

The Derivative Action in Asia
The Complex Reality of Comparative Corporate Law
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This seminar will use the derivative action in Asia as a lens for re-evaluating the foundational theories of Asian and comparative corporate law. It will begin by demonstrating that the cultural theory of “Asian non-litigiousness” provides scant explanatory or predictive value for either the evolution or function of the derivative action in Asia’s leading economies. As such, it will suggest that the theory of Asian non-litigiousness should be relegated to the dustbin of academic history. Without the black box of Asian culture to erroneously explain away potential differences between “Asian” and “Western” derivative actions, the reality of the derivative action in Asia’s leading economies becomes markedly more important. It allows evidence from derivative actions in Asia to be used as a valuable litmus test for three of comparative corporate law’s most important theories which all claim universal applicability (the three “grand universal theories”). This seminar will demonstrate, using evidence from the derivative action in Asia, that the claim of universal applicability, which underpins the grand universal theories, is erroneous. Indeed, it will turn the grand universal theories on their heads by demonstrating that they not only fail to explain the derivative action in Asia but also terribly mislead. The seminar will conclude by suggesting that comparative corporate law should replace its lust for grand universal theories with a quest for understanding (rather than avoiding) the complex reality that is inherent in comparative corporate law. The conclusion will also provide a window into my upcoming research project: “Comparative Corporate Law in Asia: Complexity Revealed”.

*The forthcoming article, which this seminar is based on, is available for download on SSRN: <http://ssrn.com/abstract=2256275>

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