## **Contents**

## Part I Introduction Introduction to the Book: Interaction and Mutual **Enrichment Between the East and the West.....** 3 Chang-fa Lo, Nigel N.T. Li, and Tsai-yu Lin Introduction of Professor Herbert Ma and the Arc of Taiwan's Progress 15 Jerome A. Cohen Part II Mutual Influence and Interaction in Legal **Regimes and Practices** 3 The Triumph (?) of Western Law: A Contemporary Perspective ..... 21 John Owen Haley and Willaim R. Orthwein How Can We Know What We "Know" About Law 4 and Development? The Importance of Taiwan in Comparative Perspective ..... 37 John Ohnesorge Judicial Strategies and the Political Question Doctrine: An Investigation into the Judicial Adjudications of the East Asian Courts..... 47 Jiunn-rong Yeh The Ideas of "Rights" in the "East" and "West" and Their Continued Evolution: A Case Study on Taxpayer's Rights in Taiwan.... 75 Chi Chung

viii Contents

Par	t III Mutual Influence and Interaction in Constitutional Law and Fundamental Rights	
7	Comparative Discourse in Constitution Making: An Analysis on Constitutional Framers as Dialectic Agent Wen-Chen Chang	93
8	Constitutional Change in Hong Kong and Taiwan in the Late Twentieth Century: A Comparative Perspective	105
9	Different Patterns of Applying Transitional Constitutionalism  Between the Nationalists and the Communists  David K.C. Huang	127
10	The Presumption of Innocence Principle in the People's Republic of China and in the West	147
11	Privacy: A Genealogy in the East and the West	163
12	Compulsory Motherhood Challenged and Remade in the Name of Choice: Framing the Right to Choose Under Old and New Maternalism	177
13	The Emergence of the Right to Health in Taiwan: Transplantation from the West and Its Implementation Chuan-Feng Wu	199
Par	t IV Mutual Influence and Interaction in International Law and Regional Governance	
14	China's Performance on International Treaties on Trade and Human Rights	217
15	The Transplantation of "Western" International Law in Republican China Pasha L. Hsieh	239
16	From Accepting to Challenging the International Law of the Sea: China and the South China Sea Disputes	255
17	Human Rights in ASEAN Context: Between Universalism and Relativism	277

Contents ix

18	Host State's Regulatory Change for Public Health in the Context of Different FET Formulations: US and China Investment Treaty Practices as Examples	291
19	Protection of Indigenous Cultural Heritage in Free Trade Agreements: Issues and Challenges from a North-South Perspective Pei-Kan Yang	309
20	On the Establishment of a Regional Permanent Mediation Mechanism for Disputes Among East and Southeast Asian Countries  Chang-fa Lo	335
Par	t V Mutual Influence and Interaction in Specific Substantive Laws	
21	The Universality of Good Faith and Moral Behaviour: A Challenge for the Principles of Asian Contract Law Mary E. Hiscock	355
22	Coordinating Matrimonial Property Regimes Across National Borders: Israeli and Comparative Perspectives Talia Einhorn	369
23	Risk Assessment in the European Food Safety Authority and Its Lessons for Taiwan	395
24	The Limit of Regulatory Borrowing: "Cocktail Therapy" Reforms of Food Safety Law in Taiwan Ching-Fu Lin	409
25	Equity Clearing and Settlement Models in the UK and Taiwan: Market Stability and Investor Protection Perspectives	423
26	Envisaging an East Asian Model of Corporate Governance: A Developmental State Perspective Yueh-Ping (Alex) Yang	445
27	Patent Right in China: Influences from the West and China's Responses	475
28	Reinventing Clinical Legal Education: Taiwanese Adaptation of an American Model Serge A. Martinez	491

x Contents

Par	t VI Mutual Influence and Interaction in Dispute Settlement Mechanisms and Practices	
29	How Confucianism Asserts Itself in Modern ADR  Development in East Asia: A Revisit  Nigel N.T. Li and Angela Y. Lin	507
30	Beyond the "Harmonious Confucian": International Commercial Arbitration and the Impact of Chinese Cultural Values  Joshua Karton	519
31	Significant Differences in International Arbitration in the "East" and the "West": Myth, Reality, or Lost in Globalization? Stephan Wilske	543
32	A Bad Compromise Is Better than a Good Lawsuit: Mutual Influence Between the East and the West on Mediation Hong-Lin Yu	555
33	Taming the Unruly Horse? The New York Convention's Public Policy Exception to the Enforcement of Arbitral Awards Winnie Jo-Mei Ma and Helena Hsi-Chia Chen	575
Ind	ev ev	597