

<<中国民事诉讼法与法律冲突法>>

图书基本信息

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作者：陈卫佐

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内容概要

The manuscript of the present textbook has been used for a course taught by the author for the LL.M. Program in Chinese Law at Tsinghua University School of Law from 2005 to 2010. The main objective of this course is to provide international students with basic knowledge of Chinese civil procedure and the conflict of laws. In particular, the course expounds civil lawsuits that are filed in accordance with the Chinese code of civil procedure (Civil Procedure Law of the People's Republic of China), other statutes and judicial interpretations, as well as choice of law rules determining the law applicable to civil relationships involving foreign elements. The course provides succinct explanations of essential issues, fundamental principles and particular institutions in Chinese civil procedure and the conflict of laws. The textbook begins with a survey of the Chinese procedural law and an overview of Chinese civil procedure and then focuses on essential aspects of court jurisdiction and trial procedure in civil matters. In view of the traditional importance of alternative dispute resolution in China, mediation (conciliation) and arbitration are also discussed with corresponding comparisons to civil procedure. The textbook also discusses issues relating to the conflict of laws, i.e. international jurisdiction under the Chinese international civil procedure law, recognition and enforcement of foreign judgments as well as Chinese choice of law rules. Focus is directed toward the Chinese Statute on the Application of Laws to Civil Relationships Involving Foreign Elements of 28 October 2010, which entered into force on 1 April 2011. Two appendixes are printed at the end of the textbook: "Addendtrm 1: Chinese Statutory Conflict Rules and Conflict Rules Contained in Judicial Interpretations Prior to 1 April 2011" and "Addendum 2: Statute on the Application of Laws to Civil Relationships Involving Foreign Elements of the People's Republic of China" which has been translated into English jointly by Professr CHEN Weizuo and Mr. Kevin M. Moore.

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作者简介

CHEN Weizuo, Director of the Research Centre for Private International Law and Comparative Law, Tsinghua University School of Law, Beijing, China; Doctor of Laws, Wuhan University, China; LL.M. and doctor iuris, Universit t des Saarlandes, Germany; professeur invite   la Facult  internationale de droit compare de Strasbourg, France (since 2003); professeur invite l'Universit  de Strasbourg, France (2005-2010); to teach a special course in French.

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章节摘录

版权页：B damaged a Sony video projector borrowed from A. A requested compensation of 10,000 yuan RMB from B, but B refused to do so. A sued B in a people's court. The court tried many times to conciliate the dispute between the two parties. A maintained his claim of 10,000 yuan RMB because the original product was available only in Japan whereas B only wanted to compensate 6,000 yuan RMB at most, arguing that the product was already 2 years old. After several months B expressly declared to the court that he did not want to continue the mediation. The court thought that the two parties had been close friends and the object of dispute was not big. It maintained the mediation and postponed the judgment. After another four months, the plaintiff A protested to the court and requested a prompt judgment. The trial judge said to him, "It's quite easy for me to render a judgment, but it will be disadvantageous to you, for you might be compensated merely 5,000 yuan RMB." Question: was that reasonable? Answer: in the instant case, the court conducted mediation on an involuntary basis. It was wrong to do so, because any mediation conducted by a people's court shall be on the voluntary basis (Article 9 of the CPL) .

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