

COMMERCIAL LAW
OF
CHINA

By
WILLIAM S. H. HUNG, J. D.
of the Shanghai Bar



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AUTHOR'S PREFACE

Contempt or dissatisfaction often results from lack of understanding; the general foreign view in respect of the Chinese law arises out of the same unfortunate causes. Notwithstanding the remarkable success achieved by the Legislative Yuan of the Republic of China, nevertheless, the misconception of foreigners to-day seems to have remained the same as that of thirty-two years ago when Mr. Ernest Alabaster in his work of "Notes and Commentaries on Chinese Criminal Law" wrote, *inter alia*, as follows:—"To all intents and purposes, foreigners are completely in the dark as to what and how law exists in China. Nor would it be easy to enlighten them with their limited knowledge of the language."

As a Chinese, the writer shall not attempt to throw any blame on foreign nationals for not giving a careful study to the Chinese laws, and, at the same time, will not deny the fact that they have not been afforded sufficient opportunity to understand them. The difficulty which a foreign student experiences in the study of Chinese law is, as it were, two-fold. Firstly, the classification of the various subjects of law in China is so different from that of other countries, especially England and the United States of America, that he may even fail in his attempt to lay his hands

on the particular point of law which he intends to locate for reference even though he may have the complete code of law on hand. Secondly, apart from a few translated copies of the code—the articles of which in the Chinese language are already dry enough to lessen the interest of a layman, not to speak of the translated version—, no appropriate work in text book form that may give more interest to readers has ever been published to help them gain a better understanding of the contents of the Chinese law.

In reproducing the Chinese law in the English language and according to Anglo-American form, the writer is entering a new field. An attempt has been made to prepare this book in handy, yet useful form, to supply the urgent need of foreign residents in China, particularly the business class. As far as possible, the writer has made every endeavour to collect as many citations as can readily be found at the moment of writing in support of the legal points involved in each subject. No completeness is claimed in the contents of this short treatise, but if, to some extent, it serves to give its readers a better and clearer understanding of the general principles of the Chinese commercial law, the writer will have achieved his purpose.

The writer must record his gratitude to his learned teacher, Professor R. S. Bauer, A.M., J.D., of De Paul University, Chicago, a well-known authority on the Law of Damages and author of many authentic books on Damages, Carriers and

Business Law, whose recent work on "Business Law" inspired the preparation of the present work. He is none the less grateful to Mr. Walter Hanming Chen of the editorial staff of the "North China Daily News" for his encouragement and valuable assistance in offering many helpful suggestions, thus making the publication of his book possible. Also to His Excellency Dr. Tsai Yuen-Pei, former President of the Supervisory Yuan of the National Government, Minister of Justice, Minister of Education, President of the National Research College, etc., for examining the present work at a moment when he was confronted with the Sino-Japanese crisis.

The writer must not leave unpaid his indebtedness to J. R. Jones, Esquire, M.C., Croix de Guerre, M.A., Barrister-at-law and Secretary of the Shanghai Municipal Council, for his valuable direction and much-needed suggestions which have led to considerable improvement in the present work; to Sir Peter Grain, Kt, Chief Judge of His Britannic Majesty's Supreme Court for China, and a number of other friends for reading through and commenting on the book. Thanks are also due to the British Chamber of Commerce, Shanghai, for courteously consenting to supply of materials which the author has made good use of in preparing the appendices.

WILLIAM S. H. HUNG.

Shanghai, January 15, 1932.

FOREWORD

In bringing modern Chinese law into the hands of English and American readers, Dr. Hung is doing a genuine service both to the Chinese people and to those so fortunate as to make use of his book. To the Chinese people, this book, by bringing a better understanding of Chinese law to foreigners, will contribute its part toward the breaking down of any appearance of a necessity of continuing that anomalous juridical plan known as "extraterritoriality." To English speaking lawyers and laymen, unaccustomed to the classification and terminology of the Chinese law and of the European civil law, which has much influenced recent developments in Chinese law, this book will be invaluable.

Dr. Hung possesses that clear perception which goes with honest scholarship. It seems certain that that accuracy which readers of law books universally desire will be produced by his ability and his reliability.

RALPH S. BAUER.

De Paul University,
Chicago, Ill.
December 22, 1931.

PREFACE

This work of Mr. W. S. H. Hung is a pioneer effort to reduce into a comprehensive and convenient form what may be termed the "law merchant" of China to-day. In Europe the law merchant—"The general body of usages which grew up amongst persons engaged in the carrying trade of Europe, whether by land or sea, for the regulation of differences and disputes between one another"—developed on international lines often independent of national tribunals. Gradually, however, the administration of justice by the State absorbed its principles, and in England the great Lord Mansfield absorbed into the Common Law such of the rules of the law merchant as were deemed consistent with the fundamental principles of English law. The new Civil Code of the Republic of China was intentionally framed to comprise all principles of civil as distinct from penal and criminal law without making any distinction between civil and commercial laws. Many commercial matters, however, which required more latitude for evolutionary development than the strait-jacket of a code permitted, e.g., laws relating to negotiable instruments, insurance, commercial companies and maritime law, were provided for by separate special enactments.

From the point of view of convenience, as distinct from that of the theory of legislation, it is very convenient to have a comprehensive view

of the law applicable to commercial matters arranged under the ordinarily accepted headings. With this object Mr. Hung has grappled with the difficult task of providing the merchant, the practitioner and the law student with a book where all the provisions of the commercial law of China may be found within one volume. He has abundantly illustrated his enunciations of principle with references to accepted mercantile usages and to decided cases in China and abroad.

The difficulties of any such pioneer enterprise are great. The traditional conception of Chinese civil law, whereby the relationships of the family and to the State are governed by the cultivation of *boni mores*, of ceremony and etiquette, is difficult to reconcile with the strict application of legal rights according to the principles of Western law. The spirit of the Chinese language does not render it easy to express abstract scientific ideas, and the application of the phraseology of the Code to the technical terms of modern business relations is a very difficult problem which can only be solved by experience in carrying out the code and by the elucidation that may come from legal precedent. Moreover, the provisions of the new codes have not been long enough in force to furnish the writer of a text book with sufficient data in the form of decided cases and commentaries on the law to write with the desirable degree of certainty and authority.

, The civil code embodies most of the leading principles found in Western jurisprudence. The application of these principles to the new facts and problems of international trade, as particularly exemplified in a port like that of Shanghai, affords a direct point of contact whence the whole conception of law and its application in China may be leavened. The growth of legal literature based on special aspects and problems will encourage the development of a common law and the legal consciousness necessary for its application in commercial dealings and in the tribunals of the country. Hence the appearance of this pioneer book on the commercial law of China, however modest in its initial aims, is to be welcomed, and having blazed the trail the author, and doubtless others too, will explore the subject further and help towards that certainty and uniformity which is necessary in a body of law under which merchants engage in the complicated and delicate web of international trade.

J. R. JONES

Shanghai, 23rd July, 1932.

INTRODUCTION

The existence of the practice known as extraterritoriality in China, by virtue of which foreign nationals living within the territorial limits of the Republic of China are exempted from the jurisdiction of the Chinese law courts and are entitled freely to observe their own laws is an apparent contradiction to the principles of international equality and reciprocity. Likewise, it is humiliating to the citizens of China and is deeply deplored by modern jurists.

Such an anomalous and inappropriate international situation has been prolonged by the foreign Powers under the pretext that China's laws are inadequate. But why, after China's promulgation from time to time of civil and commercial laws which are by no means inferior to those of other States, have we achieved such little success in our efforts to bring about the abolition of extraterritoriality? Causes for the continued existence of extraterritoriality may be complicated but the need of appropriate and properly qualified men to undertake the burden of enlightening foreign nationals insofar as present Chinese laws are concerned at least constitutes one of the causes.

Dr. William S. H. Hung possesses a thorough knowledge in his study of Anglo-American law. Seeing that the world is still in the dark concerning the laws of China, he has undertaken to

enlighten foreign nationals by producing a book on "The Commercial Law of China" almost immediately after his graduation from his study of law in the United States of America. Dr. Hung is to be congratulated on his fine effort and his remarkable success, amidst the multifarious engagements connected with his legal practice, in accomplishing a most puzzling and painstaking work.

Dr. Hung confines the scope of his work to commercial law by reason of the fact that foreign residents in China are mostly of the business class. The book comprises ten parts, the significant characteristics of which are the exhaustive collections of Supreme Court Decisions and Explanations given in addition to numerous illustrations in each section.

In the preparation of such a book, which should be found practical and useful by foreign readers, Dr. Hung has attempted to create interest and to facilitate reference by arranging his subjects according to the usual Anglo-American sequence form. He had performed a task most invaluable towards the abolition of extraterritoriality and his part has differed from others in that he had devoted himself to practical lines rather than resort to mere argumentation.

I therefore take much pleasure in recommending his book.

TSAI YUEN-PEI.

Shanghai, March 20, 1932.

PREFATORY LETTER

H. B. M. Supreme Court,
Shanghai.

9th December, 1931.

Dear Mr. Chen,

I thank you for the opportunity you have given me to read the proposed publication by Mr. William S. H. Hung on the "Commercial Laws of China."

I have read through his proposed publication and am full of appreciation for the way he has set out the "Commercial Laws of China."

I was interested to read his opening chapter "The Origin of Chinese Law."

He groups his law under five heads:—

- a. General Provisions
- b. Obligations
- c. Property Rights
- d. Domestic Relations
- e. Succession

which is not dissimilar to the grouping of the old Roman Law of Justinian, viz.,

- a. Persons (*Lex Persona*)
- b. Things (*Lex Res*)
- c. Right over things (*Lex Dominium* including the Law of Succession and Trusts)

- | | |
|---------------------------|---|
| d. Rights against persons | (<i>Lex Obligatio</i>
<i>Lex Contractus</i> and
<i>Lex Delicta</i>) |
|---------------------------|---|

The Law of the British Courts is firmly based on old Roman Law. In fact the law of Contract, Trusts and Obligations is still much the same as it originally was in Roman Law save for necessary modern additions.

And it appears to me on reading Mr. William S. H. Hung's book that the Law of China at the present time is based more on British Law than any other foreign codes. Hence perhaps my appreciation.

The Law of Sales of Goods appears to be based very closely on the British Sales of Goods Act of Parliament passed in 1893 and drafted by M. D. Chalmers, C. S. I. on the various decisions given by the Courts on the Law of Sales of Goods in British Courts and some in American Courts. This Act of Parliament was taken section by section and practically word for word, and made the Law of Sales of Goods in the United States of America.

I am very glad to have had the opportunity of reading Mr. William S. H. Hung's book and congratulate him upon the lucidity and facility of expression which he has made use of in compiling the work.

Yours faithfully,

PETER GRAIN.

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