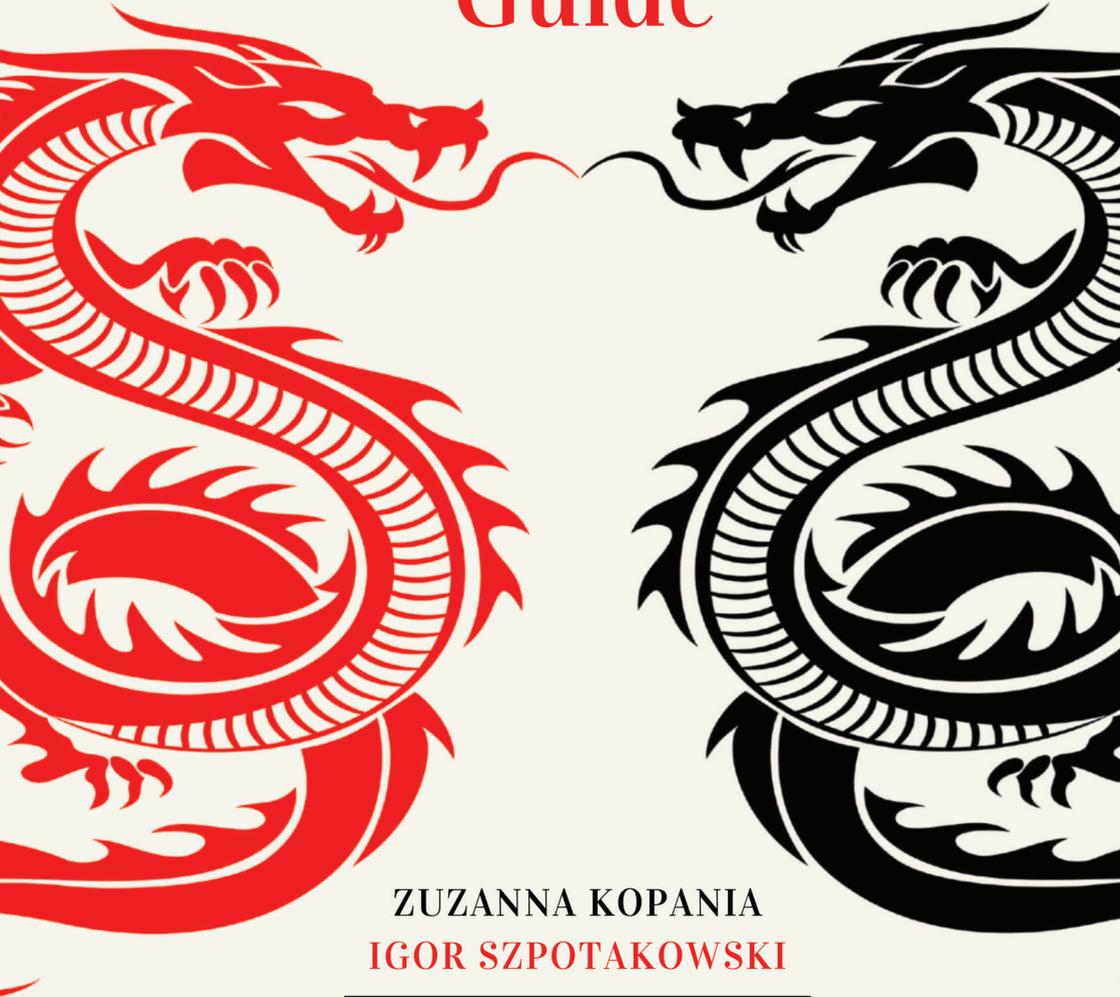


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# Chinese Law Research Guide



ZUZANNA KOPANIA  
IGOR SZPOTAKOWSKI

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WITH A FOREWORD BY  
MIMI ZOU, UNIVERSITY OF OXFORD

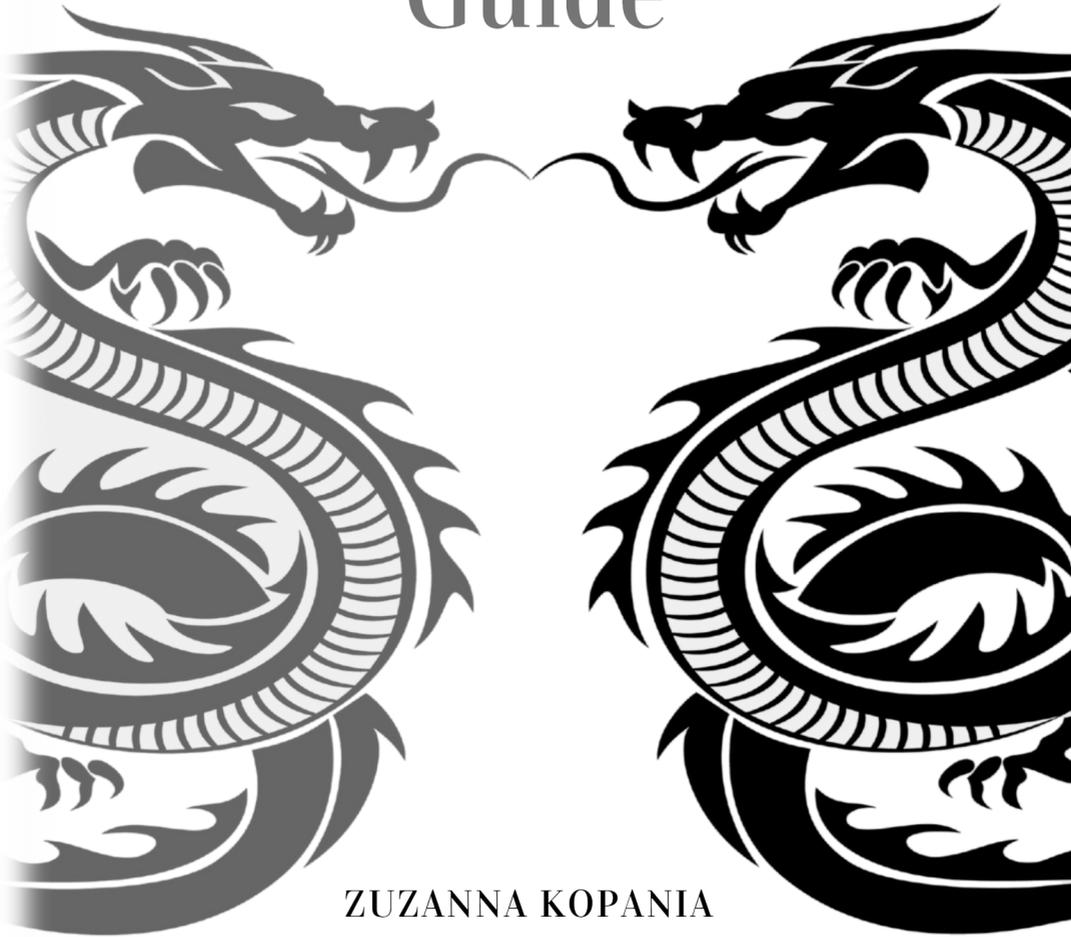
# CHINESE LAW RESEARCH GUIDE

BY  
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Authors

Zuzanna Kopania  
Igor Szpotakowski

Reviewers

prof. Mingzhe Zhu  
China University  
of Political Science and Law  
dr hab. Joanna Grzybek  
Jagiellonian University

Proofreading

Daniel Purisch  
JD (Harvard), LLM (Cambridge)

Editorial Proof and Composition

Karol Łukomiak

Cover design

Zuzanna Kopania

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# FOREWORD

It is a great honour and pleasure for me to pen this foreword for what will undoubtedly be a useful resource for anyone undertaking research on the PRC legal system and its laws. Over the past two decades, this subject area has seen exponential growth in scholarly and practitioner interest outside the PRC. Such interest has certainly been fuelled by China's rise as an economic and political actor on the global stage and its increasingly active role in seeking to shape international and transnational norms, rules, and institutions. For example, the Chinese-led Belt and Road Initiative may see the further development and growing influence of Chinese legal norms and practices in international commercial transactions.

As a lawyer trained and qualified in common law jurisdictions, I started researching Chinese law around 15 years ago at the University of Sydney when I was studying for a joint economics and law degree. I emigrated from China to Australia at a young age and was very fortunate to maintain my mother tongues (Cantonese and Mandarin). Back in the mid-2000s, I found that there were few online and publicly available primary sources of Chinese law in Chinese or English. There were also not many books on Chinese law that I could find in university libraries or bookshops in Sydney. So, when I received

an Australian government scholarship to study at Tsinghua for a semester in 2007, I took an empty suitcase with me and brought back to Australia two more suitcases of books and papers by Chinese legal scholars (I still do this regularly). Within a very short span of time, we are very fortunate that digitalisation has made it so much easier to access a wide range of Chinese law materials online.

I would like to take this opportunity to encourage law students using this valuable research guide to continue pursuing their interest in Chinese law. My scholarly and professional interest in Chinese law opened up doors for me in legal practice, academia, and international organisations. A few years ago, I had the incredible opportunity of being appointed to the first academic post in Chinese law at the University of Oxford, with the role of developing the subject as a new field of study at Oxford and cultivating ties between Oxford and leading Chinese law schools.

Last but not least, I would like to congratulate Zuzanna and Igor for undertaking this important initiative and extend my well wishes to the users of this research guide. *Jia you!*

Dr Mimi Zou, Oxford  
15 December 2020

# INTRODUCTION

News about the People's Republic of China is generating headlines and discussion in media and academia around the globe almost every day<sup>1</sup>. On the one hand, China is the most populous and one of the largest countries on Earth, with one of the largest economies, but on the other hand the PRC is a constant mystery and sometimes even a 'mental trap' for a European-educated lawyer<sup>2</sup>. The uniqueness of China and its legal system requires not only a good understanding of how Chinese law works, but also how to gain reliable knowledge about it and properly analyse that information.

In recent years, many universities around the Europe have established research centres for Chinese law (such as the Centre for Chinese Law and Policy (CCLP)

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<sup>1</sup> J. W. Tkaczyński, Ł. Gacek, *China's environmental policy in terms of European Union standards*, Göttingen 2020, p. 17.

<sup>2</sup> B. Góralczyk, *Wielki Renesans. Chińska transformacja i jej konsekwencje*, Warszawa 2018, p. 13.

of Durham University<sup>3</sup>, the Finnish China Law Centre<sup>4</sup>, the China Law Centre of Erasmus School of Law<sup>5</sup> or the Polish Research Centre for Law and Economy of China<sup>6</sup>) and schools of Chinese law (e.g. at Jagiellonian University in Cracow<sup>7</sup>, University of Warsaw<sup>8</sup>, University of Silesia<sup>9</sup> and University of Gdansk<sup>10</sup>). This shows that there is a great demand for scholarly research and instruction in Chinese law across Europe, but there is also a noticeable interest in Chinese law among legal practitioners seeking to learn more about the legal solutions applied in the People's Republic of China in order to increase their commercial awareness. Regardless of the reasons for this interest, the question remains how to effectively search for reliable information on this topic.

This book is intended as a compact but comprehensive research guide that would provide students (especially those who are preparing coursework or dissertations about Chinese law), researchers and legal practitioners with the

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<sup>3</sup> Centre for Chinese Law and Policy (CCLP): <https://www.dur.ac.uk/cclp/>, access 20.11.2020.

<sup>4</sup> Finnish China Law Center: <https://blogs.helsinki.fi/chinalawcenter/>, access 20.11.2020.

<sup>5</sup> Erasmus Universiteit Rotterdam, China Law Centre of Erasmus School of Law: <https://www.eur.nl/esl/research/research-institutes/china-law-centre>, access 20.11.2020.

<sup>6</sup> Polish Research Centre for Law and Economy of China <http://chinalaw.wpia.uw.edu.pl/research-centre/>, access: 20.11.2020.

<sup>7</sup> Jagiellonian University School of Chinese Law and Culture: <https://okspo.wpia.uj.edu.pl/spch>, access: 20.11.2020.

<sup>8</sup> School of Law and Economy of China of University of Warsaw: <http://chinalaw.wpia.uw.edu.pl/about-the-school/>, access: 20.11.2020.

<sup>9</sup> University of Silesia School of Chinese Law and Culture: <https://www.wpia.us.edu.pl/studia/szkola-prawa-i-kultury-chinskiej>, access: 20.11.2020.

<sup>10</sup> University of Gdansk Chinese Law School: <https://prawo.ug.edu.pl/oferta/szkolyprawaobcego/szkolaprawachinskiego> access: 20.11.2020.

necessary knowledge about how to conduct effective Chinese legal research.

Although we acknowledge that there are other outstanding books on Chinese legal research<sup>11</sup>, most of them are largely outdated or almost impossible to obtain. Although we have been able to consult most of these books, either in the course of our personal research or during the preparation of this guide, our efforts to obtain them were difficult, time consuming and expensive. That is why we decided to write a research guide that will be available via open access to anyone, anywhere in the world.

After this short introduction, this guide is divided into three chapters, followed by final remarks, a bibliography and list of relevant sources, and, finally, an index of Chinese legal terms (as Appendix 1).

Chapter 2 overviews the Chinese Legal System, briefly discussing its legal culture and legal history, as well as the main sources of law in the People's Republic of China.

Chapter 3 discusses Chinese Legal Research, and contains the following sections: Introduction to Legal Research; Starting with secondary resources; How to research PRC legislation; How to research court judgments and decisions; How to research and read Chinese contracts; How to cite Chinese legal sources.

Chapter 4 discusses websites and blogs about Chinese law which could be useful in conducting your research.

The last chapter consists of short summary of the materials and tips contained in this book.

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<sup>11</sup> For example: L. Foster, T. Yajima, Y. Lin, *China Law Reader*, San Francisco 2013 or P. Kossof, *Chinese Legal Research*, Durham 2014.

## INTRODUCTION

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Finally, we would both like to wish you the best of luck and every success in your journey with Chinese law and legal research!

Zuzanna Kopia

Igor Szpotakowski

# THE CHINESE LEGAL SYSTEM IN BRIEF

## THE PHILOSOPHICAL CONTEXT OF CHINESE LAW

John K. Fairbank and Denis Twitchett in the general editors' preface to 'The Cambridge History of China' book series have commented that the history of Chinese civilization is broader and more complex than the history of any single Western nation<sup>1</sup>. In fact, the history of the Middle Kingdom is only just marginally less ramified than the history of European civilization as a whole<sup>2</sup>. According to Janos Jany, the Middle Kingdom is remarkable in that Chinese legal history until the end of the 19th century is the history of almost identical patterns continuously repeating itself for millennia without any ground-breaking

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<sup>1</sup> *The Cambridge History of China. Volume 1: The Ch'in and Han Empires, 221 BC–AD 220*, Denis Twitchett, Michael Loewe (Eds.), Cambridge 1986, p. VI.

<sup>2</sup> *Ibidem.*

changes<sup>3</sup>. This is indeed a considerable simplification; however, it is true that the influence of the major Chinese philosophical doctrines like Confucianism (儒家 *Rujia*), Legalism (法家 *fajia*), Daoism (道教 *Daojia*) and Chinese Buddhism (汉传佛家 *Hanchunfojia*), which are a substantial part of the Middle Kingdom civilization, shaped Chinese views on morality and law for centuries<sup>4</sup>. The most influential of them were Confucianism and Legalism, which are still the main underpinnings of China's legal system<sup>5</sup>. Chang Wang and Nathan H. Madson have characterised current Chinese law as legalistic while still retaining a Confucian face<sup>6</sup>. As this is not a book about the philosophy of Chinese law, but a research guide, we will cover these issues quite briefly. However, getting acquainted with these philosophies will definitely aid one's understanding of how Chinese legal culture and how Chinese people themselves view the role of law and its implementation; such knowledge is crucial for conducting any research about China. If you are interested in reading more on this subject in a broader context, we recommend Dingxin Zhao's *The Confucian-Legalist State: A New Theory of Chinese History*<sup>7</sup> or, for Polish speakers, Mateusz Stępień's *Spór legistów z konfucjanistami. Wokół chińskiej kultury prawnej*<sup>8</sup>.

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<sup>3</sup> J. Jany, *Legal Traditions in Asia - History, Concepts and Laws*, Cham 2020, p. 309.

<sup>4</sup> *Ibidem*, p. 326-327.

<sup>5</sup> Chang Wang, Nathan H. Madson, *Inside China's Legal System*, Oxford, Cambridge, New Delhi 2013, p. 27.

<sup>6</sup> *Ibidem*.

<sup>7</sup> Dingxin Zhao, *The Confucian-Legalist State: A New Theory of Chinese History*, New York 2015.

<sup>8</sup> M. Stępień, *Spór konfucjanistów z legistami. Wokół chińskiej kultury prawnej*, Kraków 2013.

In a 1978 paper, Luke T. Leel and Whalen W. Lai briefly summarised the approach to law taken by the Chinese philosophical traditions of Legalism, Confucianism and Buddhism:

*Major Chinese traditions may be characterized in terms of their conceptions of law, man, and the cosmos as follows: the Legalist believes in man, or rather, the king, as the agent in the creation of law; the Confucian trusts in the natural harmony between man's ritual propriety and the natural principles of the universe; and the Buddhist believes in the sacred transcendental law, with a historical but superhuman origin in the teachings of one man—the Buddha<sup>9</sup>.*

The Confucian vision of the society is based on a patriarchal hierarchical system in which each person's role is determined by their position in society, as well as by familial and personal connections<sup>10</sup>. Confucian filial piety (孝 *xiao*) and respect for elders can easily be spotted in the General Part<sup>11</sup> of the new Chinese Civil Code<sup>12</sup>. According to the Confucians, everyone should be guided by

<sup>9</sup> Luke T. Leel, Whalen W. Lai, *The Chinese Conceptions of Law: Confucian, Legalist, and Buddhist*, Hastings Law Journal, vol. 29, issue 6, article 3, 1-1978, p. 1308.

<sup>10</sup> Chang Wang, Nathan H. Madson, *op. cit.*, p. 28.

<sup>11</sup> See article 26 of the Civil Code of the People's Republic of China, adopted May 28, 2020, effective Jan. 1, 2021: *Parents have the obligation to raise, educate and protect their minor children. Adult children have the obligation to support, assist and protect their parents* (父母对未成年子女负有抚养、教育和保护的义务。成年子女对父母负有赡养、扶助和保护的义务).

<sup>12</sup> G. Lebedowicz, I. Szpotakowski, B. Wiśniewski, *Zarys chińskiego prawa cywilnego w dobie kodyfikacji*, Toruń 2019, p. 129.

tradition and ritual (礼 *li*), which is far more important than the law (法 *fa*)<sup>13</sup>.

In contrast to the Confucian vision, the Legalists argue that the law should comprise principles and standards of conduct backed by the power of the state authority and publicly promulgated in legal codes<sup>14</sup>. The Legalist vision of the society is assumes that the rule of law is higher than the tradition or rituals<sup>15</sup>. But according to them the ruler was above the law, while for Confucianism legal institutions were far less important than the judgment of moral men<sup>16</sup>.

## CHINESE LEGAL HISTORY

The beginning of imperial China according to J. K. Fairbank dates to the year 221 BC, when Qin Shi Huang unified Chinese territory by conquering various warring states<sup>17</sup>. Since the Warring States period, almost every Chinese dynasty has established legal codifications<sup>18</sup>. However, the earliest known set of laws that has survived in its entirety is the Tang Code, in its version from the year 653<sup>19</sup>. The code was first promulgated in 637 during the reign of Emperor Taizong and can undoubtedly be called one of the most important monuments of law not only

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<sup>13</sup> J. M. Zimmerman, *China Law Deskbook: A Legal Guide for Foreign-invested Enterprises*, Third Edition, Chicago 2010, p. 36.

<sup>14</sup> Chang Wang, Nathan H. Madson, *op. cit.*, p. 35.

<sup>15</sup> J. M. Zimmerman, *op. cit.*, p. 40.

<sup>16</sup> *Ibidem*.

<sup>17</sup> J. K. Fairbank, M. Goldman, *China: A New History*, Cambridge, London 2006, p. 54-57.

<sup>18</sup> M.E. Lewis, *China's Cosmopolitan Empire: The Tang Dynasty*, Cambridge, London 2009, p. 50.

<sup>19</sup> T. Brook, J. Bourgon, G. Blue, *Death by a Thousand Cuts*, Cambridge, London 2008, p. 37.

in the history of China, but the whole world<sup>20</sup>. The era of the Tang dynasty (618-907 CE), according to Geoffrey MacCormack and Wang Feng-Xin, marked a culmination in the development of Chinese civilisation with respect to law<sup>21</sup>. The Tang legal code represents a great intellectual achievement, and several of its rules and distinguishing features have appeared in later codes of Song dynasty (960-1279 CE), Yuan dynasty (1279-1368 CE), Ming dynasty (1368-1644 CE) and finally many centuries later in the code of the Qing dynasty (1644-1912 CE) which formed the basis of Chinese law until 1911<sup>22</sup>. When writing about Chinese law of the imperial era, one must worth to bear in mind that the theory that ancient law in China only concerned penal and administrative matters is just an oft-repeated myth<sup>23</sup>. It is important to remember that Chinese courts rarely hear purely commercial disputes since civil cases have traditionally been settled through either mediation or arbitration<sup>24</sup>.

As China has played a hegemonic role in the region and is very fond of its culture, tradition and closed legal system, it has sought to limit the impact of foreign

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<sup>20</sup> I. Szpotakowski, *Złota era w historii Chin – panowanie cesarza Taizong'a z dynastii Tang*, [in:] *Monarchia. Idea, Historia, Perspektywy*, K. Kofin, M. Kofin (Eds.), Kraków 2018, p.177.

<sup>21</sup> Geoffrey MacCormack, Wang Feng-Xin, *The T'ang code: early Chinese law*, Vol. 18, no. 1 (summer 1983), p. 132.

<sup>22</sup> *Ibidem*.

<sup>23</sup> I. Szpotakowski, Z. Kopania, *Między prawdą, a mitem – o kontrowersjach co do istnienia prawa cywilnego w Chinach dynastycznych*, [in:] *Rozważania nad procesem stanowienia prawa w Polsce i Chinach na przestrzeni wieków. Wybrane zagadnienia*, I. Szpotakowski (Ed.), Łódź – Kraków 2020, p. 117-133.

<sup>24</sup> J. M. Zimmerman, *op. cit.*, p. 41.

superpowers<sup>25</sup>. The so-called Unequal Treaties concluded between the Qing dynasty and several countries (the British Empire, United States of America, Russian Empire, Empire of Japan, French colonial empire, Portugal etc.) were intrusive and a result of “gunboat diplomacy”<sup>26</sup>. To follow Japan in its (successful) efforts to become an equal to those powers, China decided to abandon its legal tradition and create civil and criminal codes<sup>27</sup>. The Chinese government assumed that the new codification of civil and criminal code would lead the British Empire to fulfil its promise made in a trade deal on 5 February 1902 to relinquish the extraterritorial rights British citizens in China enjoyed under an unequal treaty signed in 1842<sup>28</sup>. The new Civil Code was supposed to include five parts: the General Part, Liabilities, Property Law, Family Law and Inheritance Law. This followed the “pandectic” systematization that had been developed at the turn of the 19<sup>th</sup> century in German lawyers’ textbooks seeking a way to apply Roman law to contemporary needs. At the turn of the 20<sup>th</sup> century, it became the basis of the system of many

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<sup>25</sup> M.R. Auslin, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy*, Cambridge-London 2004, p. 16.

<sup>26</sup> The time between 1839 and 1949 is often called the “century of humiliation”. A. Kaufman, *The “Century of Humiliation” and China’s National Narratives*, The U.S.-China Economic and Security Review Commission 2011, <https://www.uscc.gov/sites/default/files/3.10.11Kaufman.pdf>, access: 10.12.2020; I. Szpotakowski, *Suwerenność państwa i rządu prawa: kodyfikacja prawa prywatnego w Chinach*, Świat Idei i Polityki 2018, Vol. 17, p. 161.

<sup>27</sup> I. Szpotakowski, *Suwerenność...*, p. 161.

<sup>28</sup> In the 1902 trade deal, the British Empire committed to relinquish its citizens’ rights to extraterritoriality once the Chinese Empire changed its outdated laws and adjusted them to modern western standards. The United States of America and Japan followed with similar commitments. *Ibidem*.

European civil law codes<sup>29</sup>. The penal code was adopted in May 1910. It aimed to abolish cruel and unusual punishments such as slicing to death or desecrating a corpse, to introduce a court system with four levels<sup>30</sup> (independent from the administrative offices) and to reform the prison system<sup>31</sup>. Due to the fall of the dynasty the planned civil code was never adopted. However, it did become the basis for further work on codification projects<sup>32</sup>. Both codes resembled the German Civil Code (*Bürgerliches Gesetzbuch*)<sup>33</sup>.

When the Qing dynasty ultimately fell in 1912<sup>34</sup>, the Republic of China was created. Its constitution contained a USA-influenced Bill of Rights<sup>35</sup>. Between 1912 and 1931 the constitution was redrafted multiple times, incorporating several other Western-style legal provisions. During the same period, the Republic of China revised and eventually adopted a civil law system that introduced the Six Codes of the Guomindang and was modelled on European legal codes<sup>36</sup>. The six codes were the Organic Law of the Courts, Commercial Law, Civil Code,

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<sup>29</sup> *Ibidem*.

<sup>30</sup> In 1906 the Court of Judicial Review became the Supreme Court and in 1907 a four-level court system began to be implemented. By 1911 there were 345 established courts. X. Xu, *Heaven Has Eyes: A History of Chinese Law*, New York 2020, p. 114.

<sup>31</sup> *Ibidem*, p. 111-112.

<sup>32</sup> I. Szpotakowski, *Suwerenność...*, p. 162.

<sup>33</sup> M. Łągiewska, *Charakterystyka chińskiego prawa cywilnego – wybrane aspekty*, "Gdańskie Studia Azji Wschodniej" 2017, No. 12, p. 86-87.

<sup>34</sup> Z. Kopania, *Proces powstawania Kodeksu Qing (1646 – 1912) i jego dziedzictwo*, [in:] *Rozważania nad procesem stanowienia prawa w Polsce i Chinach na przestrzeni wieków. Wybrane zagadnienia*, I. Szpotakowski (Ed.), Łódź – Kraków 2020, p. 176.

<sup>35</sup> P.R. Luney, Jr, *Traditions and Foreign Influences: Systems of Law in China and Japan*, Law And Contemporary Problems, Vol. 52, No. 2, 1989, p. 131.

<sup>36</sup> *Ibidem*.

Criminal Code, Civil Code of Procedure, and Criminal Code of Procedure. The legal transplants made by China marked a critical turning point in its legal history and changed its legal system forever. The Criminal Code in the Republic of China was inspired by the criminal codes of Hungary, Germany, Holland, Italy, Egypt, Siam and Japan<sup>37</sup>. The Civil Code (which was eventually promulgated in 1930<sup>38</sup>) was based on the Swiss, Japanese and German codes (but unlike those it did not separate civil law from commercial law)<sup>39</sup> and the Code of Civil Procedure was based on the Austrian Code. At the same time the courts were organized on the French model, except that China followed the Anglo-American principle of separating the judiciary from the executive<sup>40</sup>.

In February 1949, the CPC Central Committee of the People's Republic of China announced the decision to abolish the Republic of China's legal system. They thought what was created from 1912 was a bourgeois law not fit for Chinese people and intended just to protect those in privilege<sup>41</sup>. They established the Judicial Principles in the Liberated Area. Between 1949 and 1953, 148 laws and regulations were enacted<sup>42</sup>. PRC's legal system was significantly inspired by Soviet Union's<sup>43</sup>. In 1951 the Supreme People's Court was established, as well as 2,547

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<sup>37</sup> *Ibidem*.

<sup>38</sup> I. Szpotakowski, *Suwerenność...*, p. 164.

<sup>39</sup> Chen Lei, *The historical development of the Civil Law tradition in China: a private law perspective*, *The Legal History Review* 2010, No. 78, p. 169-171.

<sup>40</sup> P.R. Luney, Jr, *op.cit.*, p. 131.

<sup>41</sup> Chen Lei, *op.cit.*, p. 173.

<sup>42</sup> P.R. Luney, Jr, *op.cit.*, p. 131.

<sup>43</sup> P. Kossof, *Chinese Legal Research*, Durham 2014, p. 7.

local courts<sup>44</sup>. Approximately 25,000 judges were installed, mostly on the basis of their political standards rather than their legal background<sup>45</sup>. The period from 1954 to mid-1957 is sometimes referred to as the golden age of legal development in the People's Republic of China due to the considerable progress made in the creation of a formal legal system<sup>46</sup>. With the promulgation of the first Constitution of PRC in 1954 the framework for the system was established, and it was later supplemented by organic laws for the courts and the procuracy. Additionally, during this golden age of legal development scholarly research flourished and several law books and two major law journals were created and meticulous work on creating civil and criminal codes began<sup>47</sup>.

In 1957 an extensive Anti-Rightist political campaign took place, during which many judges were criticised for using the people's courts against the people<sup>48</sup>. The Soviet-Chinese alliance shattered and Chinese leaders abandoned the Soviet legal model<sup>49</sup>. Between 1957 and 1965, some Chinese jurists, legal scholars, and party leaders made efforts to modernize the legal system. Several attempts were made to draft uniquely Chinese legal codes based on Chinese characteristics and not on foreign models, but none was successful<sup>50</sup>. Eventually during the Cultural Revolution (1967 to 1977) the judicial system that has been set up in the 1950s was completely destroyed,

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<sup>44</sup> Y. Li, *The Judicial System and Reform in Post-Mao China: Stumbling Towards Justice*, Surrey-Burlington 2014, p. 1.

<sup>45</sup> *Ibidem*.

<sup>46</sup> P.R. Luney, Jr, *op.cit.*, p. 133.

<sup>47</sup> *Ibidem*.

<sup>48</sup> Y. Li, *op.cit.*, p. 2.

<sup>49</sup> P.R. Luney, Jr, *op.cit.*, p. 133.

<sup>50</sup> *Ibidem*.

the legal profession was abolished and public and security organs were merged into regional single organisations under the control of the revolutionary committee<sup>51</sup>. As legal procedure was abandoned, special case groups were set up and empowered to try and sentence individuals<sup>52</sup>.

According to Lin Yan, the modern Chinese legal system emerged in 1976 after the death of Chairman Mao and the fall of the so-called 'Gang of Four', a radical faction inside the Chinese Communist Party (CCP)<sup>53</sup>. Another important reason was that spectacular economic development since 1978's Deng Xiaoping's 'open door' policy, needed a sustainable and predictable legal system to attract foreign investments in China<sup>54</sup>. During the third session of the Eleventh Communist Party's Congress in 1978 the Party declared that its priority will shift from class struggle to economic development<sup>55</sup>. After the end of the Cultural Revolution, Chinese Communist Party leaders shared a consensus that the kind of lawlessness seen during the Cultural Revolution should not be allowed to happen ever again and all aspects of life both in political and in social context should be protected by law<sup>56</sup>. In August 1980, the National People's Congress adopted the PRC Provisional Regulations on Lawyers restoring the legal profession that was abolished in 1959 and in July

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<sup>51</sup> Y. Li, *op.cit.*, p. 2.

<sup>52</sup> *Ibidem*.

<sup>53</sup> Lin Yan, *A brief legal history of Modern China*, [in:] L. Foster, T. Yajima, Y. Lin, *China Law Reader*, San Francisco 2013, p. 11.

<sup>54</sup> *Ibidem*; Guanghua Yu, *Introduction*, [in:] *Rethinking Law and Development: The Chinese Experience*, Guanghua Yu (Ed.), Abingdon, New York 2013, p. 1.

<sup>55</sup> Y. Li, *op. cit.*, p. 2.

<sup>56</sup> X. Xu, *op. cit.*, p. 232.

1986 the National Association of Lawyers was founded<sup>57</sup>. By 1989 more than 3,500 law firms had been in operation nationwide, with over 31,000 lawyers<sup>58</sup>. By June 1995 there were almost 89,000 lawyers and more than 7,200 law firms<sup>59</sup>. Even the number of law schools in China rose, from two in the end of 1977<sup>60</sup> to more than 100 in 2020. The political jargon of the late 1970s and 1980s included key terms like “improving the legal system” (健全法制 *jianquan fazhi*) and “enforcing the rule of law” (实行法治 *shixing fazhi*), the latter coming into more regular usage in the 1990s and after<sup>61</sup>.

In 2009 Lei Chen described Chinese legal modernization as an immature process, even though he admitted that it is rapidly developing and ongoing<sup>62</sup>. More than a decade after that statement the question arises whether the Chinese legal system has changed significantly. In the last decade, the Chinese legal system has developed to the point that it is no longer just a recipient of Western models, but rather an innovative system whose legal solutions have begun inspiring other countries, especially in the areas of innovation and new technologies. With the adoption of the first civil code in the history of PRC by the 13th National People’s Congress in Beijing on 28 May 2020 another step in this development has taken place. China

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<sup>57</sup> *Ibidem*, p. 241.

<sup>58</sup> *Ibidem*.

<sup>59</sup> Chenguang Wang, *Introduction: An Emerging Legal System*, [in:] *Introduction to Chinese Law*, Chenguang Wang, Xianchu Zhang (Eds.), Hong Kong-Singapore 1997, p. 13.

<sup>60</sup> *Ibidem*.

<sup>61</sup> X. Xu, *op. cit.*, p. 232

<sup>62</sup> Lei Chen, *The historical development of the Civil Law tradition in China: a private law perspective*, *The Legal History Review* 78 (2010), p. 160.

is also not afraid to refer to its rich tradition and history in legal acts, for example in the case of using custom as a source of law in Chinese civil code<sup>63</sup> or in understanding the principle of good faith<sup>64</sup>.

## THE CHINESE LEGAL SYSTEM

When one is first embarking on a journey through Chinese law, it is crucial to remember that Chinese law is very different from the common law jurisdictions that many English-speaking lawyers come from or are familiar with. Court's decisions do not have precedential value in civil law, which means that Chinese courts do not have to follow the decisions of other courts<sup>65</sup>. Chinese law is a civil law tradition system with Chinese characteristics. Its national legislation is often quite vague and aims to focus on main policies and goals, while filling in the detail of specific rules frequently is left to additional regulations. Thus, researchers cannot limit themselves to reviewing national legislation, as it definitely does not provide the full scope needed to conduct valuable research<sup>66</sup>. National legislation does not include the definitions of the terms it uses; to find that one must take a closer look at administrative and local regulations<sup>67</sup>.

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<sup>63</sup> I. Szpotakowski, *Geneza i rola zwyczaju w nowej części ogólnej kodeksu cywilnego Chińskiej Republiki Ludowej*, Warsaw University Law Review, Volume XVIII, no. 1/2019, p. 173-186.

<sup>64</sup> I. Szpotakowski, *Polish and Chinese civil law perspectives on the principle of good faith*, [in:] *China and the Chinese in the modern world. An interdisciplinary study*, Zuzanna Kopania, Igor Szpotakowski, Kraków-Łódź 2020, p. 115-128.

<sup>65</sup> P. Kossof, *op.cit.*, p. 7.

<sup>66</sup> *Ibidem*.

<sup>67</sup> *Ibidem*.

As this is a Research Guide, we will not describe every organ of every central body of the People's Republic of China in detail. Key entities, persons, and issues include: the National People's Congress, the NPC's Standing Committee, the President and Vice-President of the People's Republic of China, the State Council, the Central Military Commission, the judiciary and in particular the Supreme People's Court, prosecutors' offices within the Supreme People's Procuratorate, supervisory commissions and especially the National Supervisory Commission, the legislative mode and the party system, taking into account the changes effected through the 2018 amendment to the constitution of the PRC<sup>68</sup>.

The Chinese legal system follows the (European) continental legal tradition which means that the sources of law are mainly statutes and written legal documents<sup>69</sup>. Those sources are:

1) Constitution (宪法 *xianfa*) – The current Constitution of the People's Republic of China was promulgated in 1982 and later amended in 1988, 1993, 1999, 2004 and in 2018. It consists of an extended preamble and 143 articles divided into 4 chapters (General Principles; The Fundamental Rights and Duties of Citizens; The Structure of the State; The National Flag, the National Anthem, the National Emblem and the Capital). The legal system that functions in the People's Republic of China, although formally recognized as a statutory

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<sup>68</sup> See: I. Szpotakowski, *Konstytucyjne ramy systemu rządów w Chińskiej Republice Ludowej*, Białostockie Studia Prawnicze 2019, Vol. 24 No. 4, p. 189-205.

<sup>69</sup> Chenguang Wang, *Introduction: An Emerging Legal System* [in:] *Introduction to Chinese Law*, Chenguang Wang, Xianchu Zhang (Eds.), Hong Kong-Singapore 1997, p. 15.

system, in practice is a hybrid: due to the traditional elements of the continental legal system (codifications) and references to the common law system, especially in contract law and company law<sup>70</sup>. Since 2008 it has not been permitted for the Constitution to be quoted in judicial verdicts and administrative decisions, and the Constitution thus exerts little influence over daily legal practice<sup>71</sup>.

2) Law (法律 *falü*) – This category includes all legal documents promulgated by the National People's Congress and its Standing Committee which means laws, decisions and ratified international treaties<sup>72</sup>.

3) Administrative regulations (行政法规 *xingzheng fagui*) – The State Council issues rules concerning important issues in the country (although they cannot contradict the Constitution)<sup>73</sup>.

4) Administrative rules (行政规章 *xingzheng guizhang*) – Issued by the ministries, commissions and departments of the State Council aim to regulate matters under their jurisdiction<sup>74</sup>.

5) Local regulations (地方法规 *difang fagui*) – These are enacted by local people's congresses and their standing committees, and they affect their respective territories<sup>75</sup>.

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<sup>70</sup> I. Szpotakowski, *Konstytucyjne ramy systemu rządów w Chińskiej Republice Ludowej*, Białostockie Studia Prawnicze 2019, Vol. 24 No. 4, p. 192.

<sup>71</sup> Chenguang Wang, *Introduction: An Emerging Legal System*, [in:] *Introduction to Chinese Law*, Chenguang Wang, Xianchu Zhang (Eds.), Hong Kong-Singapore 1997, p. 18.

<sup>72</sup> *Ibidem*.

<sup>73</sup> *Ibidem*, p. 18-20.

<sup>74</sup> *Ibidem*, p. 20.

<sup>75</sup> *Ibidem*.

6) Local administrative rules (地方行政规章 *difang xingzheng guizhang*) – These are issued by provincial, city and county governments and their administrative branches and aim to implement national laws to their respective locations<sup>76</sup>.

7) Autonomous regulations and special regulations (地方自治条例和单行条例 *difang zizhi tiaoli he danxing tiaoli*) – This category contains autonomous and special regulations made by the people's congresses and their standing committees<sup>77</sup>.

8) Autonomous rules (地方自治规章 *difang zizhi guizhang*) – Autonomous governments have powers similar to local governments and therefore may make rules regulating day to day matters<sup>78</sup>.

9) Regulations by Special Economic Zones (经济特区法规 *jingji tequ fagui*) – Special Economic Zones have the power to enact regulations that institutionalize their economic practices<sup>79</sup>.

10) Interpretations of law – As Chinese legal acts are mostly enacted in general and vague terms, their interpretation by various authorities effectively forms an important source of law. Without them Chinese law could be unusable and sometimes even misleading. In general, legislative interpretation means interpretation given by legislative authorities on laws and rules issued by themselves; administrative interpretation refers to interpretations given by administrative authorities of these rules and regulations; and judicial interpretations are those issued

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<sup>76</sup> *Ibidem.*

<sup>77</sup> *Ibidem.*

<sup>78</sup> *Ibidem.*

<sup>79</sup> *Ibidem.*

by the Supreme People's Court (司法解释 *sifa jieshi*) and the Supreme People's Procuratorate in their adjudicative and procuratorial work<sup>80</sup>.

11) Guiding cases system (案例指导制度 *anli zhidao zhidu*) – See: Chapter 2: Chinese Legal Research, subchapter: What is the Guiding Cases System? And how can you find them? (page 39).

12) Hong Kong basic law (香港基本法 *xianggang jiben fa*) and Macao (澳门特别行政区基本法 *aomen tebie xingzhengqu jibenfa*) – the Concept of 'Special Administrative Region' (SAR) and the formula of 'one country, two systems' which is applied to Hong Kong and Macao basically means that within a unified country the fundamental political, socio-economic and legal system in an SAR may be allowed to be different from the rest of the country to deal with the difficult issue of national unification<sup>81</sup>.

13) Common practice – Those are the informal elements of legal practice (for example, since it is not proscribed by law, lawyers often try and meet with judges before trials to influence their opinions)<sup>82</sup>.

14) Custom (习惯 *xiguan*) – Article 10<sup>83</sup> of the new Chinese Civil Code restores custom as a source of Chinese civil law<sup>84</sup>.

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<sup>80</sup> J. Chen, *Chinese Law: Context and Transformation Revised and Expanded Edition*, Leiden, Boston 2016, p. 266-267.

<sup>81</sup> *Ibidem*, p. 144.

<sup>82</sup> *Ibidem*, p. 22.

<sup>83</sup> In Chinese: 第十条 处理民事纠纷, 应当依照法律; 法律没有规定的, 可以适用习惯, 但是不得违背公序良俗。

<sup>84</sup> I. Szpotakowski, *Geneza i rola zwyczaju w nowej części ogólnej kodeksu cywilnego Chińskiej Republiki Ludowej*, Warsaw University Law Review, Volume XVIII, no. 1/2019, p. 173.

15) International treaties – When China becomes a signatory party of a treaty, the treaty becomes an integral part of PRC's legal system<sup>85</sup>.

In the People's Republic of China only Chinese nationals may hold Chinese law licences or represent clients in court. Foreign counsel may only represent a client through assuming the client's position and latter waiving its right to counsel<sup>86</sup>. This creates a substantial challenge for us foreign legal professionals, but one should not get discouraged, as the puzzle that is the Chinese legal system is incredibly fascinating and amply rewards those who engage with it.

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<sup>85</sup> *Ibidem*.

<sup>86</sup> P. Kossof, *op.cit.*, p. 7-8.



# CHINESE LEGAL RESEARCH

## INTRODUCTION TO LEGAL RESEARCH

According to Michael Salter and Julie Mason ‘research’ signifies the systematic study of a topic<sup>1</sup>:

*‘Research’ seeks to define, describe and explain what the topic is and how it has come to be distinct from other similar phenomena. Research requires the ability to access and then critically assess the various debates and issues that the topic has generated. Research is usually assessed [...] in terms of its accuracy, the scope and depth of appropriate reading, explanatory power, and the extent to which it has developed a suitably critical analysis of both the explicit claims and implicit assumptions which currently prevail regarding the topic<sup>2</sup>.*

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<sup>1</sup> Michael Salter, Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*, Dorset 2007, p. 6.

<sup>2</sup> *Ibidem*.

Researching Chinese law is not an easy task. Firstly, according to Xiaomeng Zhang, successful research on Chinese law requires a solid understanding and knowledge of the Chinese legal system and its major primary and secondary resources<sup>3</sup>. Basic proficiency in understanding Chinese legal language is also important to understanding the historical subtext of the legal system and the ever-expanding list of primary law sources<sup>4</sup>. According to Evelyn Ma and Xiaomeng Zhang, without some basic proficiency in the Chinese language, it is difficult to correctly understand the contextual meaning of legal terms and the context of their usage<sup>5</sup>. Sometimes, academic papers on Chinese law published in English lack discussion about the most recent current legal topics because there are not many sufficiently high-quality translations of Chinese law and secondary resources are not consistently available<sup>6</sup>. However, in opinion of the authors of this Research Guide, there are enough resources in English to conduct fairly in-depth research and write an academic text on Chinese law, especially at the level of university coursework or an initial paper published in an academic legal journal. The previous chapter presented the basic information about the Chinese legal system and its history and presented many additional sources in the form of footnotes that can be consulted. X. Zhang stated that often a complete legal research requires starting with secondary

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<sup>3</sup> Xiaomeng Zhang, *On describing Chinese legal research - Paul Kossof, Chinese Legal Research book review*, *The Chinese Journal of Comparative Law*, 2015, p. 194.

<sup>4</sup> Evelyn Ma, Xiaomeng Zhang, *Researching Chinese Law Using Legal Periodicals in English and Chinese: A Critical Overview*, *Legal Reference Services Quarterly* 2015, 34:1, p. 19.

<sup>5</sup> *Ibidem*.

<sup>6</sup> *Ibidem*.

resources and cannot be finished without making sure primary sources of law are still valid<sup>7</sup>. According to her, both steps are quite essential and should not be omitted without good justification<sup>8</sup>. Secondary sources, such as research guides, monographs, and journal articles, help one get the basics of the Chinese legal system, and they also help identify most of the relevant primary sources<sup>9</sup>.

In this Chapter, we first discuss the relevance of the jurisprudential framework of Roman law for research about Chinese law. The next sub-chapter then lists academic journals regarding Chinese law. You will learn how to research PRC's legislation, how to research court judgments and decisions and how to research and read Chinese contracts. And finally, you will learn how to cite Chinese legal sources.

### **Chinese law and the jurisprudential framework of Roman law**

Although Chinese law is one of the oldest legal traditions in the world, changes that occurred in the twentieth century resulting in the adoption of Western-style laws marked a significant turning point<sup>10</sup>. For the first time China has moved away from traditional Chinese society and old Chinese philosophies<sup>11</sup>. A frequently asked question is how we should research Chinese law. Should

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<sup>7</sup> Xiaomeng Zhang, *On describing...*, p. 195.

<sup>8</sup> *Ibidem*.

<sup>9</sup> *Ibidem*.

<sup>10</sup> P. R. Luney, *Traditions and Foreign Influences: Systems of Law in China and Japan*, Law and Contemporary Problems, vol. 52, no.2, p. 131.

<sup>11</sup> *Ibidem*.

we use the jurisprudential framework of the Roman law or should we pay special attention to the Chinese characteristics, despite the fact that the law looks similar to the law of the European civil law tradition countries, like Germany or France?

Franciszek Longchamps de Bériér described the jurisprudential framework of the Roman law as a research approach that can be applied to any legal tradition<sup>12</sup>. Roman law, so extensive and dogmatically rich, has undergone many centuries of evolution and took on at various stages its history many regulations that dealt with the same issues<sup>13</sup>. So Roman law created a framework of concepts<sup>14</sup>. This framework can be treated as a language of speaking about law in general, even regardless of the legal tradition from which the applicable regulations originate<sup>15</sup>. Theoretically good knowledge of Roman law allows you to describe every law<sup>16</sup>. Secondly, Roman law provides a framework for discussions about the law in civil law tradition countries and its national regulations: about reform for some countries, and, for others, developing the legal system from scratch<sup>17</sup>.

So, can we use jurisprudential framework of Roman law as a method of analysing Chinese law? In opinion of the authors of this Research Guide, the answer is yes, but only if we also have a good knowledge of Chinese law and Chinese legal culture and legal history. Chinese

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<sup>12</sup> F. Longchamps de Bériér, *Law of Succession: Roman Legal Framework and Comparative Law Perspective*, Warszawa 2011, p. 17-18.

<sup>13</sup> *Ibidem*.

<sup>14</sup> *Ibidem*.

<sup>15</sup> *Ibidem*.

<sup>16</sup> *Ibidem*.

<sup>17</sup> *Ibidem*.

society is now fully mature to accept and use legal structures consistent with its history, the oldest and the most recent, with the recognition of the significance of law that was not born in China – the Roman law tradition<sup>18</sup>.

## STARTING WITH SECONDARY RESOURCES

Research on Chinese law should normally begin with secondary sources. In the bibliography of this Research Guide you will find books and articles that may inspire you to try and find answers to your questions. Here I will only present a list of academic journals that are worth looking at when you are searching for information on a specific topic regarding Chinese law:

- Peking University Journal of Legal Studies
- Frontiers of Law in China
- Tsinghua China Law Review
- China Legal Science
- Peking University Law Review
- The Chinese Journal of Comparative Law
- China-EU Law Journal
- Gdansk Journal of East Asian Studies (in Polish and English)
- Chinese Law and Government
- Chinese Journal of International Law
- German Journal of Chinese Law (*Zeitschrift für Chinesisches Recht*)

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<sup>18</sup> Riccardo Cardilli, *Diritto cinese e tradizione romanistica alla luce del nuovo Codice civile della Rpc*, *Mondo Cinese: Rivista di Studi sulla Cina Contemporanea*, vol. 167, no. 1, p. 41.

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## HOW TO RESEARCH PRC LEGISLATION?

English translations of Chinese primary sources of laws and regulations have become more readily available in proprietary databases and in the public domain<sup>19</sup>; unfortunately, however, there is no comprehensive or up to date collection of Chinese laws in English on open access websites<sup>20</sup>. One source for English translations of many laws is the National People's Congress Database of Laws and Regulations<sup>21</sup>, but the quality of the translations is sometimes not very good or might even turn out to be misleading. Additionally, bear in mind that the English translation of laws are never official. For Chinese speakers there is a governmental open-access website of the Ministry of Justice of the People's Republic of China (中华人民共和国司法部 *Zhonghua renmin gongheguo sifa bu*)<sup>22</sup>. Other national governmental and administrative units also often provide their laws and regulations through their websites, although unfortunately the English version of those websites usually has less information than the original Chinese version<sup>23</sup>. Therefore, researchers looking for the official legal acts usually need to use the Chinese version of the website. Paul Kossof in his book 'Chinese Legal Research' proposed the following instruction how to

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<sup>19</sup> E. Ma, Xiaomeng Zhang, *Researching Chinese Law Using Legal Periodicals in English and Chinese: A Critical Overview*, Legal Reference Services Quarterly 2015, 34:1, p. 19.

<sup>20</sup> China & Hong Kong Legal Research Guide: Legislation <https://unimelb.libguides.com/china/legislation>, access: 09.12.2020.

<sup>21</sup> Laws of the PRC (Translation for reference only), [www.npc.gov.cn/englishnpc/lawsoftheprc/list.shtml](http://www.npc.gov.cn/englishnpc/lawsoftheprc/list.shtml), access: 12.12.2020.

<sup>22</sup> Ministry of Justice of the People's Republic of China (中华人民共和国司法部) [www.chinalaw.gov.cn/Department/node\\_592.html](http://www.chinalaw.gov.cn/Department/node_592.html), access: 12.12.2020.

<sup>23</sup> P. Kossof, *Chinese Legal Research*, Durham 2014, p. 50.

search for primary sources of law at any of PRC's governmental websites:

*On the main Chinese homepage, look for a link to “法律法规” (“legal legislation”), “法规” (“legislation”) or “规定” (“regulations”). That page will have a list of regulations. The next step will be to search the page with the Chinese name of the regulation found through Baidu or a subscription-based services<sup>24</sup>.*

As the students do not usually have access to subscription-based databases the authors will only here mention the databases that have large resources of PRC laws and regulations: Chinalawinfo<sup>25</sup>, Westlaw China<sup>26</sup> and Lexis China<sup>27</sup>.

The NPC Observer blog<sup>28</sup> and China Law Translation<sup>29</sup> website also sometimes have good-quality, although unofficial, English translations.

On 24th February 2021, Chinese National People's Congress (NPC) launched an online database of Chinese legal acts: the National Database of Laws and Regulations (国家法律法规数据库 *Guojia falu fagui shujuku*)<sup>30</sup>. This database in the future will be probably one of the main sources for browsing, search, and download Chinese legal acts.

<sup>24</sup> *Ibidem*, p. 50.

<sup>25</sup> Chinalawinfo, <http://www.chinalawinfo.com>, access: 10.12.2020.

<sup>26</sup> Westlaw China, [http://www.westlawchina.com/index\\_en.html](http://www.westlawchina.com/index_en.html), access: 10.12.2020.

<sup>27</sup> Lexis China, <http://www.lexisnexis.com.cn/en-cn/products/lexis-asia.page>, access: 10.12.2020.

<sup>28</sup> NPC Observer <https://npcobserver.com/>, access: 07.12.2020.

<sup>29</sup> China Law Translate <https://www.chinalawtranslate.com/en/>, access: 07.12.2020.

<sup>30</sup> National Database of Laws and Regulations, <https://flk.npc.gov.cn/>, access: 25.02.2021.

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## HOW TO RESEARCH COURT JUDGMENTS AND DECISIONS?

### First steps

Case law is very important when you are conducting research on Chinese law. And luckily since July 2013 the “China Judgments Online” website – an initiative of China’s Supreme People’s Court – has been online. All Chinese courts must post their judgments on this open access website; as of December 2020 there were more than 109,037,905 documents published there<sup>31</sup>. The website includes not only criminal, civil, and administrative judgments, but also other judgment documents such as payment orders and state compensation decisions<sup>32</sup>. The website China Judicial Process Information Online (中国审判流程信息公开网)<sup>33</sup> may also be useful in examining the Chinese judicial system. Many English versions of judgments are available in databases like Westlaw China<sup>34</sup> or BeiDa Fabao - Cases Database<sup>35</sup>.

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<sup>31</sup> China Judgements Online (中国裁判文书网), access: <https://wenshu.court.gov.cn/>, access: 10.12.2020.

<sup>32</sup> *Ibidem*.

<sup>33</sup> China Judicial Process Information Online (中国审判流程信息公开网), <https://splcgk.court.gov.cn/>, access: 10.12.2020.

<sup>34</sup> Westlaw China, [http://www.westlawchina.com/index\\_en.html](http://www.westlawchina.com/index_en.html), access: 10.12.2020.

<sup>35</sup> BeiDa Fabao - Cases Database, [http://www.pkulaw.cn/cluster\\_call\\_form.aspx?menu\\_item=case](http://www.pkulaw.cn/cluster_call_form.aspx?menu_item=case), access: 10.12.2020.

## **What is the Guiding Cases System? And how can you find them?**

The Supreme People's Court (最高人民法院 *Zuigao Renmin Fayuan*) has not been passive in shaping the processes of Chinese law, although the judicial function of the SPC is not as important as in Common Law Systems like the UK or USA<sup>36</sup>. Most recently the process of shaping Chinese law by judicial power has been supplemented through the so-called “guiding cases” system (案例指导制度 *Anli zhidao zhidu*) since 2010, whereby the SPC compiles the most important and high-quality examples of High People's Courts (高级人民法院 *Gaoji renmin fayuan*) case judgments to encourage reform deliberation and more informed and consistent judgments<sup>37</sup>. A White Paper on Judicial Reform in China issued in October 2012 in Beijing defined this system in Part II. “Maintaining Social Fairness and Justice”, Section 2, “Standardizing Judicial Acts”.

In 2010, China's judicial organs issued regulations on building a case guidance system, marking the establishment of a case guidance system with Chinese characteristics. Different from the system of case judgment in the common law, China's case guidance system - under the statutory law - uses cases to give directions for the accurate understanding and appropriate application of the provisions of laws. In recent years, judicial organs have made public cases that are typical in the application of laws as guiding cases and references for judicial personnel at all

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<sup>36</sup> Ronald C. Keith, Zhigui Lin, Shumei Hou, *China's Supreme Court*, Abingdon, New York 2014, p. 63.

<sup>37</sup> *Ibidem*.

levels to settle similar cases. The case guidance system has improved the standardized exercise of judicial discretion, and enhanced uniformity in the application of the law<sup>38</sup>.

Sometimes, in order to understand the interpretation and practical use of particular provisions in Chinese law, it is necessary to reach for not only the legal act, but also to read relevant Guiding Cases. So, what is the easiest way to find them?

One of the best and most accessible sources is “The China Guiding Cases Project (the “CGCP”)” of Stanford Law School<sup>39</sup>. One can find there the full text of judgments (mostly in Chinese), commentaries, as well as some guides in English. According to its website, this project:

*aims to advance the understanding of Chinese law and to help develop a more transparent and accountable judiciary in China by engaging experts and other stakeholders around the world to contribute to a unique knowledge-base, undertaking capacity-building activities for legal actors, and promoting public education and participation*<sup>40</sup>.

Another option is an open source case database, OpenLaw<sup>41</sup>, launched in 2014, which provides judicial decisions and guiding cases for free. One can also conduct research about guiding cases system on China Judgements

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<sup>38</sup> *White Paper on Judicial Reform in China, Part II. Maintaining Social Fairness and Justice, Section 2: Standardizing Judicial Acts*, english.www.gov.cn/archive/white\_paper/2014/08/23/content\_281474983043170.htm, access 09.12.2020.

<sup>39</sup> The China Guiding Cases Project (the “CGCP”) of Stanford Law School, <https://cgc.law.stanford.edu/>, access: 08/12/2020.

<sup>40</sup> *Ibidem*.

<sup>41</sup> Open Law, <http://openlaw.cn/>, access: 10.12.2020.

Online website (中国裁判文书网)<sup>42</sup>, Westlaw China<sup>43</sup> or BeiDa Fabao - Cases Database<sup>44</sup>.

### **Where to watch court trials in China?**

A really useful online resource for accessing Chinese trials is the website China Court Trial Online (中国庭审公开网)<sup>45</sup>, where live broadcasts and recording of thousands court proceedings from all provinces of PRC can be viewed online. This source can be used for empirical research on, for example, courtroom psychology. It also includes a ranking list that allows one to see which live broadcasts and even which areas of law are the most popular among viewers<sup>46</sup>. Unfortunately, this resource is primarily useful for those who understand Mandarin.

### **HOW TO RESEARCH AND READ CHINESE CONTRACTS?**

Civil and commercial relationships are growing significantly in the People's Republic of China<sup>47</sup>. Each year they are more complex and technical<sup>48</sup>. Under the old legislation, previous to new Chinese Civil Code (which

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<sup>42</sup> China Judgements Online (中国裁判文书网), access: <https://wenshu.court.gov.cn/>, access: 10.12.2020.

<sup>43</sup> Westlaw China, [http://www.westlawchina.com/index\\_en.html](http://www.westlawchina.com/index_en.html), access: 10.12.2020.

<sup>44</sup> BeiDa Fabao - Cases Database, [http://www.pkulaw.cn/cluster\\_call\\_form.aspx?menu\\_item=case](http://www.pkulaw.cn/cluster_call_form.aspx?menu_item=case), access: 10.12.2020.

<sup>45</sup> China Court Trial Online (中国庭审公开网), <http://tingshen.court.gov.cn/>, access: 11.12.2020.

<sup>46</sup> <http://tingshen.court.gov.cn/rank>, access: 11.12.2020.

<sup>47</sup> Mimi Zou, *An introduction to Chinese Contract Law*, Hong Kong 2018, p.13.

<sup>48</sup> *Ibidem*.

as mentioned earlier was adopted by the 13th National People's Congress in Beijing on 28 May 2020 and will enter into effect on 1 January 2021<sup>49</sup>), there were many special types of contract, including, for example, contracts of sale, supply and consumption of electricity, gas and water, loan contracts, gift contracts, lease agreements, technology contracts<sup>50</sup> and contracts of agency<sup>51</sup>. Under the new Civil Code there are many types of contract as well, including Contracts for Supply and Use of Electricity, Water, Gas, and Heat (供用电、水、气、热力合同), Gift Contracts (赠与合同), Loan Contracts (借款合同), Guarantee Contracts (保证合同), Lease Contracts (租赁合同), Financial Lease Contracts (融资租赁合同), Factoring Contracts (保理合同), Construction Contracts (建设工程合同), Contracts of Carriage (运输合同), Technology Development Contracts (技术开发合同), Technology Transfer Contracts and Technology Licensing Contracts (技术转让合同和技术许可合同), Technical Consulting Contracts and Technical Service Contracts (技术咨询合同和技术服务合同), Custody Contracts (保管合同), Warehousing Contracts (仓储合同), Entrustment Contracts (委托合同), Property Service Contracts (物业服务合同), Partnership Contracts (合伙合同), etc<sup>52</sup>.

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<sup>49</sup> I. Szpotakowski, *The New Chinese Civil Code and its contribution to Sustainable Development*, *Transformacje Prawa Prywatnego*, 3/2020, p. 243.

<sup>50</sup> Mimi Zou, *op. cit.*, p. 13.

<sup>51</sup> Hui Zheng, *Legal Capacity, Legal Representative and Agency*, [in:] *Chinese Civil Law*, Yuanshi Bu (Ed.), München 2013, p. 14.

<sup>52</sup> *Civil Code of the People's Republic of China* (中华人民共和国民法典), original text in Chinese available here: <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml>, access: 10.12.2020.

Although it is rare for contracts or drafts of contracts to be among the sources for an academic paper about Chinese law, it is worth knowing how to go about analysing such a contract, and what its structure will be, if such an analysis is called for. As a first step, it is useful to obtain some substantive knowledge about Chinese contract law. Listed below are the best and most up-to-date secondary resources in English on Chinese contract law and how contracts work in the PRC:

- Mimi Zou, *An introduction to Chinese Contract Law*, Hong Kong 2018.
- Mimi Zou, *Chinese Contract Law and the 2020 Civil Code*, Hong Kong 2020.
- Mo Zhang, *Chinese Contract Law—Theory and Practice*, Leiden, Boston 2020.
- *Sino-Polish Perspectives on the Theory and Practice of Contract Law*, Piotr Grzebyk, Ewa Rott-Pietrzyk, Chen Su (Eds.), Warsaw 2020.
- *Perspectives on Chinese Business and Law*, Łukasz Gołota, Jiaxiang Hu, Kim Van der Borght, Saisai Wang (Eds.), Cambridge 2018.
- Igor Szpotakowski, *Polish and Chinese civil law perspectives on the principle of good faith, [in:] China and the Chinese in the modern world. An interdisciplinary study*, Zuzanna Kopania, Igor Szpotakowski, Kraków-Łódź 2020, p. 115-128.
- Igor Szpotakowski, *The New Chinese Civil Code and its contribution to Sustainable Development*, *Transformacje Prawa Prywatnego*, 3/2020, p. 233-246.
- Lawrence Foster, Tiffany Yajima, Yan Lin, *China Law Reader*, San Francisco 2013.

Below you will find a contract of agency drafted specifically for the purposes of this Research Guide to show you how Chinese contract could look like. Read the translations carefully and think about how this contract differs from that type of contract in your jurisdiction.

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53  
**委托代理合同**

案件编号[PLS22]<sup>54</sup>

**甲方<sup>55</sup>: ABC有限公司**

住所<sup>56</sup>: 广州市番禺区石碁镇市莲路南浦村段32号。

法定代表人<sup>57</sup>: 张大卫

**乙方<sup>58</sup>: 波兰律师事务所**

住所<sup>59</sup>: al. Mickiewicza 9, 31-120 Kraków

代表人<sup>60</sup>: Mr John Wright

ABC有限公司（下称“ABC公司”）与CBD有限公司（下称“CBD公司”）借款合同纠纷一案，ABC公司不服广东省广州市天河区人民法院作出的（2018）粤0106执3232号《执行裁定书》，拟委托波兰律师事务所（下称“乙方”）作为本案代理人，代为对（2018）粤0106执3232号提出执行异议、执行监督，目的在于撤销《执行裁定书》以及申请法院对案涉房产再次公开拍卖等<sup>61</sup>。

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<sup>53</sup> Type of the contract. Here: “Contract of agency”.

<sup>54</sup> Contract/Case Number. Here: PLS22.

<sup>55</sup> Party A Name. Here: ABC Limited (the Principal in the principal-agent relationship).

<sup>56</sup> Legal representative. Here: Zhang Dawei.

<sup>57</sup> Address. Here: No. 1250, Nanpu Village, Shilian Road, Shiqi Town, Panyu District, Guangzhou City, Guangdong Province.

<sup>58</sup> Party B Name. Here: Polish law firm (the Agent in the principal-agent relationship).

<sup>59</sup> Address. Here: al. Mickiewicza 9, 31-120 Kraków.

<sup>60</sup> Legal representative. Here: Mr John Wright.

<sup>61</sup> The purpose of the contract. Here: Regarding the dispute over a loan contract between ABC Ltd. (hereinafter referred to as “ABC Limited Company”) and CBD Limited (hereinafter referred to as “CBD Limited Company”), ABC Limited Company refused to accept the court ruling case number: (2018) 粤0106执3232 made by the People’s Court of Tianhe District, Guangzhou City,

经各方协商，订立下列各条，共同遵守<sup>62</sup>。

### **第一条 委托代理事项<sup>63</sup>**

代理案件<sup>64</sup>：(2018)粤0106执3232号执行案执行异议和执行监督等。

代理内容<sup>65</sup>：对(2018)粤0106执3232号执行裁定提出执行异议并申请法院对案涉房产再次拍卖。

受理机关<sup>66</sup>：\_\_\_\_\_。

### **第二条 委托代理权限<sup>67</sup>**

以甲方签发的授权委托书为准，授权委托书是本合同的组成部分<sup>68</sup>。

### **第三条 甲方的义务<sup>69</sup>**

1. \_\_\_\_\_;
2. \_\_\_\_\_。

### **第四条 乙方的义务<sup>70</sup>**

1. \_\_\_\_\_;
2. \_\_\_\_\_。

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Guangdong Province (hereinafter referred to as “Execution Ruling”, it is proposed to entrust a Polish law firm (hereinafter referred to as “Party B”) as the agent of this case to file an execution objection and enforcement supervision against the ruling: (2018) 粤0106执3232, with the purpose of revoking the “Execution Ruling” and applying to the court for another public auction of the real estate involved in the case.

<sup>62</sup> Summary: After negotiation by all parties, the following articles are concluded and abide by them together.

<sup>63</sup> Article 1: Matters entrusted to the agent

<sup>64</sup> Acting in case/s.

<sup>65</sup> Acting in matter.

<sup>66</sup> Received by.

<sup>67</sup> Proxy’s authority.

<sup>68</sup> The power of attorney issued by Party A shall be part of the contract and shall form an integral part of it.

<sup>69</sup> Article 3 Obligations of Party A.

<sup>70</sup> Article 4 Obligations of Party B.

## 第五条 律师费、工作费用<sup>71</sup>

### (一) 律师费的计算及支付<sup>72</sup>

经各方协商同意，本代理的律师费采取预付前期律师费+后期提成的收费方式<sup>73</sup>：

1. \_\_\_\_\_；
2. \_\_\_\_\_；

### (二) 乙方开户银行和账号<sup>74</sup>：

开户名<sup>75</sup>：波兰律师事务所

开户银行<sup>76</sup>：波兰银行

账号<sup>77</sup>：10202020202020

律师代理费以到达上述账号或乙方财务现金收妥为收讫<sup>78</sup>。

### (三) 工作费用及支付方式<sup>79</sup>

### (四) 逾期付款责任<sup>80</sup>

## 第六条 合同的变更和解除<sup>81</sup>

1. 甲、乙方经协商同意，可以变更或者解除本合同<sup>82</sup>。

<sup>71</sup> Article 5 Lawyer's fees, Costs of work.

<sup>72</sup> Calculation and payment of lawyer's fees

<sup>73</sup> As agreed by the parties, the lawyer's fees are to be paid in advance + the fee method for the later commission.

<sup>74</sup> Party B's bank account and account number.

<sup>75</sup> Account Name. Here: Polish law firm.

<sup>76</sup> Bank of Account. Here: Bank of Poland

<sup>77</sup> Account number.

<sup>78</sup> The lawyer's fee is due and payable on arrival at the above account number or on receipt of cash from your finances.

<sup>79</sup> Costs of work and payment methods.

<sup>80</sup> Liability for late payment.

<sup>81</sup> Article 6 Contract modification and termination.

<sup>82</sup> Party A and Party B may change or terminate this contract by mutual agreement.

2. 乙方有下列情形之一的，甲方有权解除合同<sup>83</sup>：

- (1) \_\_\_\_\_；
- (2) \_\_\_\_\_。

3. 甲方有下列情形之一的，乙方有权解除合同或者暂停工作直至甲方自行纠正时止，因此而产生的后果由甲方自行承担<sup>84</sup>：

- (1) \_\_\_\_\_；
- (2) \_\_\_\_\_；
- (3) \_\_\_\_\_。

### **第七条 合同的终止**<sup>85</sup>

- 1. 甲乙双方履行完毕，本合同自行终止<sup>86</sup>。
- 2. 各方协商一致，书面约定提前终止合同<sup>87</sup>。

### **第八条 违约责任**<sup>88</sup>

1. 乙方无正当理由不提供第一条约定的法律服务，甲方有权视违约情况要求乙方退回已付相应部分的律师费<sup>89</sup>。

但甲方不得以如下任何理由之一拒绝支付或者要求乙方退回律师费<sup>90</sup>：

- (1) \_\_\_\_\_；
- (2) \_\_\_\_\_。

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<sup>83</sup> Party B has the right to terminate the contract if any of the following circumstances apply to Party A.

<sup>84</sup> Party B has the right to terminate the contract or suspend performance thereof until Party A corrects the situation on its own, and Party A shall be responsible for any consequences arising therefrom.

<sup>85</sup> Article 7 Termination of the contract.

<sup>86</sup> This contract shall be terminated upon completion of the performance of Party A and Party B.

<sup>87</sup> The parties agree in writing to terminate the contract early by consensus.

<sup>88</sup> Liability for breach of contract.

<sup>89</sup> If Party B does not provide the legal services stipulated in Article 1 without justifiable reasons, Party A has the right to request Party B to refund the corresponding portion of the lawyer's fees paid by Party B depending on the breach of contract.

<sup>90</sup> However, Party A may not refuse to pay or require Party B to refund the lawyer's fees for any of the following reasons.

2. 甲方未按合同约定支付律师费和其他费用，或者违反约定单方解除合同，乙方有权依照本合同第五条的约定要求甲方支付未付的律师费和其他费用以及违约金<sup>91</sup>。

### 第九条 特别约定<sup>92</sup>

1. 由于完成本合同委托代理事项，需要各方的共同配合和努力，甲方不得以自己参与或协助办理了与本案有关的事务，而要求乙方减免律师费<sup>93</sup>。

2. 本合同由甲乙代表签字并加盖公章，自签字、盖章之日起生效，至委托事项终结时为止<sup>94</sup>。

甲方<sup>95</sup>: (公章)

授权代表<sup>96</sup>: (签字)

乙方<sup>97</sup>: 波兰律师事务所 (公章)

授权代表<sup>98</sup>: (签字)

2021年1月1日签订于克拉科夫<sup>99</sup>

<sup>91</sup> If Party A fails to pay the lawyer's fees and other expenses according to the contract, or unilaterally terminates the contract in violation of the agreement, Party B has the right to demand Party A to pay the unpaid lawyer's fees and other expenses and liquidated damages in accordance with Article 5 of the contract.

<sup>92</sup> Article 9 Special terms.

<sup>93</sup> Since the completion of this contract requires the joint cooperation and efforts of both parties, we shall not ask you to reduce or waive your lawyer's fees on the grounds that you have participated in or assisted in matters related to this case.

<sup>94</sup> This contract is signed and sealed by the representatives of Party A and Party B. It is valid from the date of signature and effective from the date of stamping, until completion of the contract.

<sup>95</sup> Party A.

<sup>96</sup> Authorized representative.

<sup>97</sup> Party B.

<sup>98</sup> Authorized representative.

<sup>99</sup> Signed in Cracow on January 1<sup>st</sup>, 2021.

## 致委托人的法律风险及注意事项告知书<sup>100</sup>

尊敬的委托人<sup>101</sup>：

感谢您委托波兰律师事务所律师承办您的法律事务<sup>102</sup>。

为了更好地维护您的合法权益，同时也为了使您更加了解律师工作，特提醒您注意如下事项<sup>103</sup>：

一、任何诉讼/仲裁、非诉案件均具有法律风险，案件进程和案件结果可能受到各种客观因素的影响，在聘请律师前您应确认具有承受此等法律风险之负担能力及合理预见<sup>104</sup>。

二、您的请求/申请/答辩/辩护意见，存在部分或全部不被司法机关或其他相关国家机关支持的可能；或者某些陈述、辩解成为法律上的自认<sup>105</sup>。

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<sup>100</sup> Notice of legal risks and precautions to the client.

<sup>101</sup> Dear client.

<sup>102</sup> Thank you for entrusting lawyers from Polish law firms to handle your legal affairs.

<sup>103</sup> In order to better protect your legal rights and at the same time to make you better understand the work of our lawyers, we hereby draw your attention to the following matters.

<sup>104</sup> Any litigation/arbitration or non-litigation case involves legal risks, and the course and outcome of the case may be affected by a variety of objective factors.

<sup>105</sup> Your request/application/defence/defence opinions may not be supported by judicial or other relevant state agencies in part or in whole; or some statements or defences may become legal admissions.

三、如果在委托合同履行过程中承办律师有任何违规行为，或者您有任何疑问或意见，请与本律师事务所联系：电话：+48 000-000000，传真：+48 000-000000，电子邮箱：xyz@legalmail.com<sup>106</sup>。

**请您确认上述事项后才签署委托合同<sup>107</sup>。**

委托人确认<sup>108</sup>：

我已了解告知书中所提示和说明的内容<sup>109</sup>。

**委托人签名<sup>110</sup>：                    签署日期<sup>111</sup>：2021年1月1日**

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<sup>106</sup> If there are any violations of the contract or if you have any questions or comments, please contact our law firm by phone: +48 000-000000, fax: +48 000-000000, e-mail: xyz@legalmail.com.

<sup>107</sup> Please confirm the above items before signing the contract.

<sup>108</sup> Client's confirmation.

<sup>109</sup> I have understood what is prompted and explained in the notice.

<sup>110</sup> Client's signature.

<sup>111</sup> Signature Date. Here: January 1<sup>st</sup>, 2021.

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## HOW TO CITE CHINESE LEGAL SOURCES?

The first information that should be taken into account when citing Chinese language resources is the fact that, contrary to the practice in many Western countries, a Chinese surname appears before the personal name<sup>112</sup>. For example, Yao Ming and Xi Jinping should be referred to as “Mr. Yao” and “Mr. Xi,” not “Mr. Ming” and “Mr. Jinping”. Unfortunately, catalogers unfamiliar with the nature of Chinese names have, on occasion, reversed the names in the catalog, making an author search challenging<sup>113</sup>. There is no obligation to Romanise Chinese characters when you are citing Chinese sources. But sometimes it might be helpful for your non-Chinese readers if you do so<sup>114</sup>. If you struggle with Romanising Chinese characters by yourself, you could copy Chinese characters and paste them into Google Translate, it will automatically convert them into *pinyin*. Another option is to copy and paste character by character to Yellow Bridge online dictionary<sup>115</sup>. The important matter is fact that Chinese sentences do not have any spaces<sup>116</sup>. So, when you are Romanising you need to pay close attention to where each word breaks<sup>117</sup>. Although the Romanisation may not always be perfect, paying close attention to the breaks will help you to make it better<sup>118</sup>.

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<sup>112</sup> T. Kimbrough, *Building a Chinese Law Collection in the Academic Law Library Challenges, Alternatives, and Trends*, Legal Reference Services Quarterly, vol. 25:4, p. 44.

<sup>113</sup> *Ibidem*.

<sup>114</sup> P. Kossof, *Chinese Legal Research*, Durham 2014, p. 67-68.

<sup>115</sup> YellowBridge <https://www.yellowbridge.com/chinese/dictionary.php>, access:10.12.2020.

<sup>116</sup> P. Kossof, *Chinese Legal...*, p. 72.

<sup>117</sup> *Ibidem*.

<sup>118</sup> *Ibidem*.

## USEFUL WEBSITES AND BLOGS ABOUT CHINESE LAW

Sometimes it is difficult to stay up-to-date with all current developments concerning Chinese law and the Chinese legal system. To develop sufficient awareness about China and Chinese law it is highly recommended that researchers dealing with China should consider periodically visiting websites and blogs dedicated to monitoring changes in Chinese law. Blogs and websites about Chinese law should be considered as a tertiary source and all information posted on these sites should be verified before using them for academic purposes<sup>1</sup>. As authors of this guide we believe that those sources should be considered only a starting point of research and that academic papers should not be based mainly on citing such sources. Sometimes, however, there is no better way to find more information about specific legal issue, especially when it comes to new legal acts. In such situations, these websites are a great help.

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<sup>1</sup> P. Kossof, *Chinese...*, p. 57.

One of the best blogs in our opinion, which provides very up-to-date information on Chinese law and also gives quick access to the original content of legal acts is “NPC Observer”<sup>2</sup>, founded by Changhao Wei (魏常昊), which covers the National People’s Congress and its Standing Committee legislation. The mission of this blog is to provide information on the two bodies’ legislative activities, which are mostly the events happening before, during and immediately after their sessions<sup>3</sup>. The blog provides short summaries of new legal acts, with commentary and useful links to original sources and sometimes even short practical legal guides. The blog will help you to better understand the practice of the lawmaking process in the People’s Republic of China, including that of the National People’s Congress (NPC), its Standing Committee (NPCSC), and their subordinate bodies.



Picture source 1: <https://npcobserver.com/>, access: 07.12.2020.

Another interesting blog is China Law Blog<sup>4</sup>, often connected with its lead writer Dan Harris, founder of Harris Bricken, an international law firm based in Los

<sup>2</sup> NPC Observer <https://npcobserver.com/>, access: 07.12.2020.

<sup>3</sup> <https://npcobserver.com/about-the-npc-and-the-blog/>, access: 07.12.2020.

<sup>4</sup> China Law Blog [www.chinalawblog.com](http://www.chinalawblog.com), access 07.12.2020.

Angeles<sup>5</sup>. The blog is about the practical aspects of Chinese law and legal system, including how law impacts business in China and internationally. Although the blog's main goal is to assist businesses already in China or planning to enter into China, it is also an interesting source of knowledge for students and researchers looking to obtain real practical insight into Chinese law. Deep knowledge of Chinese law, legal culture, and business of the blog's authors delivered in a plain and concise language is useful when you are taking the first steps in understanding the complexity of the legal world in the People's Republic of China.

HOME ABOUT SERVICES CONTACT HB HARRIS BRICKEN

## China Law Blog

China Law for Business

Search...

### Doing Business in China: A Personal View

By Dan Harris on December 22, 2020  
POSTED BY CHINA BUSINESS, GOOD PEOPLE

About a decade ago, I had been working with [Damian DeNoble](#), who was at that time a health care consultant in China, but wanted to go to law school. Towards that end,

**About China Law Blog**  
We will be discussing the practical aspects of Chinese law and how it impacts business there. We will be telling you what works and what does not and what you as a businessperson can do to use the law to your advantage. Our aim is to assist businesses already in China or planning to go into China, not to break new ground in legal theory or policy.

Picture source 2: <https://www.chinalawblog.com/>,  
access: 22.12.2020.

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<sup>5</sup> <https://www.chinalawblog.com/author/danharris>, access: 07.12.2020.

The China Law Translate<sup>6</sup> website founded by Jeremy Daum<sup>7</sup>, a Yale Law Tsai Center Fellow, is also very helpful resource. It is a crowdsourced, crowdfunded translation project, which include English-Chinese translation for legal acts and news.



Picture source 3: <https://www.chinalawtranslate.com/en/>,  
access: 22.12.2020.

Finnish China Law Centre blog<sup>8</sup> is promoting new research on Chinese law and legal culture, organising academic and networking events and publishing interesting posts on recent developments and research about the Chinese legal system. The Centre's member institutions include nine leading Finnish universities and the Institute of Criminology and Legal Policy (Krimo), a research institute at the University of Helsinki<sup>9</sup>.

China Law Insight<sup>10</sup>, authored by lawyers from King

<sup>6</sup> China Law Translate <https://www.chinalawtranslate.com/en/>, access: 07.12.2020.

<sup>7</sup> Jeremy Daum, <https://law.yale.edu/jeremy-l-daum>, access: 08.12.2020.

<sup>8</sup> Finnish China Law Center <https://blogs.helsinki.fi/chinalawcenter/>, access: 07.12.2020.

<sup>9</sup> Member Institutions, [blogs.helsinki.fi/chinalawcenter/memberinstitutions](https://blogs.helsinki.fi/chinalawcenter/memberinstitutions), access: 11.12.2020.

<sup>10</sup> China Law Insight <https://www.chinalawinsight.com/tags/english/>, access: 07.12.2020.

& Wood Malleons, an international law firm headquartered in Asia, is another blog which can assist in developing a commercial and legal awareness of China. It covers topics like Chinese company law, finance law, intellectual property law, dispute resolution and international trade law.

The Chinese Law Discussion Group<sup>11</sup>, co-founded by Dr Mimi Zou, is a discussion forum established at University of Oxford for exploring a full range of issues with respect for the intersection/comparison of Chinese, civil, and common law and legal traditions as well as international law issues relating to China<sup>12</sup>. The group organizes or co-hosts interesting events and publishes articles about China on their blog<sup>13</sup>.



Picture source 4: <https://www.law.ox.ac.uk/current-students/graduate-discussion-groups/chinese-law-discussion-group>, access: 07.12.2020.

<sup>11</sup> Chinese Law Discussion Group <https://www.law.ox.ac.uk/current-students/graduate-discussion-groups/chinese-law-discussion-group>, access: 07.12.2020.

<sup>12</sup> *Ibidem*.

<sup>13</sup> <https://www.law.ox.ac.uk/current-students/graduate-discussion-groups/chinese-law-discussion-group/blog>, access: 07.12.2020.

China Justice Observer<sup>14</sup> co-founded by Guodong Du (杜国栋) and Meng Yu (余萌) and sponsored by the Academy of Comprehensive Rule of Law at China University of Political Science and Law<sup>15</sup> is an insightful source of knowledge about the Chinese judicial system in practice.

The Polish Research Centre for Law and Economy of China is a research unit of the Faculty of Law and Administration of the University of Warsaw<sup>16</sup>. The Centre, established in 2016, conducts academic research in the areas of law and economy of contemporary China, and from time to time it publishes analyses and reports on Chinese law and business, such as the Polish-language ‘Inside China’ reports<sup>17</sup>.

For German speakers, an interesting source of knowledge could be the German Journal of Chinese Law (*Zeitschrift für Chinesisches Recht*)<sup>18</sup> which is one of the most influential German-language publications addressing Chinese law. The journal publishes detailed reports and analyses - “*Aufsätze*” (Articles), current legal developments - “*Kurze Beiträge*” (Notes) and translations of the most important new Chinese legal acts “*Dokumentationen*” (Documentation)<sup>19</sup>. On their website in section “*Übersetzungen chinesischer Rechtstexte*” (Translations of Chinese legal texts), there are German translations

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<sup>14</sup> China Justice Observer <https://www.chinajusticeobserver.com/>, access: 07.12.2020.

<sup>15</sup> <https://www.chinajusticeobserver.com/p/about>, access: 07.12.2020.

<sup>16</sup> Polish Research Centre for Law and Economy of China, <http://chinalaw.wpia.uw.edu.pl/research-centre/>, access: 07.12.2020.

<sup>17</sup> *Ibidem*.

<sup>18</sup> *Zeitschrift für Chinesisches Recht* (German Journal of Chinese Law) <https://www.zchinr.org/index.php/zchinr>, access: 25.12.2020.

<sup>19</sup> *Ibidem*.

of many Chinese legal acts and they are publishing annually bibliography of academic writings in the field of Chinese law in western languages (mostly German and English).

In 2020 a new blog has been created for Polish speakers - [prawochinskie.com.pl](http://prawochinskie.com.pl)<sup>20</sup>, which is running by lawyers from Polish law firm JGBS Biernat & Partners. The blog is about practical legal issues in relation to China that lawyers and entrepreneurs face every day.

If your Mandarin Chinese skills are sufficiently advanced, but you need to learn more about Chinese law and Chinese legal culture, you can register for free MOOC courses on [www.icourse163.org](http://www.icourse163.org)<sup>21</sup>. There is a wide range of free online courses organized by Chinese universities.

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<sup>20</sup> [prawochinskie.com.pl](http://prawochinskie.com.pl), access: 26.12.2020.

<sup>21</sup> For example: 法学方法论 [Methodology of Law], <https://www.icourse163.org/course/cupl-1002597082>, access: 12.12.2020 or 比较法总论 [Introduction to Comparative Law], [https://www.icourse163.org/course/0301CUPL011-1002843009?outvandong=zwmoooc\\_pclszykctj](https://www.icourse163.org/course/0301CUPL011-1002843009?outvandong=zwmoooc_pclszykctj), access: 12.12.2020.



## FINAL REMARKS

China and Chinese law grow more important every day from a global perspective. However, studying and conducting research on Chinese law can be extremely challenging, especially if you do not know Mandarin well. We hope that this Research Guide increased your understanding of how to conduct research on Chinese law and convinced you that this is not an impossible task. With the increasing popularity of Chinese law in Poland and in Europe, we hope that reading this guide was useful and encouraged you to continue your research.

Every time when you are conducting your research on Chinese law you should check whether you have properly evaluated all sources you have gathered. Below you will find a few questions<sup>1</sup> that you should answer:

1) What information is relevant for the research? – You should be able to answer the questions: what is the purpose of your research and what is your focus.

2) Who is providing the data and how credible is the resource? - Academic books or journal articles that

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<sup>1</sup> R. LeRoy Miller, G. A. Jentz, F. B. Cross, *Online Legal Research Guide to Accompany 2004 Business Law and Legal Environment Texts*, Mason 2004, p. 25-28.

peer-reviewed and published by recognised publishers are usually credible resources, but you should be more careful regarding news and posts on blogs which you have found on the internet.

3) How accurate is the information? – Although sources might be credible, sometimes it is better to cross-check some not obvious matters.

4) What about objectivity? – It is much better if you are able to confirm the information given in several sources, especially when it comes to specific dates related to Chinese history.

5) Are the data you have gathered up-to-date? – please consider timeliness of the data.

We wish you all well and 加油!<sup>2</sup>

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<sup>2</sup> Mandarin Chinese: Good luck!

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Below you will find a list of the books that have been used in this Research Guide, in alphabetical order. Among them there are also works that were not directly cited, but in the authors' view were worth mentioning in light of their strong influence on this book. We hope that they will also serve as a list that will help you find academic papers directly relevant to your own research. We have collected these materials using hard-copy sources as well as electronic databases belonging to the Bodleian Law Library of University of Oxford, the Jagiellonian University in Cracow library, the University of Bristol library and the Nottingham Trent University library.

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## INDEX OF CHINESE LEGAL TERMS

Chinese	Pinyin	English
儒家	<i>Rújiā</i>	Confucianism (philosophy)
法家	<i>Fǎjiā</i>	Legalism (philosophy)
法	<i>Fǎ</i>	Law
道家	<i>Dàojiā</i>	Daoism (philosophy)
汉传佛家	<i>Hànchuán fójiā</i>	Chinese Buddhism
礼	<i>Lǐ</i>	Ritual
孝	<i>Xiào</i>	Filial piety
健全法制	<i>Jiànquán fǎzhì</i>	Improving the legal system
法制	<i>Fǎzhì</i>	Legal system and institutions
实行法治	<i>Shíxíng fǎzhì</i>	Enforcing the rule of law
中华人民共和国	<i>Zhōnghuá rénmin gònghéguó</i>	The People's Republic of China
全国人民代表大会	<i>Quánguó rénmin dàibiǎo dàhuì</i>	National People's Congress

中华人民共和国全国人民代表大会	<i>Zhōnghuá rénmin gònghéguó quánguó rénmin dàibiào dàhuì</i>	The National People's Congress of the People's Republic of China
中华人民共和国宪法	<i>Zhōnghuá rénmin gònghéguó xiànfǎ</i>	Constitution of the People's Republic of China
宪法	<i>Xiànfǎ</i>	Constitution
通过	<i>Tōngguò</i>	To enact/to pass
公布	<i>Gōngbù</i>	To promulgate
修正	<i>Xiūzhèng</i>	To amend/To revise
行政法规	<i>Xíngzhèng fǎguī</i>	Administrative regulations
行政	<i>Xíngzhèng</i>	Administrative; Executive
条例	<i>Tiáolì</i>	Rules; regulations
案例指导制度	<i>Ànlì zhǐdǎo zhìdù</i>	Guiding cases system
案例	<i>Ànlì</i>	Case
指导	<i>Zhǐdǎo</i>	To guide/To give directions
制度	<i>Zhìdù</i>	System
习惯	<i>Xíguàn</i>	Custom; Habit
中华人民共和国司法部	<i>Zhōnghuá rénmin gònghéguó sīfǎ bù</i>	Ministry of Justice of the People's Republic of China
司法部	<i>Sīfǎ bù</i>	Ministry of Justice; Justice Department
法规	<i>Fǎguī</i>	Legislation
规定	<i>Guīdìng</i>	Regulations
最高人民法院	<i>Zuìgāo rénmin fǎyuàn</i>	Supreme People's Court
高级人民法院	<i>Gāojí rénmin fǎyuàn</i>	High People's Court
法院	<i>Fǎyuàn</i>	Court
刑法	<i>Xíngfǎ</i>	Criminal Law

民法	<i>Mínfǎ</i>	Civil Law
民法典	<i>Mínfǎ diǎn</i>	Civil Code
民法总则	<i>Mínfǎ zǒngzé</i>	General Rules on the civil law
合同法	<i>Hétóngfǎ</i>	Contract Law
合同	<i>Hétóng</i>	Contract
婚姻法	<i>Hūnyīnfǎ</i>	Marriage law
婚姻	<i>Hūnyīn</i>	Marriage
侵权责任法	<i>Qīnquán zérèn fǎ</i>	Tort law
责任	<i>Zérèn</i>	Liability
继承法	<i>Jìchéng fǎ</i>	Succession law
继承	<i>Jìchéng</i>	To inherit/To succeed to
物权法	<i>Wùquán fǎ</i>	Property law
物权	<i>Wùquán</i>	Property right
知识产权法	<i>Zhīshì chǎnquán fǎ</i>	Intellectual Property Law
收养	<i>Shōuyǎng</i>	Adoption
公司法	<i>Gōngsī fǎ</i>	Company Law
公司	<i>Gōngsī</i>	Company
律师	<i>Lǜshī</i>	Lawyer
律师事务所	<i>Lǜshī shìwùsuǒ</i>	Law firm
律师费	<i>Lǜshī fèi</i>	Lawyer's fee
审判官	<i>Shěnpàn guān</i>	Judge
诉讼	<i>Sùsòng</i>	Litigation
起诉	<i>Qǐsù</i>	To start a lawsuit
上诉	<i>Shàngsù</i>	Appeal
证据	<i>Zhèngjù</i>	Evidence
法律研究	<i>Fǎlǜ yánjiū</i>	Legal research
数据库	<i>Shùjùkù</i>	Database



Zuzanna Kopania  
ResearchGate account



Igor Szpotakowski  
ResearchGate account

A journey of a thousand miles begins with a single step. This Research Guide will be the first step in your journey with Chinese law. China grows more important every day from a global perspective. However, studying and conducting research on Chinese law can be extremely challenging, especially if you do not know Mandarin well. This book is intended as a compact but comprehensive research guide that would provide students (especially those who are preparing coursework or dissertations about Chinese law), researchers and legal practitioners with the necessary knowledge about how to conduct effective Chinese legal research.

Recommended by:



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ResearchGate account

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