

Lǐ, Fǎ, Fǒu, Fù and the blood of an Irish man in China

If your company is considering doing business in the People's Republic of China (PRC), it's vital for you to know the workings of Mainland Chinese law and its effects on dispute resolution, to avoid ending up in a Chinese court. To gain this understanding, it's important to go beyond Acts and seek insights into Chinese society, history and philosophy. And for that, we'll need to look at how the law has traditionally been regarded in Chinese society.

Over the past forty years, the PRC has transformed the world's economy while simultaneously developing and reforming its own institutions. Yet the way in which the law is regarded in China is not what the Irish businessperson may assume. Ask a law student in Ireland, 'What is law?' and while you may not get a simple answer, the Irish student will generally view the law as sacrosanct. In contrast, Chinese tradition holds the law in low esteem.

For decades after the Chinese civil war and the proclamation of the PRC in 1949, no real effort was made to distinguish politics from law. Since the opening of the country in 1978 under the de facto leadership of Deng Xiaoping, the socialist rule of law became slowly part of the official policy. Professional standards have improved, particularly in commercial law, and a less political and more institutionalized and codified system of law has been established. On 1 October 1999 the Contract Act ("Hetong Fǎ") was enacted. This Act is strongly influenced by the German civil code, and the interpretation of this Act is not on the letter of the text (as in Ireland), but on the intention of the legislator – i.e. the purposive interpretation (as on the continent).

The essential difference between the law in Chinese tradition and the Irish rule of law is the matter of how the relationship between law and morality is conceived. The great Chinese philosopher Confucius regarded regulation through laws to be a matter of moral performance; he made no sharp distinction between morality and law. In the Confucian ideal, morality is the highest warranty to secure social order, and this is regulated through moral rules, constituting a code of etiquette - conventions (called Lǐ (礼)) enforced by society, rather than the state. The rules imposed by the state (called Fǎ (法)) were historically limited to criminal law and regulated the relationship between the state and individuals. The word Fa in Chinese does not relate to fairness or justice, but is closer to Fá (法), which means penal punishment, and Lü (律), which means written laws.

The contrast between Lǐ and Fǎ marks a distinction in Chinese political theory as to the nature of political order and the preferred means of achieving such order.

In Ireland we're told the tale of Jack and the Beanstalk, where Jack trades the family cow for magic beans which grow into a vine up to the sky, to a giant's castle. Jack returns laden with gold, and he and his mother live happy ever with the riches (Fù (富)). It's said that the giant's catchphrase was: "*Fe-fi-fo-fum! I smell the blood of an Irish man: Be he alive, or be he dead, I'll grind his bones to make my bread.*" However, what the giant might equally have said was: "Lǐ, Fa, Fǒu, Fù!". Arguably, the giant might have warned foreigners like Jack that if they didn't understand the dichotomy between Lǐ and Fǎ, they could never find (or would be denied Fǒu) riches Fù in his kingdom. This is the same message we give at Herbots Solicitors to Irish businesses who venture into China. Seek advice first: we can help you. In that regard, the new book by our Chairman and accredited arbitrator with the China International Economic and Trade Arbitration Commission (CIETAC), Dr. Prof. em. J. Herbots, "*Contracts in the People's Republic of China,*" is an excellent starting point.

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