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中国民法

CHINA'S CIVIL LAW

□ 朱羿锳 著



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编写说明

面对经济全球化和科技革命的挑战,中国的法律日趋与国际接轨;我国法学教育的国际化自不待言。国家教育部因势利导,于2001年颁发《关于加强高等学校本科教学工作,提高教学质量的若干意见》,即2001年4号文件(以下简称“《意见》”),提出了十二项提升本科教学质量的举措,其中第八项举措就是积极推动国内高等学校使用包括英语在内外国语进行教学,积极创造条件使用英语等外国语进行公共课和专业课教学。对于法律等专业,《意见》则明确要求先行一步,力争在三年内,使用外语教学课程达到所开课程的5%~10%。为此,许多高校相继尝试用英语讲授部分法律专业课,不少高校还专门成立国际学院,所有课程均用英语讲授,其中“法学概论”或“法律基础”为各个专业的公共必修课。法学自有其独特的概念体系,其中不乏艰深晦涩的专业术语,阅读中文已令人生畏,要在英文背景下讲授和学习,又缺乏英文教材,学生更容易就坠入云山雾海之中。因此编写适合全英教学的法学教材,其紧迫性不言而喻。

China's Civil Law(《中国民法》)为全英文教材,采用与国际接轨的读者中心主义(reader friendly)的写作风格。全书紧扣现行民法的逻辑体系,涵盖总则、物权、知识产权、合同、担保、侵权和婚姻家庭法,简洁地勾勒出中国现行民法的基本制度。本书选材精当,层次分明,主次鲜明,摒弃了细枝末节的问题,读者能够在短时间内对中国民法有比较全面系统的把握。为达到简约之目标,本书在体例结构、观点阐述等进行了大胆的探索、创新。归结起来,主要有四点:(1)每章篇首均用简短的篇幅,尤其是表格,将浩繁的立法用简洁的命题串连起来,勾勒出了该领域涉及的法律法规全貌及其变迁历程,便于读者对该领域的立法先有一个总体的把握和了解,为理解和领悟其后的具体制度安排做好铺垫。(2)正文引入88个精选案例,以案说法。如“二奶”争夺遗产引发的私权自治与权利滥用之争等,既生动而简洁地阐释了相关法律制度,又能够启发读者深思,领悟精妙之处,举一反三。(3)设

2 编写说明

计并使用 51 个图表(40 个表和 11 个图)。法学概念和法律规则可谓纷繁芜杂,运用表格和图形进行精心梳理,通过一个个简洁的主题之串连,化繁为简,简洁明了,有助于进行横向比较和研究,体味不同制度的微妙差异。(4)大胆使用规范化的缩略语,正文目录之后还配专门的缩略语目录,减少或消除了赘笔,大大节约了篇幅,读者易于阅读。

作为一项全新的事业,本系列教材能够面世,得益于法律出版社尤其是丁小宣先生的鼎力支持和西南财经大学法学院院长、教授、博士生导师高晋康博士的大力举荐。作者本人虽已走出产业经济学领域,暨南大学的云冠平教授、黄德鸿教授、副校长胡军教授和广东金融专科学校校长张丙申教授作为我的导师和恩师,仍然一如既往地给予关心和教诲,这一切我都将永志不忘,感念终生。我与暨南大学徐暄博士、刘颖博士、吕国民博士等诸位同事的讨论,使我受益匪浅。需要特别提及的是,本书接近完成之际,电脑遭受肆虐的病毒袭击,转瞬间所有的书稿全部丢失,我的两位学生张宏鹏和杨少雄同学以及广东理治律师事务所的麦允良和谢子坚先生,昼夜兼程,奋力拼搏,文稿得以挽救。否则,我可能无力承受。自然,书中一切文字责任当由我个人承担。新的事业本来就意味着有不成熟、不完善之处,本书所作上述新尝试,必然伴随着相应的风险和疏漏。如蒙方家指正,当不胜感激。

朱羿锟

2003 年 6 月于广州暨南园

Abbreviations

ACFTU	All-China Federation of Trade Union
ADR	Alternative Dispute Resolution
ADR	Anti-Dumping Regulations
AIC	Administration for Industry and Commerce
ALL	Administrative Litigation Law
ALL Opinions	Opinions on Implementing the ALL (Trial implementation)
APL	Administrative Penalty Law
ARIC	Administrative Rules on Insurance Companies
ARL	Administrative Reconsideration Law
ASL	Administrative Supervision Law
ASR	Anti-Subsidy Regulations
AUCL	Anti-Unfair Competition Law
B/L	Bill of Lading
BOD	Board of Directors
BOS	Board of Supervisors
CCCPC	Central Committee of Communist Party of China
CCPIT	China Council for the Promotion of International Trade
CGA	Customs General Administration
CIETAC	China International Economic and Trade Arbitration Commission
CiPL	Civil Procedure Law
CiPL Opinions	Opinions on Application of the CiPL
CIRC	China Insurance Regulatory Commission
CJV	Contractual Joint Venture
CLS	Company Limited by Shares
CMAC	China Maritime Arbitration Commission
CMC	Central Military Commission
COFTEC	Commission of Foreign Trade and Economic Cooperation

2 *China's Civil Law*

C/P	Charter Party
CPC	Communist Party of China
CPPCC	Chinese People's Political Consultative Conference
CR IPL	Consumer Rights and Interests Protection Law
CrPL	Criminal Procedure Law
CSRC	China Securities Regulatory Commission
EBL	Enterprise Bankruptcy Law
EBL Measures	Measures on Several Questions in Hearing Enterprise Bankruptcy Cases
EPL	Environmental Protection Law
EJV	Equity Joint Venture
EPA	Environment Protection Administration
EPL	Environment Protection Law
ETDZ	Economic and Technological Development Zone
FDI	Foreign Direct Investment
FICLS	Foreign-Invested CLS
FICLS Provisions	Interim Provisions on Several Questions for Establishing FICLS
FICLS Opinions	Several Opinions on Foreign Investment in Listed Company
FIE	Foreign Invested Enterprise
FIEITL	Foreign-Invested Enterprises and Foreign Enterprises Income Tax Law
FTL	Foreign Trade Law
GATT	General Agreement on Tariff and Trade
GM	General Manager
GPCL	General Principles of Civil Law
GPCL Opinions	SPC Opinions on Questions Concerning the Implementation of the GPCL (for trial use)
ICC	International Chamber of Commerce
IEOWPL	Law on Industrial Enterprises Owned by the Whole People
IICH	Individual Industrial and Commercial Household
INCOTERMS	International Chamber of Commerce of Terms
IP	Intellectual Property
IPO	Initial Public Offering
IPO	Intellectual Property Office
JV	Joint Venture

LAC	Legislative Affairs Commission of the SCNPC
LAL	Land Administration Law
Land Regs.	Interim Regulations on the Grant and Transfer of Land Use Rights to the State-Owned Land in the Urban Areas
L/C	Letter of Credit
LLC	Limited Liability Companies
LSO	Legal System Office of the State Council
MEPL	Marine Environment Protection Law
MOA	Ministry of Agriculture
MOC	Ministry of Communication
MOC	Ministry of Commerce
MOC	Ministry of Culture
MOC	Ministry of Construction
MOE	Ministry of Education
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOFERT	Ministry of Foreign Economic Relations and Trade
MOFTEC	Ministry of Foreign Trade and Economic Cooperation
MOJ	Ministry of Justice
MOLSS	Ministry of Labor and social Security
MOP	Ministry of Personnel
MOST	Ministry of Science and Technology
MPS	Ministry of Public Security
NIL	Negotiable Instrument Law
NPC	National People's Congress
PBOC	People's Bank of China
PGDFI	Provisions for Guiding the Direction of Foreign Investment
FIELM	FIE Liquidation Measures
PLC	Political and Legal Commission
PMC	People's Mediation Committee
PMCOR	Organic Regulations on the People's Mediation Committee
PQL	Product Quality Law
PRC	People's Republic of China
QTSB	Quality and Technology Supervision Bureau
RCOH	Rural Contracting Operation Household

RMB	Ren Min Bi
SAEC	State Administration of Exchange Control
SEPA	State Environmental Protection Administration
SAIC	State Administration for Industry and Commerce
SAR	Special Administrative Region
SAT	State Administration of Tax
SCA	State Copyright Administration
SCL	State Compensation Law
SCNPC	Standing Committee of the National People's Congress
SDPC	State Development and Planning Commission
SDR	Special Drawing Rights
SEAC	State Ethnic Affairs Commission
SEPA	State Environment Protection Administration
SETC	State Economic and Trade Commission
SEZ	Special Economic Zone
SFCJV	Sino-Foreign Contractual Joint Venture
SFCJVL	Sino-Foreign Contractual Joint Venture Law
SFCJVL Rules	Detailed Rules for SFCJVL
SFEJV	Sino-Foreign Equity Joint Venture
SFEJVL	Sino-Foreign Equity Joint Venture Law
SFEJVL Regs.	Implementing Regulations for SFEJVL
SFPC	State Family Planning Commission
SIPO	State Intellectual Property Office
SOE	State-Owned Enterprise
SPC	Supreme People's Court
SPP	Supreme People's Procuratorate
SQTSB	State Quality and Technology Supervision Bureau
STL	Secured Transaction Law
SWPPCL	Solid Waste Pollution Prevention and Control Law
TAL	Taxation Administration Law
TAL Regs.	Regulations for Implementing the TAL
TOMIEOWPR	Regulations on Transformation of Operation Mechanism of Industrial Enterprises Owned by the Whole People
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights

TVIIT	Township and Village Individual and Commercial Households Income Tax
UN	United Nations
UNCCISG	United Nations Convention on Contracts for the International Sales of Goods
UREAL	Urban Real Estate Administration Law
VAT	Value Added Tax
WFOE	Wholly Foreign Owned Enterprise
WFOEL	Wholly Foreign Owned Enterprise Law
WFOEL Rules	Detailed Rules for WFOEL
WPPCL	Water Pollution Prevention and Control Law
WTO	World Trade Organization

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