



China's *Civil Code*

an advanced, unified socialist legal code

impact of the code

social impact

The first legal code since the founding of the PRC, the *Civil Code* is referred to as the ‘encyclopedia’ of social life, regulating issues that directly affect the lives of people in the PRC.

Wang Liming 王利明 Renmin University vice president and former NPC delegate advised the drafters of the code; he outlined the code to the *People’s Daily* as ‘the basic law of the market economy, a declaration of protection for citizens’ rights, and the legal basis for resolving civil and commercial disputes.’

legal impact

A major legal achievement, the code represents a ‘coming of age’ for the PRC legal system. Made up of seven parts, the legislation brings together existing civil laws and regulations, striving for consistency, and reflecting the approach of the Party-state and the changing values of society.

It provides a foundation for civil law in China. Through protecting the basic interests of the people and regulating issues important in their daily lives, many commentators profess high hopes that this law will pave the way for greater rule of law, justice and fairness across the country.

political impact

As has been observed in other contexts, from foreign relations to the economy, Xi Jinping does not lack a sense of historic mission. One of the hallmarks of China’s successful dynasties for centuries has been promulgating and regularly updating a unified legal code.

For the Party, the code fulfills a mission of the post-1949 People’s Republic and acts as a hallmark of Xi’s new era of ‘great revival’ for the nation.



reach and scope of the code

long in the making

The newly established PRC began work on a unified civil code as early as 1954, but Mao's priorities lay elsewhere. There were repeated false starts during the Deng Xiaoping, Jiang Zemin and Hu Jintao eras, with many judging society and the legal system in mainland China not yet 'ripe'.

This round of codification began in 2014, with the drafting of the *General Provisions of the Civil Code*. In 2017, the lengthy provisions set out key legal principles and concepts, replacing the 1986 *General Principles* as the foundation of the future code. With this framework, legislators began the mammoth task of writing each of the special-topic parts that make up the code.

On 27 August 2018, NPC Standing Committee reviewed the first official draft of the main body of the code. After three more revisions, it was adopted in May 2020.

forward-looking

The *Civil Code* incorporates and replaces the existing *Property Law*, *Contract Law*, *Marriage Law*, *Adoption Law*, *Inheritance Law*, *Guarantee Law* and *Tort Liability Law*. It will also guide the application of dozens of special topic laws, such as the *Environmental Protection Law*, *Labour Contract Law*, *E-commerce Law* and *Land Administration Law*. Some of these special topic laws are due to be revised, but it is likely that most will simply be read as revised, with any conflicting provisions overridden by the *Civil Code*.

The code also resolves debates on various social issues, such as liability for environmental damage, privacy and personal information protections and current marriage and family values. Equally, it introduces legal concepts that signal policy moves or create space for future policy development.

the code at a glance

overview

- 7 chapters comprising 1,260 articles
- adopted 28 May 2020, comes into effect 1 January 2021
- more than 580 articles that are innovations and amendments to existing civil laws, especially in personality rights which is almost all new

purpose

The *Civil Code* deals with both past and present dilemmas: it must be consistent with existing laws in order to avoid widespread upheaval in business, family and personal relationships. It must address conflicts between current civil laws, drafted separately over a span of decades (*Inheritance Law* has not been updated since it was promulgated in 1985). It must provide answers to new legal questions created by rapid social and technological changes, such as the rise of the internet. It must also try to get ahead of the challenges posed by the coming waves of social change.

parts

general provisions

property rights

contracts

personality rights

marriage and family

inheritance

tort liability



public consultation

Put to the public ten times, the draft received some 1 million opinions and suggestions from over 400,000 people. Extended to almost twice the normal time, the comment period reflected the complexity of the issues under review.

Some issues popular with the public received direct responses at press conferences and via other statements: most prominent have been the legislature's direct response on same-sex marriage. Other suggestions have been taken up in drafts, and many others left aside.

public opinion focused on

- renewing the residential land use period
- divorce cooling-off period
- changing children's family name in cases of divorce
- same-sex marriage/cohabitation
- rules surrounding common debt
- liability for objects falling from heights



1 general provisions

1 'general provisions' snapshot

contents

- 10 chapters comprising 204 articles
- mixture of basic rights (applying to the whole code) and specific rights (applying to specific parts)
- describe the types of legal persons, statute of limitations, civil liabilities

debate

- only slight changes between the *General Provisions of the Civil Code* promulgated in 2017 and the final version in the code, so no real debate

purpose

- drafted first to provide basic, unifying legal principles and concepts to guide the special-topic chapters
- provide principles for all other civil law

pandemic-related

- late addition of a clause which requires the state to make appropriate arrangements when a guardian is unable to fulfil their duties to a ward due to an emergency, such as if they are in mandatory quarantine (Art. 34)

replaces



2017 General Provisions of the Civil Code

1986 General Principles of the Civil Law

1 changes to the *2017 General Provisions*

changes to fundamental principles

The *2017 General Provisions* were prefaced with a statement of principles. These are symbolic placeholders, declaring the values assumed in the code: changes to them are symptomatic of social change.

- adds a 'green principle': civil acts are to support conserving resources and respecting the environment (Art. 9)
- adds a 'good custom and public order' principle: civil acts are to be in line with social public order and moral norms (Art. 8)
- removes 'planned economy' and 'equal compensation' requirements from general provisions
- removes requirement that national policy be followed in the case of no applicable law, replacing it with 'customs'

changes to legal person

The *1986 General Principles* included two categories of legal person: 'corporate' and 'non-corporate'. The *2017 General Provisions* update the phrasing to be more consistent with international practice: 'for-profit' and 'non-profit'. A third category is also introduced: 'special legal person'.

special legal persons include

- state agencies
- rural collective economic organisations
- urban-rural cooperative economic organisations

'Special legal person' was introduced to better reflect the broad spectrum of organisations requiring legal personhood in China. It describes organisations which do not fit either the 'for-profit' or 'non-profit' legal personality, but that are large, common and often engaged in private law-regulated activities. Giving previously public organs this status helps to regulate their involvement in profit-making activities.

1 changes to the *2017 General Provisions*

increased rights for fetuses: can receive inheritance and gifts

Article 16

protects personal information

Article 111

lower age of limited civil capacity, from ten to eight

Article 19

'good samaritan' protection for volunteer assistance

Article 184

adults can appoint guardians for themselves in advance

Article 33

prohibits libel against revolutionary martyrs

Article 185

guidance for guardians: must benefit the ward

Article 35

increases statute of limitations from two years to three

Article 188

rural collectives given special legal status

Articles 96101

special provisions for sexual assault of minors

Article 191



1 responses to the 2017 General Provisions

commentators were split on some specifics in the general provisions, not least the addition of a third legal person; the general consensus was that they set a good foundation for the code to come



- granting special legal status to rural collective economic organisations is a vital step in defining individual rights within collectives
- other chapters should outline individual rights in collective economic organisations
- other chapters should clarify the legal mechanisms for rights transfer



- the lowered age of civil capacity has not been well thought through
- 'libel against revolutionary heroes and martyrs' is based on ideology and lacks legal clarity
- 'good Samaritan' immunity is reckless and counterproductive. It will protect well-intentioned but potentially harmful behaviour



- some welcome innovations have been made relating to natural persons, legal persons, civil rights and limitation of actions
- the law falls short in several regards, in particular the lack of clear definitions for civil and personality rights, but these are clarified to some extent in the separate part on personality rights



2 property rights

2 'property rights' snapshot

content

- 5 sections, 20 chapters comprising 258 articles
- describes real and personal property rights
- sections on general principles; ownership (including rules on state, collective and private property ownership); usufructs (rules on rights to use another's property, notable due to state and collective ownership of the land); guarantees; possession

replaces

- *2007 Property Rights Law*

debate

- process for renewing land use rights for residential construction; answering the question of what will happen when land use rights expire
- whether the right of residence should be a new, independent property right

pandemic-related

- inclusion of epidemic prevention and control as a reason for property requisition
- obligations of homeowners and property-management service providers to cooperate with emergency response measures

2 'property rights' legislative timeline

May
2020

NPC approves Property Rights as a part of the *Civil Code*

Apr
2019

NPC Standing Committee reviews second draft of Property Rights

Aug
2018

NPC Standing Committee reviews first draft of Property Rights

Oct
2017

Property Law adopted

guarantees equal protection for public and private property ownership, usufruct, security and occupancy rights



elderly citizens reading their land certificates (土地证)

2 'property rights' legislative timeline

Dec
2002

NPC Standing Committee reviews *Property Law* draft

this early version of *Property Law* was drafted for a civil code which did not pass; it later served as the basis of the 2007 *Property Law*

1998

drafting of *Property Law* completed

NPC did not ratify it

1993

drafting of *Property Law* begins



the Property Rights part introduces a right of residency, giving more protection for those who live in others' properties

2 what's new in 'property rights'

general rules

- equal protection of public and private property rights (Art. 207)

ownership

- includes villagers' houses in the scope of land expropriation compensation and timely payment of fees (Art. 243)
- clarifies uninhabited islands are owned by the state (Art. 248)
- higher deliberation threshold and lower approval threshold in owner committee (Art. 278)
- bars property management companies from putting common space into commercial use without owners' permission and income from common space is shared by owners (Art. 282)

possessions

- no significant changes

usufructs

- separates three rights of rural land: ownership rights, contractor rights, management rights; allows rural households to contract out or mortgage management rights to their land (Art. 339-341)
- allows transfer of land contractual management rights (Art. 339)
- automatic renewal of land use rights for residential construction for a fee, but fee reductions/exemptions available (Art. 359)
- introduces a 'right of residency', but bars transfer and inheritance of this right (Art. 366-371)

security interest

- affirmed the effectiveness of atypical guarantee contracts (Art. 388)
- allows owners of collateralised assets (i.e. a mortgage) to transfer them after giving notice to collateral holder (Art. 406)
- allowed liquidity clauses in mortgages and pledges (Art. 401,428)

2 residency rights?

the introduction of a right of residency—a person's right to 'occupy and use' another's residence to live—brought heated debate

supporters

- increases protection for the tenant to ensure a stable residence
- supports the 'house for pension' program, which allows homeowners to mortgage a portion of their property for a monthly sum
- resolves issues related to residence of those whose name is not on the title, in particular non-heirs and those in need of financial assistance after divorce
- resolves inconsistencies in past judicial practice
- develops a diversified housing security system in which housing is more valued and used more efficiently

opponents

- it is unnecessary: in Germany and France residency rights were established due to inequality between men and women in property rights, but in contemporary China, men and women are equal (spouses have inheritance rights) and there is a strong tradition of care of children and the elderly
- personal servitude should be the foundation of residency rights and it is not currently part of the rights of rem system
- in practice, there is little demand from minors, vulnerable parties in divorce, the elderly and housekeepers for residency rights

2 residency rights?

‘A right of residency helps the socially disadvantaged to obtain stable housing despite high housing prices; rights are created for two separate functions: ownership of housing and its use. Multiple, maximised use is allowed for, as is security for the elderly (by allowing them to support their daily expenses using the value of their housing).’



Ma Yide 马一德

**NPC delegate and Beijing Academy of Social
Sciences Law Institute professor**

2 changes to 'property rights'

land management rights	property security rights	future thinking
<ul style="list-style-type: none">• new transferable land management rights may speed up farmland consolidation currently underway across the country• this new right will allow land contractors, usually rural households, to<ul style="list-style-type: none">◦ monetise land they left behind when migrating to cities◦ boost profitability of farming through industry upscaling and professionalisation• in the case of land expropriation by local governments, it would<ul style="list-style-type: none">◦ increase legal leverage of farmers and agricultural businesses in demanding fair compensation	<ul style="list-style-type: none">• allowing rural land rights to be mortgaged will potentially help broaden financing channels of individuals and SMEs in need of credit but underserved by state banks• it also may curb private financing practices, such as P2P online lending platforms, which have proliferated in the poorly regulated environment and threaten social stability• more detailed rules based on the Code draft were formed in 2019 revised <i>Land Management Law</i>	<ul style="list-style-type: none">• the Property Rights Chapter has adopted some measure of digital thinking and technology to solve legal problems such as confidentiality in real estate registration information• paves the way for more changes in the future, leaving space to move in supporting legislation

2 unresolved 'property rights' issues

- does not state that the automatic extension of urban housing land-use rights is free of charge, instead providing a placeholder for later legislation to impose taxes and fees
- fails to regulate major aspects of property rights, e.g. in the event of abandoned property, or 'easements' (right to use or pass through land that is not owned)
- provisions on possessions are minimal and unspecific: 'possessions' are vaguely defined, likewise their relation to property (needed to resolve issues in multiple sales of the same housing)
- lacks detail on transferring/mortgaging rural land management rights, requiring other laws to fill the gap
- fails to authorise transfers or mortgages of rural homestead rights, despite high vacancy rates
- fails to clarify 'fair and reasonable compensation' when property is expropriated for development
- needs broader discussion of 'residency rights' in relation to inheritance

2 renewing land use rights?

experts were divided on the technicalities of renewing land use rights when drafting; after its adoption, many felt the code lacked clear guidance on extensions, above all liability for fee payments



- when the limit on land use expires, there is no reason to require application or approval procedures
- land use rights should not be able to be renewed permanently. The renewal period should be as long as possible, such as 70 years. A minimum period should also be set, such as 30 years.
- for the sake of fairness, renewal cannot be completely free, but there should be no charge for land transfer fees, and the burden on the owners should be reduced, e.g. consider distinguishing between properties for living and investment



- there should be free and automatic renewal while the house is still safe to live in
- the state should own all land, rather than some owned by rural collectives
- the owner of the land right should be able to claim the restoration or repair of buildings on the ground when the use period expires
- the free use period should be based on either the usage right period or the designed use period of the original building, whichever is longer
- the code will help to resolve disputes over the period of construction land use rights



- urban residents in China usually live in apartments, so home ownership is more important and relevant than land use rights
- state-operated land should not be understood as the state's own private land
- inconsistencies in land use periods in different areas exist and this should be resolved
- the code is incomplete on this issue, requires further legislation or policy by State Council

2 property use rights?

experts were generally agreed on dividing the rural land use right into three to create a distinct management right; right of residence, however, was the topic of heated debate, with commentators holding different views on how to balance competing entitlements of homeowners and residents



- separate the legal concept of land management rights from ownership and contract rights
- provide more detail on how management rights may be transferred and mortgaged
- distinguish between short and long-term land management rights, categorising the former as obligations and the latter as property rights
- set terms of compensation for management right holders when land is expropriated



- usufruct rights should be restricted to immovable assets
- pawning rights (right to use as collateral) and land management rights should be part of usufruct rights
- make land management rights effective upon registration
- set conditions for giving up or revoking land management rights



- residency rights do not differ in essence from property use rights and should not have been included in the code
- clarify the nature of land contract rights and land management rights as means to realise rural land ownership instead of property rights
- create a unified easement system (right to cross or use someone's land for a specific purpose) that applies to land as well as properties on the land to better realise their potential economic value

2 whither guarantees?

questions remain for some regarding guarantees; solutions, not least for pawning rights, remain contentious, as they have been throughout China's legal history



- create a unified registration system for moveable assets pledged as security
- create sales pledges and pawning rights
- need to recognise proprietary security rights
- improve security rights transfer laws to guarantee the interests of rights holders



- allow transfer of guarantees and business pledges
- extend the scope of guarantees to all properties and rights with economic value and transferability, including collective land use rights



- protect the indivisibility of security rights
- allow privately funded schools and hospitals to serve as collateral
- extend security rights to accessions; add rules on shared security rights
- clarify that recourse rights for security rights owners is an obligation

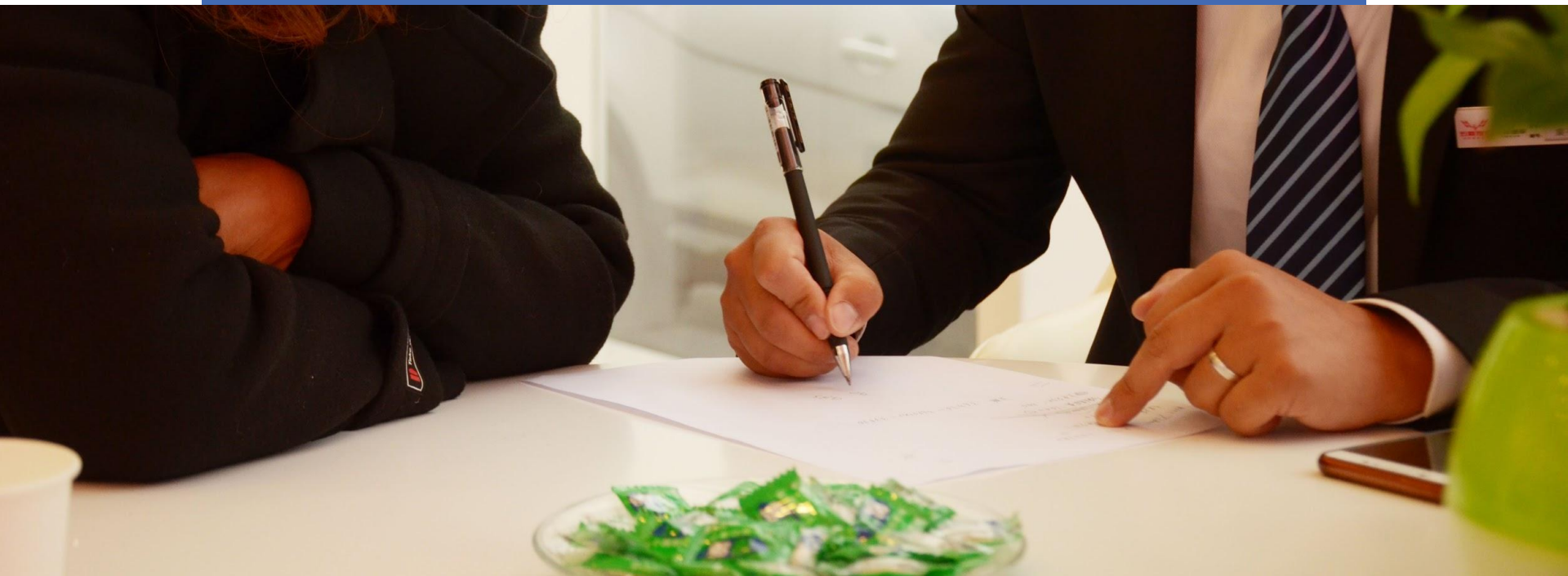
2 'property rights' rules vs. interests

deeper reform has run aground on ill-defined property rights. Remedies have long been pledged, but conflicting material and ideological interests are too intertwined to progress easily

- the state preserves collective land ownership as a safety net, and repository of land for agricultural use, while also freeing underused rural land for more lucrative purposes
- changes in this chapter are mainly incremental, but are expanded on in the 2019 revised *Land Management Law*
- pilot practices have been formalised in the new Law or Code but major reform remains. On the agenda is marketising rural collective construction land, integrating rural land planning into broader regional development agenda and approving rural land for industrial and commercial use
- exact terms of reform will determine who reaps profits of rural development: townships or cities



land ownership is especially contentious often involving conflicts of interest among multiple parties



3 contracts

3 'contracts' snapshot

content

- 3 sections, 29 chapters comprising 526 articles
- describes rights and obligations for different types of contracts and agreements
- sections on: general principles on contracts and obligations which introduce governing principles for all stages of transactions; typical contracts; contract-like agreements

replaces

- *1999 Contract Law*

debate

- generated little debate
- updates are widely-supported changes to the 1999 law

pandemic-related

- adds an obligation to cooperate with state purchase orders and other mandatory assignments issued for emergency rescue and disaster relief, epidemic prevention/control and other reasons
- adds principles for re-negotiating or terminating contracts when circumstances change (e.g. the pandemic)

3 'contracts' legislative timeline

May 2020	NPC approves Contract as a part of the <i>Civil Code</i>
Dec 2018	NPC Standing Committee reviews second draft of Contract
Aug 2018	NPC Standing Committee reviews first draft of Contract
Aug 2018	NPC Standing Committee approves <i>E-commerce Law</i> an important step in establishing online consumer rights; controversy and disagreement throughout drafting over collection and use of personal information



the code adds provisions to regulate increasingly commonly-used electronic contracts

3 'contracts' legislative timeline

2008

Labour Contract Law

aimed to protect the worker in labour disputes, and to arrest informalisation of the labour market; provisions included 30-day written notice of dismissal, severance pay and social insurance benefits

1999

Contract Law

established equality of parties in contracts, aimed to maintain socio-economic order and promote 'socialist modernisation'; instrumental in China's bid to join the WTO; replaced three previous laws with a unified law for all contracts, including between individuals

1987

1985

1982

1987 Technology Contract Law

1985 Foreign-related Economic Contract Law

1982 Economic Contract Law

introduced to promote economic growth and foreign investment during the first decade of reform and opening



the Contracts part offers small steps to protect ordinary consumers dealing with powerful players such as utilities and property managers

3 what's new in 'contracts'

e-contracts

- provisions added to bring the old contract law into line with the times
 - online shopping contracts now deemed effective when the order is made (Art. 491)
 - clarifies how the service or delivery time of a contract is to be determined (Art. 512)

types of typical contracts

- adds four new typical contracts
 - guarantee contracts (Chapter 13)
 - factoring contracts (Chapter 16)
 - property service contracts (Chapter 24) - notes property service enterprises cannot cut off basic services to ensure fees are paid
 - partnership contracts (Chapter 27)

quasi-contracts

- introduces a new chapter listing two types of quasi-contract (an obligation of one party to another that operates like a contract)
 - *gestio negotiorum* (Chapter 28) - where one party manages the affairs of another for their benefit without a contract
 - unjust enrichment (Chapter 29) - where a beneficiary gains unjust benefits, the party suffering losses may ~~back~~ reclaim the benefits

strengthens protections for weaker parties

- expands requirements and clarifies obligations of providers regarding standard clauses that notify customers of the contract they are entering into and clarifies customers' right to claim these clauses invalid if they are not reasonably notified or explained (Art. 496)
- regulates clauses which unreasonably exempt providers of liability (Art. 497)
- strengthen protections for consumers when dealing with public utilities such as water, gas or electricity providers (Art. 648)



3 what's new in 'contracts'

usury is directly prohibited for the first time (Art. 680)

updated provisions on passenger transport contracts: transport operators cannot double charge passengers who lose their ticket (Art. 815); transport carriers are to honour the ticket information, and provide compensation for missed flights or other costs to passengers in the case of delays (Art. 820)

incorporates technology licensing contracts (allowing another to use your tech IP) into technology contracts (Chapter 20 Section 3)

clarifies that the loan contract is 'established' rather than 'effective' at the time the loan is given by the lender (Art. 679)

added a change of circumstance clause allowing parties renegotiate or terminate the contract (Art. 533)

adds provisions that increase the rights of tenants, including giving current tenants priority to extend their lease then the rental period lapses or purchase the property, and relaxing conditions for terminating a contract (Art. 724, 726, 734)

3 impact of 'contracts' chapter

- without a separate commercial code, the *Civil Code* must regulate both civil and commercial law. The Contracts Chapter more clearly differentiates between civil and commercial contracts than previous laws, providing better contractual regulation to meet the needs of both business and civil life
- the new Contracts Chapter aims for greater respect for the will of those entering into an agreement: many provisions allow for the agreements of parties to be prioritised
- new regulations protecting tenants responds to the state's call for equal rights for housing tenants and owners
- better regulation on contracts: improved and clarified many aspects, such as conclusion, validity, performance and termination of contracts



new provisions bar transport operators from double charging those who lose their ticket if booked under their name

3 changes in 'contracts'

increased contract efficacy

- defined terms and standardised contracts encourages using the latter in commercial and private dealings, replacing informal agreements based on personal relations
- facilitates resolving disputes, as people deal more with strangers, e.g. online
- better regulates lending, including non-bank lending
- better regulates behaviour of private property management companies, the frequent target of homeowner protests

protects the consumer

- complements *E-commerce Law* and *Cybersecurity Law*, ensuring online vendors and buyers are all aware that clicks can be contracts
- consumer prioritised in both real world and electronic contracts, reflecting government concerns about social friction
- new regulations protecting tenant rights could encourage longer-term tenancy
- sellers are to bear the risk in the product trial period rather than consumers in cases of experiential consumption (where products are given to consumers to try for free or at very low prices, only expecting them to buy the product if they are satisfied) (Art. 637-640)

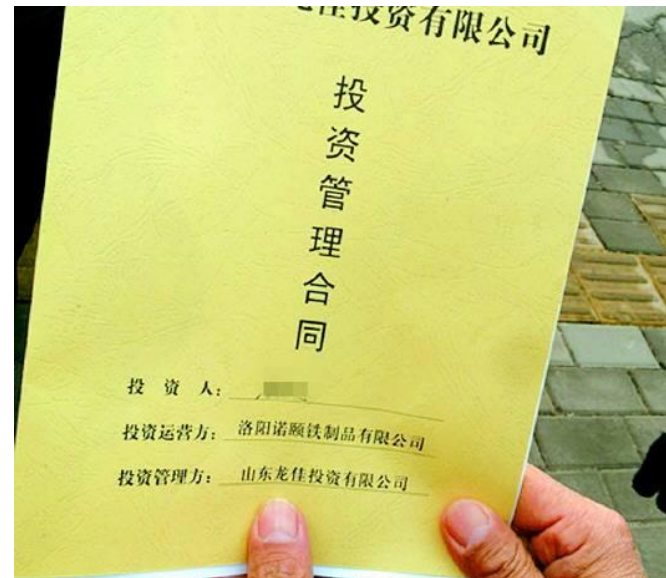
future thinking

- the types of civil and commercial contracts are more open, leaving space for further legislation and the application of existing laws
- addresses some aspects of e-contracts and other internet-related contracts, but relies on further clarification in separate laws

3 unresolved issues in ‘contracts’

the Chapter offers cautious, incremental change with many questions remaining unanswered

- many common contracts (e.g. business transfer, re-lending, debt with equity performance, deficiency compensation, fundraising and investment contracts) are not clearly regulated. This may be due to limited research, or because a consensus between legislators could not be reached, and some contracts are loosely regulated because of their complexity, awaiting future separate regulations
- many terms are left unclear/undefined, risking their enforceability; e.g. there is no guidance on what is a ‘reasonable period’ for the landlord to request the tenant pay rent owed
- amending regulations brings new risk, the impact of which remains to be seen, i.e. for non-scheduled contracts with ongoing payments, parties can terminate the contract at any time



many contracts used in daily life have not been regulated

3 change of circumstance?

with abundant legal challenges to contracts in the wake of the pandemic, 'change of circumstance' provisions are widely supported, yet many point out their vagueness when trying to apply them; the comparison to *force majeure* principles in international use is striking



- change of circumstance principle has legislative legitimacy because it will affect all of society, rather than a specific subject
- principle may be easily abused. To avoid this, could make it necessary for parties to gain court approval
- parties should be bound by an obligation to continue negotiations



- *force majeure* and change of circumstance principles are different, but have certain commonalities: they both regulate risks that are out of the control of all parties
- the main difference lies in the extent of the barriers that limit contract fulfillment: *force majeure* has constituted inability to perform (in a broad sense); compulsory performance during a change of circumstances will result in obvious unfairness or failure to achieve the purpose of the contract



- *force majeure* is the cause and is a more legitimate legal principle; change of circumstance is just one of its consequences, others are, legal rescission, liability for breach of contract, risk burden rule, and suspension of limitation of action

3 integrating civil and commercial contracts?

integrating civil and commercial law is an old puzzle; they are generally legislated together in China, yet commercial issues are, many argue, left unresolved under the code's 'civil-leaning' contracts



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- as Chinese law combines civil and commercial law, the code must provide for both. *Civil Code* should deal only with general issues in commercial law, special commercial issues should be in separate law that takes precedence over the general rules of the code
- lacks transaction regulations related to business, e.g. sales contracts should distinguish between the sale of goods, rights and businesses
- many business-related issues are not clarified in the code
- the code is sometimes 'insufficiently commercial': overly restricts parties from setting interest rates in commercial transactions; default priority to current tenants in commercial leases disregards the commercial value of priority rights
- sometimes is 'overly commercial': non-commercial buyers should not have the same obligations as commercial buyers when products are defective; providing non-commercial intermediary services such as matchmaking, should not enjoy the same right to compensation as being a commercial middleman
- contract law, as the law of transactions, typically focuses on commercial issues. Yet the code tries too hard to be objective and not differentiate between civil and commercial rules. This results in an unclear system of rules, and relies on the interpretation of judges
- existing regulations ignore non-consumer transactions and sacrifice protections for debtors in civilian transactions (in sales contracts, most regulations are for commercial transactions such as buyer's product inspection responsibility)

3 regulating online contracts?

strengthening legislation on electronic contracts is widely called for; the new code is considered to favour consumers, but better protection of personal data (see 'personality rights' chapter) is needed



- establish clear guidelines for when parties have entered into and carried out a contract in the online space, to facilitate e-commerce



- specifically address internet service contracts in the *Civil Code* as they are a frequently used kind of contract
- recognise 'digital humanism' as the right of individuals to fully know how their personal data is used by third parties



- should address internet service contracts and coordinate with *Cybersecurity Law*
- true identities of people involved in virtual contracts should be required
- Code does take into account substantial imbalance between consumers and companies
- add greater protections for consumer data when establishing, fulfilling and terminating internet service contracts



4 personality rights

4 'personality rights' snapshot

content

- 6 chapters comprising 51 articles
- describes basic and fundamental rights for civil entities
- chapters on general rights; rights to life, body and health; name and title; image; reputation; privacy

replaces

- the only part of the code with no specific pre-existing legislation
- some provisions are based on judicial interpretations and administrative regulations, others are drawn from existing law

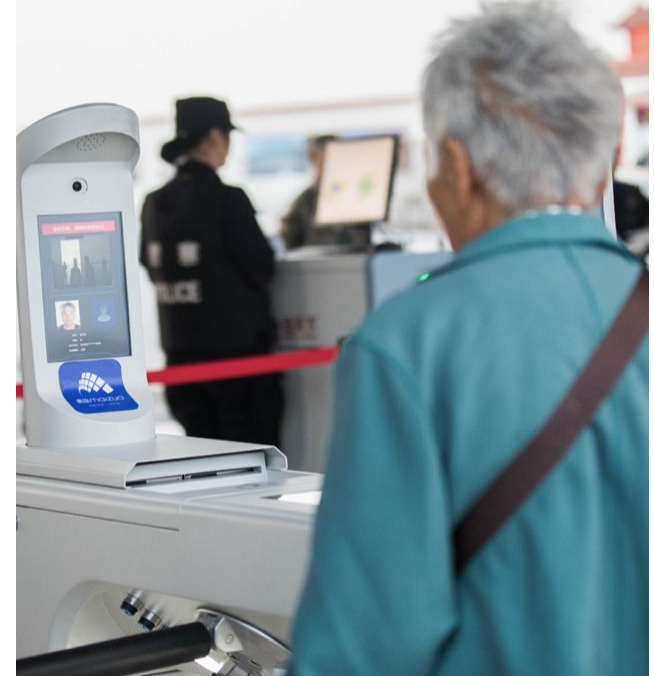
debate

- whether a personality rights part should be included
- how personal information and privacy protections should be legislated
- regulations on genetic research and human tissue/organs
- sexual harassment provisions

pandemic-related

- inclusion of health information as part of protected personal information

4 'personality rights' legislative timeline



facial recognition technology is now widely used in public places, but its use is not specifically regulated

4 'personality rights' legislative timeline

Jul
1998

Supreme People's Court updates and expands its guidance on reputational rights

Aug
1993

Supreme People's Court provides lower courts with detailed instructions on handling reputational rights claims

Jan
1988

Supreme People's Court judicial interpretation on Several Issues Concerning the Implementation of the *General Principles of the Civil Law* goes a long way to unpack the brief provisions on personal rights

Apr
1986

NPC approves the *General Principles of the Civil Law*, which lists seven 'personal rights' including rights to life, health, name, image, reputation, honour and marriage autonomy



the code introduces privacy rights, including provisions on protection of personal information

4 ‘personality rights’, or not?

fierce debate took place during the legislative process on whether there should be an independent chapter on personality rights—a world first

supporters (mostly the legislature)

- deemed key to protecting people’s most basic rights
- deemed to exemplify a ‘people-centred’ approach (where other codes are deemed fixated on property)
- as nations develop, their laws become more ‘about people’, less about property
- a major innovation in an era where one’s data may be of more value than one’s property

opponents (mostly legal scholars)

- Personality Rights part ruins the structural cohesion of the code
- the provisions should be spread out among other parts rather than having their own section
- inconsistent with China’s existing legal framework



Wang Yi

王轶

Renmin University

‘The personality rights section is a major development and innovation in our country’s civil legislation and civil code system. It is a deepening of the civil law protection of human dignity and is conducive to promoting the judicial protection of personality rights’

4 general rights section

includes five tiers of specific rights: life, body, health; name and title; image; reputation; privacy

also contains 'other rights' based on personal freedom and dignity

personality rights cannot be waived, transferred or inherited, but can permit your name or portrait to be used by others (Art. 992)

the personality rights of the deceased are protected (Art. 994)

statute of limitations does not apply to breaches of personality rights (Art. 995)

can apply for an injunction to limit someone from breaching personality rights (Art. 997)

Zhou Youjun 周友军 Chinese Law Society *Civil Code* Special Project Group on general personality rights

“other rights” allows for general protection of personality rights - demonstrating a great deal of respect for personal dignity and allowing the law to adapt to future developments’



‘consistent with Chinese legal history of protecting the rights of the deceased’

‘resolves inconsistencies in judicial application of the statute of limitations in personality rights cases’

‘not common in Chinese law, demonstrates the importance placed on personality rights’

4 what's new in 'personality rights'

right to life, body and health

- right to donate organs, cannot be forced (Art. 1006)
- cannot buy or sell human tissue (Art. 1007)
- limits scientific research on human tissue (Art. 1009)
- added sexual harassment regulations; final Code adds provisions that text or images may constitute sexual harassment, in addition to words or conduct (Art. 1010)

right to name and title

- children must take either of their parents names, with some exceptions; these exceptions in the final Code resolve debate over whether a minor's name could be changed after divorce (Art. 1015)
- pen/online/stage names are protected in some cases (Art. 1017)

right to image

- right to one's own image (Art. 1018): protections extend to the use of deep fakes
- images allowed to be used for public education campaigns and in reporting where unavoidable (Art. 1020)

right to reputation

- right to protection of reputation (Art. 1024)
- new provisions complicate the balance between journalistic freedoms and reputation protection, but regulation reversing the burden of proof for journalists in these cases was removed

right to privacy

- defines privacy as 'ones peace of private life, and private space, activities and information that they do not want shared' (Art. 1032)
- prohibits spam calls (Art. 1033)
- protects personal information; including electronic data (Art. 1034)
- personal information cannot be provided to a third party without consent (Art. 1038)

4 impact of 'personality rights' chapter

- including a chapter on personality rights, asserts their importance, improves consistency and provides a necessary foundation for more detailed legislation in the future
- the Personality Rights Chapter has a function similar to that of a the Constitution. As personality rights are unable to be interpreted from the Constitution, this chapter makes up for gaps in legal protection and allows for personality rights to be protected in courts
- the article on sexual harassment—a problem highlighted in China by the #MeToo movement—may make it easier for victims to get into court
- provisions on personal information protection lay the legal ground for the rights of personal information owners, rather than those of information collectors, as is the focus of *Personal Protection and Information Law*, *Cybersecurity Law* and *E-commerce Law*



new provisions increase employer liability for sexual harassment in the workplace, responding to an issue that has been increasingly highlighted in society

4 unresolved 'personality rights' issues

- personal information ownership is not defined as a right. Victims of personal information breaches are not guaranteed the right to seek compensation
- no checks are placed on the state collecting and using personal information: a prominent point of discussion given the large amount of health information collected as part of the epidemic
- research institutions conducting human experiments are forbidden to offer payments to subjects, but can offer compensation: a distinction that is not defined clearly and could lead to disguised payments
- surrogacy, euthanasia and ownership of tissues, organs and the bodies of stillborn foetuses are not mentioned
- joint liability for sexual harassment does not extend beyond employers, does not include schools or other welfare organisations
- a proposed 'freedoms' section has been left out of the chapter: it outlined rights such as freedom in marriage, freedom of movement and freedom to not be illegally detained

4 personal information and privacy?

welcome additions, personal data and privacy provisions protect citizens in the digital era; commentators fault imbalances between privacy (given as a right) and personal information (only generally protected) and call for clarity surrounding their relationship in cyberspace



- the code should clearly state when personal information may be collected for public interest purposes, and offer clear definitions for 'public interest'
- protection of private information should be strengthened by writing it as a specific right, as with privacy. This would provide it a higher legal status for application in other laws
- the code does not clarify the difference between private information and public information which may result in very different interpretations



- praises that the code restricts the use of personal information except where individuals cannot be identified, allowing agencies to collect group data as necessary
- concerned that privacy protection in the code is still largely limited to the physical space, and does not deal comprehensively with cyber-privacy
- proposed to increase online accounts and other such personal information to respond to people's current privacy concerns and legal needs



- separating privacy and personal information is appropriate given the digital age (previously, personal information has been regarded as part of privacy)
- however, the code lacks definition and scope around personal information and to what extent it intersects with privacy. This can perhaps be qualified in subsequent laws or judicial interpretations
- the code attempts to balance personal information protection and the public interest (i.e. collecting health codes in the pandemic), but this also needs more clarification

4 organ donations, genetic research and euthanasia?

provisions on genetic research and organ donations (previously unregulated) are generally applauded, experts however deem the rules insufficiently comprehensive; a key topic, euthanasia is ignored



Liu Jingwei

柳经纬

China University of
Political Science
and Law

- human genetic research should be legislated for in a separate law, not as part of the *Civil Code*
- the code does not have the capacity to fully legislate for these complex issues



Yang Lixin

杨立新

Renmin University

- simultaneously encourages development of new medical technology and increases protection of personality rights
- has successfully expanded the scope of medical testing allowed, but tightened regulations on how testing is to be carried out
- *Civil Code* gives principles on these issues but they should be followed up with separate law



Shi Jiayou

石佳友

Renmin University

- dodges issues of human foetuses: does not assign a clear legal status to unborn human foetus
- should set a time limit such as five years for storing human foetuses; forbid trading, discarding or burning them
- should allow terminally ill patients to reject treatments intended to prolong life

4 sexual harassment?

provisions deemed inadequate by women's rights advocates despite favourable expert ratings; the focus on workplaces, above all, overlooks other arenas for harassment, notably on campuses



- the code greatly improves on previous regulations on sexual harassment
- sexual harassment provisions focus on employers because research shows the workplace power dynamics are a significant factor



- holding employers jointly responsible for sexual harassment of employees is positive, as they have failed in their duty to provide a safe workplace, but should be in *Labour Law* rather than the code
- the code should focus on a general prohibition and thus this liability should be extended to include other organisations including education or welfare institutions: on-campus sexual harassment has been a significant issue in recent years
- also should clearly stipulate legal consequences



- the code does not address the biggest problem in civil prosecutions on sexual harassment: obtaining evidence
- victims who make public accusations on social platforms may now also be held liable for 'infringing reputation rights'
- to further prevent and deal with sexual harassment and protect the rights and interests of victims, the allocation of burden of proof needs to be adjusted



5 marriage and family

5 'marriage and family' snapshot

content

- 5 chapters comprising 79 articles
- regulates civil behaviour and relationships in marriage and family
- sections on general principles, family, marriage, family relations, divorce, adoption

replaces

- *2001 Marriage Law*
- *1992 Adoption Law*

debate

- same-sex marriage/cohabitation rights
- 'common debt' rules clarifying liabilities for debt in a marriage
- 30 day 'cooling off' period for divorce

pandemic-related

- no pandemic-related changes

5 'marriage and family' legislative timeline

May
2020

NPC approves Marriage and Family as a part of the *Civil Code*

Oct
2019

NPC Standing Committee reviews third draft of Marriage and Family

Jun
2019

NPC Standing Committee reviews second draft of Marriage and Family

Aug
2018

NPC Standing Committee reviews first draft of Marriage and Family

Jan
2018

SPC interpretation on joint marital debt

joint debts defined as those established under the signature of both husband and wife, or a joint declaration of their will



marriage of Yi couple, an ethnic minority from Yunnan

5 'marriage and family' legislative timeline

Jan
2016

amendment to *Population and Family Planning Law*

One Child Policy relaxed, allowing couples to have two children

2001

revised *Marriage Law*

included provisions on domestic violence, bigamy and matrimonial property; previously, domestic violence and extramarital affairs were considered outside the remit of the law

1998

revised *Adoption Law*

did not recognise 'fact adoption' and made it clear that the adoption relationship is established from the date of registration

1991

Adoption Law

outlines the conditions and legal responsibilities of adoption



the code adds regulations to protect the welfare of children, including requiring that potential adopters have no criminal history

5 'marriage and family' legislative timeline

1980

Second Marriage Law

Introduced provisions for divorce, applicable when 'emotions or mutual affections were broken'. Mediation through the work unit prior to divorce was encouraged. Promoted the One Child Policy

1950

New Marriage Law

Established the principle of monogamy and attempted to increase gender equality. Stipulated that marriage was a matter between two individuals, not two families



the Marriage and Family chapter better protects the interests of both parties in the marriage relationship

5 what's new in 'marriage and family'

general principles

- removes family planning requirement
- clarifies relatives (Art. 1045)
- again sidesteps LGBTQ and cohabiting couples

marriage

- marriage is effective when the marriage registration is complete (previously when the marriage certificate was received) (Art. 1049)
- adds a requirement to notify the other party of any significant health issues before the marriage (but removes regulations barring people with major illnesses from getting married) (Art. 1053)
- provisions on forced marriage allow more time for victims to revoke the marriage (Art. 1052)
- allows for remedies of no-fault parties in cases where marriages are invalid or revoked (Art. 1054)

family relations

- clarifies liabilities of spouses in cases of common debt: debt incurred for the needs of the family's daily life in the marriage is shared, debt exceeding this is not (Art. 1064)

divorce

- adds a 30 day 'cooling-off' period for divorces; either party can withdraw the divorce application within 30 days; both parties must personally apply for the divorce certificate within another 30 days or the application will be considered withdrawn (Art. 1077)
- previously courts were required to take into account the rights and interests of women and children when dividing assets after a divorce, now they are also to consider the interests of the no-fault party (Art. 1087)

adoption

- adds requirement that adopters must not have any previous criminal convictions to adopt (Art. 1098)

5 'modern' vs. 'conservative'

substantive division between these contrasting visions of the code

what modernisers wanted

- redefine 'family' to include cohabitating couples
- extend right to bear children to single women
- regulate assisted reproduction technology and surrogacy
- groundwork for a future specialised law on civil partnerships or marriage for same-sex couples

what conservatives wanted

- maintain 'traditional' family household
- deny cohabiting couples recognition as family
- discourage 'rash' divorce via mandatory 'cooling off' during divorce registration

the code sidesteps radical proposals of both modernisers and conservatives; but traditional (quasi-patriarchal) values have staved off erosion by alternatives

- marriage emerges as a core value; lack of legal protection for unmarried cohabitating couples and lack of recognition of a single women's right to bear or raise a child aimed at creating pressure to marry
- traditional families; key legal definition of 'family' and 'family members' has not been extended to reflect new kinds of families; same-sex marriage and cohabitation not mentioned
- surrogacy is not mentioned
- provisions on domestic violence are not extended to cohabiting unmarried couples, LGBTQ couples or other housemates; does not extend 2016 *Anti-domestic Violence Law*

5 import of changes to ‘marriage and family’

divorce cooling off period

- 30-day divorce cooling-off was passionately debated
- it was argued to minimise impulsive/hasty divorce and increase stability in marriages and society
- on release of the final draft, an NPC Law Committee confirmed ‘cooling-off’ will not apply to divorce due to domestic violence, but opponents protest the impact of emotional abuse and weakened protection for women and children

marriage equality

- hundreds of thousands of comments were submitted advocating same-sex marriage, particularly after its legalisation in Taiwan in May 2019
- NPC Law Committee spokesman stated that marriage between a man and a woman suits China’s national conditions and historical and cultural traditions, and the rules will not change
- many supporters express concern that LGBTQ rights are not adequately protected without a mention in the code

removing family planning provisions

- the unsurprising removal of family planning provisions reflects the state’s recent pro-natalist shift, boosting the future labour force

common debt

- many widowed, divorced or abandoned spouses complained about being held liable for debts of their previous partners
- a judicial interpretation issued in January 2018 trialed new provisions on common debt; these principles were a late addition to the code

5 principles of marriage chapter?

speaking to values around the family, this chapter was hotly debated; commentary diverged above all on elementary structures in family law: married couples or households, and what the relationship between these should be



- the code reflects the state's responsibility to protect family values
- should supplement patrimony system with state support
- show marriage as a public matter central to the well-being of the nation



- make the married couple the basic unit of family law, rather than the household
- recast the family as the support structure for the marriage
- revise the chapter frequently to ensure that its basic principles remain in line with contemporary developments in society



- the household should be the basic unit of family law
- no additional laws protecting the rights of women, minors or the elderly are needed
- should not recognise cohabiting couples
- strengthen patrimony to ensure social stability despite rural-urban migration
- minimise the role of the state in caring for the growing elderly population, as it is part of Chinese tradition that this is done by the family

5 defining the family?

public and expert opinion diverged dramatically on several aspects of this topic: unmarried and LGBTQ cohabiting couples, adult children, stepchildren and elderly parents



- define the family as the civil entity set up for long-term cohabitation with shared assets
- the family should be the unit of *hukou* (household registration), with members sharing a single *hukou*
- a family debt obligation extends to its members



- family members who have reached adulthood can be removed from the family
 - their continued membership can be determined by a family meeting
- the family shares common property
 - should the family dissolve, this property should be divided according to each family member's contribution to the common property



- define family members through the kinship system
- for situations such as the relationship between step-parent and child, after three years of dependency they should be considered family
- stipulate that kinship obligations created through marriage cease if the marriage comes to an end, unless the parties involved decide otherwise

5 responding to changes in society?

appearing conservative in response to societal changes, the code is applauded by some as reflecting 'authentic' social values; others object to 'outdated' (i.e. patriarchal) rulings, issues left untouched and poor protection of key groups



Yang Lixin
杨立新
Renmin University

- recognise the capacity of over-18s to form same-sex households if they wish, with potential for allowing civil partnerships in the future
- confirm that if a married couple has a child through IVF or artificial insemination, then the law views that child as the child of a marriage



Xu Diyu
徐涤宇
Hunan University

- recognise unmarried cohabiting couples and their children so as to better protect the rights of minors and allow division of property when these couples end their relationship
- does not respond to new social problems, including children left behind when their parents migrate to urban areas for work; or that of the elderly who live alone
- reduce minimum age for marriage (currently 20 for women, 22 for men)
- appropriately relax protections for military marriages (members of the military cannot be divorced against their will unless seriously at fault)



Xia Yinlan
夏吟兰
China University of
Political Science
and Law

- should be based on clear principles rather than specific rules, so that the law can be interpreted on a case-by-case basis by judges regardless of regional differences in marriage practices
- needs legislation to protect the no-fault party in the breakdown of a cohabiting relationship
- separate adoption and guardianship in legislation

5 protections for women and children?

deemed positive moves for women and children, provisions on common debt and child-raising as a joint parental duty of care are also critiqued as chances missed to reinforce protection for women



- the rights and needs of children (less able to represent themselves in civil matters) should be considered apart from those of women and the elderly within the code
- the rights of children should take priority over rights of adults when the two conflict
- the shared property of a married couple should have special legal status; it should be clear what constitutes personal property and what is joint property



- the code does not do enough to protect women's rights
- should recognise the contribution of women to the family
- should consider housework an economic activity
- needs to introduce legislation that supports an increase in the level of women's employment
- extend the right to bear children to unmarried women



- clear provisions on common debt are a positive move to protect women and children
- could go further to require the joint signature of both the husband and wife on joint debts
- make clear the responsibilities of the married couple as a unit and as individuals



6 inheritance

6 'inheritance' snapshot

content

- 4 chapters comprising 45 articles
- describes rights to inherit private and personal property
- chapters on general principles, succession, wills, bequests

debate

- minimal debate: only small changes have been made to bring rules up to date

replaces

- *1985 Inheritance Law*

pandemic-related

- no pandemic-related changes



6 'inheritance' legislative timeline

May
2020

NPC approves Inheritance as a part of the *Civil Code*

Jun
2019

NPC Standing Committee reviews second draft of Inheritance

Aug
2018

NPC Standing Committee reviews first draft of Inheritance

1985

Inheritance Law passed

served a planned economy where relatively few people wrote wills;
established equal rights of men and women to inherit



recording a will at Notary Office, Nanjing

6 what's new in 'inheritance'

greater scope of inheritance; now can inherit IP, including alipay accounts and bitcoin, etc.

wills can take more diverse forms, including being video-recorded or printed out and signed in the presence of a witness (Art.1137)

notarised wills are no longer favoured over non-notarised wills, making amendment simpler

introduces an 'administrator of the estate' and outlines their role and processes (Art.1145-1149)

executor must settle debts, burial expenses and any estate management costs out of the estate before distributing the estate to heirs (Art.1159)

if the deceased has not designated an executor, and the heirs do not select one, then all heirs must jointly act as executor (Art.1145)

natural persons can contract with non-heirs to provide lifetime support or burial services for someone (such as a spouse or parent) and this contract is binding on the estate (Art.1158)



6 changes to 'inheritance'

property rights strengthened

- standardises increasingly important inheritance and estate management rules as population ages
- strengthens rights of owners to dispose of their property
- in line with the Property Rights chapter (Article 59) allowing grant of lifetime residency to non-heirs of homeowners, disadvantaging heirs to estates

left for future discussion

- more radical proposals, e.g. letting family members inherit WeChat or other accounts, were omitted. Debate continues on viewing them as heritable property (they have features of (heritable) personality rights)
- these debates are likely to shape future amendments

discussion during drafting

There was consensus on the limitations of the existing 1985 *Inheritance Law*; what scholars wanted in the new draft was to

- update the inheritance system to complement a market economy with extensive private property
- reduce inheritance disputes and 'non-inherited' property going to the state
- expand the circle of family members entitled to inherit if there is no will or the named heirs have died
- ensure that the wishes of the deceased are respected
- standardise the process of will-writing so fewer wills are invalidated

6 updating inheritance?

a range of proposals surfaced on updating the inheritance system; some prominent ones were incorporated (e.g. allowing video-recorded wills), others remain topics for future legislation



Guo Mingrui
郭明瑞
Yintai University

- extend family members eligible to inherit to the fourth blood relative if there is no will or the named heirs have died
 - follow 'historical tradition' and 'custom', which recognise distant heirs
- reduce use of total deprivation of inheritance rights as penalty; replace with partial deprivation
- succession order of spouses should not be changed



Yang Lixin
杨立新
Renmin University

- create rules relating to wills that govern
 - appointment
 - validity and invalidity
 - notice and publication
- encourage the use of wills so inheritance through wills becomes the norm



Ma Xinyan
马新彦
Jilin University

- prioritise carrying out the will of the deceased
- create clearer provisions on the time of death and the order of succession, especially in cases where several family members are killed in the same event
- limit the presumption of 'downstream inheritance' from old to young
- coordinate with Property Chapter to allow co-ownership of inheritance between heirs

6 custom vs. innovation?

while not notably problematic, inheritance provisions were required to blend traditional and modernising legal approaches; deemed too conservation for those seeking to address realities such as rising divorce rates, others laud the growing scope (e.g., to IP and Alipay accounts) as betokening progress



Sun Kefeng

孙科峰
Zhejiang
University of
Technology

- should better consider the impact of the internet era on inheritance
- while mentions some areas of digital inheritance, does not address key issues such as the use of blockchains in wills and estates



Ma Xinyan

马新彦
Jilin University

- accommodate rising divorce rates
 - surviving spouses should be disinherited in cases of unfaithfulness, frequent domestic violence, living apart due to loss of affection or filing for divorce
- modify inheritance rights of widows and widowers
 - widows who remarry should not have limited inheritance rights
 - should automatically inherit the property shared during the life of the marriage; rights to other property should be stipulated in a separate agreement



Guo Mingrui

郭明瑞
Yintai University

- full respect needs to be given to custom and tradition
- ensure that widows and widowers are not the first order successors of their parents-in-law, following the traditional 'branch' system of inheritance
- more recognition should be given to the practice of gift giving



7 tort liability

7 'tort liability' snapshot

content

- 10 chapters comprising 95 articles
- protects the rights and interests of civil subjects and clarifies tort liability and consequences for its infringement
- chapters on general principles, damages (clarifying what constitutes loss and how to calculate damages); remaining chapters address different types of torts including medical malpractice, traffic accidents, ecological damage

replaces

- *2010 Tort Liability Law*

debate

- structure of 'tort liability' part
- whether the equal liability principle should be abolished
- extent of compensation for environmental pollution and ecological damage

pandemic-related

- inclusion of health information as part of protected personal information

7 'tort liability' legislative timeline

May
2020

NPC approves Tort Liability as a part of the *Civil Code*

Aug
2019

NPC Standing Committee reviews third draft of Tort Liability

Dec
2018

NPC Standing Committee reviews second draft of Tort Liability

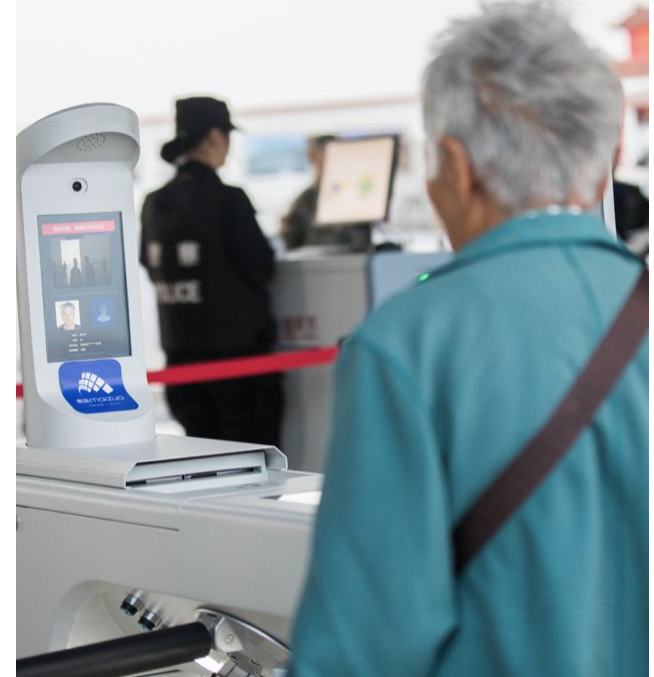
Aug
2018

NPC Standing Committee reviews first draft of Tort Liability

Jul
2010

Tort Liability Law adopted

increased rights for individuals to sue for mental distress, environmental damage and online defamation; right to claim potentially unlimited sums in corporate damage compensation



facial recognition technology is now widely used in public places, but its use is not specifically regulated

7 'tort liability' legislative timeline

May
2004

Supreme People's Court Interpretation on Application of Law in Adjudicating Cases of Personal Injuries adopted

laid down rules on employers' vicarious liability and concurrent torts

Mar
2001

Supreme People's Court Interpretation on the Determination of Damages for Pain and Suffering Arising from Torts

recognised compensation for mental distress

Jan
1986

General Principles of the Civil Law adopted

established the legal rules governing tortious actions



the Marriage and Family part better protects the interests of both parties in the marriage relationship

7 what's new in 'tort liability': general rights

alters basic tort liability principle: one party's fault must, to bear liability, have caused harm as a result of breaching another's civil interests and rights (Art.1165) (previously applied only in case of a breach)

there are now four elements to establish fault liability: fault, infringement, damage and causality. Previous *Tort Liability Law* only listed the first two. The *Civil Code* sets up a more complete fault liability principle here and makes it consistent with the provisions on no-fault liability

adds that the injured party has an obligation to take measures to prevent further damage (Art.1173)

this change is to avoid injured parties or their family members increasing damage to gain greater compensation

clarifies that participants assume certain risks when voluntarily undertaking sports and cultural activities (Art.1176)

corrects the previously excessive liability of sports or cultural organisation, hindering sports development in practice. It is restricted **to** sports or cultural activities, however, to ensure event organisers still fulfill their security obligations

introduces a 'self-help' doctrine: victims may take appropriate measures to protect their lawful rights, e.g., seizing another's property while waiting for the police (Art.1177)

aimed at preventing dine-and-dash or other similar behaviour; self help measures must be reasonable and can only be used to protect legitimate rights and interests in an emergency where public relief cannot be obtained quickly

7 what's new in 'tort liability': key issues

medical liability

- new rules on doctors' responsibility to keep patients' information confidential (Art. 1034,1226)

motor vehicle accident liability

- if non-commercial vehicles carrying non-paying passengers are involved in an accident, the driver assumes reduced liability, except if it was intentional or due to gross negligence (Art. 1217)

special provisions on liability

- supplements existing 'safe harbour' regulations for ISPs; extends provisions on liability for notifications, counter notifications and wrong notifications (Art. 1195,1196)

product liability

- sales of products found defective are to be suspended, and the recall fee borne by producers and sellers (Art. 1206)

compensation for damage

- can claim mental harm for damage to objects of significance (Art. 1183)
- greater compensation for IPR infringement (Art. 1185)

motor vehicle accident liability

- prohibits throwing objects from buildings
- property management teams are to take preventative safety measures to ensure protection from falling objects
- states that all residents are liable if a responsible party cannot be identified, but offers relief for non-labile residents (Art. 1254)

7 import of changes to ‘tort liability’

- actively responds to social issues: promotes accountability for ecological damage, improves regulations on objects falling/thrown from buildings, allows greater compensation for ISP infringement and clarifies liabilities in non-commercial carpooling
- absorbs existing legislative and judicial experience: no drastic changes in rules
- expands accountability for environmental damage
- supplements administrative penalties with expanded civil liability for damage
- paves the way for setting ecological damage reparation and compensation rules
- empowers state agencies and social organisations to bring public interest environmental lawsuits, allowing them to assess damage from environmental incidents, and take preventative and restorative measures, with the violator now liable for the costs
- future thinking: together with the *E-commerce Law*, this chapter clarifies the responsibility for internet service providers in online tort cases; by detailing the responsibilities and liabilities of claimants in tort actions, it helps to provide clearer guidance for internet service providers and for courts

7 unresolved 'tort liability' issues

- no provision for the right of close relatives to file compensation for mental damage: implies lawful rights and interests of victims who have died due to infringement cannot be protected
- no exemption clause for product producers and sellers: punitive damages protect the rights and interests of consumers, but excessive blows can easily dishearten producers and cause production to shrink
- lacks regulation on liability where cosmetic procedures have unwanted or dangerous results
- in emergencies, it is not clear whether medical institutions have a right to decide on medical measures if the patient and close relatives cannot reach an agreement
- medical institutions and their staff are not prohibited from over-diagnosing and over-prescribing unnecessary drugs or other examinations



botched cosmetic procedures are one of the social issues not legislated for in the Tort Liability Chapter

7 equal liability?

liability for damage due to falling objects was of great public concern, but effectively inverting the burden of proof, the solution—all are liable unless able to prove otherwise—raised expert alarm bells; other situations in which neither party is at fault are equally problematic



- the legislation on objects being thrown or falling from high buildings should be deleted. Inverting the burden of proof, it implies presumption of fault for residents in a building, and greater responsibility of the innocent
- this is inconsistent with modern rule of law, sacrificing the rights of higher-floor residents to protecting the rights of plaintiffs



- to ensure fairness and other principles, abolish equal responsibility in situations where neither the victim nor the perpetrator are at fault, e.g. in cases of one child unintentionally harming another



- security obligations and equal liability can be abused by judges
- equal liability is a statutory compensation obligation
- refine regulations on equal liability, safety guarantee obligations and fault offset
- government rescue fund should compensate for damages caused by objects falling from high buildings where the persona at fault cannot be identified

7 environmental pollution and ecological damage?

in line with the code's new 'green principle', attention to environmental and ecological damage won praise, not least for attaching penalties for those responsible; details of the penalties are yet to emerge, gaps left for future legislation to fill



Yang Lixin
杨立新
Renmin University

- negligence in protecting the ecological environment resulting in damage should not be ignored
- for punitive compensation based on serious damage to ecological environment, the penalty should be an administrative fine, not giving damage compensation to victims (private law relief)
- should distinguish between intentional and gross negligence, penalties for intentional torts should be twice that of gross negligence



Lv Zhongmei
吕忠梅
Tsinghua University

- expand the definition of environmental tortious actions from merely 'environmental pollution' to include 'ecological damage'
- allow tort claims to be filed in the 'public interest' as well as in the interest of specifically harmed parties; if the violator's assets are not sufficient to cover public interest and private claims, prioritise private claims



Wang Yi
王轶
Renmin University

- change wording from 'intentionally damaging ecology and environment' to 'knowingly causing serious damage' and set punitive damages at less than twice the loss suffered
- those that fail to take corresponding remedial measures and cause damage to others should be punished at less than twice the loss suffered

next steps

A milestone in many respects, making distinct progress and wrapping up decades of legislation, the PRC *Civil Code* is decidedly cautious, often sidestepping reform. With many questions still unanswered, it will be up to other standalone laws or accompanying interpretations to push civil law boundaries.

Now adopted and effective 1 January 2021, focus of the code shifts to promotion and enactment. [Various training methods](#) are being adopted for officials and public. Measures are also in place to re-gear regulations in a range of areas, including (click links for more information)

- [IP protection](#)
- [GI regulations](#)
- [sexual assault](#)
- [right of residence](#)
- [personal information protection](#)
- [other national and local regulations](#)

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