

## Brief Study of the Essence and the Historical Development of China's Contract Law

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### Abstract

**Society must be restricted by law. Contract Law is a legal basis of mutual relations in the process of trading, which has an importantly supporting role in the operation of the economic market, and is also evolved and developed step by step in the history of the development. Since the opening up of the political revolution, the social and economic structures have changed dramatically. Accordingly, we are in the stage that the science and technology are heading for economic globalization, and restriction of law to human beings is more and more rationalized, at this moment, we should discuss the essence and historical development of Contract Law in order to strengthen the protection for consumers and make a better use of Contract Law.**

### Keywords

**Contract law; Historical change; Trend of development.**

### 1. Definition of Contract

Contract, in simple terms, is a representative of contractual relationships between the two sides: creditor and debtors. Just like The General Principles of Civil Law defining the contract law as an agreement between two parties to establish, alter or terminate the civil legal relationship. There are many kinds of contracts, such as the contracts which signed according to Labor Law, and the contracts which signed voluntarily between individuals and subjects, or the oral agreement is also a valid contract. In short, the contract itself is designed to balance the interests between the two sides

### 2. The Essence of the Contract

As for the nature of Contract Law, we can analyze it in many ways. From the perspective of stratum, contract is the embodiment of social class hierarchy in the society which the bourgeoisie exploiting the proletariat, where the Contract Law is nothing more than another procedural means of exploitation. While from the perspective of social development, the amendment of the Contract Law is a reflection of people's credit, which relies on the binding force of law to enable people to abide by this system without breaking the contract. Today, with the rapid economic development, the contract balances the difference of value and ensures the rationality of the economy. From the perspective of the contract itself, the contract protects the subject matters stipulated by both parties, and the legal effect of the contract is exactly what the parties rely on and expect for. Simply, the meaning of the contract is to balance the creditor's rights and to achieve their own interests. The

legal relationship of the contract also embodies the importance of the standardized transactions. It is also an important manifestation of people's volition.

### 3. The Historical Development of the Contract Law

Contract law is an important part of the subjects of legal restraint. Whether in foreign countries or the whole of China, Contract law is as changing and developing as the other types of laws and regulations. From the history of the legal system of the world, the characteristics of the Contract Law are formed according to the characteristics of the times. So according to its characteristics, we can imagine its status in the legal system. Like our history and culture, we divide contract law into the "ancient contract law", the "modern contract law" and the "contemporary contract law" similarly.

#### (1)The Ancient Contract Law

The ancient contract, as a kind of "check - like property" circulated in society. its social background was established on the basis of property, and the Contract Law was mainly accompanied by slavery and a series of exploitation systems in the period of feudal system. In the legal system of Britain and America, the Contract Law began in thirteenth Century. From that time, people entered into the contracts in the form of debt and settled the problem of disputes in the economy according to the Contract Law. However, these laws and regulations were not official at that time, and later a series of promise contract laws were introduced. These contracts have laid a good foundation for the continued development of the final contract law.

Objectively speaking, the establishment of ancient contract law was unreasonable, and many systems need to be perfected. Most of the contracts were directed towards a few people, and there was no real fairness.

In Rome, for instance, the society at that time not only seriously persecuted the human rights of slaves, but also did not have real human rights for women and children, the Contract Law was just a Imaginary form at then. If a contract was signed in conformity with the form of the law, even if there was a violation of morality, no one would investigate it, So many times, forced conditions still had legal effect. With the passage of time and rapid economic development, those unreasonable contract laws must eventually be replaced by modern contract law.

#### Modern Contract Law

Modern contract law was a contract law started in the civil code of France., at that time, people advocated the pursuit of freedom, so the contract law was based on that. The modern contract law payed more attention to human rights, and everyone had the personality meaning in face of the law, but also the law had many restrictions on human's behavior ability.

In general, the modern contract law advocated the principle of voluntary fairness and no oppression. Its scope of application was also very wide, from the construction of the state system to resolution of family disputes, also in terms of time, the modern contract law lasted for a long time, and did not end until the fifteenth Century.

#### (2)Contemporary Contract Law

Modern contract law is the product of capitalism and the legalization of capital property right. In terms of content and establishment principles, it has something different from the modern contract law. In modern times, the contract has begun to be popular in the capitalist market, as long as the interest transactions were involved, a written contract would be required. The contract does not exist for a person or a group, but restricts the behavior of almost everyone, Of course, at the same also protects the legitimate rights and interests of those people.

With the rapid development of modern economy and more and more frequent trades at home and abroad, the Contract Law is not only practical in the country, but also plays an irreplaceable role in the world.

## 4. The Development of China's Contract Law

#### (1) The Period of Feudal China

Compared with the development of contract legislation in western countries in the past, that was on the bleak very much in the ancient oriental nation. In our country, because of the long period of feudalism, the law had the characteristics of "heavy punishment law light civil law". Although the contract types such as "Zhi Ji" and "Fu Bie" had appeared in the Western Zhou Dynasty, the development of contract law in China was still in a slow state, which was adapted to the slow developing socioeconomic then.

#### (2) After the Founding of New China in 1949

Since the founding of new China, the development of Contract Law had experienced some twists and turns, but the implementation of the socialist commodity economy had created an important condition

for the healthy development of Contract Law, for what the Contract Law ushered in a rare opportunity for development.

From 1950 to 1956, in this historical stage, the party's guiding principle and policy was to develop commodity production. In September 1950, the Financial and Economic Committee of the Government promulgated the first contract regulations of China - "Provisional Measures for Contract Signed by Organs, State-Owned Enterprises and Cooperatives", which played a great role in the completion of the first five-year plan. Then from 1957 to 1966, China's contract law experienced a tortuous development process as follow: during the period 1958 to 1960, the contract system was abolished, until 1961 when the party approved the eight-character policy in the ninth Plenary Session of the 8th CPC Central Committee, the administration of the contracts was strengthened. However, from May 1966 to October 1976, the contract law was abandoned again.

After the smash of the Gang of Four in 1976, China entered a new historical period: "the Law of the Peoples Republic of China on Economic Contracts" which was adopted by the meeting of the five NPC in December 1981, is a major achievement of China's contract law, indicating that the contract law of China has entered a new stage.

In March 1985, the tenth meeting of the Standing Committee of the Sixth NPC passed the Contract Law on the foreign economic for foreign affairs, and subsequently the People's Republic of China Technical Contract Law was passed by the twenty-first meeting of Standing Committee of the Six NPC in June 1987. At that time, the system of Contract Law in China had formed a situation of tripartite confrontation from "Economic Contract Law", "Foreign-related Economic Contract Law" to "Technical Contract Law". In 1999, at the second session of the Ninth National People's Congress, "the Contract Law of the People's Republic of China" was promulgated, and the situation of "tripartite confrontations" was abolished. The reason why those three contract laws were merged was because with the deepening of the reform, the continuous expansion of opening and the continuous development of modern construction, the law of those three contracts exposed some problems in the implementation. First, "Domestic Economic Contracts", "Foreign Economic Contracts" and "Technical Contracts" were different contract laws, some of the common problems were not unified. According to the requirements of the actual development of the socialist market economy, it was necessary to formulate a unified contract law; Second, at that time, some speculators used fraudulent contracts to cheat in market transactions, which harmed the interests of the state, society and others. Supplementary provisions should be made in preventing contract fraud and maintaining the order of the socialist market economy. Third, there were many new types of contract, the scope of the adjustment of the Contract Law at that time had not been fully adapted, so that was necessary to make the corresponding changes.

## 5. The Future of China's Contract Law

Looking at the history of the Contract Law of all dynasties in China, we can draw a conclusion that only the prosperity of commodity economy can lead to the development of contract legislation, otherwise the contract legislation is stagnant or even cancelled.

At present, after the establishment of the socialist market economy system, the market economy of our country has developed rapidly, and the Contract Law ushered in a different spring. At the same time, the Contract Law provides the basic principles for the market economy and micromanagement which will certainly promote the healthy development of the socialist market economy.

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