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*Chinese
Real
Estate
Law*

*by
Patrick A. Randolph Jr.
and
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KLUPER LAW INTERNATIONAL

Chinese Real Estate Law

 *by*
Patrick A. Randolph Jr.
and
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Table of Contents

Chapter 1: A Brief History of Chinese Real Estate Law	1
1.1. Land Ownership	1
1.1.1. Early Concepts of Private Land Ownership	1
1.1.2. Land Ownership Policies of the Communist Government Before 1949	6
1.1.3. Land Ownership System under the Kuo Minh Tang Government on the Mainland before Liberation	7
1.1.4. The Nationalization of Ownership of Urban Land after the Establishment of PRC	9
1.2. Development of Chinese Real Estate Law	11
1.2.1. Real Estate Regulation 1949–1988	14
1.2.1.1. 1949-1956	14
1.2.1.2. 1956-1962 (The period for Socialist Transformation)	15
1.2.1.3. 1966-1976 (the Cultural Revolution)	17
1.2.1.4. 1978-1988	17
1.2.2. The Modern Era	18
1.2.2.1. The Granted Land Use Right	18
1.2.2.2. Commercial Development	19
1.2.2.3. Housing Development	21
1.2.2.4. Agricultural Land Preservation	25
Chapter 2: Legal Background	29
2.1. The Impact of Civil Law Concepts	29
2.1.1. Principles of Civil Law	30
2.1.2. Judicial Interpretation	30
2.1.3. Principle of Fairness	32
2.2. The 1999 Contract Law	33
2.2.1. Similarities to Common Law	35
2.2.2. Special Distinctions from the Common Law of Contract	37

Table of Contents

2.2.2.1. No Consideration Required	37
2.2.3. Unenforceable Promises	38
2.2.4. The Principle of Fairness	38
2.2.5. The Principle of Good Faith	39
2.2.6. Choice of Law	40
2.2.7. "Standard Terms"— Limits on Waiver of Responsibilities	40
2.3. The Distinction Between Credit Rights and Rights <i>In Rem</i>	42
2.4. Concepts of Co-Ownership	45
2.4.1. Condominium Ownership	47
2.5. Inheritance Laws	49
2.6. Spousal Rights	51
2.7. Dispute Resolution; the Judicial System	52
2.7.1. Mediation (Conciliation)	52
2.7.1.1. Conciliation by the Court	53
2.7.2. Arbitration	54
2.7.3. Litigation	55
2.7.3.1. Litigation involving Real Estate Interests	57
2.7.3.2. Attorney's Fees	58
Chapter 3: The Ownership of Land	59
3.1. State Land Ownership	60
3.1.1. The Scope of the State Land Ownership	60
3.1.1.1. Urban Land	62
3.1.1.2. Expansion of Urban Land into Agricultural Collective Areas	62
3.1.1.3. Countryside or suburban land which has been purchased, confiscated, requisitioned, collected, or nationalized by the State	64
3.1.1.4. Forest land, grassland, waste land, tidal- flat areas, flood land and other land, which has not been ascertained by the State to be owned by Agricultural Collectives	65
3.1.1.5. Land used for various state public works, public security and public safety purposes	65
3.1.2. Institutions Embodying State Land Ownership	68

Table of Contents

3.1.2.1. Central Government	68
3.1.2.2. Local Government	69
3.1.3. Origins of the State Land Ownership	70
3.1.3.1. Confiscation	70
3.1.3.2. Buying Out (Policy of Redemption)	70
3.1.3.3. State Trusteeship	71
3.1.3.4. Nationalization	72
3.1.3.5. Requisition	73
3.2. Agricultural Collective Land Ownership	74
3.2.1. What is an Agricultural Collective?	74
3.2.2. Confirmation of Agricultural Collective Ownership by Continuous Use	75
3.2.3. Varieties of Agricultural Collective land	76
3.2.4. The Origins of the Agricultural Collective Land Ownership	77
3.2.5. Agricultural Collective Land Registration and Certification	79
3.2.6. Limitations on Agricultural Collective Land Ownership	81
3.2.7. State Requisitioning of Agricultural Collective Land	83
3.2.7.1. Conversion of Arable Land	83
Chapter 4: Allocated Land Use Rights	85
4.1. Allocated Land Use Rights Defined	86
4.2. Allocated Land Use Rights on State-Owned Land	87
4.2.1. Distinctive Characteristics of Allocated Land Use Rights vs. Granted Land Use Rights	89
4.2.1.1. Term of Allocated Rights	91
4.2.1.2. Purpose	91
4.2.1.3. Nature of Interests Conferred	91
4.2.1.4. State's Right to Terminate	92
4.2.2. Creation of Allocated Rights	93
4.2.2.1. Circumstances in Which Allocated Rights are Still Created	93
4.2.2.2. Process for Creation of Allocated Rights Before 1999	94
4.2.2.3. Creation of Allocated Land Use Rights After 1998	96

Table of Contents

4.2.2.4. Compensation to Former Occupants or Agricultural Collectives	96
4.2.3. Transferring, Leasing, and Mortgaging Allocated Land Use Rights	98
4.2.4. The Future of Allocated Land Use Rights on State-Owned Land	100
4.3. Collective Enterprise Allocated Land Use Rights	103
4.4. Military Allocated Land Use Rights	104
4.5. Allocated Land Use Rights of Educational Institutions, Scientific Research Institutes, Cultural Organizations and Health Institutions	105
4.6. Interim Rights	106
4.7. Homestead Rights	107
4.8. Foreign-investment Enterprise Allocated Land Use Rights	110
4.8.1. How Can a Foreign-investment Enterprise Obtain New Allocated Land Use Rights?	111
4.8.1.1. Land Use Rights Allocated by County or City Government	111
4.8.1.2. Land Use Rights Contributed by Chinese Venturers as their Investment to Joint Ventures	113
4.8.2. Characteristics of Foreign-investment Enterprises' Allocated Land Use Rights	114
4.9. Allocated Land Use Rights on Agricultural Collective-owned Land	116
4.9.1. Land Used Under the Agricultural Contract Responsibility System	116
4.9.2. Homesteads on Agricultural Collective-owned Land	117
4.9.2.1. Rural Residents' Homesteads on Agricultural Collective-owned Land	117
4.9.2.2. Urban Residents' Homesteads on the Agricultural Collective-owned Land	119
4.9.2.3. The Future of the Rural Residents' Homestead System	120
4.9.3. Township Enterprise's Land Use Rights on Agricultural Collective-owned Land	120
4.9.4. Land Use Rights Contributed by Agricultural Collectives to Joint Venture Enterprises	121

4.9.5. Termination of Allocated Land Use Rights on Agricultural Collective-Owned Land	123
Chapter 5: Granted Land Use Rights	125
5.1. Characteristics of Granted Land Use Rights	126
5.1.1. Use Limitations	126
5.1.1.1. Changing the Use	127
5.1.2. Term of Granted Land Use Rights	127
5.1.2.1. Renewal	128
5.1.2.2. Termination	129
5.1.2.3. Forfeiture	130
5.1.3. Transferability of Granted Land Use Rights	131
5.2. Who Can Own	132
5.3. Creation of Granted Land Use Rights	134
5.3.1. Authority to Grant	134
5.3.1.1. Agricultural Collectives	135
5.3.1.2. Bureaus of Land Administration	135
5.3.1.2.1. Approval System for Granted Land Use Rights Prior to 1999	135
5.3.1.2.2. System for Approval of Granting or Allocating Land Use Rights Subsequent to 1999 (The “Land Use Purpose Control System”)	136
5.3.2. Planning Requirements	138
5.3.3. Qualifying to Obtain a Land Use Right	140
5.3.4. Types of Granting Contracts	141
5.3.5. Select of Grantee	147
5.3.5.1. The Auction Requirement	148
5.3.5.2. Bid Invitations	149
5.3.5.3. Private Negotiation	150
5.3.6. The Land Use Fee	152
5.3.6.1. Timing of the Payment	152
5.3.6.2. Basic Land Price	152
5.3.6.3. Infrastructure Contribution	156
5.3.7. Limit on Government Expenditure of Proceeds of Granted Land Use Rights	156

Table of Contents

5.4. Remedies for Breach of Granting Contract	157
5.4.1. Enforcement of Price Obligation	157
5.4.2. Enforcement by Buyer	157
Chapter 6: Registration and Conveyancing	159
6.1. Registration of Real Estate Interests	159
6.1.1. The Requirement for Registration	159
6.1.2. Registration Systems	162
6.1.3. Inspection of Registration Records	165
6.1.4. Land Registration	167
6.1.4.1 Registration of Mortgages on Land Use Rights	167
6.1.5. Registration of Rights in Buildings	168
6.1.5.1. Liability of the Registration Office for Erroneous Registration of Buildings	171
6.1.6. Registration of Leases	171
6.2. Property Descriptions and Surveys	173
6.2.1. Boundary Disputes	174
6.3. Real Estate Brokerage and Appraisal	175
6.3.1. Real Estate Intermediaries Generally	175
6.3.2. Appraisers	177
6.3.3. Can a Foreigner be a Real Estate Intermediary in China?	179
6.4. Transfer of Land Use Rights	179
6.4.1. Conversion of Allocated Rights for Transfer	180
6.4.2. Preconditions for the Transfer of Granted Land Use Rights and Housing	183
6.4.2.1. Preconditions for the Transfer of Granted Land Use Rights	183
6.4.2.2. Preconditions for Housing Presale	184
6.4.2.3. Preconditions for the Sale of Housing Purchased from Working Units and Economic, Appropriate Housing Purchased at Subsidized Prices	184
6.4.3. Contracting for Transfer	185
6.4.3.1. Basic Land Price	186
6.4.3.2. Rights Created Under Contract	186
6.4.3.3. Requirement for a Writing; Notarization	187

6.4.3.4. Earnest Money and Liquidated Damages Provisions	188
6.4.3.5. Seller's Responsibility for Condition	189
6.4.4. Risk of loss	189
Chapter 7: Commercial Leasing	191
7.1. Basic Legal Concepts Affecting Lease Contracts	192
7.2. What Can be Leased?	194
7.2.1. Land Ownership Itself	194
7.2.2. Leasing of Land Use Rights	196
7.2.3. Leasing of Buildings	200
7.2.3.1. Buildings That Cannot be Leased	201
7.3. Who Can Be Tenants	202
7.4. Details of the Lease Agreement	203
7.4.1. Requirement of a Writing	203
7.4.2. Requirement of Registration	203
7.4.2.1. Registration of Leases of Buildings	204
7.4.3. Main Clauses of a Lease Contract	205
7.4.4. Lease Term	207
7.4.5. Rent	208
7.5. Implied Warranties of Landlord	209
7.6. Implied Duties of Tenant	211
7.7. Tenant's Rights to Transfer Interests in the Leased Premises	212
7.8. Refusal Right	214
7.9. Tenant's or His Family Members' Right to Continue the Lease Contract When the Landlord Transfers the Premise or the Landlord Dies	215
7.10. Remedies for Breach of Lease	215
7.11. Non-Mortgageability of Leasehold Estates	218
7.12. Economic Analysis of the Chinese Commercial Lease	219
Chapter 8: Mortgage Law	225
8.1. Introduction	225
8.2. Mortgage Loans Generally	227
8.3. Underlying Statutes	234
8.3.1 The 1999 Contract Law	234
8.3.2 The 1995 Commercial Banking Law and the General Provisions on Lending	235

Table of Contents

8.3.3	The 1995 Security Law	235
8.3.4	The 1996 Auction Law	236
8.3.5	Laws and Regulations on Land and Urban Real Estate	236
8.4.	Who Can Make a Mortgage Loan?	238
8.5.	What Can Be Mortgaged?	240
8.5.1.	Land Use Rights	240
8.5.2.	Multiple Parcels	242
8.5.3.	Commonly Owned Property	242
8.5.4.	Leaseholds	244
8.5.5.	Presale Interests	246
8.5.6.	Improvements to Mortgaged Property	247
8.5.7	Restrictions on Mortgaging Certain Interests	248
8.6.	The Mortgage Debt	250
8.6.1	General Terms	250
8.6.2	Loan Term	250
8.6.3	Interest	251
8.6.4	Prepayment	252
8.6.5	A Special Problem Regarding the Amount of Loans — Construction Loans	253
8.6.6	Future Advances	253
8.6.7	Registration and Priority	254
8.7.	Transfer of Mortgagee's Rights	257
8.8.	Transfer of Mortgagor's Rights	258
8.8.1.	Basic Transfer Restriction	258
8.8.2.	Problem With Contracting for Sale of Mortgaged Property	258
8.8.2.1.	The Basic Problem	258
8.8.2.2.	Partial Interpretive Solution	259
8.8.2.3.	Substitute Security and the Issue of Defeasance	260
8.8.2.4.	Drafting Around the Problem	262
8.8.2.5.	Contrary Authority in the Urban Mortgage Measures	263
8.8.3.	Impact of Transfer on Original Mortgagor	264
8.9.	Leasing of Mortgaged Property	264
8.10.	Condition of Property; Insurance	265
8.10.1.	Physical Condition of Property	265

Table of Contents

8.10.2. Insurance	266
8.10.3. Expanding a Mortgagee's Rights	267
8.11. Default and Acceleration	267
8.12. Possession after Default and Right to Rents	271
8.13. Can the Parties Avoid Legally Prescribed Mortgage Terms by Contract?	274
8.14. Foreclosure	277
8.14.1. Judicial Actions	277
8.14.1.1. Venue	277
8.14.1.2. Timing	279
8.14.1.3. Election of Remedies	279
8.14.1.4. Notice	280
8.14.2. Conduct of Auction	282
8.14.3. Distribution of Proceeds	282
8.14.4. Settlements in Lieu of Foreclosure	284
8.14.5. Rights and Duties of Foreclosure Sale Purchasers	285
8.15. Rights of Junior Parties	286
8.16. Subrogation	288
8.17. Deficiency Claims	289
8.18. Summary and Conclusions	290
8.18.1 Problems Resulting from Overfavoring Lenders	290
8.18.2. Problems Resulting from Overfavoring Lessees	292
8.18.3 Structural Issues	294
8.18.4 Enforcement	295
Chapter 9: Liens and Other Creditor's Rights	297
9.1 Collecting Judgments	297
9.2. Security Interests	299
9.2.1. Guarantee	299
9.2.2. Pledges	300
9.2.2.1. Pledges on Moveable Property	300
9.2.2.2. Pledges on Negotiable Instruments, Securities or Intellectual Property Rights	301
9.2.3. Possessory Liens	302
9.3. <i>Dian</i>	303
9.3.1. Enterprise Bankruptcy Law	307
9.3.1.1. Claims of Creditors	307
9.3.1.2. Concerns About Enterprise Bankruptcy	310

Table of Contents

9.3.2. Bankruptcy of Entities Other than State Owned Enterprises	313
Chapter 10: Restrictions on Ownership and Regulations on Real Estate Development	315
10.1. Interests Reserved by the State	315
10.2. Neighborhood Rights	316
10.2.1. Pass Right	317
10.2.2. Water Rights	318
10.2.3. Utility Services	319
10.2.4. Nuisance	319
10.2.5. Responsibilities with respect to boundaries	320
10.2.6. Safety, Health and Environment	320
10.2.7. Trespass	321
10.2.8. Lateral and Subjacent Support	322
10.3. Servitudes	322
10.3.1. Easements	322
10.3.2. Covenants	323
10.4. Regulation of Land Use	325
10.4.1. Overview of Land Using Regulation	325
10.4.2. Basic Structure of Zoning System	326
10.4.3. Comprehensive Land Use Planning	328
10.4.4. Limitations on Private Participation in Land Use Decision Making	328
10.4.5. National Land Administration Information System	329
10.5. Regulations on Real Estate Development	330
10.5.1. Compliance with the Zoning Plan, Granting Contract, and Technical Standards of the Government	330
10.5.2. Establishing Real Estate Development Companies	331
10.5.3. Qualification Control on Real Estate Development Companies	333
10.5.4. Control on the Ratio of Registered Capital to the Total Investment	333
10.5.5. Policies Encouraging Real Estate Development for Residential Purposes	334
10.6. Business Regulation	334

Chapter 11: Real Property Taxation	337
11.1. Land Use Charge on Domestic Holders of Allocated Land Use Rights and Land Use Fee on Foreign Investment-enterprises' Allocated Land Use Right	338
11.1.1. The Land Use Charge On Domestic Users	338
11.1.2. The Land Use Fee on Foreign-investment Enterprises' Allocated Land Use Rights	341
11.2. Cultivated Land Occupation Charge for Conversion to Non-Agricultural Purposes	344
11.3. Building Property Tax	346
11.4. Contract Tax	349
11.5. Stamp Tax	351
11.6. Fixed-Asset Investment Adjustment Tax	352
11.6.1. New Construction or Purchase	354
11.6.2. Transformation or Renovation	355
11.7. Business Tax	355
11.8. Value-Added Tax on Land	356
11.8.1. Rational for the VAT	356
11.8.2. Incidence of the VAT	357
11.8.3. Calculation of the VAT	357
11.8.3.1. Calculation of the Amount of Taxable Appreciation	357
11.8.3.2. Rates of Tax	359
11.8.4. Penalty for Evasion	359
11.8.5. Exemptions from VAT	359
11.9. Income Tax	360
 Appendix I: Forms	 363
 Appendix II: Index of Titles of Legal Documents	 411
 Appendix III: Table of Titles of Statutes and Regulations	 431
 Index	 443

CHAPTER 1

A Brief History of Chinese Real Estate Law

1.1. Land Ownership:

1.1.1. Early Concepts of Private Land Ownership:

The Xia (21st C B.C.–16th C B.C.) is considered to be the first dynasty in China. Information from this early period does not make clear who actually was perceived as having “ownership” in land, but the Xia rulers nevertheless saw the benefits to their personal interest in exercising control over the potential wealth in land resources. The rulers of Xia divided the land in the kingdom into three classes on the basis of fertility characteristics, and levied taxes accordingly upon those using the land.¹

The succeeding dynasty, Shang (16th C B.C.–11th C B.C.), set up a much more developed land law system. In Shang Dynasty, it was clear that all the land belonged to the Emperor. Most of the people in the empire were serfs who were viewed essentially as part of the land and who passed with the land. The Emperors provided the right to use the land to nobles, military officers and public officials, as rewards and as compensation for their services to the Emperor. The recipients of the use rights, however, did not “own” the land. They were prohibited from transferring the land and obliged to pay for their use of the granted land.² The use rights, however, were inheritable.³

The Western Zhou (11th C B.C.–770 B.C.), developed a more elaborate feudal style system of land use distribution. All the land together with the “attached” serfs, was owned by the Emperor. The Emperor first granted the

¹Law School Textbook Series, *The History of China's Legal System* (Mass's Publishing House, 1985) 15. (Hereafter cited as *History Textbook*)

²*Id.* at 24–25.

³*Id.*

lands to rulers of sub-kingdoms, and, these sub-kingdom rulers sub-granted land to their military officers and public officials. The grantor could take the land and attached serfs back when necessary. The grant was inheritable, but not transferable.⁴ These rules changed gradually after the midpoint of Zhou Dynasty. The grantees became the *de facto* owners of the granted land. They could not only rent their land out, but also could sell or transfer their land in exchange for other forms of wealth.⁵ There are recorded examples where land was used as consideration for jewels and horses. There were even cases where defendants were ordered by judges to compensate wronged persons with land.⁶

In 770 B.C., the emperor of Zhou moved the capital to an eastern city, which began the history of the Eastern Zhou Dynasty. The history of Eastern Zhou was divided into two parts: 770 B. C.–476 B.C., the Period of Spring and Autumn; 475 B.C.–221 B.C., the Warring States Period.

Early in the Eastern Zhou, there developed a system of land management known as the “well” system,⁷ because the Chinese character for the word “well” is #. This was viewed as symbolic of the division of the land into nine sections. More than one person could own sections of an identical parcel, but overall there were always nine identical sections. The parties given the right to use the land had an obligation to care for and cultivate the center section of the nine sections for the benefit of the overlord, and pay over the proceeds or the product itself to the overlord. The obligation was to use at least the same level of irrigation and other management for the center parcel as for the other eight.

Due to the development and application by this time of new agricultural techniques and technology, it was no longer necessary to have many slaves work the land to produce a minimal return. At the same time, more and more arable land was developed. Thus, land was viewed as a less vital, and therefore a less valuable resource, and the Eastern Zhou emperors tolerated a system that did not view the newly developed land as belonging to or

⁴Pu Jian (Editor-in-Chief), *China's Legal History* (The Guangming Daily Publishing House 1987) 33 (hereafter cited as Pu Jian).

⁵*History Textbook* at 42.

⁶*Id.*

⁷This system is said to have been recognized first in the Lu Kingdom of Eastern Zhou, a sub-kingdom located roughly in what is now Shandong Province, in the year 594 B.C. Pu Jian at 44.

granted from the emperor, but saw it as more or less actually “owned” by private citizens. These citizens often were basically peasants — farmers who had little wealth other than that represented by the land they had been able to reclaim and work themselves.

In response to the new concepts of private ownership, rulers of sub-kingdoms began to reform their land tax system from the “well” system, which was primarily viewed as a method of capturing feudal revenues, to a different taxation system that would also reach the privately owned land. The tax was based upon the size of the land, rather than income. The tax could be, and often was, paid in products of the land, rather than cash.⁸

The Warring States Period ended in 221 B.C. when Qin Shi Huang unified China. The Qin Dynasty is viewed as China’s first true centralized government, and the foundation of modern China. It lasted barely beyond the lifetime of the Emperor Qin Shi Huang himself, but nevertheless brought about many important changes in government and society. Qin Shi Huang confirmed the private ownership on the basis of the land ownership developed through sub-kingdoms during the Eastern Zhou. In 216 B.C., he issued an order requiring all the peasants to report their private land and recognized their ownership.⁹

Following a brief period of unrest, the Qin Dynasty was succeeded by the Han Dynasty, which ruled China basically from 206 B.C. until 220 A.D. Historical reports on land ownership during the Han Dynasty¹⁰ indicate that the Han emperors continued the practice of differentiating between state land (owned by the Emperor) and private land. Transactions in state land were strictly prohibited. Violators were executed. Owners of private land, however, could transact freely in such land, including transferring ownership to others.

The next available report on ancient rules of land ownership is from the Northern Wei kingdom, during a period known as the “North and South Kingdoms,” a time when the empire had fractionated into at least six separate kingdoms. In 485 A.D., the King of North Wei issued an order redistributing land to the peasants. There were two types of interests created — one type was not inheritable; it was basically a life estate. The

⁸*History Textbook* at 45.

⁹*Id.* at 96.

¹⁰The material on Han is based upon Ye Xiao Xin (editor-in-chief) *Textbook of China’s Legal History*, (Peking University Press 1989) 103. (Cited as Ye Xiao Xin).