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China's New Contract Law, and Some Reflections on Two Years in the PRC

[**Special to JURIST**] This inaugural essay will try to be both useful and amusing. First, the useful -- a glance at the new Contract Law of the PRC. And second, a short tour of a law teaching experience in Wuhan University.

Anyone who taps into the University of Washington's [Chinese Law Net](#) will be dazzled at the scope and complexity of legal changes taking place in the PRC today. From copyright controls to gong fu legislation to trusts and recondite pockets of property law, the intercontinental scholars' and lawyers' dialogue about China law is dizzying.

This dialogue pales, however, in contrast to the utterly confounding experience of teaching law for two years in the PRC, first as a Fulbright Scholar (twisting on occasion between two government bureaucracies, and often turned to vinegar by the censors) and, in the second year, as an employee of Wuhan University.

I. CHINA'S NEW CONTRACT LAW

In October of 1999, China's new Contract Law went into effect, unifying prior laws that had separated domestic from international contracts, and both of these from contracts concerning technological transfer. As with Gaul, the unification of the former tripartite system seems doubtless the thing to do. Questions about the new law, however, and how PRC authorities disseminate, enforce and interpret it bedevil lawyers and scholars as China accelerates at wild speeds into global markets. Readers are referred to sources found, for example, in the pages of the last several volumes of the *Columbia Journal of Asian Law*, to the works of Professors William Alford, Stanley Lubman, and Jane Kaufman Winn, and to many sources on the Internet about Chinese law.

The new PRC Contract Law mirrors provisions of the U.N. Convention on the International Sale of Goods (CISG), some ideas of the Uniform Commercial Code, and some modern trends in Western law. It also removes punitive provisions of prior law, provides for remedies for breach by means of compensation (limited by the foreseeability rule), contemplates specific performance, and frowns on penalty clauses not related to actual losses (Articles 107-113, 114).

A few highlights may interest legal scholars in general:

- **Oral contracts allowed.** Binding contracts may be written or oral, unless limited by agreement or law.

- Recognition of modern transaction modes. Electronically transmitted communications (fax, e-mail, etc.) constitute writings for purposes of contract law.
- Good faith in negotiating and performing. A party who, in the negotiating process, deliberately conceals important facts or pretends to conclude a contract may be liable for causing loss to the other party . Good faith is required in the performance of contractual rights and duties.
- Grounds for revocation/modification. Where serious misunderstanding lies at the base of the contract, or where the contract is manifestly unfair at the time it was made, a party may seek modification or revocation..
- Business secrets protected. A party who learns a business secret of the other in the contracting process risks damages for disclosing or unfairly using the information.
- Adhesion and Standard Form Contracts. Akin to consumer protection measures in U.S. law, the new law invalidates clauses that purport to immunize a party from, inter alia, causing personal injury or property damage to the other.
- Rules of interpretation. In case of disputes, standardized contracts will be interpreted according to general understanding, and ambiguities should be resolved in favor of the non-drafting party. Where international contracts specify, for example, that both the Chinese and English versions will have equal validity, disparate meanings should be interpreted according to the purpose of the contract.
- Offer and Acceptance. In contrast to prior law, fairly detailed rules now govern offer and acceptance, formation and revocation of offers. For example, an acceptance is generally effective when notice reaches the offeror.
- Acceptance that varies the terms of the offer. An offeree who substantially alters the contents of the offer will not be permitted to bind the offeree.

The new law encourages contracting parties to have recourse to informal dispute resolution, favors arbitration but also affirms access to courts. But the new written law is only one element in a vast, laborious network of custom and usage, established Chinese business practices, *guanxi* (good graces or favor), loyalty to party and country, and "saving face" -- aspects that tend to elude and sometimes demolish the outsider.

II. TEACHING CONTRACT LAW AND COMPARATIVE CONTRACT LAW IN CHINA

Query: What law professor could dream of a more rewarding opportunity: hungry, eager, talented and lively young Chinese law students, largely fluent in English (some with embarrassingly large vocabularies that would send most U.S. graduate students wailing off to *Webster's*), who orchestrated in class -- in English legalese -- the trial of an American contracts law case -- with judge, jury, bailiff, attorneys for plaintiff and defendant, opening and closing statement, swearing in of witnesses, introduction of exhibits, direct and cross-examination, bench conferences, objections, instructions to the jury, announcing by the foreman of the verdict, and the court's decree of judgment?

Answer: the law professor whose Chinese law students stood at the blackboard in twosomes and gave deft comparative analyses of offer, acceptance, mistake, breach, damages, and so on, drawing on Anglo-American common law (with Restatement, 2d, principles as well as case law examples), the Uniform Commercial Code, the Convention on the International Sale of Goods, and the new Chinese Contract Law. I almost forgot to mention that these were undergraduate law students who could spout American slang as well as technical legal words.

There were many astonishing experiences at Wuhan University Law School, where my students also studied Constitutional Law (except when NATO dropped bombs on the Chinese embassy -- and then they cried or argued or brought me flowers). In class, we fought our way through Bankruptcy (one class was declaring that Chinese bankruptcy law was "bankrupt"), and although many students resisted speaking in class, they opened up during informal meetings, or over sessions learning Westlaw, at informal parties or dinners in the Barbarian Teachers' Building.

Out of class, students played fierce Scrabble in English and competed madly at Monopoly (forming joint ventures to defeat their prospering opponents) in my apartment. They broke into spontaneous song (ancient and modern, Chinese and American without missing a beat), without the least self-consciousness. They play basketball and soccer, run and do Tai Qi, dance and disco, adore American movies, which they watch in the outdoor theatre, come snow or freezing rain, on tiny benches they cart with them.

The conditions of their lives defy our ideas of what is tolerable, even for prisoners: old concrete dormitories with only cold running water and crowding of four or six students to a tiny cubicle. Halls with piles of garbage. Rats occasionally running around and biting students at night. A climate in winter whose remorseless damp and bone-chilling cold permeate to one's very marrow. No heat in the library, where the windows fly open and bitter winds turn the earlobes ruby red; no heat in the classroom, where the chalk falls out of the teacher's stiffened fingers during the two-hour classes.

And uncommon cheerfulness, *esprit de corps*, physical beauty and more than not impeccable neatness in their dress. A generosity of spirit, self-effacing style, ready laughter, and hunger for life were common; a certain settled laziness and arrogance were prominent among only a few. Most striking was the esteem and affection that students displayed toward teachers, a cultural attribute more than a compliment, but something that makes teaching in China superior to any experience in my twenty-odd years of teaching in U.S. law schools.

What sorts of lawyers, officials, prosecutors, judges, and law teachers will they become? This is not easy to predict. The stifling bureaucracy that holds sway in the universities, and which awards scholarships, prizes, jobs, influence; the larger bureaucracy of the CP that strives to mimic the qualities of God -- omnipresence, omniscience, omnipotence -- superintends thought and action, progress and advancement, with maddening efficacy.

Many of my law students are hungry for ideas, for outlets to their energies and impetuous creative urges. Their imaginations are often starved, and their ambitions sometimes encouraged and often squashed. Brilliant young women students and those from poor villages are especially disheartened as they meet with discrimination in the job market or realize how indispensable it is to have the influence and prestige that they lack. Most students want to study abroad, many dream of getting a law degree from the U.S., and many are studying for the LSAT.

Education abroad is, of course, very pertinent to addressing the question, what sort of lawyers will these students become? But consider this: a fellow American (and a China law scholar) visiting Wuhan over eighteen years ago taught law to several Wuhan University students who are now some of the most ambitious and excitably scholarly faculty members today, including the new Dean. A former student of this American professor is a well-known scholar in international human rights and in clinical legal education; he has just been called to sit on the highest court in Beijing. The American teacher, Professor Bill Jones of Washington University, impressed a legacy of good will, books, ideas and patterns for scholarship that not only endures but comes to life in the teaching and values of his former students.

Another influence, of course, is the current faculty, which has a customary assembly of serious scholars (one who endured over 20 years of prison, many who experienced hard labor in the countryside during the Cultural Revolution), enthusiastic younger teachers, bored middle-aged members, and men and women of good will but stymied energies, some ground down miserably by the poverty of academic life, some full of celebration of life and vigor. Most of them were, although cordial, not accessible to me because of the language barrier.

In addressing the question about how these Chinese law students will develop, behave and think in the coming years, I have left out perhaps a more important query -- how will Western law students and legal scholars deal with the vast ignorance so many of us share about Chinese culture, values, learning, language, traditions, and the human possibilities that they show us? Do we tend to celebrate the "modernizing" of China but avoid examining, exploring and just being curious about a world utterly different from what we are accustomed to? Is it important that American law students learn first-hand what the life of Chinese law students is like?

The irony of asking these questions is that even as I write these words, life on campus at Wuhan is changing. Just before I left the campus in July, several new dormitories with heat, washing machines and gardens sprouted up like mushrooms out of the wet mud of winter. A small but modern graduate law students' computer center opened, a first step toward the new law building. A heater was put into the dilapidated old law library, whose windows were formerly open to icy blasts, rain and soot. Huge faculty apartment complexes have just been erected, as usual, by the arduous toil of miserably clad, wiry workers carrying impossible burdens on bamboo shoulder pails. Equally astounding with all these changes is the beauty of the campus, its gardens, hills, woods,

and views of East Lake, which has not changed, any more than the hypnotic smells of cooking in vast pots in the evening.

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Discussion

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