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English-Chinese

Bilingual Education Series with Laws and Regulations

民法与民事诉讼法

Civil Law & Civil Procedure Law

双语对照法规

英文译本 中文边注



法律出版社
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English-Chinese

English-Chinese Vocabulary

民法与民事诉讼法

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编者的话

我们上学的时候,中国好事不断,先是出了个神奇的李阳,带着他的“疯狂”扫过大江南北,掀起了学习英语的滚滚热潮;继而申奥的成功和WTO的加入又为大家的激情注入了更为亢奋的血液。那个时候的我们,似乎觉得自己英语水平还算可以,可是踏入了工作大门之后,才发现自己在庞大的法律专业英语面前不过是井底之蛙,才发现以法律为专业的我们在本专业面前竟会手足无措得像一群初学者——懂得英语却未必能读懂法律英语条文,这似乎成了很多法学专业学生的通病。

为了让现在的你们能在学习专业法律知识的同时就掌握标准的法律英语,熟悉并运用法律专有名词。为了帮助更多的学生成为一名真正面向社会、面向未来的现代法律工作者,我们特地编辑了这套《双语教学法规》丛书。该套丛书共分六册出版,分别为《民法与民事诉讼法》、《刑法与刑事诉讼法》、《行政法与行政诉讼法》、《宪法》、《经济法》、《商法》。

整套丛书运用标准权威的法律英文译本——所有译本均由我国立法机关全国人大法律工作委员会提供、合理的排版方式——中英文逐条当页对照、独具特色的设计风格——特殊的A5开本和低成本的定价策略,为所有法律专业的学生提供了一套案头必备的学习手册。我们希望我们的工作能真正迎时势之需,创出一代精品,也希望她的权威、实用和方便带给你无限的喜悦和灿烂的明天。

法律出版社法规中心
2004年4月

Concents

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General Principles of the Civil Law of the People's Republic of China

中华人民共和国 民法通则

(Adopted at the Fourth Session of
the Sixth National People's
Congress on April 12, 1986)

(1986年4月12日
第六届全国人民代表
大会第四次会议通过)

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Chapter I Basic Principles

第一章 基本原则

Article 1 This Law is formulated in accordance with the Constitution and the actual situation in our country, drawing upon our practical experience in civil activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

第一条 为了保障公民、法人的合法的民事权益,正确调整民事关系,适应社会主义现代化建设事业发展的需要,根据宪法和我国实际情况,总结民事活动的实践经验,制定本法。

Article 2 The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

第二条 中华人民共和国民法调整平等主体的公民之间、法人之间、公民和法人之间的财产关系和人身关系。

Article 3 Parties to a civil activity shall have equal

第三条 当事人在

status.

Article 4 In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed.

Article 5 The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them.

Article 6 Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.

Article 7 Civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order.

Article 8 The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

Chapter II Citizen (Natural Person)

Section 1 Capacity for Civil Rights and Capacity for Civil Conduct

Article 9 A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations in accordance with the law.

Article 10 All citizens are equal as regards their

民事活动中的地位平等。

第四条 民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。

第五条 公民、法人的合法的民事权益受法律保护,任何组织和个人不得侵犯。

第六条 民事活动必须遵守法律,法律没有规定的,应当遵守国家政策。

第七条 民事活动应当尊重社会公德,不得损害社会公共利益,破坏国家经济计划,扰乱社会经济秩序。

第八条 在中华人民共和国领域内的民事活动,适用中华人民共和国法律,法律另有规定的除外。

本法关于公民的规定,适用于在中华人民共和国领域内的外国人、无国籍人,法律另有规定的除外。

第二章 公民(自然人)

第一节 民事权利能力和 民事行为能力

第九条 公民从出生时起到死亡时止,具有民事权利能力,依法享有民事权利,承担民事义务。

第十条 公民的民

capacity for civil rights.

Article 11 A citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities and shall be called a person with full capacity for civil conduct.

A citizen who has reached the age of 16 but not the age 18 and whose main source of income is his own labour shall be regarded as a person with full capacity for civil conduct.

Article 12 A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent *ad litem* or participate with the consent of his agent *ad litem*.

A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent *ad litem*.

Article 13 A mentally ill person who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent *ad litem*.

A mentally ill person who is unable to fully account for his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent *ad litem* or participate with the consent of his agent *ad litem*.

Article 14 The guardian of a person without or with limited capacity for civil conduct shall be his agent *ad litem*.

Article 15 The domicile of a citizen shall be the place where his residence is registered; if his habitual

事权利能力一律平等。

第十一条 十八周岁以上的公民是成年人,具有完全民事行为能力,可以独立进行民事活动,是完全民事行为能力人。

十六周岁以上不满十八周岁的公民,以自己的劳动收入为主要生活来源的,视为完全民事行为能力人。

第十二条 十周岁以上的未成年人是限制民事行为能力人,可以进行与他的年龄、智力相适应的民事活动;其他民事活动由他的法定代理人代理,或者征得他的法定代理人的同意。

不满十周岁的未成年人是无民事行为能力人,由他的法定代理人代理民事活动。

第十三条 不能辨认自己行为的精神病人是无民事行为能力人,由他的法定代理人代理民事活动。

不能完全辨认自己行为的精神病人是限制民事行为能力人,可以进行与他的精神健康状况相适应的民事活动;其他民事活动由他的法定代理人代理,或者征得他的法定代理人的同意。

第十四条 无民事行为能力人、限制民事行为能力人的监护人是他的法定代理人。

第十五条 公民以他的户籍所在地的居住

residence is not the same as his domicile, his habitual residence shall be regarded as his domicile.

地为住所,经常居住地与住所不一致的,经常居住地视为住所。

Section 2 Guardianship

第二节 监 护

Article 16 The parents of a minor shall be his guardians.

第十六条 未成年人的父母是未成年人的监护人。

If the parents of a minor are dead or lack the competence to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:

未成年人的父母已经死亡或者没有监护能力的,由下列人员中有监护能力的人担任监护人:

(1) paternal or maternal grandparent;

(一)祖父母、外祖父母;

(2) elder brother or sister; or

(二)兄、姐;

(3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighbourhood or village committee in the place of the minor's residence.

(三)关系密切的其他亲属、朋友愿意承担监护责任,经未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会同意的。

In case of a dispute over guardianship, the units of the minor's parents or the neighbourhood or village committee in the place of his residence shall appoint a guardian from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

对担任监护人有争议的,由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的,由人民法院裁决。

If none of the persons listed in the first two paragraphs of this Article is available to be the guardian, the units of the minor's parents, the neighbourhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

没有第一款、第二款规定的监护人的,由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会或者民政部门担任监护人。

Article 17 A person from the following categories shall act as guardian for a mentally ill person without or

第十七条 无民事行为能力或者限制民事行为能力精神病人,由

with limited capacity for civil conduct:

- (1) spouse;
- (2) parent;
- (3) adult child;
- (4) any other near relative; or
- (5) any other closely connected relative or friend

willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighbourhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs or the neighbourhood or village committee in the place of his residence shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first paragraph of this article is available to be the guardian, the unit to which the mentally ill person belongs, the neighbourhood or village committee in the place of his residence or the civil affairs department shall act as his guardian.

Article 18 A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his wards. A guardian shall not handle the property of his ward unless it is in the ward's interests.

A guardian's rights to fulfil his guardianship in accordance with the law shall be protected by law.

If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss. The people's court may disqualify a guardian based

下列人员担任监护人:

(一)配偶;

(二)父母;

(三)成年子女;

(四)其他近亲属;

(五)关系密切的其他亲属、朋友愿意承担监护责任,经精神病人的所在单位或者住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的,由精神病人的所在单位或者住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的,由人民法院裁决。

没有第一款规定的监护人的,由精神病人的所在单位或者住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十八条 监护人应当履行监护职责,保护被监护人的人身、财产及其他合法权益,除为被监护人的利益外,不得处理被监护人的财产。

监护人依法履行监护的权利,受法律保护。

监护人不履行监护职责或者侵害被监护人的合法权益的,应当承担民事责任;给被监护人造成财产损失的,应当赔偿损失。人民法院可以根据有关人员或者有关单位的申请,撤销监护

on the application of a concerned party or unit.

Article 19 A person who shares interests with mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

Section 3 Declarations of Missing Persons and Death

Article 20 If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 21 A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court.

Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of

人的资格。

第十九条 精神病人的利害关系人,可以向人民法院申请宣告精神病人为无民事行为能力人或者限制民事行为能力人。

被人民法院宣告为无民事行为能力人或者限制民事行为能力人的,根据他健康恢复的状况,经本人或者利害关系人申请,人民法院可以宣告他为限制民事行为能力人或者完全民事行为能力人。

第三节 宣告失踪和 宣告死亡

第二十条 公民下落不明满二年的,利害关系人可以向人民法院申请宣告他为失踪人。

战争期间下落不明的,下落不明的时间从战争结束之日起计算。

第二十一条 失踪人的财产由他的配偶、父母、成年子女或者关系密切的其他亲属、朋友代管。代管有争议的,没有以上规定的人或者以上规定的人无能力代管的,由人民法院指定的人代管。

失踪人所欠税款、债务和应付的其他费用,由代管人从失踪人的财产

the missing person's property.

Article 22 In the event that a person who has been declared missing reappears or his whereabouts is ascertained, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his missing-person status.

Article 23 Under either of the following circumstances, an interested person may apply to the people's court for a declaration of a citizen's death:

(1) if the citizen's whereabouts have been unknown for four years; or

(2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 24 In the event that a person who has been declared dead reappears or it is ascertained that he is alive, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his death.

Any civil juristic acts performed by a person with capacity for civil conduct during the period in which he has been declared dead shall be valid.

Article 25 A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in accordance with the Inheritance Law shall return the original items or make appropriate compensation if the original items are no longer existent.

中支付。

第二十二條 被宣告失踪的人重新出現或者確知他的下落,經本人或者利害關係人申請,人民法院應當撤銷對他的失踪宣告。

第二十三條 公民有下列情形之一的,利害關係人可以向人民法院申請宣告他死亡:

(一)下落不明滿四年的;

(二)因意外事故下落不明,從事故發生之日起滿二年的。

戰爭期間下落不明的,下落不明的時間從戰爭結束之日起計算。

第二十四條 被宣告死亡的人重新出現或者確知他沒有死亡,經本人或者利害關係人申請,人民法院應當撤銷對他的死亡宣告。

有民事行為能力人在被宣告死亡期間實施的民事法律行為有效。

第二十五條 被撤銷死亡宣告的人有權請求返還財產。依照繼承法取得他的財產的公民或者組織,應當返還原物;原物不存在的,給予適當補償。

Section 4

Individual Businesses and Leaseholding Farm Households

Article 26 Individual businesses refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27 Leaseholding farm households refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

Article 28 The legitimate rights and interests of individual businesses and leaseholding farm households shall be protected by law.

Article 29 The debts of an individual business or a leaseholding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family.

Section 5

Individual Partnership

Article 30 Individual partnership refers to two or more citizens associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement.

Article 31 Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and

第四节

个体工商户、 农村承包经营户

第二十六条 公民在法律允许范围内,依法经核准登记,从事工商业经营的,为个体工商户。个体工商户可以起字号。

第二十七条 农村集体经济组织的成员,在法律允许范围内,按照承包合同规定从事商品经营的,为农村承包经营户。

第二十八条 个体工商户、农村承包经营户的合法权益,受法律保护。

第二十九条 个体工商户、农村承包经营户的债务,个人经营的,以个人财产承担;家庭经营的,以家庭财产承担。

第五节

个人合伙

第三十条 个人合伙是指两个以上公民按照协议,各自提供资金、实物、技术等,合伙经营、共同劳动。

第三十一条 合伙人应当对出资数额、盈余分配、债务承担、入伙、退伙、合伙终止等事项,订

withdrawal from partnership, the ending of partnership and other such matters.

Article 32 The property provided by the partners shall be under the unified management and use.

The property accumulated in a partnership operation shall belong to all the partners.

Article 33 An individual partnership may adopt a shop name; it shall be approved and registered in accordance with law and conduct business operations within the range as approved and registered.

Article 34 The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities.

The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel.

Article 35 A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.

Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners.

立书面协议。

第三十二条 合伙人投入的财产,由合伙人统一管理和使用。

合伙经营积累的财产,归合伙人共有。

第三十三条 个人合伙可以起字号,依法经核准登记,在核准登记的经营范围内从事经营。

第三十四条 个人合伙的经营活动,由合伙人共同决定,合伙人有执行和监督的权利。

合伙人可以推举负责人。合伙负责人和其他人员的经营活动,由全体合伙人承担民事责任。

第三十五条 合伙的债务,由合伙人按照出资比例或者协议的约定,以各自的财产承担清偿责任。

合伙人对合伙的债务承担连带责任,法律另有规定的除外。偿还合伙债务超过自己应当承担数额的合伙人,有权向其他合伙人追偿。