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RCCL Online Symposium on Chinese Civil Code (7 June 2020)

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On 28 May 2020, the Third Plenary Meeting of the 13th National People's Congress passed the much anticipated Civil Code of the People's Republic of China (Civil Code). When it comes into force on 1 January 2021, the Civil Code will replace the existing General Principles of Civil Law, General Rules of Civil Law, Contract Law, Property Law, Guarantee Law, Tort Liability Law, Marriage Law, Succession Law and Adoption Law, and becomes the single most comprehensive collection of civil and commercial provisions of law in China.

Given the importance of the Civil Code to the civil and commercial law development and practice in China, being a research centre which keeps close watch on China's legal development, the Centre for Chinese and Comparative Law (RCCL) of the School of Law of City University of Hong Kong held an online academic symposium on 7 June 2020, inviting a group of civil law scholars and experts, from the Hong Kong, mainland China and overseas (including a member of one of the Civil Code drafting teams), to discuss a range of academic issues arising from the Civil Code, such as the debates and controversies during the law-making process and issues in its future application in areas including but not limited to the structure of the Civil Code, the general provisions, and the provisions relating to property, contract, personality rights and torts.

While the Symposium was held on Sunday morning, the number of participants was still very high: in addition to eight speakers, there were 134 audience at the peak.

The Symposium was divided into two parts: speakers' presentations and roundtable discussion. The Symposium started with the opening speech by RCCL Director Prof. Wang Jiangyu who thanked all the participants' support and participation in this event, and Prof. Liu Qiao — convener of this Symposium and RCCL Core Member — who explained the purpose of this Symposium and introduced all the speakers.



Prof. Wang Jiangyu (left) and Prof. Liu Qiao (right) delivered the welcome speech and introduced the purpose of this Symposium

In the first part of the Symposium, each of the speakers took turn to speak and share their insightful views with all the participants on various issues relating to the Civil Code, including the value of the Civil Code in the history of China's civil law development; the controversies and responses relating to the Tort Liability Chapter; the public law dimension of the Property Law Chapter; the feasibility of applying the Contract Law Chapter and the Personality Rights Chapter to marriage and family law issues by analogy; changes in the Contract Law Chapter and methods to handle contractual deadlock situations; the relationship between Civil Code and politics; and the internal and external structural problems of the Civil Code.

The first speaker of this Symposium Prof. Han Shiyuan of Tsinghua University examined the Civil Code from historical, comparative law and social/legal development perspectives. He considered that the Civil Code is not only a milestone in China's history, but also a practical necessity in China's social development; it is a product of legal transplant and has the characteristics of 'continental legal system as the fundamental structure, Anglo-American legal system for practical use'; it has absorbed the existing judicial interpretation and at the same time added new provisions. Notwithstanding that, however, Prof. Han pointed out that the practical value and regulatory function of the Civil Code remain to be seen, and whether the Civil Code could turn from the law on the book to living law depends on civil law education, which would be a long process.

Dr. Meng Qiang's presentation focused on the Tort Liability Chapter of the Civil Code. He discussed the changes from Tort Liability Law to the Tort Liability Chapter in the Civil Code, including the opinions of the draftsmen of the Tort Liability Chapter and the responses in the Civil Code with regard to the scope of personal injury compensation; the role of Internet in cyber infringement; product liability; and the liability issues in traffic accidents related to online car hailing service, in medical incidents and in cases involving dropping objects from buildings. Besides, Dr. Meng also talked about provisions regulating voluntary risk taking, private remedy, intellectual property, punitive compensation relating to environmental pollution and ecological destruction, lift with good intention by non-business vehicles, and the increase in the property management companies' security protection obligation with regard to dropping objects from buildings.

Prof. Ling Bing analyzed the changes in the Contract Law Chapter and focused on discussing the right of the breaching party to rescind the contract in contract deadlock situations. He pointed out that while both Article 580 of the Civil Code and Article 48 of the Notice by the Supreme People's Court of Issuing the Minutes of the National Courts' Civil and Commercial Trial Work Conference (SPC Notice) attempt to solve the problems relating to contract deadlock, the subject of these two provisions are different. Besides, he commented that Article 580 of the Civil Code fails to solve two kinds of contract deadlock situations in practice while the relevant provisions in the SPC Notice are too general and needed to be made more specific to avoid the court enjoying too much discretion. Given the aforementioned problems, Prof. Ling was of the opinion that contract deadlock situations still have to be interpreted by the court and the SPC Notice should continue to be applied.

In his presentation, Dr. Chen Lei based on the principle of *statutory jus in rem* to give an in-depth analysis of the public dimension of property law. After comparing the Property Rights Chapter in the Civil Code with the Property Law 2007 in detail, Dr. Chen focused on discussing the provisions in the Property Rights Chapter with regard to ownership, occupancy, land management rights from the perspective of state governance. He was of the opinion that several questions remain to be solved such as whether the ratio in ownership voting has responded to the modern skills; whether shared occupancy premises could be sold or divided; the difference between land management rights and land contract undertaking-party; and whether party with land management rights is entitled to the right to the property.

Prof. Xu Diyu examined from the law drafting perspective how the provisions in the Contract Law Chapter and Personality Rights Chapter could be applied in marriage and family law issues. He considered that the nature of the personal relationship agreement in marriage and family relationship is very different from that of the contract, though the Civil Code has not explained the difference between them. Additional, identity rights and personality rights are very different from each other and both of them could not be directly applied in the same rules. Given the fundamental principle of 'application of analogy has to be precise and specific', Prof. Xu pointed out that the Civil Code should specify the applicable provisions instead of generally permitting the application of the provisions.

Prof. Chen Jianfu examined the Civil Code from legal and political perspectives and pointed out that China's civil law development is a de-politicalization process. He believed that the promulgation of the Civil Code has actually re-defined the value and the path of development of civil law, which is an issue of choice of value and judgment rather than a merely technical issue. While the compilation of the Civil Code mainly involves issues such as political characteristics, Chinese characteristics, spirit of the time and scientific arrangements, Prof. Chen commented that Civil Code has the problem of full of political slogans and factors, confusing concepts, surpassing and inconsistent with national conditions.

The last speakers Prof. Liu Qiao examined the structure of the Civil Code and pointed out that because some of the provisions in the Civil Code are difficult to be applied, and some are in conflict with each other, therefore further clarification is needed. He proposed that the method of 'systematic analysis' by judicial organs could be used to solve these problems. Apart from that,

he analyzed in detail the inconsistencies with regard to the application of the principle of good faith in the Civil Code; the unclear demarcation and inconsistency between the Personality Rights Chapter and the Civil Rights Chapter in the General Provisions and the Tort Liability Chapter; the repetitions and inconsistencies in the provisions with regard to the abuse of power by the representatives of legal persons; and the inconsistent standards of judicial rescission of contract, etc. He pointed out the structural defects in the draft of the Civil Code and proposed possible solutions to these problems. Moreover, Prof. Liu also analyzed the external structure of the Civil Code by examining the consistency between provisions Civil Code and Company Law, private international law and conflict of law.

After all the speakers' thought-provoking presentations, there was a group discussion session during which Prof. Liu Qiao prepared some questions relating to the Civil Code and invited the speakers to give their comments. All speakers took this opportunity to further express their views with regard to the green principle in the General Provisions of the Civil Code; the typical contracts that were newly added in the Contract Law Chapter; the relationship between the special tort liability under the Tort Liability Chapter and the application of the relevant laws; the principle of *statutory jus in rem* under the Property Right Chapter; the cooling off period in divorce by consent under the Marriage and Family Chapter; and the response to the social concerns by the newly added provisions in the Civil Code, etc. The Symposium ended with the concluding remarks by Prof. Wang Jiangyu and Prof. Liu Qiao.

Since the Civil Code has not come into force, this Symposium only marked the beginning of the discussion and research relating to this new Civil Code, and what we could do at this moment are only limited to a preliminary analysis of the contents/wordings of the provisions and a prediction of the possible problems in implementing these provisions. However, once the Civil Code comes into force, we can foresee that there will be a lot of practical issues that merit further exploration. RCCL will definitely continue to organize relevant academic activities in due course to follow the development of the Civil Code.

