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On the Legislative Technique of General Principles of Civil Code and the Content Which Determines by

Li Yongjun

Abstract The fourth plenary session of the 18th Communist Party of China decides to compile the Civil Code and it is a specific strategy of implementing the guideline of “genuine rule of law”. And the system and the structure of the Civil Code especially the content of the general principles in Civil Code which are determined by both the mode of structure of the codex and the technology of the codex is particularly significant. General principles of the Civil Code is the “convergence” in an abstract way to extract the “common factor” from various parts and it needs to have the “universality” for the parts under the general principles and it is the common and important things for the parts. This will require the content of general principles to be well-designed so that it can dominant the entire Civil Code as the soul of it. “Legal Relationship” is a core concept whether from the view of a legal analysis view or of a law application so that the content of general principles in the future Civil Code should be focused on it that means the subject the object the content rights the acquisition of right legal act or non-legal act and the realization of rights will be the basic content of general principles. Meanwhile the general principles should be expressed by the way of “standard” and all slogan or political oath which diverge from “standard” should be abandoned.

Keywords civil code general principles common factor legal relationship claim

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1916 E. J. Cohn vol. 1 25
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Paris 1950 p. 254.

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4			1863					Vgl.	
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5	Vgl.	BGB Allgemeiner Teil	Prüfe dein Wissen	23. Aufl.	2004	S. 1		BGB Allgemeiner Teil	38. Aufl.
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5 Levin Goldschmidt 1829 – 1897 .
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· Hermann von Schelling
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⁴⁵ 1896 8 18⁴⁶ 1896 8 24Reichgesetzblatt ⁴⁷

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⁴³ Vgl. Ü Allgemeiner Teil des Bürgerlichen Gesetzbuchs de Gruyter Berlin/New York 1984 § 2 III 1.

⁴⁴ 397 298 232 48 18

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2015 2 11

Organization Form of the Codification of German Civil Law

Chen Weizuo

Abstract The codification of German civil law which has lasted 22 years had its own historical background theoretical preparation political environment and legislative prerequisite. It took the organization form of codification commission dominated by jurists the Federal Council established successively the the the and the and the the First Draft as well as the the Second Draft as well as the and the Third Draft . In the final phase the also established a special commission for reviewing the draft civil code. Such an organization form of codification commission dominated by jurists is beneficial to bring their leading role into full play in the course of drafting a civil code and it can eliminate outside interference from public power organs as much as possible. In order to draft the Chinese Civil Code it is suggested that the Standing Committee of the National People's Congress establishes a special and independent codification commission of civil law with jurists as its principal members including law professors experienced judges experienced lawyers and civil servants having engaged in the legislative work for a long period.

Keywords draft civil code codification commission organization form jurists

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1 Jean-Louis Halpérin

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L'Harmattan 2005 p. 33.

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Study on the Procedural Issues of the Making of the French Civil Code

Shi Jiayou

Abstract The drafting of French Civil Code began during the French Revolution. Cambacérès presented three drafts of Civil Code. Unfortunately, such codification efforts finally aborted due to the complicate political situation. After the taking over of the powers by Napoleon, the executive had the dominance over the legislative. Therefore, a Drafting Commission of Civil Code was established by the government. Portalis and other three eminent jurists were appointed as its members. Portalis was the core of the Commission. The draft was sent to the courts for consultation. Then the draft and the observations were presented to the French Council of State, where Napoleon chaired more than half of the meetings on the revision of the draft. Napoleon also expressed his personal ideas on many issues such as marriage, family and adoption. The Council of State disassembled the draft into 36 legislations and established information communication with the Parliament in order to facilitate the lecture of the draft by the latter. The legislative power was exercised by three different chambers and was weakened. After the rejection of the draft by the Parliament, Napoleon intervened with strong political willingness and reshuffled the Parliament. Consequently, the legislations were adopted by the Parliament and the French Civil Code was finally enacted.

Keywords French Civil Code, codification, Cambacérès, Portalis, French Council of State

²⁶ . . . “ ” 2004 2 2
²⁷ Charles François Tristan de Montholon, é é , é à – éè Paris 1847 t. I p. 401.

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Bibliotecacentralegiuridica 2013 p. 6.

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no Torino 1982 53ss.

8 2014 69

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[http //www. chinanews. com/cj/2011/05 – 31/3079289..shtml](http://www.chinanews.com/cj/2011/05-31/3079289.shtml)
, a cura di Liapri Bari 1974 p. 52.

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The Problems of Organization with regard to the Codification of Chinese Civil Law The Discussion with reference to the Italian Experience

Xue Jun

Abstract There are different models of organization of the activity of codification which have a heavy effect on the quality of the civil code. During the Italian civilian codification there are two commissions appointed by the government and by the parliament. This model of organization combines very well the political elements and the technical elements of the civil code. In comparison with this model the monistic commission system has obvious defects. Mandated concrete physical persons should engage in the activity of codification instead of some entities. The selection of the members of the commission should base on the main function of the commission. The project-making commission should be composed of legal scholars high judges and lawyers and the revision commission should be composed of deputies.

Keywords codification of civil law commission of preparation commission of project commission of revision

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The Formulation of the Code of Republic of China Organization and Operation of Compound Legislative Body

Zhang Sheng

Abstract With its well reputed institutional quality and legislative efficiency the Civil Code of the Republic of China hereinafter referred to as “the PR Civil Code ” was a huge success in the legislation of the Nanjing KMT Government. On its appearance the PR Civil Code was enacted by what is seemingly cumbersome “composite legislatures ” the Central Executive Committee of KMT resolved on the legislative principles of all parts of the civil code through political councils so that its political orientation was directed the Civil Law Drafting Committee affiliated to the Parliament li fayuan took charge of drafting all parts of the civil code the Legislative Committee of the Parliament deliberated and resolved on such drafts and all parts of the civil code upon the resolutions of the Legislative Committee of the Parliament were then issued and promulgated by the KMT Government. In the operation of such “composite legislatures ” several individuals have played significant roles among whom are Hu Hanming and Shi Shangkuan. Hu ensured the political orientation of the PR Civil Code in coordinating the efficient operation of the four institutions and Shi with his mastery of law provided systematic theoretical support in drafting the legislative principles of all parts of the civil code as well as all the articles thereof and designing of the structure of the civil code.

Keywords the PR Civil Code compound legislative body Hu Hanming Shi Shangkuan

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19 Cfr. Munir Karam

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20 Véase Bernardino Bravo Lira

p. 47.

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Alejandro Guzmán Brito

p. 257 Sandro Schipani

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32 Véase Noemí Lidia Nicolau

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33 Munir Karam p. 337.

36 Véase Noemí Lidia Nicolau

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38 Véase Noemí Lidia Nicolau

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Actors in the Codification of Civil Law in Latin American Countries

Xu Diyu

Abstract Jurists are the subjective determinants for the different modes of codification but those first codifiers of Latin American civil codes are generally neglected in comparative study of law. Latin American countries first copied or modeled the French Civ

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The Social Transformation of Russia and the Codification of Civil Law

Yan Yimei

Abstract During the period that the system of planned economic transformed to the system of market economic Russia has spent 15 years in setting a new civil code which reflects its accomplishment in reformation. This civil code is the third one after the October Revolution. It is well-known as its widest scope last system length of compiled time intense conflict and abundant experience in Russian civil law history. What we should pay attention to is that the editing of the new civil code indicates the transformation about the civil legislation which used to be seemed as a public law and now returns back

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The Amendment Principles of Law of Succession in the Civil Codification Process

Guo Mingrui

Abstract In the process of Civil Codification the amendment of the law of succession should follow the system principle traditional principles the principle of protection of private property and the principle of maintaining a harmonious family and society. The contents of inheritance law should be considered from the perspective of the civil code system and the provisions of the law of succession should dovetail with other legal systems. The rule of the law of succession does not conflict with each other. Meanwhile excellent historical traditions or folk customs should be insisted. The existing rules should not be modified as much as possible and the customs of each nation should be fully respected. Inheritance law should maximize the protection of private property rights where legally acquired property should be in the range of heritage. Inheritance law should expand the scope of legal heir and the testament system s

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A Comparison of Defences in Infringement to Reputation Right between Chinese and English Law and Some Suggestions to the Amendment of Chinese Law Beginning with a Comment on the Reform of Defences by the *Defamation Act* 2013 of UK

Jiang Zhanjun

Abstract The defences in infringement to reputation right draw a border line between freedom of expression and protection of reputation right in substance. In English law the 2013 fulfill the codification of defences in general and promulgate a scientific defences system includinu

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On the Strata Determine of Seriousness of Crime With Comparative Analysis of Stipulation in Criminal Law both in China and Germany

Zhao Shuhong

Abstract With basis of the lawless behavior the constitutive elements cannot provide the sequential concept with which the seriousness of crime can be determined. For this the theoretical effort is to determine the seriousness of crime according to the damage to the quality of life. On the one hand the standard for quality of life itself has the potential types of thinking on the other hand with the standard of quality of life the comparative sequence can be available. Therefore as the standard the damage to the quality of life can be achieved on the seriousness of the behavior in the strata determine. This conclusion is proved in the crime against person as well as against economic organization with stipulation in criminal code not only in Germany and also in China.

Keywords seriousness of crime strata determine standard of quality of life

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Legal Control of Police Strip Searches in U. S. and Its Policy Value to China

Wu Ling & Zhang Demiao

Abstract Although strip search is a critical measure to protect officers' safety and discover contrabands in law enforcement practices, it poses a serious threat to human rights and dignity if not properly regulated. Legal control of strip searches not only requires balancing the crime prevention value and the needs of human rights protection, but also sets behavioral boundaries for law enforcement. The current research analyzes judicial decisions on police strip searches by the U. S. federal courts under the Fourth Amendment. It examines key aspects of strip search behaviors such as scope, manner, place, and justification, and then summarizes and reveals related legal doctrines and specific reasonableness tests. Finally, this research discusses the limitation of extant law on body search in China and suggests the measures to utilize U. S. experiences in China's policy implementation.

Keywords strip search, police power, legal control, balancing test

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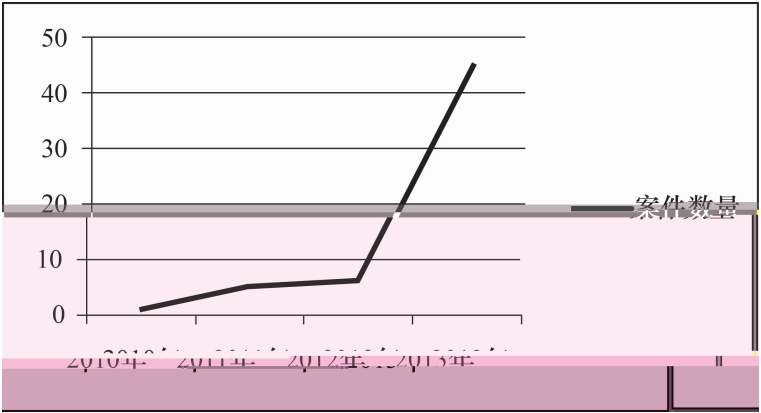
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Legal Basis and Practice regarding the Establishment of the Air Defense Identification Zone

Yen-Chiang Chang

Abstract The Air Defense Identification Zone is a mechanism that requests the civil aircraft identifying itself before entering a specific territorial airspace. It is a special zone in which certain air traffic control measures may be adopted. This paper suggests that while considering the Air Defense Identification Zone international law only provides partial jurisdiction for limited purposes. This means that the establishment of the Air Defense Identification Zone is not an occupation over the airspace upon High Seas or Exclusive Economic Zone. One cannot exclude the lawful usage from others. It is therefore reasonable that there are overlapping areas among the Air Defense Identification Zones established by different states. This paper concludes that the establishment of the Air Defense Identification Zone is based on the right of self-defense of customary international law and the purpose of which is to ensure national defense. Therefore it can be implemented beyond the scope of territorial airspace. Investigation and identification measures are imposed for those foreign aircraft who does not report before entering the Air Defense Identification Zone. It is a none-armed defense measure therefore does not violate any international law.

Keywords air defense identification zone exclusive economic zone Convention on International Civil Aviation UNCLOS

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On the Feudal Law in Medieval Europe

Ma Jianyin

Abstract Which is the supreme authority in Middle Ages The sacred authority or the royal power This is a problem. “The Doctrine of Two Swords ” — the theory of struggle between spiritual sword and secular sword — shows the basic context of evolution of laws in medieval Europe. On the one hand These secular laws countered to the canon law but on the other hand they had to follow the canon law. This article introduces and analyzes the system of “feudal law ” in medieval Europe which was named by posterity. The system of feudal law derived from the feudalization of Germanic law was a structured system which was borrowed from the method of systematization of canon law as well as other secular legal systems. This article also gives a clear explanation of the origin and transition of the feudal law and recapitulates the principal elements the fundamental characteristics and the status of this legal system. In order to understand the conception of “feudal/feudalism ” this article differentiates the three meanings of the word especially in the history of the academic ideas.

Keywords feudal feudalism feudal law fief vassalage