

Chinese Civil Code – The General Part –

by

Yuanshi Bu


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Preface and Acknowledgements

In modern times, the codification of the entire civil law has become a rare phenomenon. Nevertheless, the Chinese lawmaker has decided to create the first Civil Code in the history of PRC and set out an ambitious timeline to achieve this goal. In the process of construction, the future Chinese Civil Code will principally follow the Pandectist System and, in particular, comprise of a General Part. On 15th March 2017, the General Part was enacted, as scheduled, in the form of a single statute for the time being. By 2020, the other books covering the law of personality, obligations, property, family and succession law, should be codified as well. These books, together with the General Part, will form the future Civil Code.

The purpose of this book is to provide a concise and in-depth practical guide to this new statute, namely the General Rules of Civil Law (GRCL). To this end, it seeks to deliver a general picture of the GRCL and to explore the important provisions in more detail. In addition, it strives to provide answers to the question of which laws apply in the case of conflict between the GRCL and other statutes. Before the subject matter can be approached, it is important to first address four issues.

1. Style of this book. Recently, Chinese civil law scholars have been discussing and exploring the possibility to adopt the German-style law commentaries and have so far identified the GRCL as the ideal experimenting object. This book does not follow this style, not only because a number of provisions are – due to their character of moral appeals – unsuitable for comments with the aim to facilitate law application, but also because relevant case law has not yet evolved in this short period of time.

2. Focus of this book. Traditionally, juristic act is regarded as the core of the General Part of Pandectist style Civil Codes and stands in the focus of relevant treatises. By contrast, the GRCL has devoted considerably less weight to this area. New provisions have been introduced primarily in the field of natural and legal person such as custodianship and general rules on legal persons. Although it is still controversial to what extent these new norms are practically meaningful given many overlaps with the pre-existing laws, this book will give equal attention to the law of persons and that of juristic act.

Due to the general nature of the GRCL, many legal provisions may only be applied and understood in conjunction with other statutes. This problem is particularly prominent with regard to law of persons and law of subjective rights. Given the fact that some related areas of civil law have already been covered by “Chinese Civil Law” and “Chinese Business Law” in this series, other statutes will be touched upon in detail only when comprehensive analysis is still lacking.

3. Selection of literature. The aspiration to create the first Civil Code in the PR China has given rise to euphoria in the legal academia and generated a large number of publications since 2014. The same observation could be made at the turn of the century in the preparation of the last round of codification attempts in China. Facing this great amount of publications, it is necessary to make an appropriate selection. In this book priority is given to journal articles, which are more apt to reflect personal opinions and easily accessible via databases to foreign readers as well. In the course of preparing the Civil Code, Chinese scholars have spent considerable efforts to clear up Chinese civil law by tracing back the evolution history of the relevant terms. This book also draws up on these findings.

4. Involvement of comparative law. Foreign readers occasionally complain about the excessive reference to comparative law in Chinese legal writings. The reason is that Chinese civil law has its roots in Continental-European legal system and uses more or less the same legal vocabulary. This includes the comparative law aspect and is thus inevitable. It may be the primary goal for foreign observers to learn more about the indigenous Chinese elements. However, a clear-cut separation between Chinese law and foreign law in academic writings is almost impossible, since scholars frequently use foreign material for arguments and considering that foreign sources form integral part of Chinese law. In particular, the GRCL has deliberately left out a number of legal issues, which have to be solved with the help of comparative law. In the author's view it may also be intriguing to learn about the origin of legal concepts in the GRCL and the process in which Chinese lawmakers decided to adopt or reject certain foreign legal concepts. That being said, this book will try to limit the scope of foreign law as it sees fit.

5. Incorporation of court decisions. The GRCL is a new statute and has just come into force on 1st October 2017. Thus, only limited real case law has been formed so far. As the GRCL is not a law created from scratch, but a modified continuation of the General Principles of Civil Law, old judgments, guiding cases, and judicial interpretations will be included to illustrate the practical handling of the norms.

In line with the two previous books on Chinese law in this series, this book includes a bibliography and an index at the end as well as a list of laws and regulations. In the footnotes, books are cited without titles and journal articles with the abbreviated journals names. English translations of the norms are mostly from official sources, some are also from Westlaw China and Chinalawinfo.

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Freiburg, August 2018

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