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Thomas M.J. Möllers/Hao Li (eds.)

The General Rules of Chinese Civil Law

History, Reform and Perspective

Nomos

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Foreword: The Current Reform of Chinese Civil Law

University of Augsburg's law faculty looks back on a long history of scientific contact to China. Already in May 2006, several colleagues of the law faculty, namely the Professors *Marion Albers*, *Ivo Appel*, *Volker Behr*, *Michael Kort*, and *Thomas M.J. Möllers*, undertook a research trip to China and established first contacts there. In 2015, these close contacts led to the foundation of a research center for Chinese law (Research Center of Innovation and Legal Studies between China and Europe – *RICE*) at the University of Augsburg.

When the German Civil Code (*BGB*) was introduced in Germany on January 1, 1900, it was considered "a new code for a new century". The People's Republic of China now plans the same. It will certainly be a feat of strength before the civil code will be completed in 2020. China pursues a vision as well: introducing a modern, progressive, overall codification which is competent to overcome the challenges of the 21st century.

This was reason enough for us to hold a conference on the already completed general part of this civil code, the General Rules of Civil Law (*GRCL*), on July 20, 2017. In this context, we wanted to learn how the GRCL and the BGB, which was created more than a 100 years earlier, differ. It is even more surprising how similar they are. This conference transcript depicts these very similarities and differences.

We would like to sincerely thank the Bavarian Academic Center for China (*Bay-China*) whose financial support was indispensable for the conference. Special thanks go to the persons primarily responsible, *Dr. Liuhua Shen* of the research center for Chinese law and *Pirmin Herz* for the preparation of the conference and this transcript. We thank *Professor Dr. Knut Benjamin Pißler, Dr. Peter Leibküchler* und *Nils Klages* for providing a German translation of the Chinese legal text. The research assistant *Sandra Paulson* kindly translated the legal text into English. Lastly, we owe great thanks to the staff of the Augsburg Center for Global Economic Law and Regulation (*ACELR*), in particular *Michael Biesinger* and *Tristan Eickholt*, for their support in performing the conference as well as supervising the conference transcript.

Professor Dr. Thomas M.J. Möllers (Augsburg)
Professor Dr. Hao Li (Beijing)

March 2018

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Introduction

Today, China is the second largest economy worldwide. No other nation exports an amount comparable to that which is exported by China. Being aware of its global influence, the 12th Chinese National People's Congress passed a new general part of Chinese civil law on March 15, 2017 which replaced the until then valid General Principles of Civil Law (GPCL) and came into force on October 1, 2017. This general part, now known as the General Rules of Civil Law (GRCL), is the first step for the new Chinese Civil Code that is to be finalised by 2020.[1]

The general part of the German Civil Code (BGB) has its foundation in the three-part structure, which was first introduced by the famous Roman legal practitioner Gaius in 162 AD and also builds the basis of todays French and Austrian Civil Codes: personae, res, actiones. The GRCL, on the other hand, consists of 11 parts. At the same time however, similar to the general part of the German Civil Code, the GRCL contains a general set of approximately 100 rules on natural and legal persons (sections 13–108 GRCL). The legal transactions which are laid out by sec. 104 et seq. in the German Civil Code, find a similar placement in the GRCL under the chapter civil legal transactions in sections 133 et seq. GRCL. The conference follows the classical four-step method of law comparison[2]: What is the current legal situation in one's own country? Which legal solutions does the foreign legal system present? What are the similarities that exist between both legal systems? Which solutions could appropriately be assimilated into the own legal system and which solutions cannot, and why?

In hindsight of the importance of such a codification in Chinese Law, the Research Center of Innovation between China and Europe (RICE) at the Law Faculty of the University of Augsburg under the leadership of Professor Dr. *Thomas M.J. Möllers* held a conference entitled "The Current Reform of Chinese Civil Law" on July 20, 2017. Aim of the conference was to recognise the fundamental changes made to the General Principles and to analyse these in a comparative way. For this occasion, seven renowned legal academics from throughout China were invited to Augsburg and engaged in a constructive dialogue with German scholars. Representative of

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1 A German and English version of the General Principles of Law is attached as an Annex at the end of this publication, p. 295. For an overview oft he GRCL see *Yuanshi Bu*, ZChinR 183 et seq. (2017).

2 *Zweigert/Kötz*, Einführung in die Rechtsvergleichung, 3. Aufl. 1996, p. 45 et. seq.

the Consulate General at the Chinese Embassy in Munich, Professor Dr. *Chongling Huang*, emphasised in her opening speech the great significance of this first legal dialogue between Germany and China on the topic of the Chinese Civil Law reform. She stated that this reform would herald a "new era of Chinese jurisprudence".

This symposium is just the fruit of this first dialogue and shows mutual understanding between Germany and China. This publication includes 14 contributions selected from the contributions made during the conference and afterwards on other conferences in Germany and China by Chinese and German scholars on the topic of the reform. These articles show the historic development of Chinese civil legislation, the main controversies in the civil code drafting process and the main contents of the new General Part of the Chinese Civil Code. The topics include basic principles, natural persons, legal persons, civil juristic acts (particularly gross misunderstanding) and agency, unjust enrichment, and civil liability. They also discuss theoretical controversies and the future improvement of the new General Part as well as make a comparison between the German Civil Code and the new General Part of Chinese Civil Law. In addition, two articles examine the contentious topics in the field of Chinese property law and contract law.

Since the beginning of the 20th century, China has made numerous attempts to introduce a general codification of civil law. Professor Dr. *Hao Li* (Beihang University, Beijing) further explains this development in his article "The Codification of Chinese Civil Law – Innovations and Controversies". First Chinese civil codifications dated from the late Qing Dynasty, but all attempts since then were frustrated. The Kuomintang Party introduced the first Chinese civil code, the Republican Civil Code, in 1930. This civil code showed a strong orientation towards the German Civil Code. After the founding of the People's Republic of China in 1949, this civil code was abolished as it was considered reactionary and western. The new People's Republic tried to draft new civil codes three times from 1950s to 1980s, which were inspired by the foundations of the Soviet Civil Code. The General Principles of Civil Law (GPLC) introduced in 1986 was the result of the third drafting attempt, which still showed the heavy influence of the Soviet Union's legal system. The new GRCL is the result of the fourth attempt towards a complete civil code, one of whose most significant aims is to introduce a progressive, market-economy orientated code, which is able to withstand the challenges of the 21st century. Nonetheless, *Li* raises the question whether China is ready for such a modern codification of civil law. Because of the unique nature of the political system and cultural history of China, he warned that it was essential to find a way to unify reform and

tradition. The new GRCL should have paved the foundation for such unification. Further progress must however be made when it comes to law enforcement.

As opposed to the German Civil Code, the GRCL include a number of general principles of law such as the freedom of contract (section 5 GRCL) and the principle of equal treatment (section 4 GRCL). Professor Dr. *Thomas M.J. Möllers* (University of Augsburg) further examines this in his article on the "Principles in the Chinese Civil Code" by defining the nature and work process with these general principles. When considered in an abstract manner, general principles of law are not yet subsumable and thus not tangible for law practitioners. Further substantiation through legal principles and the consideration of relevant circumstances is needed.

In this regard, *Möllers* introduces three possible techniques: First, the legal principles of *lex specialis* and *lex superior* can be used to concretise; in the case of a collision between legal principles these must be weighed up. He is however critical of section 3 GRCL, which protects absolute rights against all forms of legal violation. The absolute rights are concretised by special rules such as section 107 et seq. GRCL. Second, *Möllers* illustrates the way in which a principle is derived from applicable law and in a second step further refined as a legal institution with the example of private autonomy. Third, the principle of *lex superior derogat legi inferiori* allows for further concretisation. Superior rules of law for example are found when examining the legal relationship between federal law and state law. Furthermore, the "Green Principle" in section 16 GRCL is touched upon, although *Möllers* considers this more of a legal idea, than a legal principle as such.

Under the GRCL, the Chinese Civil Law on natural persons is no longer only applicable to citizens of the People's Republic of China but to everyone. This shows a clear abdication from the earlier influence of Soviet Union law. With this realisation, the article by Professor Dr. *Hongjie Man* (Shandong University, Qingdao) "The Law of Natural Persons in the GRCL: Innovations, Debates and Prospects" introduces the main progress of the GRCL in the field of natural persons. Section 16 GRCL for the first time bestows legal capacity even on the foetus under certain circumstances. As a precautionary measure to deal with China's ageing population and the threat of the increasing number of persons suffering fading consciousness due to health problems such as Alzheimer's disease, sections 21 and 22 GRCL lay out rules for cases of the limited legal capability of fully aged persons and guardianship. As a result of Alzheimer's disease, experts assume that approximately 24 million persons in China will be limited in their legal capacity by 2040. Whilst the interests of these persons became the

focus of the legislative procedure, *Man* notes that the regulations on guardianship are not yet precise or comprehensive enough to cope with this threatening challenge.

In German law, the general part of the Civil Code and the part on family law include rules on natural persons. Section 1 of the German Civil Code declares all people as natural persons. As illustrated by Professor Dr. *Raphael Koch* and *Finn Mrugalla* (University of Augsburg) in their article "The Natural Person in German Civil Law", legal capacity in German Civil Law is bestowed on an individual with the completion of birth. German law however, also protects unborn life. By analogy to section 16 GRCL, section 1923 para. 2 of the German Civil Code renders unborn life as capable to inherit and is protected by tort law. *Koch* mentions however, that the case law of the German Federal Court of Justice on the matter of "wrongful life" (see BGHZ 86, 240, 251 *et seq.*) must be taken into account when considering protection through tort law. Similar to Germany, China also has cases in which unborn life is protected, especially in tort liability cases such as traffic accidents, medical malpractice and liability for environmental pollution. But it is still unclear exactly how China will continue dealing with this issue in the coming years. Each country's regulations on legal capability only differ slightly. Like the German Civil Code (section 828), Chinese civil law also contains specific rules on the liability of minors for civil wrongs (Chinese Tort Liability Law section 32). In German Law, persons with limited legal capacity can only obligate themselves to legal transactions that provide them solely with a legal advantage. In contrast, Chinese Law allows in section 19 GRCL persons with limited legal capacity to obligate themselves if the legal transaction provides them solely with an economic advantage or if the transaction is appropriate when considering the age and understanding of the individual.

Under the influence of the reform of the state-owned enterprises of 1986, the GPCL divided legal entities into four categories: enterprises, state institutions, institutions and social organisations. Professor Dr. *Tong Zhang* (China University of Political Science and Law, Beijing) describes the renunciation from the socialist character in the new GRCL in her article "Classification of Legal Entities in General Section of the Civil Code: Reforms and Problems". The GRCL distinguishes between for-profit and non-profit legal persons. There are specific regulations for Special Legal Persons such as state bodies, village committees and neighbourhood committees. *Zhang* mentioned however, that there still ceases to be a clear differentiation

between legal persons of public law and those of private law. She also criticised the lack of harmonisation between civil and commercial law in relation to legal persons.

Professor Dr. *Michael Kort* (University of Augsburg) notes in his supplementary article "Recent Developments of the Legal Capacity of Economic Entities and Legal Persons" that case law is developing in a direction slowly closing the gap between economic entities with legal capacity and legal persons. In this context, he referred to a decision passed by the German Federal Court of Justice in 2017 (BGH, NZG 2017, 696) on the consumer status of private companies which involve a legal person. In addition, *Kort* stated that the fundamental right protected by section 19 para. 3 of the German Constitution also includes economic entities. When it comes to liability issues however, economic entities and legal persons still find their differences.

Sections 113 et seq. GRCL, which contain rules on property law questions, have been almost entirely taken over from the Chinese Statute on Property Law. At the beginning of his article "Introduction to New Property Rules in the GRCL", Professor Dr. *Jiayuan Zhuang* (Shanghai Jiaotong University, Shanghai) notes that the fundamental principles of Chinese property law are comparable with those contained in the German Civil Code. The Numerus Clausus concept is in this sense also known to Chinese law (section 117 GRCL). The existing legal structures for the ownership of real estate still reflect the early socialist influence. Private property ownership is only possible for buildings, not however, for land ownership. In the case that one wishes to actually use or build on a plot of land, a right of use must first be applied for. *Zhuang* compares this structure to that of the German Heritable Building Law. In addition, the right of the state to expropriate property in China is closely tied to the public interests (section 117 GRCL).

Similarly to earlier codes, the GRCL only contain a general rule for the issue of unjustified enrichment (section 122 GRCL). This general clause is then substantiated through further rules contained in contract law and other more special laws. In his article "The Chinese Civil Code and Unjustified Enrichment: Evaluation and Future Prospects", Professor Dr. *Guangyu Fu* (University of International Business and Economics, Beijing) mentions that unlike in Germany, the dogmatic foundations of enrichment law were never thoroughly examined in China. Because of the prevailing view that there is no such thing as the German "Abstraktionsprinzip" (Abstraction principle) in Chinese law, it is disputed which role enrichment law plays. Also unclear remains the relationship between enrichment law and other restitution claims. As the future Civil Code could probably refuse a general

part of the law of obligations, unjustified enrichment would be located in the book of contract law as part of 'quasi contracts'. It is desirable, that the future Civil Code could, to a certain extent, reduce disputes and uncertainty concerning unjustified enrichment with further supplementary regulations.

Under the title "Civil Juristic Acts: History, Comparison and Problems" Professor Dr. *Yongqiang Chen* (China Jiliang University, Hangzhou) illustrates the prerequisites of the civil juristic acts in section 143 GRCL. These include legal capability and an honest intent. In addition, the acts may not violate mandatory rules, general discipline or social morals. *Chen* continues by examining the similarities to sections 134 and 138 BGB. The Chinese rules on interpreting declarations of intent (section 142 GRCL) are of specific interest. In cases of a unilateral agreement, the literal sense of the declaration as a whole must be considered. In addition, individual concepts, habits and the principle of good faith are to be borne in mind. In cases of one-sided declarations, it is necessary to identify the declaring party's real will.

"Significant misunderstandings in Chinese Civil Law" are the topic of the article by Dr. *Tianfan Wang* (Beihang University, Beijing). Section 147 GRCL rules that a legal transaction that was entered into as a result of a significant misunderstanding can be revoked. Part of *Wang's* article therefore revolves around the question how a "significant misunderstanding" is to be differentiated from the German legal idea of a "misconception" consequently. To further ascertain this issue, *Wang* points out that the Civil Code of the Republic of China, which finds strong parallels to the German Civil Code and was abolished in China in 1949, is still valid in Taiwan. She adheres to the idea, that when considering the literal meaning, a "misconception" always occurs on the side of the declaring party, whereas a significant misunderstanding arises on the part of the recipient. It is therefore all the more complicated that section 147 GRCL does not contain any concrete legal conditions, which allow drawing a clear line between the two.

On the symposium in July 2017, Professor Dr. *Martin Maties* (University of Augsburg) explained how the concept of a "misunderstanding" is treated in German law (His talk, however, has not been put in writing). A misunderstanding occurs, when a declaration is not understood by the recipient in the way that was initially intended. Here the law differentiates between three cases: whilst invalidity ipso iure is the result of the cases in sections 116 and 118 of the German Civil Code, cases in which a misconception has occurred require an appeal (sec. 119 German Civil Code). In both cases, a one-sided misconception exists on the side of one of the involved parties. The essential issue here is the question of causality: would the declaring

party have decided differently, if he were to have had subjective knowledge of the situation and an objective understanding of the case? Section 313 para. 2 sentence 1 BGB allows for a collaborative adaptation of the contract in case of a misconception on both parts. The corrective measure here is the concept of reasonability.

Dr. *Jieqiong Li* (Sun Yat-sen University, Guangzhou) contributes with her article on "Civil Liability Provisions in the GRCL". According to *Li*, the chapter on civil liability of the GRCL is still characterised particularly heavily by socialist morals (see for example the protection of heroes and martyrs in section 185 GRCL). *Li* also draws particular attention to section 184 GRCL, which contains a "Good Samaritan" clause. The clause contains an comprehensive exemption from liability with the aim of encouraging the willingness to help in accident situations. This exemption goes beyond the regulation of section 680 BGB. During the conference, the continuing discussion quickly found its focus on section 179 GRCL, which contains a clause for punitive damages. Because of its systematic position in the GRCL, section 179 GRCL is applicable to all legal rights protected by section 109 et seq. GRCL that have a general preventive effect. This could, in individual cases, lead to very high compensation claims.

Besides the above-mentioned articles, this conference transcript also includes two articles from Ms. *Qiangzhi Hu* (University of Bochum) and Assistant Professor Dr. *Jing Jin* (China University of Political Science and Law, Beijing).

In her article "The Prohibition of Self-contracting in section 168 para. 1 GRCL: From the Perspective of Comparative Law", *Hu* analyses the legal effect of the issue of self-contracting by an agent. Generally, there exists a conflict between the representative's personal interests and those of his principal. It is assumed especially in the case of so-called self-contracting that the agent may act to maximize his own economic interests rather than those of his principal. Section 168 para. 1 GRCL, section 181 para. 1 BGB, Art. 2. 7. 7 PICC and Art. 3: 205 PECL regulate this situation. Section 168 para. 1 GRCL stipulates that an agent can't contract between the principal and himself, unless he has been expressly authorised or approved to do so. However, the legal consequence of violating this rule is missing. In German Civil Code, sec. 177 et seq. could apply to this situation. According to Art. 2. 7. 7 PICC and Art. 3: 205 PECL, the principal could also avoid the contract. These provisions could be commendable for the section 168 para. 1 GRCL by considering its main aim to provide protection to the principal.

Under the title "The Conflicting Standard Terms in Chinese Contract Law: The Way of Interpretation and the Possibility of Codification during

the Drafting of Chinese Civil Code" Assistant Professor Dr. *Jing Jin* (China University of Political Science and Law, Beijing) illustrates the theoretical development of the battle of forms in commercial transactions. This evolved from the "first blow doctrine" in the beginning, to the prevailing "last shot doctrine" in the 20th century, and ultimately to the current "knock out doctrine". *Jin* states that China should carefully examine the relationship between Article 19 of the CISG and Article 30 of the Contract Law. With respect to the background of the compilation of Chinese Civil Code, China should try to construct or update relevant systems through legislation, introduce special rules on the conclusion of contract or on standardised terms and supplement them with clear rules on interpretation. In doing so, China could get itself out of the dilemma of normative application and the interpretation of the battle of forms.

This conference transcript gives an extensive insight into the current reform of Chinese Civil Law and its background. It becomes apparent, that the German Civil Code has an ongoing worldwide influence and is often used as an exemplary code for proposed legislation. Throughout the conference, it was however often mentioned, that "learning" is certainly not a one-way street. It is imperative that Germany also takes interest in the developments made by such modern civil law codes as the GRCL and how these could give inspiration for future reforms.

Professor Dr. Thomas M.J. Möllers (Augsburg)
Professor Dr. Hao Li (Beijing)

March 2018

The Codification of Chinese Civil Law: Innovations and Controversies

*Hao Li**

Abstract: *In 2015, the codification of Chinese civil law has set off its new journey. The agenda of the Chinese civil codification is divided into two steps: firstly the promulgation of the General Part in 2017, secondly the announcement of the Special Parts and the whole code in 2020. On March 15, 2017, the General Part of the Chinese Civil Code was finally reviewed and passed by the National People's Congress of China. The innovations of the new General Part appear in the field of basic principles, legal resources and the basic systems of civil law, such as civil subjects, the protection of civil rights, civil legal acts and agency, and limitations of periods. Along with these innovations, quite a few problems in the General Part still exist, such as apparent flaws in certain provisions, politics overriding academy, deficiency of legislative skills and academic foundations for an advanced civil code. Strong controversies still remain within the frame and structure of the Chinese Civil Code, especially the problem of the fusion or separation of civil law and commercial law, the preferential place of property law and personal law, the independence of the law of personality rights, the general part of the law of obligations, the law of intellectual property and the application of law on foreign-related civil relationships.*

Keywords: Development of Chinese Civil Law, Civil Rights, Controversies

* *Dr., LL.B., LL.M. (Peking)*; Associate Professor, Beihang University, School of Law. Chair for Civil Law, Commercial Law and Comparative Private Law.

I. Introduction

In the past decades, China has influenced the world with its rocketing economy. With the rapid development of China's market economy, the need for an autonomous civil code has arisen.

In 2015, the codification of Chinese civil law has set off its new journey. According to the official explanation of the Draft of the General Part of the Chinese Civil Code, the goal of this codification task is to establish an advanced civil code in the 21st century, which could solve the problems and satisfy the new demands of the modern society. To fulfill this objective, the codification not only includes systematical and comprehensive integration of the existing civil legislations, but also needs to amend the existing civil provisions that do not meet the actual situations.[1]

The National People's Congress of China (NPC) has also published an agenda according to which the task of civil codification is divided into two

1 See National People's Congress (NPC) Standing Committee, Statement on the Draft of the General Rules of Chinese Civil Law (Mar. 8, 2017) ("关于«中华人民共和国民法总则（草案）»的说明——2017年3月8日在第十二届全国人民代表大会第五次会议上"), http://www.npc.gov.cn/npc/xinwen/2017-03/09/content_2013899.htm (last visited Jul. 7, 2017).

steps：Firstly, the General Part should be read by the Standing Committee of the NPC in 2016 for three times and finally should be approved by the NPC in March 2017. Subsequently, from 2017 to 2020, the Special Parts, including property law, contract law, tort law, family law, succession law, etc., will be drafted and are expected to be passed by the NPC to finally form an autonomous Civil Code with the General Part.[2]

In June 2016, the twelfth session of the Standing Committee of the twelfth NPC read the General Part for the first time. The first reviewed draft consisted of 11 chapters and 186 articles. Compared with the old General Principles of Civil Law (GPCL), the first reviewed draft has made many changes, laying the foundation for the following draft versions.

The second reviewed draft published in October 2016 was made of 11 chapters and 202 articles. Compared to the first reviewed draft, the second draft has made quite a few changes, especially in the field of guardianship and legal persons.[3]

In December 2016, the third reviewed draft of the General Part was published, including 11 chapters and 210 articles. It has made only some small changes in comparison with the second draft, which had been the most important one as special legal persons were codified for the first time.[4]

Based on the third reviewed draft on March 15, 2017, the General Part of the Chinese Civil Code (i.e. General Rules of Civil Law, GRCL) was

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2 See NPC Standing Committee, Statement on the Proposal of the General Rules of Chinese Civil Law (Jul. 6, 2016) ("关于«中华人民共和国民法总则（草案）»的说明"), http://www.npc.gov.cn/npc/lfzt/rlyw/2016-07/05/content_1993422.htm (last visited Jun. 19, 2017); the statement also asserts that compiling the Civil Code is an arduous and complicated project. In accordance with the requirements of the Central Committee of the Communist Party of China, it is necessary to promote actively and steadily the quality of legislations under the premise of strengthening the political foundation. The Civil Code will be composed of the General Part and the Special Parts (currently including contract law, property law, tort law, marriage and family law, and succession law). The General Part stipulates the basic principles and general rules that must be followed in civil activities and directs the special parts.

3 Li Hao, *The History and Recent Development of the Codification of Chinese Civil Law – Is China Ready for an Advanced Civil Code in the 21st Century?*, in Die Kodifikation des Zivilgesetzbuches der VR China, 1, 9–11 (Yuanshi Bu ed., 2017).

4 Li Hao, *The History and Recent Development of the Codification of Chinese Civil Law – Is China Ready for an Advanced Civil Code in the 21st Century?*, in Die Kodifikation des Zivilgesetzbuches der VR China, 1, 11–14 (Yuanshi Bu ed., 2017).

finally reviewed and passed by the NPC. It is the milestone of civil legislation in China and its promulgation has taken a solid step towards the whole task of a civil codification.

II. The history and current situation of Chinese civil legislations

1. A short but intricate history of the Chinese Civil Code

Before considering the current legislations of Chinese civil law, we need to take a short review of its history. The traditional China lacked the concept of separation of civil and criminal law. Most of the codes were the result of the fusion of administrative and criminal matters, and provisions about civil matters just appeared as ancillary. However, reforms of the Chinese legal system took place in the late Qing Dynasty. The legal reformers of the late Qing drafted a civil code modeled on the German Civil Code enacted in 1900. With the help of Japanese scholars, the first three books of the Great Qing's Draft of the Civil Code – General Part, Law of Obligations and Law of Rights over Things – were finished by 1911, shortly before the fall of the Dynasty. Thus, they were never promulgated within the Qing Dynasty. Moving to the pre-modern period, the successor of the Qing Dynasty, the Northern Warlords Government of China, followed the Draft of the Civil Code of the Great Qing and drafted its own civil code in 1925 (Draft of the Civil Code of the Republic of China), which still didn't go into force and could only be cited by courts as jurisprudence. As a consequence, the Republic of China continued to use the civil parts of the Criminal Code of the Great Qing until 1930. The first Chinese civil code, the Republican Civil Code, was finally adopted in 1930, after the Kuomintang came into power in 1927. Nevertheless, the Republican Civil Code was hardly implemented in the vastness of China, due to the chaotic political situation and long-term wars in the 1930s and 1940s. After 1949, the Republican Civil Code was repealed by the new people's government in the mainland of China, but is still used in our Taiwan District nowadays.[5]

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5 For a brief history of Chinese civil codification before 1949, see Liang Huixing, *The Reception of Foreign Civil Law in China* ("中国对外国民法的继受"), 1 Shandong University Law Review 1, 1–4 (2003). For a detailed description, see Zhang Xinbao & Zhang Hong, *The Last Hundred Years of China's Civil Law* ("中国民法百年变迁"), 6 Social Sciences in China 67, 68–70 (2011).

After the Chinese Communist Party (CPC) swept into power in 1949, the new government abandoned the Republican legal system and adopted certain elements of the Soviet legal system in the 1950s. The primary way to settle civil matters was through politicized mediation then.

From the 1950s to the beginning of the 21st century, political authorities and academic pioneers have made three attempts to draft an autonomous civil code. In the second half of 1954, the Standing Committee of the first NPC set up a special team and began drafting a Civil Code. The drafting team finally finished several drafts, including four parts, i.e. the general part, ownership, obligations and succession. At that time, the structure of the drafts of the Civil Code was of course strongly affected by the Soviet Civil Code.[6] However, the first drafting process was interrupted because of political movements. Again, in December 1962, the civil law teaching and research section of the Renmin University of China proposed an Outline of the Draft of Civil Law. In 1963, other institutions submitted different versions of drafts. In July 1964, the tentative draft of Chinese civil law was finished, which included only three books, i.e. the general part, ownership of property and transfer of property. However, the process was cut off by the movement of the "four clean-ups" erupted in 1964. In 1979, the political situation restored to stability, and three years later, four drafts of a Chinese civil code were finished. Unfortunately, none of them had turned into formal legislations.[7] At the same period, certain special statutes like the Marriage Law (1980), the Succession Law (1985) and the GPCL (1985) were adopted and promulgated.

In December 2002, a brand-new draft of the Chinese Civil Code, including 9 books and 1209 articles, was completed. It mainly followed the German pandect system, and consisted of General Part, Property Law, Contract Law, Personal Rights Law, Marriage Law, Succession Law, Adoption Law, Tort Law, and Choice of Law for Foreign-Related Civil Relationships. This civil code was a fusion of civil law and commercial law with separate books

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6 Wang Liming, *The Retrospective of and Expectations towards the Chinese Civil Code* ("中国民法典制定的回顾与展望"), 5 Legal Forum 5, 7–14 (2008).

7 For a brief history of Chinese civil codification after 1949, see Liang Huixing, *The Reception of Foreign Civil Law in China* ("中国对外国民法的继受"), 1 Shandong University Law Review 1, 5–7 (2003); Liang Huixing, *About the Compilation of the Chinese Civil Code* ("关于中国民法典编纂问题"), http://www.iolaw.org.cn/showArticle.aspx?id=4200 (last visited Sep. 25, 2017). For collections of drafts of Chinese civil codes from the 1950s see The General List of Drafts of Civil Codes of New China («新中国民法典草案总览»(上中下卷)) (He Qinhua, Li Xiuqing & Chen Yi eds., enlarged ed. (增订本), 2017).

for personal rights and tort law, compared with the traditional pandect system.

Because of the complicated political situations and immature economic foundations, all these attempts mentioned above have failed and never came into force. On the one hand, it has proved that civil codification needs suitable political chances and society situations; on the other hand, it has also revealed that the process of civil codification can be very challenging and China's legislative capacity to accomplish a civil code has always been insufficient. An integrated civil code thus became a dream of Chinese civil law scholars of several generations.

2. A brief list of current Chinese civil legislations and legal resources

Since 1979, the NPC and its Standing Committee have enacted and amended a huge number of laws and decisions. In the realm of civil law, the GPCL, promulgated and enacted in 1986, has provided the foundation for all laws concerning civil matters. As a continuation of the late Qing and the Republican Civil Codes, the GPCL is still modeled after continental civil codes, especially the German Civil Code (BGB).

Since the GPCL, a series of "special laws" regulating specific civil relationships have been promulgated. The Contract Law (1999, CL) is the combination and replacement of the Law of Economic Contracts (1981), the Law of Foreign-Related Economic Contracts (1985) and the Law of Technology Contracts (1987). Statutes concerning property are composed of the Property Law (2007, PL), the Guaranty Law (1995), and the Law of Rural Land Contracts (2002). As for intellectual property, statutes include the Patent Law (1984, latest amendment in 2008), the Trademark Law (1982, latest amendment in 2013) and the Copyright Law (1990, latest amendment in 2010). Moreover, in 2010, the Tort Law of the People's Republic of China came into effect. Besides property relationships, the People's Republic of China has also enforced three statutes to adjust personal relationships including the Marriage Law (1950, which was the first civil legislation of the People's Republic of China and later replaced by the Marriage Law of 1980, which was amended in 2001), the Succession Law (1985) and the Adoption Law (1991).

Chinese civil legislation also appears in six kinds of legal resources.[8] Statutes adopted by the NPC and its Standing Committee are the first references in the realm of Chinese civil law. Successively, State Council regulations, local legislations, judicial interpretation documents, customs, international conventions and treaties (such as the CISG) are all important legal resources to regulate civil matters. Yet in the judicial practice, judicial interpretation documents have been rendered more important than other statutes.

III. Innovations of the new General Part of the Chinese Civil Code

In March 2017, the final version of the General Part was publicly reviewed and passed by the NPC, which has gone into force since October 1st, 2017. The final version includes 11 chapters and 207 articles. Compared with the third reviewed draft, there are 126 amendments made in the final version, which will apparently have tremendous effects on the society.

1. Enrichment of basic principles

The core contents of the General Part are basic principles, which guide civil activities and judicial practice and fill in loopholes of statutes. Compared with the old GPCL, the new General Part has enriched the principle of good faith and added a new principle, the green principle.

a) The "most cited" principles of the GPCL and relevant cases

The GPCL has provided several basic principles in Arts. 3 to 7. The most important ones are the principles of voluntariness, fairness and good faith (Art. 4), and the principle of public order and good morals (Art. 7).

8 See Li Yu, Essentials of the General Part of Chinese Civil Law, Interpretation of Rules and Variorum of Judgments («民法总则要义：规范释论与判解集注»), 54–59 (2017).

(i) Art. 4. The Principles of Voluntariness, Fairness and Good Faith

Art. 4 of the GPCL provides that in civil activities, the principles of voluntariness, fairness and good faith shall be followed. A statistic shows that Art. 4 of the GPCL is cited in more than 50591 cases.[9]

Initially, the principle of good faith is characterized as an essential element to constitute a lawful juristic act. In other words, the insufficiency of authenticity might directly lead to the result of an invalid juristic act and damages bearing. However, the meaning of this principle has become intricate as different judges are using the principle differently. The cases concerning the principle of good faith have mounted up to 33583 insofar.[10] In a judgment ruled by the Supreme People's Court (SPC), the judge stated that, since the defendant had admitted a fact in the first instance, therefore, a contradictory assertion was rejected because the principle of good faith does not allow it.[11] From this judgment, we can see that the principle of good faith can reach outside its apparent meaning.

As for the principle of voluntariness, it is not only an important principle for the establishment of civil relationship, but also has some procedural efficacy. The Civil Procedure Law (hereafter "CPL") provides that, with respect to a legally effective conciliation statement, if evidence furnished by a party proves that the conciliation violates the principle of voluntariness, or that the content of the conciliation agreement violates the law, the party may apply for a retrial. If the foregoing proves true after the examination of the People's Court, the case shall be retried (Art. 201 CPL).

The principle of fairness also has an important derivation in Art. 114 CL. The article states that, based on the principle of fairness, where the amount

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9 Result of a search on the website of China Judgments Online (裁判文书网), http://wenshu.court.gov.cn/list/list/?sorttype=1&conditions=searchWord+QWJS+++全文检索:民法通则第四条 (last visited Jul. 7, 2017). On Jan. 1, 2014, the SPC published a statement to formally implement the requirement about letting all the judgments be published on the internet. The statement clarified that the website, China Judgments Online, would be officially established to unify the publication of all documents and judgments made by the courts.

10 Result of a search on the website of China Judgments Online (裁判文书网), http://wenshu.court.gov.cn/list/list/?sorttype=1&conditions=searchWord+QWJS+++全文检索:诚信原则 (last visited Jul. 8, 2017).

11 See (2014) Min Yi Zhong Zi No. 108 ((2014)民一终字第108号), available at http://wenshu.court.gov.cn/content/content?DocID=024d6ead-5f35-41ca-bf8c-22f7d5305ac0&KeyWord=民一终字第108号 (last visited Jul. 8, 2017).

of liquidated damages prescribed is below the loss resulting from the breach, a party may petition the People's Court or an arbitration institution to increase the amount; where the amount of liquidated damages prescribed exceeds the loss resulting from the breach, a party may petition the People's Court or an arbitration institution to decrease the amount as appropriate. In 2005, in Zhejiang, a southern China province, Company X and Plant Y signed a mold production contract, with the contract price being 150 thousand Yuan. As agreed in the contract, if Plant Y delays in delivery, it shall pay 120 thousand Yuan as contract damages. The delivery of Plant Y then delayed for 36 days and Company X sued Plant Y to claim the aforementioned damages. However, the judge held that the damages provided in the contract were relatively too high according to Art. 114 CL and as a result, instead of spending 120 thousand Yuan, the defendant paid only 3900 Yuan to cover the damages.[12]

(ii) Art. 7. The Principle of Public Order and Good Morals

Art. 7 GPCL provides that civil subjects engaging in civil activities should have respect for social ethics and shall not harm public interests or disrupt social economic order. A statistic shows that this article appears in more than 1655 cases.[13]

There was an impactful case related to this principle in Sichuan, a southwest province of China, in 2001. The parties of this case were Mr. Huang's legitimate wife and his unlawful lover, Mrs. Zhang. Before his death, Mr. Huang had lived with his unlawful lover for five years and they even had a daughter. When the late stage of liver cancer was diagnosed to Mr. Huang, he made a will, and decided to donate his entire legacy to Mrs. Zhang. When Mr. Huang died, Ms. Zhang sued Mr. Huang's wife for her refusing to execute the will of Mr. Huang. The court of first instance dismissed Mrs. Zhang's complaint on account that the will violated the principle of good

12 (2005) Shan Min Chu Zi No. 473 ((2005)善民二初字第473号), available at http://wenshu.court.gov.cn/content/content?DocID=7b01e547-913d-465e-a649-274620ee2688&KeyWord=合同法第一百一十四条%7C违约金 (last visited Jul. 8, 2017).

13 Result of a search on the website of China Judgments Online (裁判文书网), http://wenshu.court.gov.cn/list/list/?sorttype=1&conditions=searchWord+QWJS+++全文检索:民法通则第七条 (last visited Jul. 8, 2017).

morals and therefore was invalid.[14] The appellate court upheld the judgment.[15]

In reality, China has the tradition of holding a very restricted tolerance towards adultery. When the story was spread all over the country, the public and social media overwhelmingly stood in the favor of the legitimate wife.

Nevertheless, Art. 16 of the Succession Law of the People's Republic of China has clearly stated that a citizen may, by making a will, donate his personal property to the state or a collective, or bequeath it to persons other than the statutory successors. However, this rule was ignored. Both courts of the first instance and the second instance had judged that the will was invalid solely based on the principle of good morals (Art. 7 GPCL), ignoring the fact that Ms. Zhang had lived a long time with Mr. Huang and they also had a daughter. From my perspective, issues concerning family relationships and inheritance relationships must be analyzed separately. Even if the adultery with a third party is not tolerated in the social ethics and should be regarded as violating good morals, the will to bequeath the third party should not be wholly invalid just because living with the third party is immoral. The application of the principle of good morals should consider the motive and aim of the donation and the concrete circumstances of each case. At the same time, the autonomy of the testator should also be respected. If the adultery is not the condition for the donation and the motive and purpose of the donation might aim at safeguarding the livelihood of the lover and

14 Zhang Xueying v. Jiang Aifang (张学英与蒋伦芳遗赠纠纷案), (2001) Naxi Min Chu Zi No. 561 (2001) 纳溪民初字第561号), available at http://www.pkulaw.cn/case/pfnl_1970324837012371.html?keywords= 纳溪民初字第561号&match=Exact (last visited Sep. 27, 2017).

15 Zhang Xueying v. Jiang Aifang (张学英与蒋伦芳遗赠纠纷案), (2001) Lu Min Yi Zhong Zi No. 621 (2001) 泸民一终字第621号), available at http://www.pkulaw.cn/case/pfnl_1970324837023525.html?keywords= 泸民一终字第621号&match=Exact (last visited Sep. 27, 2017).

their child, the will should be valid in the realm of the testator's own property.[16] The aforementioned judgments were apparently distorted by the public opinion and media.[17]

b) Introducing new principles into the new General Part

Compared to the GPCL, basic principles are enriched and supplemented in the new General Part of the Chinese Civil Code. The three principles stipulated in Art. 4 of the GPCL are divided into three separate articles (Secs. 5–7 GRCL). Especially the principle of good faith (Sec. 7 GRCL) is concretized in the General Part, which specifically clarifies that the principle of good faith means civil subjects engaging in civil activities shall adhere to honesty and keep their commitments.

Another outstanding change in this section is that it involves the environmental-friendly principle, known as the green principle (Art. 9 GRCL), to become a basic principle. This principle serves as the cornerstone to regulate natural persons and legal persons to conduct civil activities without doing harm to the environment and save public resources as much as possible.

In order to cooperate with the green principle, on June 27, 2017 the Standing Committee of the twelfth NPC amended the CPL, and authorized the Supreme People's Procuratorate (SPP) to bring public interest litigations in the field of environment and resources protection (Art. 55 Para. 2 CPL).[18]

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16 As to the similar opinions, see Yu Fei, Studies on the Principle of Public Order and Good Morals («公序良俗原则研究»), 202–213 (2006); Xiao Han, *The Suspended Succession Law* ("被架空的继承法"), Vol. 2 No.1 Private Law Review 300, 300–313 (2002); Jin Jinping, *When Donation Meets Extramarital Cohabitation: Public Order, Good Morals and the Coordination of System* ("当赠与（遗赠）遭遇婚外同居的时候：公序良俗与制度协调"), 6 Peking University Law Review 287, 289–303 (2005).

17 See Xu Mingyue & Cao Mingrui, *Another Analysis of the Luzhou Bequest Case* ("泸州遗赠案的另一种解读"), 2 Research on Judicial Judgments 72 et seq. (2002).

18 Public interest litigation was established in China in 2015, when the Supreme People's Procuratorate (SPP) published a pilot program. For more information see the website of the SPP spp.gov.cn: http://www.spp.gov.cn/zdgz/201507/t20150703_100706.shtml (last visited Jul. 7, 2017). Recently, the SPC published a report about the examples of filing public interest litigations. In 2016, many air pollution cases were accepted, the reports of these litigation have been published on the website ChinaCourt.org, http://www.chinacourt.org/article/detail/2017/04/id/2738851.shtml (last visited 7 Jul. 2017).

The green principle, which closely relates to the system of public interest litigation, would clearly stimulate new progress on environmental protection and resource conservation. Yet it remains in doubt how the special parts of the Chinese Civil Code could reflect this principle and how judges should use this principle in judicial practice. Otherwise, this principle would be just a slogan without any practical value.

c) Dilemma about the derivation and substantiation of basic principles

When analyzing the development of Chinese civil law, it is prevailed that basic principles entrust judges with more freedom to make decisions, and enable them to carry out their discretion creatively to adapt to the change of political, economic and cultural situations in the society. Considering the reality, basic principles of Chinese civil law are playing too many roles. They are miscellaneous provisions of civil legislations to close loopholes in the statutes, they are the legal resources for civil jurisdiction, and they could integrate social norms and morality that guide civil subjects' civil activities. However, the meanings of basic principles are ambiguous, easily leading to the phenomenon of abuse, thus suppressing and restricting private autonomy. Lots of contradicting judgments within similar cases exist.

In 2016, Ms. Zhang and Ms. Wei signed a house-selling contract in Tianjin, with a concerted price of 1.3 million Yuan. However, after the contract was signed, the value of the house increased to 1.960 million Yuan. In view of the difference, Ms. Wei, the seller, refused to sell the house and claimed the termination of the contract according to the principle of changed circumstances.[19] When Ms. Zhang, the buyer, sued Ms. Wei, the court ruled that the principle could not be applied to this case. However, it decided the

19 According to Art. 26 of the Interpretation II of the Supreme People's Court of Several Issues concerning the Application of the Contract Law of the People's Republic of China (2009), when any unforeseeable major change is not a business risk and is not caused by a force majeure occurs after the formation of a contract, if the continuous performance of the contract is obviously unfair to the other party or cannot realize the purposes of the contract and a party files a request for the modification or rescission of the contract with the people's court, the people's court shall decide whether to modify or rescind the contract under the principle of fairness and in light of the actualities of the case. This provision reflects the principle of changed circumstances ("Störung der objektiven Geschäftsgrundlage" in German civil law).

termination of the contract and ruled as a punishment that the defendant should pay 330 thousand Yuan for her breaching of the contract in the first place.[20] In fact, this ruling partially recognized the legal effect of the principle of changed circumstances, i.e., that both parties should share the risk of the significant rising of the value.

In another very similar case, the concerted price was 830 thousand Yuan, and later, according to the claim of the defendant, the market price rose up by 60 or 70 percent. The court also excluded the application of the principle of changed circumstances to this case, but ruled that the initial contract remained effective and the seller should continue to perform the contract, i.e., to sell the house at the previously concerted price, without any other condition attached.[21]

Due to the indetermination of the principle of changed circumstances, the rulings from the courts in the abovementioned both cases were inconsistent. In both cases, the difference was beyond 30%. By analogy with Art. 29 Para. 2 of the Interpretation II of the Supreme People's Court of Several Issues Concerning the Application of the Contract Law of the People's Republic of China (2009), which regulates the adjustment of too high liquidated damages, 30% might be regarded as a boundary to judges whether the difference between prices shall constitute changed circumstances. In a famous case in the 1990s, which might be the first case citing the principle of changed circumstances in China, the significant rising of the price of raw materials was regarded as a kind of changed circumstances.[22]

To avoid the discretionary application of the basic principles, we still need the necessary technique of typification to concretize them and delimit their application.

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20 Zhang Tong v. Wei Xia (张彤等诉魏霞房屋买卖合同纠纷案), (2016) Jin 0106 Min Chu No. 7587 (2016) 津 0106 民 初 7587 号), available at http://www.pkulaw.cn/case/pfnl_1970324877008705.html?keywords= 情 势 变 更%20房屋买卖合同&match=Exact (last visited Sep. 27, 2017).

21 Yan Fuxin v. Zhang Yuan (阎富信诉张媛等房屋买卖合同纠纷案), (2017) Jin 0102 Min Chu No. 2143 ((2017) 津 0102 民 初 2143 号), available at http://www.pkulaw.cn/case/pfnl_1970324877590512.html?keywords= 房 屋 买 卖合同%20上涨&match=Exact&tiao=3 (last visited Sep. 27, 2017).

22 Wuhan Municipal Coal Gas Corp. v. Chongqing Measuring Instrument Factory (武汉市煤气公司诉重庆检测仪表厂煤气表装配线技术转让合同、煤气表散件购销合同纠纷案), 1996 No. 2 Sup. People's Ct. Gaz. 63 («中华人民共和国最高人民法院公报»1996 年 第 2 期， 第 63 页), available at http://www.pkulaw.cn/case/pfnl_1970324837041389.html?keywords=煤气表散件购销合同&match=Exact (last visited Sep. 27, 2017).

2. Enrichment of legal sources

The sources of law are a special concept in civil law systems. The methodology of using a specific rule to address legal resources originates from Art. 1 of the Swiss Civil Code (ZGB). Similar provisions can also be found in the Korean and Taiwanese Civil Code, whereas they do not exist in the German, French and Japanese Civil Codes. According to the examples from civil law countries or districts, legal sources can be summarized into three levels: the first is statutes, including administrative regulations, the second is customs, and the third is jurisprudence (doctrines).

Similar to other civil law countries, statutes are the most important kind of legal sources in China. Beside statutes, sec. 10 GRCL adds customs, which are not contrary to public order and good morals, as another kind of legal sources to settle civil disputes, provided that there is an absence of statutes. This is a brave attempt of the new General Part, since it is the first time for the Chinese civil law to formally admit customs as one of the legal sources. This admission might break the limit of *numerus clausus* in the Chinese Property Law (Art. 5 PL).

3. Amendments concerning the basic systems

a) Natural persons and guardianship[23]

A considerable change in this chapter is that the legislator lowers the standard age of natural persons with limited civil capacity from 10 years old to 8 years old (Sec. 19 GRCL). The new law also provides that adults who could not recognize or fully recognize their behaviors have no or limited civil capacity for juristic acts (Secs. 21–22 GRCL). This could be regarded as a great improvement, since in the GPCL, this scope is strictly restricted to mentally disabled persons (Sec. 13 GPCL).

Another advancement is that the new law formally provides protection to fetuses. In the GPCL, a fetus could not possess civil capacity. Only Art. 28 of the Succession Law provides legally reserved portion in heritage for a fetus. In the new General Part, for the first time, fetuses are given the legit-

23 For a more detailed introduction about natural persons and guardianship in the new General Part, see Man Hongjie, The Law of Natural Person in the New General Rules of Civil Law (in this Symposium, p. 87).

imate status of possessing partial civil capacity to inherit legacy, accept bestowal or any other benevolent donation, except in the case that the fetus is dead when it comes out of the womb (Sec. 16 GRCL).

In respect of guardianship, changes are also obvious. Firstly, the statutory order of guardians is established. Secondly, the new law stipulates that the guardian could be assigned through a testament or an agreement. More importantly, the new law also involves civil affairs departments as competent guardians.

In addition, the new law provides the revocation system of guardianship. Since the guardian might infringe upon the lawful rights and interests of the ward, the new law provides three situations for the ward to appeal to the People's Court to revoke the guardianship and replace the guardian (Sec. 36 GRCL).

In a word, the aim of this section is to regulate the guardianship system in details to respect the ward's own will and best protect his or her interests.

b) Legal persons and unincorporated organizations[24]

The new law chooses a brand-new methodology to classify legal persons and to regulate their civil rights and civil liabilities.

In the GPCL, legal persons are classified in respect of their ownership, like "state owned company" or "collectively owned company". The new law divides legal persons, according to their purposes, into "profit-oriented legal persons", "non-profit legal persons" and "special legal persons" (Chapter 3).

"Profit-oriented legal persons", inherited from the term "enterprises as legal persons", refers to limited liability companies, companies limited by shares and other corporate legal persons (Sec. 76 GRCL). "Non-profit legal persons" refers to institutional units, social organizations, foundations, social service agencies and any other legal person aiming for charity (Sec. 87 GRCL). For non-profit legal persons, the new law expresses the rules for prohibiting the distribution of surplus property, i.e., the remaining property shall be used for public purposes (Sec. 95 GRCL).

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24 For a more detailed introduction about legal persons in the new General Part, see Tong Zhang, Klassifizierung der Juristischen Personen im Allgemeinen Teil des chinesischen Zivilgesetzbuchs: Reformen und Probleme (in this Symposium, p. 129).

Furthermore, some delegates of the Standing Committee of the NPC have suggested that there are certain organizations and units that could not be classified either as profit-oriented legal persons or as non-profit legal persons. Therefore, it is necessary to add a special section. The third draft invented a new type of legal person, known as the "special legal persons", which refers to official organs, rural collective economic organizations[25], cooperative economic organizations and residents' and villagers' committees (Chapter 3 Section 4 GRCL).

Also, "unincorporated organizations" are the last kind of civil subjects, defined as organizations which could engage in civil activities with their own names, but do not possess independent legal personality as legal persons, including individual proprietorship enterprises, partnership enterprises, professional services, etc. (Sec. 102 GRCL). The new law also stipulates that investors or founders of the unincorporated organizations should bear unlimited liability for the debts of the organizations (Sec. 104 GRCL).

c) Agency

The aim of this section is to abstract different forms of agency existing in reality and govern them respectively.

The new law also emphasizes the prohibition of self-agency and bilateral-agency (Sec. 168 GRCL). More importantly, the new law reaffirms the validity of apparent agency first appearing in the CL of 1999 (Sec. 49 GRCL). Where the agent acts without authority, beyond authority or after the termination of agency but the third party has reason to trust it, then the contract between the third party and the agent shall be admitted and protected by law (Sec. 172 GRCL). Comparing the three drafts, the final version does not list the cases of exception any more. The new law also stipulates an independent agency based on the position and regulation, that the inner limitation on agency could not be raised against the counterparty in good faith (Sec. 170 GRCL). The relation of these regulations to the apparent agency is still unclear.

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25 Rural collective economic organizations refer to a kind of organizations that specifically exist in rural areas, which possess the collection of a cluster of people and their investment and conduct business activities for the aim of economic development.

4. Improvement of the protection of civil rights

a) The protection of personal information and virtual property

To meet the development of the internet, the new General Part emphasizes that natural persons' personal information shall be protected by law. No organization or individual may illegally collect, use, or transmit personal information, and shall not illegally provide, disclose or sell personal information (Sec. 111 GRCL). Although the provision of personal data follows special personality rights, its legal attribute is still controversial because the relationship between personal information and data in Sec. 127 GRCL is still unclear.

Besides, the new law emphasizes the protection of virtual property and data (Sec. 127 GRCL), but detailed stipulations are still left to special statutes.

b) The protection of intellectual property

In order to strengthen the protection of intellectual property and to promote scientific and technological innovation, the new General Part stipulates that intellectual property covers drafts, patents, trademarks, geographical indications, trade secrets, integrated circuit layout designs, as well as new varieties of plants and other objects prescribed by law (Sec. 123 GRCL). The protected scope reflects over thirty years of rapid development in the field of intellectual property in China and greatly exceeds the GPCL.

c) The protection of personality rights

The protection of personality rights is one of the biggest amendments in the new General Part.

In the realm of special personality rights, besides the traditional ones – for example the rights to life, health, reputation, name, and portrait – the new law lists the right to physical integrity and the right to privacy as two

independent special rights (Sec. 110 GRCL). In the times of the GPCL, privacy was regarded as a part of the reputation.[26] The right to physical integrity was classified in the same way. However, with the development and changes in the complex social life, there will always be some new uncovered rights. Therefore, in accordance with Arts. 37 and 38 of the Constitution, the new law clearly stipulates that the personal freedom and dignity of natural persons shall be protected by law (Sec. 109 GRCL). The intention of this provision is not only to protect personal freedom and personal dignity, but also to protect all the personal interests of natural persons. The provision uses these two concepts (personal freedom and dignity) to express the sum of the natural persons' personality interests. Therefore, Sec. 109 is regarded as the provision of "general personality rights".

More importantly, the new General Part adds that an infringement of heroic martyrs' names, portraits, fame or honor, which causes damage to public interests, shall be subject to civil liability (Sec. 185 GRCL).

d) The protection of Good Samaritans[27]

On the one hand, the new General Part has confirmed the right for Good Samaritans to request compensation. If one's rights and interests are prejudiced during the process of protecting others' civil rights, the infringer shall bear the liability of compensation, while the beneficiary could give proper compensation at the same time. Where there is no infringer, the infringer escapes or is unable to bear the liability, and meanwhile the Good Samaritans requests compensation, then the beneficiary should give appropriate compensation instead (Sec. 183 GRCL).

On the other hand, it has remained disputable whether Good Samaritans shall bear liabilities in the case that the rescue process has caused further damage to the sufferer. In the third reviewed draft of the General Part, Good Samaritans were supposed to be responsible for their gross mistake, while

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26 Typical example: Art. 140 para. 1 of the Opinions of the Supreme People's Court on Several Issues concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (For Trial Implementation) of 1988 (最高人民法院关于贯彻执行«中华人民共和国民法通则»若干问题的意见（试行)).

27 For a another analysis of the Good Samaritan provision in the new General Part, see Jieqiong Li, Civil Liability Provisions in the New General Principles of Civil Law (in this Symposium, p. 269).

the final version of the General Part confirms that Good Samaritans are excused from all liabilities (Sec. 184 GRCL). It is believed that the goal of this article is to free citizens from worries about liability while giving help.

4. Amendments concerning limitation periods

The first and foremost change in this chapter is the extension of the ordinary limitation period from two years to three years (Sec. 188 Para. 1 GRCL).

Furthermore, for maximizing the protection of minors' interests, Sec. 184 establishes that the limitation period of claiming sexual assault by a minor shall be calculated from the day the victim reaches the age of 18 years.

The new law also separately stipulates the scheduled period ("Ausschlussfrist" in German) but therefore uses the expression of the "duration of rights" instead of its academic name for the public to understand (Sec. 199 GRCL).

It is also clarified in Sec. 197 that limitations of actions and scheduled periods are compulsory, which could not be excluded by agreements.

IV. Problematic issues of the new General Part of the Chinese Civil Code

1. Flaws of certain provisions

a) Legal sources

As I have mentioned above, the new General Part has confirmed that customs not contrary to public order and good morals could be a legal basis for civil cases. Therefore, the remaining issue is how parties and judges can identify and determine customs, especially trade practices.

Another important issue is the status of judicial cases. Unlike the precedents of common law countries, judicial judgments have not been recognized as a formal kind of sources of law in Chinese legal theory and judicial practice. Sec. 10 GRCL has also not mentioned them as a source of law. Yet, since 2010, our SPC has been actively promoting the case guidance system (案例指导制度). Until now, it has published 17 batches of guiding cases, i.e. 92 cases in total. According to Art. 7 of the Provisions of the

Supreme People's Court on Case Guidance[28] («关于案例指导工作的规定») and Arts. 9 and 10 of the Detailed Rules for the Implementation of the Provisions of the Supreme People's Court on Case Guidance[29] («〈关于案例指导工作的规定〉实施细则»), People's Courts at all levels should refer to key points of guiding cases when the pending cases are similar in facts and legal application. Apart from that, the guiding cases cannot be cited as a basis of ruling but as judicial reasons. However, when People's Courts do not refer to guiding cases or make wrong reference, the issue whether they belong to the situation of the wrong application of law and thus constitute the cause of trial on appeal or retrial remains to be observed in judicial practice.[30]

The last issue is whether jurisprudence (doctrines) could be involved as one kind of legal sources. Different from the abovementioned Swiss, Korean and Taiwanese Civil Codes, jurisprudence is still not included in Sec. 10 GRCL as a source of law, which might also reflect the current situation of Chinese civil law theories, i.e. there still exists no prevailing legal opinion ("herrschende Meinung" in German). When considering relevant cases, it is apparent that in practice, certain cases have quoted jurisprudence as reference.[31] Some scholars claim that judges could still cite jurisprudence as a legal source in case no statutes, customs or guiding cases exist.[32] If so, because the level of our judges is uneven and they cannot accurately understand and apply the jurisprudence, the concern would arise that as a result the power of jurisdiction may be abused.

b) Civil juristic acts

Most scholars, starting from the promulgation of the GPCL, have been insisting on directly applying the concept of "juristic acts", because this is the concept used universally in civil law systems. They believe it is wrong that

28 No. 51 [2010] of the Supreme People's Court (法发 [2010] 51号).

29 No. 130 [2015] of the Supreme People's Court (法 [2010] 130号).

30 Li Yu, Essentials of the General Part of Chinese Civil Law, Interpretation of Rules and Variorum of Judgments («民法总则要义：规范释论与判解集注»), 61–62 (2017).

31 There are quite a few examples citing jurisprudence, see Li Yu, Essentials of the General Part of Chinese Civil Law, Interpretation of Rules and Variorum of Judgments («民法总则要义：规范释论与判解集注»), 65–69 (2017).

32 Liang Huixing, *The Understanding and Application of Some Important Articles of the General Provisions of Civil Law* ("«民法总则»重要条文的理解与适用»"), 4 Journal of Sichuan University (Philosophy and Social Science Edition) 51, 52 (2017).

the GPCL created the concept of "civil juristic acts" to represent lawful and valid juristic acts. This opinion was once adopted in the internal draft of the GRCL by the Legislative Affairs Committee of the NPC in 2015, which initially accepted the concept "juristic acts". However, when it came to the first official draft in 2016, the concept "civil juristic acts" returned to the paper. The reason for this was that other legal scholars outside the civil law community resisted the concept of "juristic acts". They believed that if the civil code used the concept of "juristic acts", it would leave no space for jurisprudence, administrative law, economic law and other legal disciplines to use "administrative juristic acts", "commercial juristic acts", etc. Accordingly, the concept of "civil juristic acts" was adopted until the final version of the General Part of Chinese Civil Code.

My understanding is that this result is the consequence of clearing off the entanglement for the completion of the legislation of the General Part. Although the term "civil juristic acts" used in the Chinese Civil Code is relatively different from the concept of "juristic acts" used in civil codes of the German legal system, their essence is identical. According to Sec. 133 GRCL, a civil juristic act is the act conducted by a civil subject through the expression of intention with the purpose of establishing, altering or terminating civil legal relationships.

c) Agency

In comparison with the third reviewed draft, 11 amendments were made in the section concerning agency. However, many problems are still unclear.

Firstly, Sec. 168 states that an agent shall not perform any juristic act in the name of the principal with himself/herself or other principals he/she represents, unless it is consented to or ratified by the principal. The problem is that the article fails to indicate the legal consequence of these acts.[33]

Secondly, Sec. 171 describes three situations that invoke the abuse of the power of agency, i.e., agency without authority, beyond authority, or after the termination of authority. However, this article does not consider a situation where the agent does act "within" his/her authority, but his/her act is

33 For a more detailed analysis of Art. 168 Para. 1 GRCL see Hu Qiangzhi, Das Verbot des Selbstkontrahierens nach Art. 168 Abs. 1 GRCL – aus rechtsvergleichender Perspektive (in this Symposium, p. 187).