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# Chinese Civil Law

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# Chinese Civil Law

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## Preface and Acknowledgments

The idea of writing a book on Chinese civil law arose in the course of editing the sister book “Chinese Business Law” in the series of “Beck International”. The importance of civil law, which constitutes the foundation of Chinese private law, is obvious. Accordingly, civil law is the most developed field of private law in the Chinese jurisdiction. Since the end of the 1990s great efforts were undertaken in China to codify its entire civil law. With the fundamental major statutes governing contracts, property, torts and conflict of laws being promulgated in 1999, 2007, 2009 and 2010 respectively, the most crucial steps have been made toward the creation of a Chinese Civil code. The legislator is now facing the challenge of bringing these elements into a coherent system.

Worldwide comparative civil law has gained in importance, what is exemplified in the course of compiling a scholarly draft of a European Civil Code and the tendency of reinvigoration of private law in the US. As the evolvement of Chinese civil law is essentially a process of integrating Chinese tradition and the borrowed foreign legal concepts, the discussion of creating a Chinese Civil Code could further the study of civil law. At the same time, Chinese civil law is also crucial for business operation in China.

That being said, updated, systematic and comprehensive description of Chinese civil law in the English language is scarce. Most fields of civil law remain still inaccessible to interested readers without sufficient proficiency in Chinese language. Thus, the Chinese Civil Law seeks to shed light on both the theoretical and the practical aspects of Chinese civil law. In particular, by giving a large number of references to commentaries, treatises, and articles the authors attempt to deliver an accurate and authentic account of discussions in China, rather than aspire to develop their own ideas, which would otherwise go far beyond the scope of this book. Although case law only plays a marginal role in Chinese law, this book intends to incorporate relevant cases, in particular those adjudicated by the Supreme People’s Court, to illustrate the application of civil law statutes in judicial practice. A bibliography in front of each part and an index at the end of the book allow for further study of specific areas and facilitate systematic research. No English

translations of statutes, judicial interpretations and cases cited in this book are provided as several commercial databases offer such sources. Marriage and succession law is not addressed in a separate chapter, but rather in conjunction with the issues of private international law. All internet sources are last visited in March 2013.

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# Abbreviations

Opinions on the GPCL	Opinions of the Supreme People's Court on Several Issues concerning the Implementation of the GPCL of the People's Republic of China
Answers to the Trial of Cases Involving Rights to Reputation	Answers of the Supreme People's Court on Several Issues Relevant to the Trial of Cases Involving Rights to Reputation
AUCL .....	Anti-Unfair Competition Law
Berne Convention ....	Berne Convention for the Protection of Literary and Artistic Works
BIT .....	Bilateral Investment Treaty
CCP .....	Chinese Communist Party
CEO .....	Chief Executive Officer
CISG .....	United Nations Convention On Contracts For The International Sale Of Goods
CL .....	Contract Law
CPL .....	Civil Procedural Law
DCFR .....	Draft Common Frame Reference
ECL .....	Economic Contract Law
FECL .....	Foreign Economic Contract Law
GPCL .....	General Principles of Civil Law
HK Basic Law .....	Basic Law of the Hong Kong Special Administrative Region
Hong Kong SAR .....	Hong Kong Special Administrative Region
ICC .....	International Chamber of Commerce
Interpretation on Liability of Traffic Accidents .....	Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases Involving Traffic Accidents
Interpretation on the CL (Part 1) .....	SPC's Interpretations of Certain Issues Concerning the Application of the Contract Law (Part I)
Interpretation on the CL (Part 2) .....	SPC's Interpretations of Certain Issues Concerning the Application of the Contract Law (Part II)
Interpretations on Mental Damages .....	Interpretation of the Supreme People's Court on Several Issues Concerning the Ascertainment of Compensation Liability for Non-Material Damages in Civil Torts
Interpretation on Personal Injuries .....	Interpretation of the Supreme People's Court on Several Issues Concerning the Law Applicable in Hearing Cases of Compensation for Personal Injury
Interpretations to the Trial of Cases Involving Rights to Reputation	Interpretations to Several Questions in the Trial of Cases Involving Rights to Reputation
IP .....	Intellectual Property
IPR .....	Intellectual Property Rights
LAL .....	Law of the Application of Law for Foreign-related Civil Relations
L/C .....	Letter of Credit
LLC .....	Limited Liability Companies
Ltd .....	Limited
LTL .....	Law on Tort Liability
Macao Basic Law .....	Basic Law of the Macao Special Administrative Region
Macao SAR .....	Macao Special Administrative Region
Madrid Agreement ...	Madrid Agreement for International Registration of Trademarks
ML .....	Marriage Law
Model PIL .....	Model Private International Law Code

New York Convention	1958 Convention of Recognition and Enforcement of Foreign Arbitral Awards
NGO.....	Non-Governmental Organization
NPC.....	National People's Congress
OCTS policy.....	"One Country Two Systems" policy
Paris Convention.....	Paris Convention on the Protection of Industrial Property
PICC.....	Principles of International Commercial Contracts
PQL.....	Product Quality Law
PRC.....	People's Republic of China
RRL.....	Real Rights Law
RMB.....	Renminbi
Rome Convention....	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
RTSL.....	Road Traffic Safety Law
SAIC.....	State Administration of Industry and Commerce
SARS.....	Severe Acute Respiratory Syndrome
SCNPC.....	Standing Committee of the National People's Congress
SL.....	Succession Law
SOE.....	State-owned Enterprise
SPC.....	Supreme People's Court (of the PRC)
SPC Commodity Premises Interpretation	Interpretation of the SPC on the Relevant Issues concerning the Application of Law for Trying Cases on Dispute over Contract for the Sale of Commodity Premises
SPC Condominium Interpretation.....	Interpretation of the SPC on Several Issues Concerning the Specific Application of Law in the Trial of Disputes over Condominium Ownership in Buildings
SPC Interpretation on Lease Contracts of Urban Houses.....	Interpretation of the SPC on Several Issues Concerning the Application of Law in the Trial of Cases Involving Disputes Arising From Lease Contracts of Urban Houses
SPC Interpretation on Purchase and Sales Dispute Cases.....	Interpretation of the SPC on Several Issues About the Application of Law for the Trial of Purchase and Sales Dispute Cases
SPC Judicial Interpretation No. 2007-14.....	Rules of the Supreme People's Court on the Relevant Issues concerning the Application of Law in Hearing Foreign-Related Contractual Dispute Cases in Civil and Commercial Matters
SPC Lease Contract Interpretation.....	Interpretation of the SPC on Several Issues Concerning the Application of Law in the Trial of Cases about Disputes over Lease Contracts on Urban Buildings
SPC Purchase Contract Interpretation	Interpretation of the SPC on Issues Concerning the Application of Law in the Trial of Cases about Disputes over Purchase and Sale Contracts
SPC Realty Services Interpretation.....	Interpretation of the SPC on Several Issues Concerning the Specific Application of Law in the Trial of Disputes over Realty Services
SPC Rules on Period of Limitation.....	SPC Rules on Certain Issues Concerning the Implementation of Period of Limitations in Civil Litigation
TCL.....	Technology Contract Law
TRIPs.....	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNDROIT.....	International Institute for the Unification of Private Laws
U.S.....	United States
WFOE.....	Wholly Foreign-owned Enterprise
WIPO Convention....	Convention Establishing the World Intellectual Property Organization
WTO.....	World Trade Organization