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by

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Preface and Acknowledgements

In modern times, the codification of the entire civil law has become a rare phenomenon. Nevertheless, the Chinese lawmaker has decided to create the first Civil Code in the history of PRC and set out an ambitious timeline to achieve this goal. In the process of construction, the future Chinese Civil Code will principally follow the Pandectist System and, in particular, comprise of a General Part. On 15th March 2017, the General Part was enacted, as scheduled, in the form of a single statute for the time being. By 2020, the other books covering the law of personality, obligations, property, family and succession law, should be codified as well. These books, together with the General Part, will form the future Civil Code.

The purpose of this book is to provide a concise and in-depth practical guide to this new statute, namely the General Rules of Civil Law (GRCL). To this end, it seeks to deliver a general picture of the GRCL and to explore the important provisions in more detail. In addition, it strives to provide answers to the question of which laws apply in the case of conflict between the GRCL and other statutes. Before the subject matter can be approached, it is important to first address four issues.

1. Style of this book. Recently, Chinese civil law scholars have been discussing and exploring the possibility to adopt the German-style law commentaries and have so far identified the GRCL as the ideal experimenting object. This book does not follow this style, not only because a number of provisions are – due to their character of moral appeals – unsuitable for comments with the aim to facilitate law application, but also because relevant case law has not yet evolved in this short period of time.

2. Focus of this book. Traditionally, juristic act is regarded as the core of the General Part of Pandectist style Civil Codes and stands in the focus of relevant treatises. By contrast, the GRCL has devoted considerably less weight to this area. New provisions have been introduced primarily in the field of natural and legal person such as custodianship and general rules on legal persons. Although it is still controversial to what extent these new norms are practically meaningful given many overlaps with the pre-existing laws, this book will give equal attention to the law of persons and that of juristic act.

Due to the general nature of the GRCL, many legal provisions may only be applied and understood in conjunction with other statutes. This problem is particularly prominent with regard to law of persons and law of subjective rights. Given the fact that some related areas of civil law have already been covered by “Chinese Civil Law” and “Chinese Business Law” in this series, other statutes will be touched upon in detail only when comprehensive analysis is still lacking.

3. Selection of literature. The aspiration to create the first Civil Code in the PR China has given rise to euphoria in the legal academia and generated a large number of publications since 2014. The same observation could be made at the turn of the century in the preparation of the last round of codification attempts in China. Facing this great amount of publications, it is necessary to make an appropriate selection. In this book priority is given to journal articles, which are more apt to reflect personal opinions and easily accessible via databases to foreign readers as well. In the course of preparing the Civil Code, Chinese scholars have spent considerable efforts to clear up Chinese civil law by tracing back the evolution history of the relevant terms. This book also draws up on these findings.

4. Involvement of comparative law. Foreign readers occasionally complain about the excessive reference to comparative law in Chinese legal writings. The reason is that Chinese civil law has its roots in Continental-European legal system and uses more or less the same legal vocabulary. This includes the comparative law aspect and is thus inevitable. It may be the primary goal for foreign observers to learn more about the indigenous Chinese elements. However, a clear-cut separation between Chinese law and foreign law in academic writings is almost impossible, since scholars frequently use foreign material for arguments and considering that foreign sources form integral part of Chinese law. In particular, the GRCL has deliberately left out a number of legal issues, which have to be solved with the help of comparative law. In the author's view it may also be intriguing to learn about the origin of legal concepts in the GRCL and the process in which Chinese lawmakers decided to adopt or reject certain foreign legal concepts. That being said, this book will try to limit the scope of foreign law as it sees fit.

5. Incorporation of court decisions. The GRCL is a new statute and has just come into force on 1st October 2017. Thus, only limited real case law has been formed so far. As the GRCL is not a law created from scratch, but a modified continuation of the General Principles of Civil Law, old judgments, guiding cases, and judicial interpretations will be included to illustrate the practical handling of the norms.

In line with the two previous books on Chinese law in this series, this book includes a bibliography and an index at the end as well as a list of laws and regulations. In the footnotes, books are cited without titles and journal articles with the abbreviated journals names. English translations of the norms are mostly from official sources, some are also from Westlaw China and Chinalawinfo.

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Freiburg, August 2018

Yuanshi Bu

Table of Content

Preface and Acknowledgments.....	V
Abbreviations.....	XIX

Part I. Introduction and Basic Principles

Chapter 1. Introduction	1
I. Legislative History.....	1
1. Codification Attempts after the Foundation of the PRC.....	1
2. Creation of the GRCL	1
3. Structure and Title of the GRCL	2
II. Justification for the Codification	3
1. Scholarly Response.....	3
2. Official Explanations.....	3
III. Technique of the Codification: Systematization or Compilation.....	4
1. Different Schools	4
2. Exclusion Technique.....	5
3. Relationship between GRCL and GPCL	6
4. Language of the GRCL.....	6
IV. Relationship with Other Fields of Law.....	7
1. Relationship with Individual Civil Laws	7
2. Relationship with Commercial Law	7
3. Relationship with Private International Law	8
4. Relationship with Intellectual Property Law.....	9
5. Relationship with Labor Law.....	9
V. Participation of Scholars.....	9
1. Bureaucratization of the Legislation.....	9
2. Difficulty in Reaching Consensus.....	10
VI. The Role of German Law.....	11
1. Return to German Tradition.....	11
2. Formation of German Tradition.....	11
3. Wholesale vs. Retail.....	12
a) Partial Reception.....	12
b) Minimalistic Approach.....	12
VII. Innovations in the GRCL.....	13
Chapter 2. Fundamental Principles	14
I. Overview.....	14
1. Legislative Purpose.....	14
2. Scope of Regulation	14
3. Fundamental Principles	15
4. Origin and Justification.....	16
5. Protection of Private Rights.....	16
II. Equality.....	16
III. Private Autonomy	17
IV. Fairness.....	17
V. Good Faith.....	18
1. Negotiation in Bad Faith	18
2. Duty of Confidentiality	18
3. Duty of Disclosure	18
4. Recovery	19
VI. Legality, Public Order and Morals.....	19
1. Legislative Process.....	19
2. Interpretation	19
3. Judicial Practice.....	19

Table of Content

4. Relationship to Mandatory Law.....	20
5. Relationship to Good Faith.....	20
VII. Environmental Protection.....	21
VIII. Customs as Source of Law.....	22
1. Legislative Process.....	22
2. Law.....	22
3. Customs.....	23
IX. Principle of <i>lex specialis</i>	24
1. GRCL and GPCL.....	25
2. GRCL and Individual Civil Laws.....	25
3. GRCL and Other Specific National Laws.....	25
4. GRCL and Older Judicial Interpretations.....	26
5. Retroactivity.....	26
6. Summary.....	26

Part II. Law of Persons

Chapter 3. Overview	27
I. Structure.....	27
II. Overhaul.....	27
III. Controversy.....	28
Chapter 4. Natural Person	30
I. Legal Capacity.....	30
1. Capacity to be a Subject of Legal Rights.....	30
a) Term.....	30
b) Embryo.....	30
c) Time of Birth/Death.....	31
d) Evidence.....	31
2. Capacity to Act.....	32
a) Term.....	32
b) Threefold Division vs. Twofold Division.....	32
c) No Capacity.....	32
d) Limited Capacity.....	32
e) Full Capacity.....	33
f) Procedural Rules.....	33
II. Ability of Tort Liability.....	34
1. Distinctive Features.....	34
2. Nature of Minors' Tort Liability.....	35
3. Comparative Perspective.....	35
4. Case Example.....	36
III. Domicile.....	36
1. Domicile.....	36
2. Residence.....	37
IV. Custody and Custodian.....	37
1. Systematic Arrangement.....	37
2. Appointment.....	38
a) Modes.....	38
b) Minors.....	39
c) Adults.....	39
3. Custodian's Duty, Liability and Right.....	40
a) Duties.....	40
b) Liability.....	40
c) Rights.....	40
4. Revocation of Custodianship.....	41
5. Restoration of Custody.....	41
6. Termination of Custody.....	42
V. Declaration of Disappearance.....	42
1. Prerequisites.....	42
2. Applicant.....	42
3. Receiver of Property.....	42

Table of Content

4. Duty of the Receiver	43
5. Revocation.....	43
VI. Declaration of Death	43
1. Prerequisites.....	43
2. Legal Effect.....	44
3. Revocation.....	44
VII. Individual Traders.....	44
1. History	44
2. Governing Law.....	45
3. Liability	45
4. Practical Implication.....	46
VIII. Rural Contracting Households.....	46
1. History	46
2. Establishment	46
3. Liability	47
4. Distribution of Profits	47
Chapter 5. Legal Persons	48
I. Doctrinal Basis and Categories of Legal Persons.....	48
1. Theoretical Basis.....	48
2. Primary Differentiation Based on the Profit-Orientation.....	48
a) Justification for the Division.....	48
b) Criticism on the Division	49
II. General Part.....	51
1. Establishment	51
a) Prerequisites.....	51
b) Registration	51
c) Approval	51
d) Founder's Liability.....	52
2. Legal Capacity.....	52
3. Legal Representative	52
a) One Single Legal Representative	52
b) Limitation of Representation Powers.....	53
c) Tortious Liability	53
4. Domicile	54
5. Effect of Registration	55
a) Relevant Provisions.....	55
b) Practical Example	55
6. Merger/Split	56
7. Termination	56
a) Time of Termination.....	56
b) Termination Grounds.....	57
8. Dissolution	57
9. Liquidation	57
a) Dual-Track System.....	57
b) Liquidation Obligor.....	58
c) Liquidation Group/Liquidator	59
d) Powers of the Liquidator	59
e) Liability of the Liquidation Group	60
10. Branch Offices.....	60
III. For-Profit Legal Person.....	60
1. Establishment	61
a) Registration	61
b) Business License.....	61
c) Articles of Association.....	62
2. Organs.....	62
a) Governing Organ.....	62
b) Executive Organ.....	62
c) Supervisory Organ.....	62
3. Duty of Shareholders	63
a) Towards the Company and Investors.....	63
b) Towards Creditors.....	63

Table of Content

4. Arm-Length Principle	63
5. Cancellation of Resolutions.....	64
a) Declaration of Invalidity	64
b) Resolution not Formed.....	64
c) Procedural Rules.....	65
d) Discretion of the Court	65
e) Protection of Bona Fide Third Party	65
6. Business Ethics and Corporate Social Responsibility.....	65
IV. Non-Profit Legal Person.....	65
1. Overview.....	65
2. Non-Profit.....	66
a) Public Interest	66
b) Profit Distribution	67
c) Distribution of Remaining Assets.....	67
3. Public Service Units.....	67
a) Establishment	68
b) Organs.....	68
c) Legal Representative.....	68
d) Bylaw	68
4. Associations	68
a) Establishment	69
b) Charter	69
c) Organs and Governance	69
d) Legal Representative.....	69
e) Dissolution and Liquidation	69
5. Donation-Based Legal Person.....	69
a) Terminology.....	70
b) History Evolution of Foundations.....	70
c) Establishment	70
d) Charter	70
e) Organs.....	70
f) Legal Representative.....	71
g) Donor's Rights.....	71
h) Dissolution of Foundations.....	71
i) Insolvency of Foundations	72
6. Social Service Organizations.....	72
a) Establishment	72
b) Charter	73
c) Organs.....	73
d) Dissolution and Liquidation	73
7. Religious Activities Sites	73
V. Special Legal Person	74
1. (Party and State) Organs	75
2. Rural Collective Economic Organizations	75
a) Historical Evolution	75
b) Acquisition of Legal Person Status.....	75
c) Relationship with Cooperatives.....	76
d) Relationship with Villagers' Committee.....	76
3. Cooperative Economic Organizations	76
4. Grassroots Self-Governing People's Organizations	76
Chapter 6. Non-Legal Person Organization.....	77
I. Overview.....	77
1. Term	77
2. Necessity of Third Civil Subject.....	77
II. Establishment	78
III. Liability.....	78
IV. Representation.....	78
V. Dissolution and Liquidation	79

Table of Content

Part III. Subjective Rights

Chapter 7. Introduction	81
I. Overview.....	81
1. Purpose	81
2. Structure	82
3. Scholarly Comments.....	82
II. Acquisition of Rights.....	82
III. Principles of Exercising Rights.....	83
Chapter 8. Personal and Property Rights	84
I. Personality Rights.....	84
1. Freedom and Dignity.....	84
2. Specific Personality Rights	84
a) Natural Person	84
b) Legal Person.....	85
3. Data Protection	86
4. Personality Rights associated with Marriage and Family.....	86
5. An Independent Book on Personality Rights	87
II. Rights in Things	87
1. Equal Protection for Different Owners	87
2. Concept and Object	88
3. Numerus Clausus	88
a) Legally Recognized Rights <i>in rem</i>	89
b) Not Codified Potential Rights <i>in rem</i>	89
c) Content Fixed by Law	90
d) Proposal of Relaxation.....	90
4. Expropriation and Requisition	90
a) Public Interest	91
b) Procedure.....	91
c) Compensation	91
d) Related Land Use Right.....	91
III. Obligatory Rights.....	92
1. Overview.....	92
2. Management without Mandate.....	92
a) Concept.....	92
b) Prerequisites	92
c) Manager's Duties and Rights.....	93
3. Unjust Enrichment.....	93
a) Prerequisites.....	94
b) Scope of Recovery.....	94
c) Relationship with other Legal Concepts.....	94
IV. Intellectual Property Rights	94
V. Other Enumerated Rights.....	96
1. Succession Right	96
2. Shareholder's Rights and other Investor's Rights	97
3. Data Rights and Virtual Property.....	97
a) Data Rights.....	97
b) Virtual Property.....	98

Part IV. Juristic Act

Chapter 9. Overview	99
I. Evolution History	99
1. Concept of Civil Juristic Act.....	99
a) Chinese Translation of Juristic Act	99
b) Civil Juristic Act vs. Juristic Act	99
c) Definition	100
2. Relationship between the GRCL and the Contract Law	100
3. Civil Juristic Act vs. Commercial Act.....	100
4. Act to Create Contractual Obligation and Act of Disposal.....	101

Table of Content

II. Types.....	102
1. Unilateral Juristic Act.....	102
2. Bilateral Juristic Act.....	102
3. Multilateral Juristic Act.....	102
4. Resolution.....	103
III. Form.....	103
1. Written Form.....	103
2. Requirement on Formation or Validity.....	103
IV. Formation and Effectiveness.....	104
V. Juristic Act and Declaration of Intention.....	105
Chapter 10. Declarations of Intention.....	106
I. Term.....	106
II. Form Requirement.....	106
1. Freedom of Form.....	106
2. Silence.....	106
III. Taking Effect.....	107
1. Declaration of Intention with Counterparty.....	107
a) By Means of Dialogue.....	107
b) By Means of Non-Dialogue.....	108
2. Declaration of Intention without Counterparty.....	108
3. Declaration of Intention by Means of Announcement.....	108
IV. Withdrawal.....	109
V. Interpretation.....	110
1. Methods of Interpretation.....	110
2. Approach of the GRCL.....	110
3. Criticism.....	110
Chapter 11. Effect of Juristic Acts.....	112
I. General Requirements on Validity.....	112
1. Comparison between art. 143 GRCL and art. 55 GPCL.....	112
2. Distinctive Approach from a Comparative Perspective.....	112
II. Grounds for Invalidity.....	112
1. Disability.....	113
a) Incapacity.....	113
b) Limited Capacity.....	113
2. Simulated Act.....	114
a) Definition.....	114
b) Types.....	115
c) Effect in Relation to the Third Party.....	115
3. Violation of Mandatory Law.....	117
a) Classification Criteria of Mandatory Norms of Management and Validity.....	117
b) Law and Administrative Regulation.....	119
c) Case Groups.....	119
d) Relationship with Overriding Mandatory Norms.....	120
4. Violation of Public Order and Good Morals.....	120
5. Malicious Collusion.....	121
a) Concept and Case Groups.....	121
b) Distinction from Simulated Acts.....	122
III. Other Invalidity Grounds.....	123
1. Mental Reservation and Joke.....	123
2. Juristic Acts Subject to Approval.....	123
a) Term and Scope of Application.....	123
b) Existence of Duty to Obtain Approval.....	124
c) Nature of Duty to Obtain Approval.....	125
d) Enforcement.....	125
IV. Grounds for Avoidance.....	126
1. Mistake.....	126
a) Term.....	126
b) Priority of Construction.....	126
c) Prerequisites.....	126
d) Types of Mistake.....	127

Table of Content

e) Dualistic vs. Monistic Approach.....	129
f) Claim to Compensation.....	129
2. Fraud.....	129
a) Prerequisites.....	129
b) Fraud by a Third Party.....	130
3. Coercion.....	130
a) Prerequisites.....	130
b) Coercion by a Third Party.....	131
4. Obvious Unfairness.....	131
a) Concept.....	131
b) Prerequisites.....	131
c) Case Groups.....	131
d) Control of Interests.....	132
V. Effects of Nullity and Avoidance.....	132
1. Exercising the Right to Avoidance.....	132
a) Exercise Before Court.....	132
b) Time Limits.....	132
c) No Right to Adaptation.....	133
2. Legal Effect.....	133
a) Change to the Previous Law.....	133
b) Retrospective Invalidity.....	133
c) Partial Invalidity.....	133
d) Relative Invalidity.....	134
3. Recovery.....	134
a) Relevant Norm.....	134
b) Return of Property.....	135
c) Return of Monetary Equivalent.....	135
d) Damages.....	136
e) New Approaches.....	136
4. Lex Specialis.....	139
VI. Reinterpretation and Confirmation of Void Juristic Act.....	139
Chapter 12. Conditions and Terms.....	140
I. Conditions.....	140
1. Concept.....	140
2. Preclusion of Conditions.....	140
3. Condition Precedent and Condition Subsequent.....	141
4. Conditions Dependent upon the Will of One Party.....	141
5. Legal Fiction of the Fulfilment of Condition.....	141
II. Terms.....	142
1. Concept.....	142
2. Types.....	142
3. Preclusion of Terms.....	142
Part V. Agency	
Chapter 13. Overview.....	143
I. Evolution History.....	143
II. Scope of Application.....	143
1. Juristic Act.....	143
2. Exclusion of Agency.....	144
III. Types of Agency.....	144
1. Authorized, Statutory and Designated Agency.....	144
2. Representation of a Legal Entity by its Employees.....	145
3. Direct and Indirect Agency/ Disclosed and Undisclosed Agency.....	146
a) Relevant Provisions.....	146
b) Chaos of Relevant Terms.....	147
4. Collective and Joint Agency.....	148
5. Active and Passive Agency.....	149
6. Agency of Necessity.....	149

Table of Content

IV. Elements of Agency	149
1. Authority	149
a) Authorization.....	149
b) Principle of Separation.....	150
2. Capacity of the Agent to Contract	150
3. In the Name of the Principal.....	150
a) Principle of Disclosure	150
b) Unnamed Agency	151
c) Ascertainable/Identifiable Principal	151
d) Non-Existing Principal.....	151
e) Acting under Another Name.....	151
4. Conducting a Juristic Act.....	152
V. Duty and Liability of the Agent.....	152
1. No Self-Dealing.....	152
a) Consent and Ratification	152
b) Exceptions	153
2. Not to Delegate Authority.....	153
a) Implied Authorization and Implied Ratification.....	154
b) Direct and Indirect Sub-Agent.....	154
c) Legal Consequence in Case of the Principal's Approval.....	154
d) Legal Consequence in Case of the Principal's Disapproval.....	154
e) Statutory Representation.....	155
3. Liability for Bad Faith Collusion	155
4. Illegality	155
a) Illegality of the Affairs and Act of the Agency.....	156
b) Validity of the Agent's Act.....	156
c) Knowledge of the Principal.....	156
d) Knowledge of the Agent	156
e) Protection of the Counterparty	157
f) No Need of Codification.....	157
Chapter 14. Representation without Authority.....	158
I. Definition	158
II. Prerequisites.....	158
1. Appearance of Agency	158
2. Absence of Authority.....	158
a) Lack of Authority.....	159
b) Excess of Authority	159
c) Expiration of Authority.....	159
3. No Valid Representation	159
4. Reliance of the Counterparty upon the Authorization.....	159
III. Ratification.....	160
1. Manner of Ratification	160
2. Addressee of the Ratification	161
3. Time of Ratification.....	161
4. Restrictions on Ratification.....	161
5. Avoidance of Ratification	162
IV. Agent's Notice and Withdrawal.....	162
V. Consequence in Case of Refusal of Ratification.....	163
1. Counterparty in Good Faith	163
a) Standard of Good Faith.....	163
b) Non-Fault Liability of the Agent	163
c) Scope of Compensation.....	164
d) Election between Performance and Compensation.....	164
2. Counterparty in Bad Faith	164
a) Relationship between Counterparty and Agent	165
b) Relationship between Counterparty and Principal.....	165
c) Relationship between Agent and Principal.....	165
Chapter 15. Apparent Authority.....	166
I. Evolution History.....	166
II. Elements	166
1. Appearance of Authority	167

Table of Content

2. Good Faith of the Counterparty	168
a) Standard.....	168
b) Judgment Factors.....	168
c) Case Groups.....	168
d) Guaranty Contract.....	168
3. The Imputability of the Principal.....	169
a) Legislative History	169
b) Terminology.....	169
c) Case Groups.....	170
d) Lack of Imputability.....	170
4. Causation and Relevant Point of Time	170
III. Agency by Estoppel and Apparent Representation.....	171
1. Agency by Estoppel.....	171
a) Relevant Norm	171
b) Prerequisites.....	171
c) Approach in GRCL.....	171
2. Apparent Representation	172
a) Relevant Norm	172
b) Prerequisites.....	172
c) Case Groups.....	172
d) Distinction to Apparent Agency.....	172
IV. Exceptions and Use of Seal	173
1. Legislative History.....	173
2. Judicial Practice.....	173
3. Cases.....	174
V. Legal Consequence.....	174
1. Relationship between Principal and Counterparty.....	174
2. Relationship between Principal and Agent	175
3. Relationship between Counterparty and Agent	175
Chapter 16. Termination of Agency.....	176
I. Termination of Authorized Representation.....	176
1. Operation of Law.....	176
2. Act of the Parties.....	177
II. Agent's Act Conducted After the Principal's Death.....	177
III. Expiration of Statutory Agency.....	177
Part VI. Civil Liability	
Chapter 17. Overview	179
I. Evolution History.....	179
1. Structure	179
2. Priority of Civil Liability.....	179
3. Critique in General	179
II. Debate over Independence of Civil Liability.....	180
1. Term.....	180
a) Liability in General.....	180
b) Liability in Civil Law	181
c) Law of Remedies or Law of Liability?.....	181
2. No Civil Liability in German Law.....	182
a) Rights as Center of the German Civil Code.....	182
b) Commingling of Obligation (Schuld) and Liability (Haftung).....	182
c) Broad Scope of Compensation.....	182
3. The Needs for the Independence of Civil Liability in the Chinese Civil Code	183
a) Historical Reason.....	183
b) Advantage/Disadvantage of the Separation	183
c) Replacement of the General Part of the Law of Obligations.....	184
4. The Way to Systemize Civil Liability	184
III. Types of Liabilities	186
1. Proportionate Liability	186
a) Previous Law.....	187
b) Present Regime.....	187

Table of Content

c) Determination of Shares	188
2. Joint and Several Liability.....	188
a) Concept.....	188
b) Identification.....	189
c) Application in Tort Law	189
d) Apportion	189
e) Procedural Issues	189
IV. Concurrence of Civil Liabilities	189
1. Statutory Basis.....	189
2. Theoretical Basis.....	190
3. Scope of Application.....	190
a) Concurrence between Contractual and Tort Liability	190
b) Types of Concurrence	190
c) Concurrence of other Types of Liability	191
d) No Concurrence due to <i>lex specialis</i>	191
4. Scope of Remedies Subject to Concurrence	192
5. Right of Election	192
6. Theories of Reconstruction	194
a) New Theory of Competing Norms	194
b) Elimination of Concurrence of Liabilities.....	195
c) Interpretative Theory of Concurrence.....	195
V. Good Samaritan Law.....	195
1. Evolution History	195
2. Prerequisites.....	196
a) Voluntary Rescue.....	196
b) Emergency Measures + Causation.....	197
3. Relationship with art. 183 GRCL.....	197
a) Historical Evolution	197
b) Prerequisites of art. 183 GRCL.....	197
c) Distinction between art. 183 and 184 GRCL	198
d) Distinction from Management without Mandate.....	198
4. Art. 184 GRCL and Management without Mandate.....	198
5. Liability toward a Third Party.....	198
VI. Protection of Personality Rights of Heroes and Martyrs.....	199
1. Concept.....	199
2. Prerequisites.....	199
3. Standing to Sue.....	199
4. Relationship with Existing Law.....	199
Chapter 18. Remedies.....	201
I. Overview.....	201
II. Defensive Claims	201
1. Cessation of Infringement.....	202
2. Removal of Interference.....	202
3. Elimination of Danger.....	203
4. Harmonization of the Terms.....	203
5. Procedural Rules	203
III. Restitution	204
1. Return of Property	204
2. Restoration in the Former State.....	204
a) Property Law	204
b) Contract Law	205
c) Tort Law	206
d) Summary.....	206
3. Elimination of Negative Impact/Restoration of the Good Reputation	206
4. Apology.....	207
IV. Compensation	207
1. Compensation in Contract Law.....	207
a) Norm	207
b) Terms	207
c) Principles.....	207
2. Compensation in Tort Law.....	209

Table of Content

a) Economic Loss	209
b) Immaterial Loss.....	209
3. Punitive Damages.....	209
a) Contract Law.....	209
b) Tort Law	211
V. Other Remedies	211
1. Repair, Reworking and Replacement.....	211
2. Specific Performance	211
3. Contract Penalty.....	211
4. Interest for Delay.....	212
Chapter 19. Defense.....	213
I. Force Majeure	213
1. Scope of Application.....	213
2. Definition	213
3. Relationship with Hardship	214
4. Exclusion or Reduction	214
5. Exceptions	214
II. Self-Defense	215
1. Concept.....	215
2. Prerequisites.....	215
3. Beyond the Necessary Limit	215
III. Necessity.....	215
1. Concept.....	215
2. Prerequisites.....	215
3. Legal Effect.....	216
a) Cause of the Danger	216
b) Improper Measures.....	216
Part VII. Statute of Limitations	
Chapter 20. Overview.....	217
I. Evolution History	217
II. Legal Nature of Statute of Limitations.....	217
1. Debate on the Theories.....	217
2. Invocation of Prescription.....	218
3. Voluntary Undertaking to Perform/Voluntary Performance.....	218
III. Acquisitive Prescription	219
Chapter 21. General Rules on Statute of Limitations	220
I. Standard Statute of Limitation	220
1. Period of Limitations and Exceptions	220
2. Extension and Reduction.....	220
3. Commencement.....	221
a) General Rule	221
b) Exceptions	221
4. Suspension.....	222
5. Interruption	222
a) General Rule	222
b) Special Cases.....	224
II. Claims not Subject to Limitation.....	224
1. GRCL.....	224
2. SPC	226
III. Impermissibility of Party Agreements.....	226
IV. Cut-Off Periods.....	226
1. Concept.....	226
2. Computation.....	227
3. Exceptions	227
V. Statute of Limitations in Arbitration	227
VI. Residual Questions.....	227
1. Secured Transactions.....	227
2. Offset.....	228
3. Joint Debtors	228

Table of Content

4. Alternative Period	228
5. Laches Defense	228
6. Other Questions.....	228
Chapter 22. Computation of the Periods.....	230
I. Computation Units of Periods.....	230
II. Commencement of Periods.....	230
1. Days, Months and Years.....	230
2. Hours.....	230
III. End of Periods.....	230
1. Last Day.....	230
2. Last Hour	230
IV. Exceptions	231
Bibliography.....	233
Relevant Laws and Regulations	253
Index	259

