an Act of Parliament is required. The devolved bodies also do not have legal veto on the withdrawal of the UK from the EU. As of 1st February 2017, Members of Parliament have voted overwhelmingly in favour of the Government's Brexit bill, by 498 to 114 votes. This sets into motion a clearer path for triggering Article 50 and for the UK to begin formal negotiations with the EU, a move that is perhaps eagerly awaited by some.

Vacation Scheme and Training Contract Application Advice for Law Students

Tips on writing a great application

By: Ze-Eie Wong

With vacation scheme and training contract application deadlines looming ahead, The Advocate team thought it would be a good idea to seek some advice on how to tackle those tricky application questions. We were fortunate enough to be able to collaborate on this article with Diana Ly, Senior Graduate Recruitment Adviser at the prestigious law firm, Berwin Leighton Paisner (BLP). She was kind enough to provide some great responses to some of the burning questions law students have as well as a special insight into how the assessment centre works at BLP.

In hopes of offering a different perspective, The Advocate was also able to obtain some words of wisdom from a law student at Queen Mary, who successfully secured not one, but two vacation schemes at top law firms. These were the questions we asked and the responses we received.

BLP Senior Graduate Recruitment Adviser, Diana Ly

What are some of the common mistakes candidates make in their applications?

Some common mistakes candidates make in their application is not checking for spelling and grammar or perhaps not doing enough research and providing generic answers to questions.

What are the three main things that make a candidate's application stand out?

1) A clear interest in the company and goes beyond of what is on the website or

brochure to truly understand firm's culture and values
2) Well-rounded candidate – academic, work experience and extra-curricular activities
3) Knowledge of business deals and why they are of interest to the candidate

How important are law open days and what is the proper etiquette to adopt when networking with legal professionals?

Law open days are a great opportunity to find out about the industry and firm and can set you apart from other candidates. When networking with legal professionals, come prepared with questions about the company, the work that they do and what sets them apart from other firms. If they give out their contact details, utilise the opportunity to follow up with an email.

How important is commercial awareness and how should students go about developing commercial awareness?

Commercial awareness is a very important skill and is imperative in succeeding in working in the business world. We expect students to develop an understanding of, for example, what the legal industry is about; understanding what drives the wider business economy and what factors can affect the firm in general.

Students can develop their commercial awareness by following the news; regularly reading key news sources, i.e. The Financial Times or Bloomberg etc. Information specific to a company or industry can be found either on their company website, looking at their annual reports, reading press articles and understanding what business deals they have been involved in.

What is one piece of advice you would give to students applying for vacation schemes and training contracts?

Spend time researching about the company you are applying for and understanding what they look for in candidates. Don't copy and paste answers from one application to the next.

Can you tell us about the structure of BLP's assessment centre?

The assessment centre runs from approximately 9.30am – 2.30pm. Candidates will complete a written based exercise, then do a role play based on the written exercise with a Partner/Associate. For the final exercise, candidates will be split into pairs and will take part in a negotiation exercise which is observed by a Partner/Associate. Once these exercises are completed the candidates have a lunch and tour of the office with some current trainees.

> **"Don't copy and paste answers from one application to the next"**

<u>Queen Mary Law Student</u>

How early did you apply?

It depends. If a firm recruits on a rolling basis, I would try to submit my application as early as possible. Submitting your applications at the very last minute certainly does not make a very good impression.

How many applications did you make? Should one prioritise quantity over quality?

This year, I intend to make around eight vacation scheme applications, and around four direct training contract applications. There is no magic formula regarding how many applications one should make, but quality should always be prioritised over quantity.

What are some tips on writing a good application?

1) Be specific. When talking about why you are applying to a firm, try to make it specific to them by mentioning their recent deals, international strategy or awards etc. To determine whether your answer is sufficiently specific, a rule of thumb is to replace the firm's name you are applying to with another firm's name in your answer. Re-read your answer and see if it still makes any sense. If it does, it means your answer is not sufficiently tailored to the firm in question.
2) Do not simply name-drop a fact or deal in your application. It will not add any substantial value by simply name-dropping facts that the graduate recruiter already knows. If you want to mention a deal, then explain why the deal has interested you.
3) When writing applications, research what key competencies the firm is looking for. Law firms often publish a list of competencies they look for on their graduate recruitment website. This would be useful when answering questions about your strengths.

How do you go about researching a firm?

My starting point is always to research a firm's website. Law firms' websites contain very useful information, including their strategy, CSR activities, and recent deals and awards etc. There are also other useful online resources such as Chambers Student, TARGETjobs and Legal Week (or even Wikipedia!).

But do not forget that attending open days or events at law firms is also a great way of researching a firm. This is probably the best way to get a first-hand insight into a law firm (and if you have had any previous interaction with the firm you are applying to, by all means mention it in your application).

What's the hardest question you've ever had to answer and how did you go about answering it?

The hardest question I've ever had to answer during an interview was probably asking me to describe a stapler. So yes, do expect some curveballs thrown at you during interviews!

The best way to tackle tricky questions is to take a sip of water to buy yourself some extra time. And remember, interviewers are often more interested in *how* you answer a tricky question, not *what* your answer is.

How important is networking?

Networking is very important, especially for aspiring lawyers. It can be extremely nerve-wracking to attend a networking event when you are surrounded by strangers. But trust me, as you attend more and more events, networking will come naturally to you.

What's the best piece you have been given that has helped you in your applications?

Be yourself and be interesting. Law firms do not want to hire machines or bookworms. If you have something you are particularly proud of, do not be afraid to mention it in your application forms (or at interviews) even if it is not directly related to law. Law firms value personality, and your personality will shine through when you talk about something you enjoy doing passionately.

What advice would you give to anyone applying for a vacation scheme?

Do not be discouraged by rejections, persistence is key. Virtually every applicant will get at least one rejection at some stage, so do not be deterred by rejections. Be optimistic, and be willing to learn from your failures and mistakes.

Good Guy France

The legality of the French plastic ban

By: Maria Carolina Magalhaes Centeno

France has recently passed legislation banning plastic cups, plates, and cutlery, with the exception of items made of compostable, bio-sourced materials. It is to come into force in 2020. This legislation was passed in the context of a wider French policy to tackle climate change. Pack2Go Europe, a European association of companies that manufacture packaging contested the legality of this legislation claiming that it violates European Union provisions on the free movement of goods. This article will analyse the free movement provisions and discuss whether the French ban is in breach of those provisions.

EU Legal Context

The internal (or single) market is 'at the heart of the European project.' It carries the aim of removing obstacles to inter-state trade in order to maximise the potential of the internal market. The Treaty on the Functioning of the European Union (or TFEU) contains the provisions on the free movement of goods which are Article 34 TFEU and Article 36 TFEU. Article 34 provides that quantitative restrictions on imports and all measures having equivalent effect (MEQR) should be prohibited between Member States. Article 36 provides grounds of derogation from Article 34, including the protection of health and life of humans, animals, or plants. This means that a measure caught by Article 34 may still be enforceable if it meets at least one of the grounds of justification contained in Article 36.

The Court of Justice of the European Union (CJEU), tasked with interpreting the meaning of Union legislation, has included within the meaning of MEQR provisions which, in the absence of harmonisation of national legislation, regulate how a product ought to be manufactured, packaged, composed, etc. (essentially, measures which result in a traders having to change the way the product is designed in order to sell their products in that Member State - so-called product rules). It is not relevant whether the measures in question are not discriminatory. However, where non-discriminatory product rules (indistinctly applicable measures) are enforced in a Member State, the CJEU has developed a further justificatory mechanism in the form of mandatory requirements. Mandatory requirements have a wider scope than Article 36 as to what may justify a measure in breach of Article 34: any valid public interest consideration is potentially justifiable.

French legislation – precluded or not?

The French ban of plastic cups, plates, and cutlery is a product rule. It prevents plastic cups, plates, and cutlery from circulating

within the French territory unless they are made of compostable, bio sourced materials. For a trader to export the plastic goods into France, they will have to change their composition. For this reason, the national legislation is an obstacle to inter-state trade. It falls under the meaning of MEQR and is *prima facie* prohibited by Article 34.

It may nevertheless be that the breach of Article 34 does not result in preclusion of the French measures. If they are justified on either Article 36 grounds or on mandatory requirements, derogation from Article 34 is allowed.

Article 36 provides a closed list of grounds which are interpreted restrictively. One of the grounds is the '*protection o*f health and life of humans, animals or plants.' In Mickelsson and Roos, the CJEU has interpreted the protection of health and life of humans, animals or plants as being equivalent to environmental protection. The French legislation evidently aimed at protecting the environment by reducing commercialisation of goods made of plastic. The French President, François Hollande, himself stated that the legislation was included within the wider goal to '*reducing greenhouse gas emissions, diversifying its energy mode and increasing the deployment of renewable energy sources.*'

However, it is not enough that national legislation is passed in order to protect the environment. To be justified under Article 36, it must be shown that the measures do not restrict inter-state trade any more than is necessary, that the means are suitable to achieve the aim. We call these requirements proportionality and necessity. And the main challenge to the legality of the French measures is that they are '*out of proportion to the environmental risk that disposable plastics tableware represents in reality*.'

While it may be possible to formulate alternative measures without such a restricting effect as the French ban has, the CJEU has previously ruled that proportionality does not require the Member State to demonstrate that no other conceivable measure could be envisaged. It has also decided that 'Member States cannot be denied the possibility of attaining an objective such as the protection of the environment'. It is relevant to highlight that the French ban is not absolute as it opens an exception for items made of compostable, bio sourced materials. Proportionality and necessity issues may be resolved through evidence on the detrimental impact of plastics and through an inquiry into the effect the French ban may have on tackling such impact.

"environmental protection is one of the EU's core objectives"

In any case, we should not forget about the relevancy of mandatory requirements. There is no exhaustive list of valid mandatory requirements. They are identified on a case-by-case basis. The CJEU has held that environmental protection is one of the EU's core objectives and that it is a valid mandatory requirement permitting derogation from Article 34. It is also worth reminding that a Member State can impose rules which are justified by their necessity in satisfying mandatory requirements, and that indistinctly applicable measures are justifiable by any valid public interest consideration. Since environmental protection is a valid public interest consideration, there is a strong indication that the French legislation is justified as a mandatory requirement, meaning that Article 34 does not preclude it.

Taking together the effect of Article 36 and mandatory requirements justification, it looks as if a challenge to the legality of the French legislation banning plastic cups, plates, and cutlery would not succeed.

Here we go again

Playing with the financial system

By: Maria Carolina Magalhaes Centeno

We watched Inside Job. We are quite familiar with big banks having a go at completely distorting the financial markets. Another of their surreptitious tricks came to be known as the Libor scandal. This was a cartel-like manipulation of benchmark interest rates influencing financial markets all over the world. Excuse me? Sorry for the jargon. Suffice to say for now that while it may appear that Libor is far away from our reality and does not affect the lives of ordinary people living ordinary lives, this little stunt has the potential of affecting just about anyone who holds a credit card or takes out a loan at their local bank, let alone businesses, governments and the financial market itself. That is why it is something people should be aware of.

So, what is Libor, what makes it so important, and **what was the Libor scandal?**

Libor stands for London Interbank Offered Rate. It is the interest rate banks are willing to pay to borrow money from other banks. In order to set this rate, a group of major banks confidentially submits the rate they would be willing to pay to borrow from other banks. The results are gathered together. The highest four rates and the bottom four are tossed out and an average is calculated with the remaining results. That average is *the* rate; it is Libor.

Lenders use Libor as a reference rate. They make loans, credit card deals or mortgages more or less expensive based on it. Hundreds of trillions of dollars worth of contracts are determined by Libor.[1] It is an interest rate which affects the entire financial system. One would expect such an impactful rate to be set independently, impartially, and honestly. Or at least that there were mechanisms in place to guarantee the banks involved in setting the rate would not be able to rig it. One would expect wrongly. From at least as early as 2005 to 2010, some major banks engaged in Libor-rigging activities. At first, the purpose of manipulating Libor was essentially to benefit their trading positions. Contracts directly connected to this rate could be made more profitable to the banks' traders were they to work Libor around in a way which would be advantageous to them. Another motivation concerned the health of the financial system. The 2008 financial crisis generated a tsunami of financial instability. One way some banks found to counter this situation was to keep Libor low. Since a higher interest rate is a symptom of instability and risk, this made banks look more stable and less risky at a time of financial turmoil.

Manipulation of benchmark interest rates was not exclusive to Libor. Euribor, the Euro Interbank Offered Rate, was also manipulated by a group of some of the most important banks in the financial system. Euribor is conceptually the same as Libor but differs from it in being a reference rate only for

Eurozone banks. It is as important to the financial market as Libor is and it affects citizens in the same way as Libor does. Thus manipulating this rate is just as dangerous and worthy of condemnation as is manipulating Libor.

I invite the reader to **guess which out of the following ten well-known banks listed below were involved in rigging these benchmark interest rates.**

- Barclays;
- JP Morgan Chase;
- UBS;
- RBS;
- Credit Agricole;
- Deutsche Bank;
- HSBC;
- Rabobank;
- Societe Generale;
- Citigroup.

(Un)surprisingly, the answer is ten out of ten. These banks have all played a part in submitting false figures so as to manipulate the rates. And for many years they did this without facing legal consequences. Eventually regulatory bodies began suspecting and initiated an international investigation which culminated in a series of fines. However fines have been considered close to pointless if compared to the profits these financial giants make every year and have been said to fall short of their objectives.

There have been numerous international investigations by regulatory agencies such as the Financial Conduct Authority and the European Commission. The EU fined banks like Credit Agricole, HSBC, and JP Morgan Chase for their involvement in rigging Euribor. Some former Barclays traders were jailed. In 2012, the UK Government published the Wheatley Review which proposed reforms to Libor and to how its oversight ought to be carried out, drawing attention particularly to the need for effective regulatory mechanisms. Libor has profound implications on the financial system as a whole. It is not something which can be left for unregulated, dishonest, market defiling, too-big-to fail banks to play with freely. And it is important that people do not wrap their hands around their heads with regards to these issues. We know that what financial institutions are doing 'in the shadow' is very much capable of substantially affecting our lives. The 2008 financial crisis is a clear illustration.

Rethinking the Universality of Human Rights

The Universal Declaration of Human Rights – lamentable failure or sacred document?

By: Balqis Binti Azhar

I was triggered to write this article after attending a lecture by Professor Abdullahi Ahmed An-Na'im entitled 'Decolonizing Human Rights'. The short lecture proposed the idea of subjectivism in human rights, that is, to free a state from obeying to the Universal Declaration of Human Rights (UDHR) – and to

further examine the extent to which the UDHR itself is universal.

Universal Declaration of Human Rights 1948.

This sacred document, created after World War II, was an attempt to maintain peace and to ensure that the horrors of holocaust would not be repeated. The UDHR was written by representatives from different cultural and legal backgrounds and officially established in the United Nations General Assembly in Paris on December 10th 1948. Containing 30 articles and translated into almost 500 languages worldwide, it was hoped that the document would lay down fundamental human rights that would apply to every individual equally. But one wonders if this holds true today.

Universality

First and foremost, to quote Article 2 of the UDHR;

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty." (UN General Assembly, 1948)

The excerpt from Document suggests a transcendence of cultural differences and most importantly, religious background of certain countries that may be deeply rooted in its political ideology. The ignorance of the differences that exist amongst countries sought to be undermined and transcended by the Declaration which seeks universality in defining human rights.

One needs to realise that even though there may be similarities of values and principles one can highlight amongst countries, it is undeniable that different customs, values, experiences and moral standards, also exist amongst them. Such elements have shaped our view of what is right and what is wrong, creating subjectivity of moral principles. Given that such subjectivity exists, one argues that it is not possible for UDHR to define human rights in a way that is acceptable to all individuals.

Limits on how far human rights can extend can be attributed to the extent of religious practice in a country. In countries that heavily practice religious values, such as Saudi Arabia, human rights activists certainly cannot expect those countries to allow rights of the LGBTQ community, for example, to be implemented in their country. Likewise, Malaysia, a hybrid country that cannot be defined as fully secular or Islamic, has stated in its Constitution that a Malay has to be a Muslim (Article 160) and therefore a person who is born as a Malay has no other choice but to be a Muslim. These legal rules are heavily influenced by history and legacy, and some even predate the UDHR itself. Thus, human rights activists who seek certain countries to 'behave' in accordance with the UDHR will find that it is nearly impossible to hold such expectations. Therefore, it is hard to implement universal values of human rights when the Declaration does not account for the numerous factors that may raise challenges to the imposition of universality in human rights.

The UDHR was fashioned beautifully by culturally diverse legal experts, but the liberal

and relativist perspective it tries to globalise, if it is seen in another view, is a form of neo-colonialism as it tries to dominate the rights of each state by imposing their own structure of human rights protection according to their own worldview. Consequentially, some of the Articles outlined in the Declaration gives no meaning to be exercised as it is of no relevance to their lives. The Document, made and observed by elitists (especially by developed countries) does not even include essential rights that a human being needs to have and further convinced me that the fundamental human rights written in the Document does not portray or secure individual rights at the grass root level.

The imperialism of the Western values underlying the Document is illustrated in the subtle attempt to spread their claim of universality of human rights, despite its inability to penetrate and fit in cultural difference coming from three major sources; resurgence of Islam, West itself, and East Asia. The resonance of the challenges to human rights has been outlined by Michael Ignaetiff in his article 'The Attack on Human Rights' which examines the three sources of challenges as stated above. To quote Ignaetiff:

"West now masks its own will to power in the impartial, universalizing language of human rights and seeks to impose its own narrow agenda on a plethora of world cultures that do not actually share the West's conception of individuality, selfhood, agency, or freedom"

This powerful statement is a convincing reminder that today, the relativism of human rights is just another illiberal ideology to consolidate Western hegemony over other values, undermining the idea of human rights within the state-centric body itself.

Conclusion

The harsh reality seems to be that the current values of human rights outlined by the West in the Declaration have failed in their aim to maintain a peaceful world. Issues ranging from Rohingya's ethnic cleansing, illegal settlement of Israel in Palestine, global corporations exploiting cheap labours in Bangladesh without complying to the safety of the factories, Muslim women in France being denied the wearing of Burkini - to wider wealth inequality in United States raises the question of whether the Declaration is

effective in protecting human rights or if it is just another strategy for 'elitists' to abuse human rights.

From my perspective, our fundamental human rights are in crisis; some countries are experiencing civil war, some are denied a place to stay, some are threatened to death, some are listening to the songs of bombs every day. A ratification of defining human rights needs to be done without prejudice; decolonising the notion of human rights from the Western point of view would be the best idea and giving the prerogative power to each state to define their own sets human rights by considering values, customs, moral standards and religious principles.

Genericide

Trademark graveyard or double-edged sword?

By: Dorothy Tan

Genericide in a brand society

Escalators and margarine were once trademarks, but now they are nothing but generic terms for the products themselves. They are victims of "genericide".

The expression 'genericide' was coined by lawyers in the 1980s to describe situations where marks have become generic for a category of products and can no longer exclusively identify the owner as the commercial origin of the product or service. This usually occurs when the mark has become so successful in the market and the trademark owner fails to adequately protect and police the mark, resulting in widespread usage by industry competitors. The brand is often the most valuable asset of a company with its exclusivity being what sets it apart from other market players. Once this exclusivity is lost, the value of the brand disappears and the brand reaches the end of its life.

Why does genericide occur? The problem stems from the subtle ways in which language develops. People instinctively pluralise product names in their everyday conversations, such as "Oreos", or turn them into verbs, like "photoshop" and "google". Little do people know that by so doing, they are actually beginning to erode the trademark.

Companies are constantly waging a battle against genericide and encourage consumers to use an alternative generic name, for instance Xerox Corporation created their famous advertisement: "You can't Xerox a Xerox on a Xerox. But we don't mind at all if you copy a copy on a Xerox ® copier", persuading the public to use the verb "to photocopy" instead. Similarly, Google acts warily of seeing their brand name slip into common parlance and takes active steps to prevent the media from perpetrating what they regard as misuse of their mark. When they spot publications using the term "googling", they send letters requesting them to use "using the Google search engine" instead. They also insist that their mark appears in a certain way, for instance that its name appears with a capital G, has an ® at the end of the mark, or the letters ™, to denote that it is a registered trademark or is being used in a trademark sense. However, despite such efforts on Google's part, journalists and advertisers find the trademark acknowledgement a hassle or find that they

ruin the aesthetics of the advertisement and thus tend to simply ignore them. Hence, this leave us to question how effective Google's efforts in preventing genericide actually is.

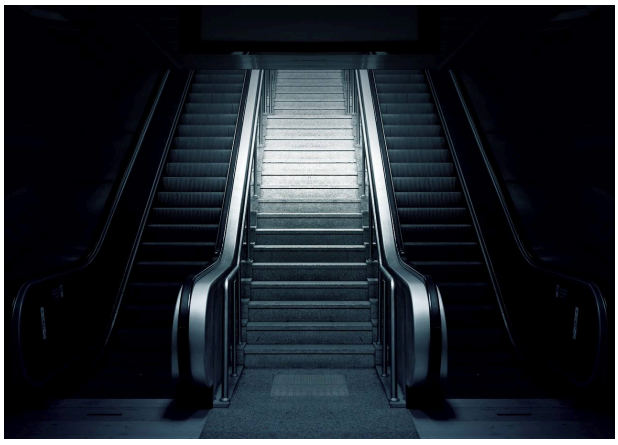
Is genericide a good thing for companies?

Companies invest huge sums into product development, advertising and marketing and building their brands, all with the intention of pushing their product to the forefront of its sector. However, genericide is the cruellest irony. There have been too many instances where, as a result of such brilliant marketing strategies, the trademark becomes so colloquial that it starts to mean the entire product category and it starts to kill the mark and profits as other businesses wade in. Accordingly, lawyers have long warned the business community that genericide remains a real threat to brand owners fortunate enough to have highly successful marks, since genericide can completely hollow out a brand's value.

"genericisation is a double-edged sword"

However, despite the lawyers' criticism about genericide, marketing specialists have demonstrated a great deal of ambivalence about the risk of genericide and have, in fact, embraced the opposite viewpoint that becoming a household name can prove to be one of the best ways to stand out in an increasingly competitive marketplace. In the age of the Internet, many of the most-hyped brands that have emerged in recent years have quickly seen their names turned into verbs, like "skyping" with friends, "googling" information etc. However, marketing managers feel that the risk of genericide can be reduced if businesses can position their brands well. A popular tactic is diversification. Heinz has continuously developed a range of products, including ketchup, beans and soups to avoid becoming synonymous with any one items. Subtle differences in design or packaging can also be useful in helping a brand stand out from the crowd, like how Apple used the iPod Nano's unique look and features to differentiate it from other portable music players. Nestle is a company that has arguably successfully worked genericisation to its benefit. Nestle is synonymous with instant coffee throughout France. Yet, it has promoted its Nescafe with a combination of trademark protections, differentiated flavour and packaging and interactive marketing campaigns that give the company some degree of genericisation without threatening the brand's core value.

In sum, genericisation is a double-edged sword and it can either benefit or harm a successful brand. However, the benefits of genericisation far outweigh the risk and businesses can ultimately still make genericisation work in their favour. With effective use of the internet, companies can monitor any unauthorised use of their brand name and co-create a strong brand image with consumers, employees and partner, thereby allowing them to reap the rewards of genericisation more quickly.



The Gig Economy and Uber

Greater control or disempowerment?

By: Dorothy Tan

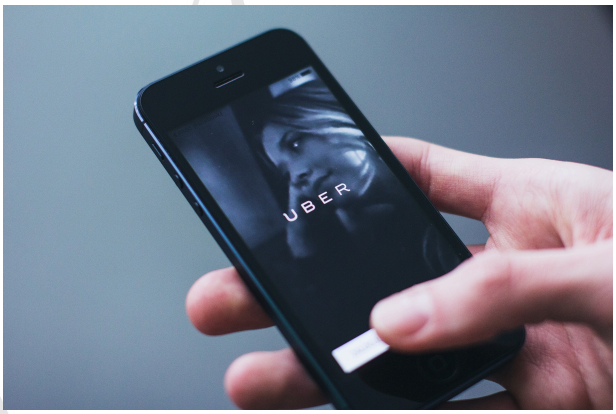
Digital capitalism is reinventing lives. It is creating a world of consumers delighting in apps for a cheap taxi or delivering speedy meals to their door. We witness the rise of the gig economy. Traditional 'jobs for life' are losing their appeal with people wanting greater flexibility in their job or simply to have a supplementary income. In the gig economy, businesses can make use of online platforms to outsource tasks which would normally be delegated to one single employee to a large pool of workers. However, whilst the gig economy enables people to take greater control of their working habits, it also disempowers workers.

Benefits of being a gig-economy worker?

One of the perks of working with a gig-economy company like Uber is that one would be able to work with complete flexibility and choose when and where they log in. They can be their own bosses, take on jobs that can fit around their other commitments and make money on their own terms. The appeal of being a gig-economy worker is evident from the 30,000 people that have chosen to partner with Uber in London.

These gig-economy companies make use of 'algorithm management', a term coined recently by academics at Carnegie Mellon University, to describe this new style of management, where workers are not managed by people, but by an algorithm that communicates with them via their smartphones. Proponents of the deployment of algorithm management argue that this creates new employment opportunities, better and cheaper consumer services, transparency and fairness in parts of the labour market that are characterised by inefficiency, opacity and capricious human bosses.

However, critics such as Guy Standing, a professor of Development Studies at the School of Oriental and African Studies, University of London, has expressed concern that 'one man's flexibility is another man's insecurity'. He argued that the gig-economy is fuelling a 'precariat' class of workers denied the protections of traditional jobs. Algorithms provide 'fantastic opportunities for rapacious exploitation' of people who are already at the bottom of the labour market. They can monitor and make sure they only pay for the time they really want to pay for, and yet have people available at all times, waiting on call.



The gig economy poses a profound challenge to the way the law defines jobs. Many gig workers simply do not fit nearly under an employee or a self-employed label. This begs the question: are these gig-economy workers self-employed, or are they employees in the eyes of the law? Do companies like Uber and Deliveroo owe these gig-economy workers any obligations? How can we protect workers while at the same time garnering and reaping the benefits of change and innovation? Theresa May, the Prime Minister of the United Kingdom, has also ordered a review of

workers' rights, saying that it is essential to ensure that employment regulation and practices are keeping pace with the changing world of work.

The Uber decision

The Uber decision brought these issues of protection of workers into the spotlight and the Employment Tribunal ruled in favour of the workers, holding that the Uber drivers are, in fact, entitled to minimum wage and holiday pay. This was decided despite Uber lawyers' arguments that the company was simply an intermediary that connects drivers with people who want rides and that the drivers were clearly self-employed because they could choose to log on to the app to work whenever they want. The Uber case is the first in Britain to test the key premise of the gig economy that people who work via such apps are independent and not employed by any company. The Tribunal decision effectively rendered Uber unable to shirk responsibilities by classifying workers as self-employed. In particular, it considered that Uber exerts a large amount of control over drivers when their app is switched on. For instance, it controls key information about passengers, sets routes and imposes numerous conditions on drivers, even deactivating drivers whose average customer ratings drop too low. Hence, the flexibility in the work is arguably a myth and non-existent.

What does this mean for Uber?

Uber is appealing against the decision, but it may have to give drivers compensation for unpaid benefits in the UK and pick up the future cost of those benefits. This would definitely result in higher labour costs on Uber's part, which they may choose to pass on to consumers. Sam Dumitriu, head of projects at the Adam Smith Institute opined that consumers will see prices rise and a less stable, predictable service. Luke Bowery, a partner at Burges Salmon, similarly agreed that the higher fares will disrupt Uber's ability to offer a flexible and responsive service to its customers- potentially hitting at the heart of service delivery, as well as its profit margins. Although, analysts have further argued that the ruling could prove more of an existential threat to new platforms than to Uber, since they may not necessarily have the scale and demand capacity to absorb additional cost.

"The Uber case is the first in Britain to test the key premise of the gig economy"

Future implications

The decision calls into question the business model that underpins many gig technology platforms, which connect workers with customers without incurring the expense of employing the people themselves. This decision will impact not just on the thousands of Uber drivers working in this country, but on all workers in the so-called gig economy whose employers wrongly classify them as self-employed and deny them the rights to which they are entitled. Hence, this decision has an impact on the relationship between firms and their self-employed workers. It would likely have significant implications for other operators in the fast-growing gig-economy, but only time will tell how whether these changes will be positive or not.

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