Law and the Chinese in Southeast Asia
The **Institute of Southeast Asian Studies (ISEAS)** was established as an autonomous organization in 1968. It is a regional research centre for scholars and other specialists concerned with modern Southeast Asia, particularly the many-faceted issues and challenges of stability and security, economic development, and political and social change.

The Institute’s research programmes are the Regional Economic Studies (RES, including ASEAN and APEC), Regional Strategic and Political Studies (RSPS), and Regional Social and Cultural Studies (RSCS).

The Institute is governed by a twenty-two-member Board of Trustees comprising nominees from the Singapore Government, the National University of Singapore, the various Chambers of Commerce, and professional and civic organizations. An Executive Committee oversees day-to-day operations; it is chaired by the Director, the Institute’s chief academic and administrative officer.
CONTENTS

Preface vii
The Contributors ix

1. Law and the Chinese Outside China: A Preliminary Survey of the Issues and the Literature
   M. B. Hooker 1

2. The Legal Position of the Ethnic Chinese in Indochina under French Rule
   Melissa Cheung 32

3. Law and Memory, De Jure to De Facto: Confucianization and its Implications for Family and Property in Vietnam
   Esta Ungar 65

4. English Law and the Invention of Chinese Personal Law in Singapore and Malaysia
   M. B. Hooker 95

5. The Indonesian Chinese: “Foreign Orientals”, Netherlands Subjects, and Indonesian Citizens
   Charles A. Coppel 131

6. Chinese Family Firms in Indonesia and the Question of “Confucian Corporatism”
   Daniel Fitzpatrick 150

7. China’s Citizenship Law and the Chinese in Southeast Asia
   Leo Suryadinata 169

Index 203

© 2002 Institute of Southeast Asian Studies, Singapore
This collection of essays emanate from a conference held at the Australian National University in 1998 on the subject of “Law and the Chinese Outside China.” As it happened, the majority of the papers were concerned with the Southeast Asian diaspora Chinese, particularly in French Indochina and Vietnam, Malaysia, Singapore, and Indonesia; these areas are the main foci of this collection.

Two things very quickly became apparent from the material. First, from the legal perspective, it falls into one of three classes. These are: (i) Chinese legal thought outside China, (ii) laws of the diaspora Chinese and (iii) laws for the diaspora Chinese. In chapter 1, I attempt a detailed description of this classification.

Secondly, the idea of “Confucian” or “neo-Confucian” appears in a number of guises. It may be that a more purely analytic rather than merely descriptive study of diaspora Chinese law could usefully concentrate on this usage.

The authors and I are well aware that this collection is a preliminary contribution to this subject and that much remains to be done, especially in the West and South Pacific. Do our initial three classes hold up, and what of “Confucian” in these areas?

Funding for the 1998 conference was provided by the Chiang Ching-Kuo Foundation to whom we express our thanks. Thanks are also due to Professor Wang Tay-Sheng of the National Taiwan University. We also acknowledge the Faculty of Law, Australian National University for providing the funding for the index done by Mr Alan Walker.

The contributors and I owe a huge debt to Professor Wang Gungwu, doyen of diaspora Chinese studies, for his valued support in this project. We are also grateful to our colleagues from the Asian Law Centre, University of Melbourne: Associate Professor Tim Lindsey, Professor Veronica Taylor, Mr Sean Cooney, Ms Sarah Biddulph and Dr Penelope Nicholson.
Finally I would thank Mrs Triena Ong and Mrs Roselie Ang of the Institute of Southeast Asian Studies for their help and efficiency in seeing this book to press.

M. B. Hooker
Faculty of Law
Australian National University
June 2002
CONTRIBUTORS

M. B. Hooker was formerly Professor of Comparative Law at the University of Kent at Canterbury, and currently Adjunct Professor of Law at the Australian National University. He is author of A Concise Legal History of South-East Asia (Oxford: The Clarendon Press, 1978); and editor of Laws of Southeast Asia, 2 volumes (Singapore: Butterworths, 1986-88). He was also a founding editor of The Australian Journal of Asian Law.

Melissa Cheung graduated from the Australian National University in 2000. Now working with Clifford Chance in Hong Kong, she is researching on Chinese law.

Esta Ungar is a lecturer in History at the University of Western Australia. Her primary research area concerns history, law and development with particular reference to land and gender issues in socialist countries in Asia. She also has overseas aid project experience under a number of international (UNDP, UNFPA) and local donor agencies (International Women's Development Agency, Quaker Service Australia). She completed her Ph.D. at Cornell University specializing in Vietnamese and Chinese history and the formation of the state in fifteenth-century Vietnam.

Charles A. Coppel is a graduate in law from the University of Melbourne. After practising as a barrister for five years, he began to take an interest in the modern history of Indonesia and its ethnic Chinese minority. His numerous publications include Indonesian Chinese in Crisis (Oxford University Press, 1983), which has been translated into Indonesian. He is also editor of the forthcoming Violent Conflicts in Indonesia, to be published by Curzon Press.
Daniel Fitzpatrick is a former solicitor and Federal Court judge’s associate, and is currently lecturing at the Australian National University. He has published widely on Indonesian land law and corporate governance, most notably in the Yale Journal of International Law. In 1997, he was the inaugural recipient of the Merdeka Fellowship to research the Indonesian legal system. In 2001, he was a consultant to the United Nations Transitional Authority in East Timor. He was also a Visiting Professor at the University of Muenster, Germany.

Leo Suryadinata is Professor in the Department of Political Science at the National University of Singapore (NUS). He has published extensively on Southeast Asian politics and the ethnic Chinese in the region. His recent books include Chinese and Nation-Building in Southeast Asia (1997, 1999); Interpreting Indonesian Politics (1998); and Elections and Politics in Indonesia (2002).