



CHINESE LAW SCHOOL 中国法

Faculty of Law and Administration at the University of Gdańsk

Chinese Law 中国法

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Founder of the Chinese Law School

class 2019/2020

INTRODUCTION. The Chinese Law School 中国法 (*Szkoła Prawa Chińskiego*) provides a broad, yet practical introduction to contemporary Chinese law and legal institutions in cultural and comparative perspective. It serves as foundation for further study in Chinese law, as well as an introduction to comparative law study. There is no doubt that China is the story for our time and that its legal reforms are of great importance, not only for China but also for the rest of the world. The topics we will consider in this course also raise some of the most fundamental issues we could discuss for any system, including our own.

Chinese Law School 中国法 offers students a curriculum of unparalleled breath: teaching and mentoring take place side by side, as faculty and students learn together and collaborate on projects, crowdsourcing, case studies, writing articles that will end up with a how-to-guide within Chinese law and legal culture.

UPON COMPLETION OF THE CHINESE LAW SCHOOL, YOU SHALL, INCLUDING BUT NOT LIMITED TO:

1. Receive a certificate issued by the University of Gdańsk Faculty of Law and Administration.



2. Acknowledge basic legal phrases in Chinese mandarin language.
3. Be able to liaise with Chinese partner, with ease.
4. Know how to prepare for the sign-off meeting in terms of an executed contract.
5. Acknowledge three golden rules on executing contract with Chinese partner.
6. Know what to expect and request from Chinese law firm or Chinese lawyer.
7. Build up *guanxi* (关系).
8. Be able to navigate through Chinese legal culture and sources of law.

ORGANISATION.

MODULE 1 一. INTRODUCTION TO 中国法 《中国法律导言》 . November 2019.

MODULE 2 二. CIVIL LAW in 中国 《民法》 . December 2019.

MODULE 3 三. CONSTITUTIONAL AND ADMINISTRATIVE LAW in 中国 《宪法和行政法》 . January
2020

MODULE 4 四. CONTRACT LAW AND BUSINESS ACTIVITY in 中国 . February 2020

**MODULE 5 五. FAMILY, INHERITANCE, EMPLOYMENT LAW AND SOCIAL SECURITY SYSTEM in 中
国** . March 2020.

MODULE 6 六. CRIMINAL LAW in 中国 《刑法》 and INTELLECTUAL PROPERTY LAW in 中国 . April
2020

MODULE 7 七. FINAL EXAM. May 2020.

The above dates are subject to organisational changes.

MATERIALS. We will use the following materials in this course:

1. Presentations including practical experience and expertise of the tutor, with a number of examples and comparative approach. You will receive electronic version thereof just before classes.



2. *Jianfu Chen's Chinese Law: Context and Transformation (2015)*. This book will serve as our basic text as well as a general reference for Chinese law topics; it's referred to as "the text" in the assignments given below. The book is available for purchase online, but you are not obligated to buy it, and I will do my best to make hard copies at the Gdańsk University Library (BUG). Kindly note that at BUG, there is a dedicated Chinese Room (room no 4.41) with a number of Chinese books on various subjects. Full address: Biblioteka Uniwersytetu Gdańskiego at ul. Wita Stwosza 53, 80-308 Gdańsk, email: bib@bg.ug.edu.pl
3. Supplementary materials, including Chinese statutes (for reference) and articles on specific aspects of Chinese law, chosen to represent a range of sources and to illustrate different points of view will be posted on the School instagram (#szkolaprawachinskiego) and facebook (<https://www.facebook.com/szkolaprawachinskiego/>) for you to access online. I will also email to you all and any necessary links.
4. Memrise. Every time you can check and revise your knowledge from each module on online learning platform called "Memrise". I have created a dedicated course for you covering the materials from each module. The platform is free of charge and you only have to create an account. Link: <https://www.memrise.com/course/1521468/chinese-law-school-zhong-guo-fa/>. Look for "Chinese Law School".
5. The course will also include sessions on sources for research on Chinese law issues. Although we will discuss them throughout the course, this session will provide a broader introduction to legal and news sources. Chinese law changes very quickly, so it's important to learn how to stay up-to-date or to research the latest legislation.

RECOMMENDED LITERATURE. (some available online, kindly refer to Google Books app)

Chen Jianfu, *Chinese Law: Context and Transformation: Revised and Expanded Edition*, 2nd ed. Edition 2015 (*the text*). Partially available at Google books: [https://books.google.pl/books?id=Q2xyDAAAQBAJ&lpq=PP1&dq=Jianfu%20Chen%E2%80%99s%20Chinese%20Law%3A%20Context%20and%20Transformation%20\(2015\)&hl=pl&pg=PP6#v=onepage&q=Jianfu%20Chen%E2%80%99s%20Chinese%20Law:%20Context%20and%20Transformation%20\(2015\)&f=false](https://books.google.pl/books?id=Q2xyDAAAQBAJ&lpq=PP1&dq=Jianfu%20Chen%E2%80%99s%20Chinese%20Law%3A%20Context%20and%20Transformation%20(2015)&hl=pl&pg=PP6#v=onepage&q=Jianfu%20Chen%E2%80%99s%20Chinese%20Law:%20Context%20and%20Transformation%20(2015)&f=false)

Chen Jianfu, *Chinese Law: Towards and Understanding of Chinese Law, Its Nature and Development*, Hague -London-Boston 1999.

Chen Jianfu, *Criminal Law and Criminal Procedure Law in the People's Republic of China*, Leiden-Boston, 2013.

Chen Jianfu, *The Revision of the Constitution in the PRC: A great leap forward or symbolic gesture? "China Perspectives"* 2004, no 53.



Chen Weidong, Retrospection and Perspective: Chinese Criminal Procedure Law (1979-2009), "Frontiers of Law in China" 2010, vol. 5.

Christensen M.B., Decoding China, Tuttle Publishing, Singapore 2013.

Kość A., Prawo a etyka konfucjańska w historii myśli prawnej Chin, Lublin 1998.

Kość A., Recepcja prawa europejskiego w czasie Republiki Chińskiej (1912-1949) [in:] Chiny w oczach Polaków. Księga jubileuszowa z okazji 60-lecia nawiązania stosunków dyplomatycznych między Polską a Chińską Republiką Ludową, red. J. Włodarski, K. Zeidler, M. Burdelski, Gdańsk 2010.

Kość A., Relacja tradycyjnego prawa chińskiego do etyki konfucjańskiej [in:] Prawoznawstwo a praktyka stosowania prawa, red. Z. Tobor, I. Bogucka, Katowice 2002.

Kość A., Starożytne kodyfikacje prawa chińskiego a współczesna kultura prawna [in:] Starożytne kodyfikacje prawa, red. A. Dębiński, Lublin 2000.

Matheson J.H., Convergence, Culture and Contract Law in China, 15 MINN. J. INT'L L. 329 (2006), available at

http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1109&context=faculty_articles

Peerenboom R., China modernizes: Threat to the west or model for the Rest?, Oxford 2008.

Peerenboom R., Competing conceptions of rule of law in China [in:] Asian Discourses of Rule of Law: Theories and Implementations of rule of law in twelve Asian countries, France and the U.S., red. R. Peerenboom, London-New York 2012.

Peerenboom R., Fly High the Banner of Socialist Rule of Law with Chinese Characteristics! What Does the 4th Plenum Decision Mean for Legal Reforms in China?, "Hague Journal on the Rule of Law" 2015, no 7.

Peerenboom R., Human Rights and Asian Values: The Limits of Universalism, "China Review International" 2000 vol. 7, no 2.

Peerenboom R., Judicial Independence in China: Common Myths and Unfounded Assumptions [in:] Judicial Independence in China: Lessons for Global Rule of Law Promotion, red. R. Peerenboom, Cambridge 2010.

Peerenboom R., The Rule of Law as Transition to Democracy in China [in:] Debating Political Reform in China: Rule of Law vs. Democratization, red. Zhao Suizheng, New York 2006.

Peng Sen, Li Chen, Reformując Chiny: główne wydarzenia (1992-2004), tłum. M. Ciecierski, Toruń 2013.



Stępień M., Chińska kultura prawna [in:] Leksykon socjologii prawa, red. A. Kociotek-Pęksa, M. Stępień, Warszawa 2013.

Stępień M., Chińskie marzenie o konstytucjonalizmie, Kraków 2015.

Stępień M., Czy szkoła legistów opowiadała się za rządami prawa? [in:] Konwergencja czy dywergencja kultur i systemów prawnych, red. O. Nawrot, S. Sykuna, J. Zajadło, Warszawa 2012.

Stępień M., Spór konfucjanistów z legistami: w kręgu chińskiej kultury prawnej, Kraków 2013.

Zuo Keyuan, China's Legal reform: Towards the Rule of Law, Leiden-Boston 2006.

Amy Lee Rosen, Chinese Contract Formation: The Roles of Confucianism, Communism, and International Influences, 20U. Miami Int'l & Comp. L. Rev.189 (2013) Available at: <http://repository.law.miami.edu/umiclr/vol20/iss2/5>

Chunli Leonhard, "Beyond the Four Corners of a written Contract: A Global Challenge to U.S. Contract Law", 21 Pace International Law Review (2009).

Yu Hua, China in Ten Words, Random House Lcc US, 2012.

Adam W. Jelonek, Bogdan S. Zemanek, "Confucian Tradition Towards the New Century" Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2008.

Rene David John, E.C.Brierley, Major Legal Systems in the World Today, An Introduction to the Comparative Study of Law, second edition, Stevens&Sons, 1978, London.

Henry Kissinger, "O Chinach", translated by Magdalena Komorowska, Wołowiec 2014.

Henryk Chołaj, "Kapitalizm Konfucjański? Chińskie Reformy Ekonomiczne A Globalizacja", Wydawnictwo Poltext Warszawa 2014.

Rowiński J., Jakobiec W., System Konstytucyjny Chińskiej Republiki Ludowej, Warszawa 2006.

Rowiński J., Jakobiec W., Parlament Chińskiej Republiki Ludowej, Warszawa 2008.

Lubman, Stanley, Looking for Law in China. Columbia Journal of Asian Law, Vol. 20, No. 1, pp. 1-92, Fall 2006. Available at SSRN: <https://ssrn.com/abstract=982009>

Hand, Keith J., Resolving Constitutional Disputes in Contemporary China (November 22, 2011). University of Pennsylvania East Asia Law Review, Vol. 7, No. 1, 2011. Available at SSRN: <https://ssrn.com/abstract=1971955>



Zhang, Mo, From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China. *Berkeley Business Law Journal*, Vol. 5, 2008; *Temple University Legal Studies Research Paper No. 2008-39*. Available at SSRN: <https://ssrn.com/abstract=1084363>

Conk, George W., People's Republic of China Civil Code: Tort Liability Law. *Private Law Review*, Vol. 5, No. 2 (The 10th Issue), pp. 77-111, December 2005; *Fordham Law Legal Studies Research Paper No. 892432*. Available at SSRN: <https://ssrn.com/abstract=892432>

Bath, Vivienne, The Company Law and Foreign Investment Enterprises in the People's Republic of China: Parallel Systems of Chinese-Foreign Regulation (May 26, 2009). *University of New South Wales Law Journal*, Vol. 30, No. 3, pp. 774-785, 2007; *Sydney Law School Research Paper No. 09/42*. Available at SSRN: <https://ssrn.com/abstract=1410383>

Vining, Joseph, China, Business Law, and Finance - Accession to the World Trade Organization (September 1, 2008). *U of Michigan Law & Economics, Olin Working Paper No. 08-015*; *U of Michigan Public Law Working Paper No. 123*. Available at SSRN: <https://ssrn.com/abstract=1276348> or <http://dx.doi.org/10.2139/ssrn.1276348>

Clarke, Donald C., Corporate Governance in China: An Overview (September 19, 2003). Donald C. Clarke, "Corporate Governance in China: An Overview", *China Economic Review*, vol. 14, 2003, pp. 494-507. Available at SSRN: <https://ssrn.com/abstract=424885> or <http://dx.doi.org/10.2139/ssrn.424885>

Lee, Jyh-An and Liu, Ching-Yi and Li, Weiping, Searching for Internet Freedom in China: A Case Study on Google's China Experience (April 1, 2013). *Cardozo Arts & Entertainment Law Journal*, Vol. 31, No. 2, 2013. Available at SSRN: <https://ssrn.com/abstract=2243205>

August R., *International Business Law. Text, Cases and Readings*, edition no 4., Pearson Education International, New Jersey 2004.

Bell D., Shelman M.L., KFC's Radical Approach to China, *Harvard Business Review*, November 2011 issue.

Hyung I. Kim, *Fundamental Legal Concept of China And The West. A Comparative Study*. New York: Kennikat Press, 1981.

Fontaine M., De Ly F., *Drafting International Contracts. An Analysis of Contract Clauses*, Martinus Nijhoff Publishers, Leiden, Boston 2009.

Yang Bojun, D.C. Lau, 论语 Confucius The Analects, 中华书公司, 2011.



Qian Ning, Nowe Dialogi konfucjańskie, próba rekonstrukcji, Wydawnictwo Olesiejuk 2014.

Wu Lan, Marta Dargas, Konstytucja Chińskiej Republiki Ludowej, przekład z języka chińskiego, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2012.

Note, Chinese Common Law? Guiding Cases and Judicial Reform, 129 Harvard Law Review 2213, Jun 10, 2016. Available at <https://harvardlawreview.org/2016/06/chinese-common-law-guiding-cases-and-judicial-reform/>

Tidiane N'Diaye, Żółte i Czarne, Historia chińskiej obecności w Afryce, Warszawa 2016.

Ted Plafker, Jak robić interesy w Chinach, Jak osiągnąć zyski na rynku rosnącym najszybciej na świecie, przekład Elżbieta Brzozowska, Warszawa 2010 (DOING BUSINESS IN CHINA. How to Profit in the World's Fastest Growing Market, New York 2007).

Francois Godement, Czego chcą Chiny?, przekład Katarzyna Sarek, Warszawa 2016.

Sun Tzu, Sun Pin, Sztuka Wojny, Gliwice 2013.

Piotr Majerski, Wprowadzenie do Filozofii Taoistycznej, Kraków 2006.

Kamil Zeidler, Joanna Kamień [red.], Azja Wschodnia w Oczach Polaków. Wybór Tekstów Józefa Włodarskiego z lat 2001-2015, Gdańsk 2015.

FURTHER READING AND VIEWING. LAW IN THE MOVIES.

If you are interested in further reading on any of the subjects we discuss, I will be happy to make recommendations. Novels, memoirs—and even films—can also provide useful illustrations of the issues we discuss in this course, whether contemporary or historical. For example, Robert Van Gulik's Celebrated Cases of Judge Dee, a translation of an eighteenth-century detective novel featuring a famous magistrate, is an enjoyable and not completely inaccurate depiction of the traditional administration of justice. The cases of Judge Bao, another clever and heroic magistrate, have also been featured in various translations, and there are several television series dramatizing his cases.

On the Chinese family, I recommend Cao Xueqin's Dream of the Red Chamber, an eighteenth-century novel of traditional extended family; or The Family, Ba Jin's 1931 autobiographical novel about the repressive effects of the traditional family on young people. For films with similar issues, see Zhang



Yimou's *Raise the Red Lantern*, in which a young student becomes a concubine in a 1920s extended family, with tragic results. The 1986 *Girl from Hunan*, though less dramatic, depicts the sad life of a foster daughter-in-law in rural China. By contrast, Taiwanese director Ang Lee's films *The Wedding Banquet* and *Eat Drink Man Woman* provide humorous and poignant treatments of modern Chinese family relations.

I also recommend *Ermo*, a Chinese comedy/drama movie (1994), the account of a noodle-maker's quest to buy the largest TV in the county; the story also illustrates the rise of new private businesses since the economic reforms and changing Chinese attitudes towards money and material possessions. Some recent Chinese films also offer vivid depictions of post-1949 political campaigns and upheavals and the lives they ruined. I recommend Tian Zhuangzhuang's *The Blue Kite* (covering the years 1953 until the Cultural Revolution, including the Anti-Rightist movement); *Hibiscus Town* (set during the Cultural Revolution of the sixties to seventies); and Zhang Yimou's *To Live* (tracing the fortunes of a Chinese couple from the late forties through the Cultural Revolution). For a picture of a very different (and richer China), you might try *If You Are the One*, a light romance-comedy that was the biggest hit in China some time ago. To get a sense of more recent social and political changes in China watch *A touch of sin* (2013) a Chinese drama film directed by Jia Zhangke. It was nominated for the Palme d'Or at the 2013 Cannes Film Festival, with Jia winning the award for Best Screenplay.

Worth seeing is also *The Story of Qiu Ju* (1992), directed by Zhang Yimou. The administrative procedure and the Administrative Litigation Law is featured in the movie. This film, which is based on a Chinese novel, will give us a chance to consider many of the issues we have raised so far relating to family law, criminal law, dispute resolution, mediation and the courts, the role of lawyers, etc.

And *Red Corner* (1997), movie that features an American attorney on business in China who is wrongfully arrested and put on trial for murder, with a female defense lawyer from the country the only key to proving his innocence.

TED.

Ideas worth spreading on China can be found on TED, my favourite include: Yang Lan, The generation that's remaking China; Abigail Washburn, Building US-China relations by banjo; Leslie T. Chang, The voices of China's workers; Michael Anti, Behind the Great Firewall of China; provocative Eric X. Li, A tale of two political systems; and great ShaoLan, Learn to read Chinese ... with ease! Ending with the former prime minister of Australia Kevin Rudd, Are China and the US doomed to conflict? Hope after the completion of the Chinese Law School you will be willing and desirous to give a speech within TED community.

Of course there is so much more to read or view on China now—your suggestions are also welcome.



Kindly note that you are not obligated to read, watch and acknowledge with all the above materials.

SOURCES OF LAW.

Such as *Zhōnghuá rénmin gònghéguó hétóng fǎ* [Contract Law Act] (1999) (P.R.C.), 中华人民共和国合同法。 Are available at <http://en.pkulaw.cn/display.aspx?id=6145&lib=law> both language versions: Chinese and English.

Also kindly visit www.npc.gov.cn looking for sources of law.

COURSE ASSESSMENT AND TEACHING METHOD.

Students will be assessed (a) on the basis of a final examination – test of open questions; and (b) on a series of short takehome topics papers or essays. Nevertheless, class participation will also be taken into account. As part of your class participation, please submit one newspaper or magazine article, selected from any major national or regional periodical, relevant to any issue or issues we discuss in this course with your comment thereon. You may email the article to me at spch@prawo.ug.edu.pl or submit the hard copy in class any time before end of module no 6. I would also be very interested in a movie, TED recommendation or podcast with some relevance to the course.

This course will be taught informally as a seminar, but everyone is expected to attend class on time, to do the assigned reading and to participate in class discussion. Your comments and questions are always welcome in our discussion: reasonable people can differ on these issues, and we can all benefit from different perspectives. Although I am happy to have students use their laptop computers for note-taking or other class-related activities, web surfing, sending email or instant messages, playing games or similar activities are unacceptable uses of your computer during class time—it's unprofessional and much too distracting to other students. Please also turn off your cell phones before class begins.

HOW TO BE PREPARED FOR THE FIRST CLASSES.

Bring true copy of the documents that you sent during your registration procedure. Review this Starter. You will be asked to introduce yourself to other students.

You are welcomed to read and watch the following:



Goossen, Richard J., "An Introduction to Chinese Law: Does it Exist? What Is It? How Is It Interpreted?." *Osgoode Hall Law Journal*, 27.1 (1989): 93-122. Available at <http://digitalcommons.osgoode.yorku.ca/ohlj/vol27/iss1/3>

Selections from the Confucius: The Analects of Confucius – look for Confucius teachings and pick your favourite one.

And possibly: Kość A., *Prawo a etyka konfucjańska w historii myśli prawnej Chin*, Lublin 1998.

Upon completion of the first class, read Jianfu Chen, *Chinese Law: Context and Transformation* (2015), pages: 1-88, 172-228, 229-278, 890-964.

Movie: *The Story of Qiu Ju* (1992), directed by Zhang Yimou.

Movie: *Red Corner* (1997), directed by Jon Avnet.

Movie: *A touch of sin* (2013), directed by Jia Zhangke.

Create and log onto Memrise account to check and revise your knowledge from each module. Link: <https://www.memrise.com/course/1521468/chinese-law-school-zhong-guo-fa/>

CONTACT INFORMATION.

You can reach me by phone (+48 518958514) or by email at spch@prawo.ug.edu.pl. I am almost always available just before and after class if you would like to speak with me then.

Should you have any questions about the School, please post them on School facebook or Instagram to get help from others in the course community and to have knowledge exchange to happen.

Good luck as you get started, and I hope you enjoy the course!

See you soon.

再见!

Magdalena Pszczółka