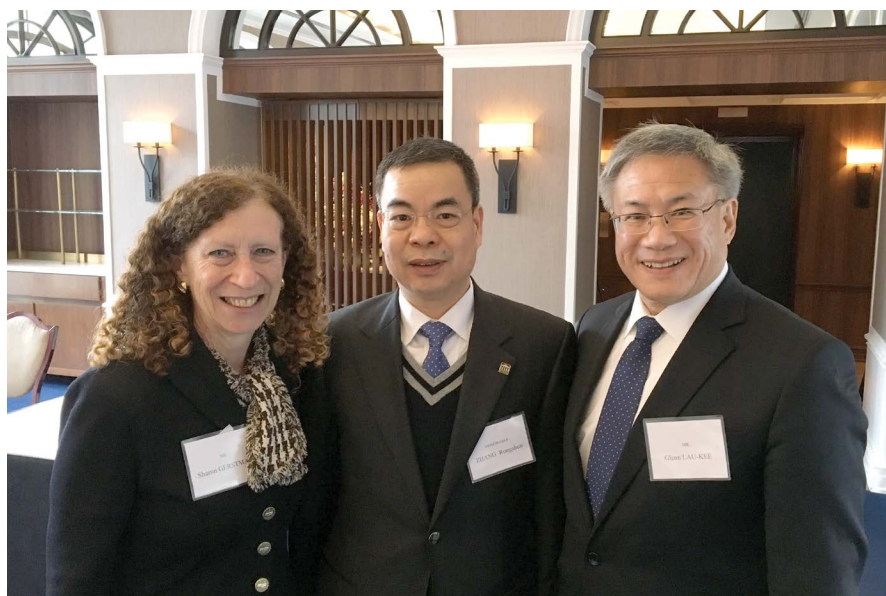# Teaching Old Law New Tricks

In November, I had the honor of participating in a program organized by Past-President Glenn Lau-Kee. Glenn was hosting a delegation from the People's Republic of China, led by Hon. Zhang Rongshun, Vice Chair of the Legislative Affairs Commission of the Standing Committee of the National People's Congress. He was accompanied by fellow commissioners and staff. They were undertaking a total recodification of all of their civil laws – an undertaking which was unfathomable to the U.S. participants, which included ABA President-Elect Robert Carlson, American Bar Foundation Executive Director Ajay Mehrotra, ALI Director Richard Revesz, Neil Quartaro, the Immediate Past Chair of NYSBA's International Section, as well as other leaders and academics from New York. The delegation had come to New York, and were then traveling to Washington, on an educational expedition. They were trying to learn all they could about how laws are written and how they adapt to social and technological changes.

After a short presentation by each of the participants, the Chinese delegation began asking questions. Thankfully, we were aided by an extremely competent interpreter, Wang Yeuduan, a lawyer licensed both in China and the U.S. The first (and most dominant) question asked by the delegation was how our law was adapting to driverless cars. The Chinese feel the urgency of creating appropriate law, as they predict that driverless cars will be on their roadways within two years.

Luckily for me, I had attended the excellent program of the Tort, Insurance and Compensation Law (TICL) Section in Nashville the prior week. During that program, we had a presentation on driverless cars, including a discussion of the science and the likely impact driverless cars would have on the insurance industry and the legal profession. Few of us in that room had previously really focused on the ripple effect this technology would have on many areas of law and society – not just the tort laws.

While it is doubtful that we would have driverless cars on our roadways as quickly as the Chinese, many experts are predicting that there will be driverless trucks in the next five to 10 years. In October 2016, there was a test run by a beer-delivery truck on I-25, from Fort Collins to Colorado Springs, while the driver slept in a berth in the back. The driver had to negotiate the truck onto the highway (the technology for driving on small roads was not yet available), and the truck was escorted by police, in case anything went wrong. The truck traveled driverless for more than 130 miles without incident.

There is a huge incentive to develop driverless trucks. Approximately 70 percent of goods in the United States are transported by truck. The cost of drivers to the trucking industry is immense – in addition to salaries and benefits, and lodging and food on the road, there is the cost of accidents often caused by driver fatigue, weather conditions and driver error. There is also a shortage of drivers.

For any form of driverless transportation the obvious question is, "What law will apply if there is a collision?" Now, driver fault is the predominant determinative factor of whether an injured party will recover. Will products liability claims (which are more complex and more difficult to prosecute) replace simple negligence actions? Will there continue to be no-fault, and a threshold to recover? Will there be a change in the law of assumption of the risk for passengers in driverless cars? Is there primary or secondary liability on the driver whose function is only to take over in an emergency? The questions are endless.

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The insurance industry is certain to be deeply affected. Currently, liability insurance of at least $25,000/$50,000 is required. Will this be required for a driverless car, if liability is solely (or primarily) on the manufacturer? If driverless technology produces fewer accidents (as is uniformly predicted), there will be fewer claims, and thousands of jobs within the insurance industry will be eliminated. There will likely be fewer lawsuits and fewer medical claims, affecting those professions, as well. Even the need for auto repair and traffic police will change.

There will undoubtedly be government involvement. There will need to be detailed regulations regarding development, deployment and market factors. There may also be governmental strategies to encourage automated driving for safety purposes.

While it is not clear exactly how the law will evolve and how the legal profession will adapt, it is imperative that we begin thinking about it, and try to formulate the best policy. Like the Chinese, we may have to adapt very quickly. In addition to the TICL Section, which will continue to monitor the tort law and the insurance industry, we now have a new Committee on Transportation Law that will be focusing on this and other topics. We are sure to have more CLEs on this topic to help all lawyers become aware of the issues. And we may want to take a look at what the Chinese develop, or at least what happens on their roadways, once driverless cars enter traffic. ∎