Book Review: Reply

Comment: Macau Commercial and Economic Law Revisited

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ABSTRACT

This Comment revisits the book review of Fan & Pereira's "Macau Commercial and Economic Law," The International Encyclopedia of Laws (Kluwer Law International, 2005) which appeared in the NTU L. Rev. (09/2008). The Comment claims that the book review was not accurate and provided wrongful information. Some of the major errors of the book review are outlined and readers are invited to refer to the original text of the monograph, a pioneer international publication on Macau Commercial and Economic Law.

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1. The *National Taiwan University Law Review* published a book review by Pint-Fat Sze to the Jianhong Fan & A. D. Pereira monograph, "Macau Commercial and Economic Law," *The International Encyclopedia of Laws* (Kluwer Law International, 2007).[1] As co-author of the monograph, it behooves one to correct those aspects of the "book review" which contain errors of fact that compromise its scientific accuracy. The author of this Comment would like to outline some of them.

2. To begin with, the book review gets its facts wrong providing an incorrect and possibly misleading date of publication for the reviewed monograph. In fact, the monograph issued not in 2007, but rather in 2005.[2] This error could be excused as mere *lapsus linguae* or typographical error, however, and regrettably, this error has substantial implications as the monograph is specifically criticized for not providing "a single reference in the chapter on state supervision etc. to the anti-moneylaundering legislation," i.e. Law No. 2 2006, Administrative Regulations No. 7 2006.[3] It seems that, according to the book review, the reviewed monograph should have referred to a piece of legislation that did not even yet exist at the time of publication of the book!

3. Moreover, the book review points out the alleged unawareness of the authors concerning the legal hierarchical supremacy value of the five Codes, which, according to the Macau SAR Basic Law, would have been "relegated to the status of (and revocable by) mere administrative regulations of the Chief Executive in post-1999 Macao."[4] However, it would be better to holistically read Articles 8 and 18 of the Basic Law of Macau SAR before jumping to such startling conclusions.

4. Furthermore, the book review states that the monograph contains a "claim that Macao law (...) is derived from German law and further qualifies such claim as 'gratuitous.'"[5] Concerning this aspect, it should be noted that the strong influence of German Law over Portuguese Law is undisputed. However, there is no claim in the reviewed monograph that Macau Law is only derived from German Law. In particular, specific influences of Italian law are referred to concerning the transfer of the enterprise,[6] for example. As a matter of fact, the monograph in context simply states:

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1 . Ping-Fat Sze, *Book Review*, 3(2) NTU L. REV. 181, 181-87 (2008), *available at* http://www.law.ntu.edu.tw/ntulawreview/articles/3-2/06-Book_Review-Ping-Fat_Sze.pdf.

2. Jianhong Fan & Alexandre Dias Pereira, *Macau Commercial and Economic Law*, *in* THE INTERNATIONAL ENCYCLOPEDIA OF LAWS 1-144 (Supp. 27, Sophie Stijns & Roger Blanplain eds., 2005).

3. Sze, *supra* note 1, at 186 & n.25.

4. *Id.* at 182 (referring also court decisions from 2006 and 2007 at footnote 4).

5. *Id.* at 182.

6. Fan & Pereira, *supra* note 2, at 55.

> "Macau law is broadly based on Portuguese law, and therefore part of the civil law tradition of continental European legal systems. Portuguese law is itself highly influenced by German law. However, many other influences are present, including Chinese law, Italian law, and some narrow aspects of common law."[7]

5. Then, the book review does not agree with the wording "public companies" to designate *sociedades anónimas* (in French, *sociétés anonymes*). However, this is the wording used by the translation of the Commercial Code commanded and published by the Macau Government Printing Bureau (*Imprensa Oficial*), upon which the monograph consistently relies with respect to legal English. On these linguistic concerns it might be useful to read the "Preliminary Note" of the translation.[8] The same goes for the criticism of the contractual principle of equity.[9] Besides, the argument that contract law is not given enough treatment fails to recognize that this monograph addresses Commercial and Economic Law and does not propose to present an exhaustive study of Macau Contract Law, which is dealt with in another monograph within *The International Encyclopedia of Laws* series.

6. Moreover, the book reviewer finds it "perplexing"[10] that the monograph reads that "public companies can *also* be created through public subscription."[11] However, there is no reason for such perplexity. The Commercial Code of Macau provides that "Shareholders shall intervene in the act of incorporation, unless the company is created by public subscription" (Art. 395). The regulation of just such a procedure is provided for in Articles 396 to 407.[12] Therefore, these are not "perplexing"—unless one is not fully familiar with the Commercial Code of Macau.

7. As far as the chapter on negotiable instruments is concerned, the book review finds it "most puzzling,"[13] perhaps because a full reading of the monograph' chapter on this issue has not taken place. In fact, this chapter distinguishes different types of negotiable instruments while focusing mainly on bills of exchange. The monograph reads that:

> "The principle is freedom of issue [...] and there are several types of negotiable instruments. First, concerning their content, there are: a) instruments of participation that grant a status, such as shares (and

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7. *Id.* at 27.
8. Commercial Code (Macao) (2003), *available at* http://bo.io.gov.mo/bo/i/99/31/codcomen/.
9. Sze, *supra* note 1, at 182.
10. *Id.* at 183.
11. The book reviewer refers to page 39 of the reviewed monograph, but such statement is to be found at page 40.
12. Commercial Code (Macao) (2003).
13. Sze, *supra* note 1, at 184 (the authors are evidently ignorant).

> bonds) of public companies; b) instruments representing merchandises, such as transportation or carriage notes (e.g., bill of lading); c) credit instruments in strict terms that grant a right to a pecuniary provision, such as bill of exchange, promissory notes and cheques. Second, concerning their normal way of circulation, there are: a) nominative instruments, which transmission must be noted in a book of registries, otherwise it does not produce effects; b) order or on demand, circulating by endorsement; c) to bearer, that are transmitted merely by deliver [...]."[14]

8. Moreover, the book review misunderstands the monograph. For example, where the monograph reads that "most civil law countries recognize that negotiable instruments only include bills of exchange and promissory notes,"[15] the book review reads/quotes "civil law countries recognize that negotiable instruments only include bills of exchange and promissory notes."[16] This circumscribing by the book review eviscerates the reasonable meaning of the monograph, which reads in full that:

> "the Commercial Code of Macau tries to 'combine' elements from both systems. On one hand, in Macau, negotiable instruments include the bills of exchange, promissory notes and cheques, however, the common law countries recognize that bills of exchange include cheques. On the other hand, most civil law countries recognize that negotiable instruments only include bills of exchange and promissory notes. There is a separated law on cheques in most civil law countries."[17]

9. On the other hand, time and again, the book review seems to be led by a fertile imagination as it does not even recognize what's written in the monograph. For example, it finds in the monograph "also inconsistencies (if not also absurdities) in the principles stated,"[18] including the comment that "in private companies, the administration can be exercised by one or more persons, regardless of whether they are shareholders or not [whereas] in public companies, the administration is entrusted to a board of directors."[19] The only inconsistency or absurdity—to use the language of the book review—in these words is a wrong quotation: no "administration" word is to

14. Fan & Pereira, *supra* note 2, at 59.
15. Sze, *supra* note 1, at 184 (the authors are evidently ignorant).
16. *Id.* at 185 (once again indicating a wrong page number of the monograph which is not 61 but 63).
17. Fan & Pereira, *supra* note 2, at 62-63.
18. Sze, *supra* note 1, at 185.
19. *Id.* (indicating again to a wrong page number which is not 48 but rather 50).

be found in the monograph.[20]

10. The book review should not mistakenly quote the reviewed monograph. The harsh criticism it provides[21] is not based upon a careful reading and understanding of the reviewed book. For example, before arguing that "the chapter on consumer protection is deficient absent,"[22] the book reviewer should take into consideration pages 135-136 and 140 of the monograph. Had those pages been read, the book review could not reasonably state: "the authors do not even mention (...) 'private use or consumption' under Article 91 of the Commercial Code (despite its relevance to the determination of a business as opposed to a consumer or private transaction)."[23] In fact, expositing on Article 91 of the Commercial Code on product liability, the monograph reads that:

> "Damage resulting from death or personal injury can be compensated, as well as damage to goods other than the defective product, provided that these are normally destined for private use or consumption and that the injured party has mainly used them in such a way."[24]

11. Furthermore, contrary to the opinion of the book review,[25] there is no allegation in the monograph that the Law on General Contract Clauses[26] is confined to consumers. Once again the book review fails to understand what's written in the monograph. Consumer protection, as protection of the weaker party, is a basic principle of this Act—despite differences from Portuguese law it does not list specific clauses for consumer contracts—and that's the reason why the Council of Consumers is entitled with legitimacy to intervene in the special proceeding (*acção inibitória*) aimed at the preventive control of such clauses according to Article 18 of Law Nº 17/92/M.

Once again, the book review is not right when it states that "Quite contrary to the authors' assertion, there is neither a definition of, nor a reference to, 'consumer' in the Law on Standard Contract Clauses."[27] The truth is that such reference can easily be found in Article 18 of the Act. It's a case to wonder, also with respect, who is "evidently ignorant" of what!

12. On the other hand, where stating that the authors "have also

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20. *Cf.* Fan & Pereira, *supra* note 2, at 50.
21. Sze, *supra* note 1, at 186 ("equally superficial and incomplete" discussion).
22. *Id.*
23. *Id.*
24. *Cf.* Fan & Pereira, *supra* note 2, at 135-36 and 140 (consumer redress).
25. Sze, *supra* note 1, at 187.
26. Cláusulas Contratuais Gerais, L. No. 17/92/M (Macao) (1992), *available at* http://bo.io.gov.mo/bo/i/92/39/lei17.asp.
27. Sze, *supra* note 1, at 186.

misconstrued Article 172 of the Commercial Code (relating to unfair competition) as providing consumer redress,"[28] the book review fails to recognize that interests of consumers can be damaged by unfair competition practices, such as through misleading acts as provided for under Article 160 of the Commercial Code, and that Article 173 of this Code confers legitimacy to initiate judicial proceedings to entities representing consumers. By the way, this is another example of the enhanced solutions provided for by the Commercial Code of Macau, but which the book review does not seem to be aware of.

13. Finally, the book review claims that the reviewed monograph would be just another of those many publications on Macau law—including those of the University of Macau—, marked by "brevity (if not also superficiality)" and which would not therefore benefit "busy foreign law practitioners, or academics interested in comparative law."[29] Strangely enough, despite all the criticism, the book review states that "This monograph is the only text ever published in English on the commercial and economic law of the Macao Special Administrative Region of China."[30]

The opinions stated in the book review rest with its author. However, it also provides misleading information based upon errors of fact, misunderstanding and pure illusion. The purpose of this Comment is to point out some of the major errors which the book review incurs. It is therefore an invitation to revisit the reviewed monograph on Macau Commercial and Economic Law, which aims to serve as a useful introductory textbook for law students as well as a source of legal information for further law research and legal professionals. As acknowledged in the preface,[31] this book brings to a larger public the research conducted by Dr. Jianhong Fan, Professor of Law at the University of Macau, and his master students, as well as the study on the Commercial Code of Macau which the author of this Comment wrote while serving as Visiting Assistant Professor at the University of Macau.[32]

Hopefully this Comment will shed some more light onto the reading of this monograph and stimulate fair criticism, which is not only legitimate but also encouraged with a view to promote academic and scientific debate.

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28. *Id*. at 187.
29. *Id.* at 187 & n.32.
30. *Id.* at 181.
31. Fan & Pereira, *supra* note 2, at 14.
32. ALEXANDRE DIAS PEREIRA, BUSINESS LAW: A CODE STUDY (2004).

REFERENCES

Cláusulas Contratuais Gerais, L. No. 17/92/M (Macao) (1992), *available at* http://bo.io.gov.mo/bo/i/92/39/lei17.asp

Commercial Code (Macao) (2003), *available at* http://bo.io.gov.mo/bo/i/99/31/codcomen/

Fan, J., & Pereira, A. D. (2005). Macau commercial and economic law. In S. Stijns & R. Blanplain (Eds.), *The international encyclopedia of laws* (pp. 1-144). London, UK: Kluwer Law International.

Pereira, A. D. (2004). *Business law: A code study*. Coimbra, Portugal: Coimbra Editora.

Sze, P.-F. (2008). Book review. *National Taiwan University Law Review*, *3*(2), 181-187.