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**CONTRACTS LAW IN ASIA**  
***CONTRACTS LAW &***  
***DISCRETE VS.***  
***RELATIONAL PROBLEM***

**Prof David K. Linnan**  
**Class Two- LAW E506**  
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# MANULIFE HIDDEN THEMES

## *WHAT ABOUT*

- 1. Formal Enforcement Systems & Economic Activity?**



# MANULIFE HIDDEN THEMES

## *WHAT ABOUT*

- 2. Character of Formal vs. Informal Enforcement Systems (instead of just courts alone, foreign vs. domestic courts, vs. arbitration, vs. quasi-public or political risk insurance (OPIC, Hermes, etc.), vs. business reputation?**

# MANULIFE HIDDEN THEMES

## *WHAT ABOUT*

- 3. Formally, (most) Asian law systems are Civil Law in origin either due to colonial history or modernization approaches (perhaps mixed now)?**

# MANULIFE HIDDEN THEMES

## *WHAT ABOUT*

4. **Balancing formal legal system claims re indigenous law vs. formalism of Civil Law (plus enforcement issues, plus legal pluralism) ?**

# MANULIFE HIDDEN THEMES

## *WHAT ABOUT*

5. Arguments about cultural vs. economic explanations of social behavior including law?



# MANULIFE HIDDEN THEMES

## *WHAT ABOUT*

- 6. Prob. of discrete contract law (neo-classical microeconomics) vs. relational business in the rule & enforceability of promises generally?**

# MANULIFE HIDDEN THEMES

## *WHAT ABOUT*

- 7. Role of the State in the Economy which is a different creature than private parties (public int'l law sovereign immunity vs. Continental pattern administrative courts & law)?**

# **DISCRETE/RELATIONAL**

## ***UNDERLYING POINTS***

**Contracts law's picture of discrete transactions & individual utility maximization does not match observed relational business patterns**

**What is the function of a contract?**

# DISCRETE/RELATIONAL

## *UNDERLYING POINTS*

**Underlying issue of Coasean problem of economic activity's organization in firm vs. market form**

**Relation to contracts law? Kinds of contracts?**

**Relation to dispute resolution? Kinds of disputes and specificity of contract?**

# DISCRETE/RELATIONAL

## *UNDERLYING POINTS*

**As an aside Atiyah talking about open-ended terms vs. Westinghouse 2-615 commercial impracticability why?**

# DISCRETE/RELATIONAL

## *UNDERLYING POINTS*

Transaction cost analysis bias towards no costs  
& individual utility maximization

Cooperation as other model, bounded  
rationality rather than homo economicus  
(Williamson)

What would you expect to happen?

# HISCOCK

**Hiscock re on-going law reform &  
commercial law**

**Is her traditional analysis different?**

**How?**

**Why?**

