

## The Recent Development of Chinese Contract Law

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**Abstract:** The Contract Law of People's Republic of China is developing with the evolvement of market economy and social life. During the first decade of the 21<sup>st</sup> century, numerous great changes occurred in China's economy and society. Some judicial interpretations which are based on the judicial practice and the development trend of modern contract law were promulgated to be in suitable with these changes. This article tries to analyze these judicial interpretations in order to reveal the recent developments in the Contract Law of People's Republic of China.

**Key Word:** Chinese Contract Law, Recent Development, Good Faith, Contractual Justice, Contract Internationalization

It is widely known that the evolvements of socioeconomic relationships make some deep influence on the development of Contract Law, which is based on the existence of market transactions. The contracts play an increasingly important role in the Chinese market economy, and the current Contract Law of China was promulgated in 1999, which is supplemented by the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of People's Republic of China (Interpretation I) in 1999. However, at the present stage, the form of Chinese Contract Law is mainly developed by the way of promulgating of legal interpretation, which mostly origins from the judicial practice that is sensitive to the needs of society. In fact, the recent developments of Contract Law in China is essentially reflected from the promulgation of three judicial interpretations which are: the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of People's Republic of China (II) (Interpretation (II)) in 2009, the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases of Disputes over Sales and Purchase Contracts (Interpretation of Sales Contracts) in 2012, and the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases of Disputes over Financial Leasing Contracts (Interpretation of Financial Leasing Contracts) in 2013. This article is trying to analyze the features and the impact of these three judicial interpretations on the Chinese Contract Law as well as its value targets.

The first part of this article is a brief introduction of the background of these Interpretations, while the Second part will emphasize on the features of recent development of Chinese Contract Law. The general development trend of Chinese Contract Law will be described in the last part.

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## 1. Background of the Interpretations

China is the world's fastest growing major economies that the growing number of contract disputes is dramatically increasing. In 2008, national first instance contract dispute cases accepted by the people's courts at all levels have reached 3,000,000.<sup>1</sup> Some experience from these judgments needs to be integrated into the legislation in order to deal with the new problems arising from the society.

Considering that the interpretation (I) was promulgated in the same year with implementation of the Contract Law, Contract Interpretation (II) tries to solve some new problems arising in the past decade. And the outbreak of the global financial crisis in 2008 made it pressing to come on some new legal rules to maintain the economic stability. Especially for the sales contracts, there is a demand of a detailed ruling system to satisfy with the needs of judicial practice. The Interpretation of Sales Contracts was thus adopted at the 1545<sup>th</sup> session of the Judicial Committee of the Supreme People's Court on March 31, 2012, and came into force on July 1, 2012.

The same situation with the financial leasing business, the number of cases over financial leasing contracts had rapid growth these years. In 2008, the People's Courts at all levels merely received 860 cases of the first instance about financial leasing disputes. In 2012, this number sharply increased to 4591, and in 2013 the number was 8530. However, there were only 14 provisions about financial leasing in Contract Law. Existing legal provisions cannot meet the needs of growing of financial leasing disputes, so the promulgation the of Interpretation of Financial Leasing Contracts was thus aimed to alleviate this contradiction that it was adopted at the 1597<sup>th</sup> session of the Judicial Committee of the Supreme People's Court on December 25, 2012 and, came into force on March 1, 2014.

## 2. The Features of the Supplementation of Chinese Contract Law

From all the interpretations as described above, we may find some general development, including the following aspects.

### 2.1 Pursuit of Contract Justice

Contract justice means that the Contract Law should protect the contractual parties to perform their obligations based on the equality and freedom, and guarantee that the contents of contract should meet the requirements of fairness and good faith. John Bordley Rawls divided the justice into the procedural justice and substantive justice.<sup>2</sup> The former one emphasizes on the widespread application of law, and advocates the same application, while the latter more focuses on the results of the law application, through

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<sup>1</sup> Cao Shouye, Guan Yu Shi Yong He Tong Fa Ruo Gan Wen Ti De Jie Shi(2) De Li Jie Yu Shi Yong( Comprehension and Application Regarding the Interpretation on Several Issues Concerning the Application of Contract Law( )), Ren Min Si Fa ( The People's Judicature, 2009(13), p.40.

<sup>2</sup> Rawls J. A theory of justice, China Social Sciences Publishing Press, 1999, pp. 65-78.

taking the difference of parties into consideration and giving different application to different parties in the different situations. Although the pursuit of contract justice limits the freedom of contract, the freedom and justice are not opposite, which should be inherently unified.

With the sustained development of economic changes, some new contract forms and numerous more complex legal relationships are evolving. And the economic developments produce some more powerful parties including the large enterprises, especially the multinational and government. The development of standard clause and information asymmetry between operators and consumers brings enormous impact to the contractual freedom and justice. Therefore, the pursuit of contract substantive justice is an essential role for the progress of Chinese Contract Law, which is reflected from the following aspects:

### **2.1.1 Expanding the Scope of Contractual Form**

The implied-in-fact contract is a kind of agreement depending on the factual act instead of the form of contract. In current China, a huge number of implied-in-fact contracts arises from the practice, for example, ATM, Vending machine and Automatic parking. These new types of transaction require a legal foundation to be liberated from the formalism to the true will and acknowledge the implied-in-fact contract at the judicial level. Article 2 of Contract Interpretation (II) makes the implied-in-fact contract recognized in the legislation: if a contract has not been concluded in writing or in oral form by the relevant parties, but the intention of entering into a legal relationship from both parties can be ascertained by their civil conducts, then the People's Courts may find that the contract has been formed in "other means" according to Clause 1 of Article 10 of Contract Law, except where it is otherwise provided under other law. The provision can be regarded as a recognition of the effectiveness of the implied-in-fact contract and makes some kind of contracts that are lack of the contract form, which could not be accepted based on the traditional contract law, recognized as contracts. It reflects that the form is not necessary for the formation of contract, and a contract may also be concluded by the factual act, which is a significant important step to protect the true intentions.

### **2.1.2 Limitation for Standard Clauses**

The standard clause was born to adapt with the rapid economic exchanges. It is aimed to save the transaction costs and improve the efficiency of market economy. However, it is closely associated with the contract freedom and justice. The parties in a dominant position frequently use the standard clause as exemptions and restrictions to the rights of the other party. In order to protect the contract justice, there should be some restrictions to the standard clause. Some provisions in Contract Interpretation (II) are set to deal with

this issue, such as Article 6, Article 9 and Article 10.<sup>3</sup>

According to these three articles, we may conclude that: First, the special characters, symbols, fonts and other signs, which are sufficient to arouse the other party's attention to the content, and can make an explanation of the standard clauses according to the requirements of the other party can be regarded as "a reasonable way". Second, if the party who provides the standard clause that would exempt or restrict his liability, he has to make some explanations. Third, if the party providing the standard clause is failure to fulfill the obligation above, the other party could apply to revoke the standard clauses. Also, if this kind of clauses falls under any of the circumstances as described in Article 40 of the Contract Law,<sup>4</sup> it would be determined to be invalid. By limiting the standard clause, contractual capacities of two parties can be balanced to achieve the contract justice.

### 2.1.3 Protection of Vulnerable Groups

The protection of vulnerable groups becomes a major issue by the legislation in current China. Especially, the generation of monopoly makes the plight of vulnerable groups even worse. Protecting the rights of vulnerable groups is important for achieving the contract justice<sup>5</sup> that can be reflected from the consideration of consumers and workers.

Consumers are the main participants in transaction activities. The gap of strength and information asymmetry makes the consumers' rights to be violated. We can find some provisions in these judicial interpretations concerning this issue, such as the provision about inspection of the subject matter. Article 19 of Interpretation of Sales Contract concludes in the situation that consumers had made payment, confirmed the amount owed, or used the subject matter, they could still claim an objection about the quality of the subject matter within a reasonable period.<sup>6</sup> The consumer cannot roundly know the

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<sup>3</sup> Article 6 of Contract Interpretation (II): Where, at the time of concluding a contract, the party providing the standard clauses adopted special characters, symbols, fonts and other signs sufficient to arouse the other party's attention to the content of the standard clauses regarding liability exemptions or restrictions in favor of the party providing the standard clauses, and made an explanation of the standard clauses according to the requirements of the other party, the people's court shall determine that the requirement of "a reasonable way" in Article 39 of the Contract Law has been satisfied. The party providing the standard clauses shall bear the burden of proof on its/his fulfillment of the obligation to make reasonable prompting and explanation. Article 9: Where the party providing the standard clauses violates the provision of paragraph 1 of Article 39 of the Contract Law regarding the obligation to make prompting and explanation and causes the other party's failure to notice the clauses regarding liability exemptions and restrictions in favor of the party providing the standard clauses, the people's court shall support the other party's application for revoking the standard clauses. Article 10: When the party which provides any standard form contractual term is in breach of Clause 1 of Article 39 of the Contract Law, and falls within the provision under Article 40 of the Contract Law, the People's Courts shall find such standard form contractual term to be invalid.

<sup>4</sup> Article 40 of Contract Law: When standard terms are under the circumstances stipulated in Articles 52 and 53 of this Law, or the party which supplies the standard terms exempts itself from its liabilities, increases the liabilities of the other party, and deprives the material rights of the other party, the terms shall be invalid.

<sup>5</sup> Wang Liming, *Lun He Tong Fa De Xin Fa Zhan* (The Recent Development of Contract Law), Jiang Hai Xue Kan (Jianghai Academic Journal), 2003(2), p. 123.

<sup>6</sup> Article 19 of interpretation of Sales Contract: Where the buyer raises an objection within the reasonable period, if the seller claims that the buyer has waived the objection on the grounds that the buyer has made

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information of subject matter, and the inspection cannot reflect the true meaning of consumers, which should be protected. Also, the Interpretation of Sales Contract tries to balance the discrepancies in the information and financial resources between sellers and buyers through Article 32.<sup>7</sup>

This rule aims to create a transparent information environment for consumers. It is widely known that the sellers always have more adequate information about the items. If the sellers failed to inform the buyer of such defects by intentional conduct or gross negligence, the consumers would easily make a decision without enough knowledge. This kind of decision is obviously contrary to the consumers' true meaning. In such situation, the buyers could claim to reduce or exempt the guarantee liability.

## 2.2 Enlightening the Principle of Good Faith

The principle of good faith was originated from the "Contractus bonae fidei" and "Actio bona fidei" in Roman law.<sup>8</sup> Although there are some certain limitations in the development of civil law, the principle of good faith has still been the "King Provision" of contract law since the late 20<sup>th</sup> century. It limits and guides the freedom of parties. Although the Contract Law in 1999 has established the principle of good faith in Article 6,<sup>9</sup> several new provisions in the judicial interpretations are strengthening its requirement.

### 2.2.1 Principle of Frustration of Purpose

Article 26 of Contract Interpretation (II) establishes the principle of frustration of purpose. The essential aim of it was shaped to response to the financial crisis in 2008. In fact, in the process of legislating the uniform Contract Law, the principle of frustration of purpose had been discussed.<sup>10</sup> However, finally it did not be involved as a part of Contract Law due to the judicial corruption in China that many delegates from the People's Congress consisted this principle can endow the judges with more discretionary power that may lead to an even worse judicial corruption. But, the value of frustration of purpose lies in the fact that when the balance between the interests of the original contract is obviously unfair, because of the financial instability, then the aggrieved parties may claim for the legal relief.<sup>11</sup>

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payment, confirmed the amount owed, or used the subject matter, the people's court shall not support such claims, except where the parties have agreed otherwise.

<sup>7</sup> Article 32 of Interpretation of Sales Contract: According to contractual provisions, the seller's guarantee liability for the defects of the subject matter is reduced or exempted, but the seller fails to inform the buyer of such defects by intentional conduct or gross negligence, if the seller claims a reduction or exemption to the guarantee liability for defects according to the contractual provisions, the people's court shall not support such claims.

<sup>8</sup> Reinhard Zimmermann, Simon Whittaker, Good Faith in European Contract Law, Cambridge University Press, 2000, pp. 63-93.

<sup>9</sup> Article 6 of Contract Law: The parties shall observe the principle of honesty and good faith in exercising their rights and performing their obligations.

<sup>10</sup> Han Qiang, Qing Shi Bian Geng Yuan Ze De Lei Xing Hua Yan Jiu (Categorization Study about the Principle of Substantial change of circumstances), Fa Xue Yan Jiu (CHINESE JOURNAL OF LAW), 2010(4), p58.

<sup>11</sup> ZHU Zhen-hua, Cong He Tong Fa Jie Shi (2) Di Er Shi Liu Tiao Zai Lun Qing Shi Bian Geng Yuan Ze (A Further

However, although Article 26 makes the rule to be a general principle of contract that may be justified applied by the judges, it does not make any further explanation on how to distinguish it with the business risk and force majeure, and how to judge if the balance of interest is unfair. It is merely a statement of the principle. So, the rule needs to be improved in the future judicial practice, and the court in the application of frustration of purpose should pay attention to balance the loss of both parties and apply it cautiously.

Worth of mentioning is that before the Contract Interpretation (II) was implemented, the principle of frustration of purpose has been involved in other legislations in China, such as the Paragraph 3 of Article 40 of Labour Contract Law.<sup>12</sup>

### **2.2.2 The Principle of Reliance Interest Protection**

The protection of reliance interest is an important part of good faith, which is based on the trust to the counterpart. There are several rules in Contract Interpretation (II) concerning this issue.

#### **2.2.2.1 Remedies for the Invalidity of Contract**

In China, the validity of a contract is sometimes subject to the approval or registration in some specific contracts. It frequently happens that the obligor did not fulfill with the obligation to get the approval or registration after the contract is concluded. Article 8 of Contract Interpretation (II) deals with this situation that the obligee may not only claim to compensate for his loss, but can also claim the obligor to perform the contract obligations to get the approval or registration. This rule is trying to provide sufficient remedies for the obligee in order to maintain the principle of good faith. .<sup>13</sup>

#### **2.2.2.2 Validity of Preliminary Agreements**

Preliminary agreements is the document agreed that a sales contract is to be concluded within a certain period of time by signing purchase offers, purchase orders, subscription

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Study of the Principle of Circumstance Alternation in Accordance with Article 26 of the Interpretation(2)of Contract Law), Zhong Nan Lin Ye Da Xue Xue Bao (Journal of Central South University of Forestry & Technology (Social Sciences)), 2010(1), p.69.

<sup>12</sup> Paragraph 3 of Article 40 of Labour Contract Law: The objective situation, on which the conclusion of the labor contract is based, has changed considerably, the labor contract is unable to be performed and no agreement on changing the contents of the labor contract is reached after negotiations between the employer and the employee.

<sup>13</sup> Article 8 of Contract Interpretation II: Where the validity of a contract shall only take effect upon seeking approval or registered in accordance with relevant law or administrative regulations, and the party, that is under the duty to proceed with the application for approval or registration, fails to proceed with the application for approval or application for registration in accordance with the requirement of the law or administrative regulation, this shall fall within the case of "any other conduct that breaches the principle of integrity and good faith" under Clause 3 of Article 42 of the Contract Law, and the People's Courts shall find that the other party shall proceed with the relevant formalities according to the specific circumstances of the case and the petition of the other party.

books, letters of intent and memorandums. An argument about the validity of preliminary agreement has been existed for a long time in the academic circle. Article 2 of Interpretation of Sales Contract makes it clear that if one party does not perform the obligation of concluding a sales contract, the other party's claim to request the liability for breach of the preliminary agreements or demand the rescission of the preliminary agreements and compensates for damages would be supported. It can be concluded that the rule of preliminary agreement requires both parties to comply with the promise that has been relied by the other party.

### 2.2.2.3 Multiple Sales of Property

The property transfer mode made in China requires both parties to comply with some forms set by the law, such as registration. For the multiple sales, it commonly refers to both Contract Law and Property Law, and it is frequently difficult to figure out the legal relationship of multiple parties. Before the Contract Interpretation (II) was implemented, the court of directly invalidates the multiple sales.<sup>14</sup> Article 15 of Contract Interpretation (II) is a provision about the validity of multiple sales.<sup>15</sup> It states that such sort of sale is not certainly invalid, and the parties who cannot receive the subject matter may request for the compensation based on the breach of contract. Worth of mentioning is that Contract Interpretation (II) does not refer to the performance of contract and the ownership of subject matter. This issue has been subsequently supplemented by the Interpretation of Sales Contracts.

Article 9 of the Interpretation of Sales Contract makes a rule that, under the situation of multiple sales of ordinary movable property, the priority of ownership shall be: (a). the buyer first to take delivery requests confirmation of transferring of ownership; (b). where no buyer takes delivery, the buyer first to make payment and request that the seller perform contractual obligations including the delivery of the subject matter; (c). where no buy takes delivery of the subject matter or makes payment, but the buyer whose contract has been formed in accordance with law and requests the seller to perform contractual obligations including the delivery of the subject matter.

However, it is worthy to note that some scholars argue that “ payment prior rule” and “contract first rule” adopted by the Interpretation of Sales Contract disobeys the principle of equality among the common claims , also it lacks of the appropriate theoretical foundations.<sup>16</sup>

<sup>14</sup> Wang Liming, Te Shu Dong Chan Yi Wu Shu Mai De Bian Dong Gui Ze: Jian Ping <Mai Mai He Tong Fa Jie Shi> Di 10 Tiao (Transfer Rules of Special Personal Property Sold for Times-Comment on Article 10 of Judicial Interpretation of Sales Contract), Fa Xue Lun Tan (Legal Forum), 2013(6), pp. 5-9.

<sup>15</sup> Article 15 of the Contract Interpretation (II) : Where a seller concludes several sale contracts on the same subject matter, if none of these contracts falls under any of the circumstances on void contracts as mentioned in Article 52 of the Contract Law and a buyer requests that the seller be held liable for breach of contract because the buyer is unable to acquire the ownership of the subject matter under the contractual provisions, the people's court shall support the buyer's request.

<sup>16</sup> Liu Baoyu, Lun Duo Chong Mai Mai De Fa Lv Gui Zhi: Jian Ping <Mai Mai He Tong Si Fa Jie Shi>9.10 Tian(Legal

## 2.3 Facilitates Transactions

Contract Law is based on the existence of transactions, and one of its significant aims is to protect and promote the transactions occurred. Contract Law in 1999 facilitates transactions by maintaining the validity and performance of the contract. However, China's economy is in a period of rapid development, facilitating the transaction can promote the accumulation of social wealth. The new development of Contract Law tries to meet the needs of this requirement.

### 2.3.1 Restriction for Rescission and Invalid of Contract

As an adjustment to legal transactions, Article 1 of Contract Interpretation (II) makes a general determination about the conclusion of contract. Where the People's Court is able to determine the names of the parties, subject matter and quantity, generally, it shall decide the contract as having been formed, unless it is otherwise provided for by law or agreed on by the parties. Trying to maintain the validation of the contract is a requirement of the development of market economy. Since a contract frequently refers to several parties, invalidating a contract easily would be harmful to the market stability. However, there are several provisions in addition that try to maintain the validation of contract:

#### 2.3.1.1 Definition of Mandatory Provisions

There is not any further explanation about the term "mandatory provisions" as mentioned in subparagraph 5 of Article 52 of Contract Law.<sup>17</sup> So in the judicial practice, many problems arise from this unclear concept.<sup>18</sup> Article 14 of Contract Interpretation (II) limits the definition of mandatory provisions to the concept of effectiveness, which means the mandatory provisions are those when a contract disobeyed, then the law states clearly that the contract is invalid.

Although the Contract Interpretation (II) does not make any further explanation on how to identify the mandatory provisions on effectiveness, it was narrowing the scope of mandatory provisions that can reduce the interference with private right from the public power, which plays impact on maximizing the freedom of the parties and promoting economic activities.

#### 2.3.1.2 Effectiveness of Fingerprint

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Regulation of multiple Sales of Property Comment on Article 9 and Article 10 of Judicial Interpretation of Sales Contract), *Fa Xue Lun Tan* (Legal Forum), 2013(6), pp.22-31.

<sup>17</sup> Article 52 of Contract Law: A contract shall be null and void under any of the following circumstances. (5) Violating the mandatory provisions of laws and administrative regulations.

<sup>18</sup> Jiang Ping, Cheng He Hong, Shen Wei Xing, *Lun Xin He Tong Fa Zhong De He Tong Zi You Yuan Ze Yu Cheng Shi Xin Yong Yuan Ze* (Study about the Principle of Contractual Freedom and Good Faith of New Contract Law), *Zheng Fa Lun Tan* (Tribune of Political Science and Law), 1999(1), pp. 2-11.

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Article 5 of Contract Interpretation (II) regulates that where a relevant party has marked his finger-print on the written contract, the People's Courts shall find that the contract is legally binding as one that has been signed or sealed.<sup>19</sup> This rule identifies that the fingerprint has the same effectiveness with the signature and seal. It would recede the formal requirement of identifying recognition, which reveals the current Chinese contract law tries to respect the mutual consent of contractual parties.

### **2.3.2 Protection of Transactions Security**

A safe transaction environment is crucial for facilitating the market exchanges. Since the risk of transactions would be harmful to the enthusiasm of participants, some provisions in the contract interpretations try to create a safe transaction environment by fairly sharing the transaction risk. For example, in a financial leasing relationship, the lease item is occupied by the lessee, and the lessor undoubtedly takes a huge risk of losing the lease item, especially when the lessee or actual user transfers the lease items or establishes any other real right on the lease items without the permission of the lessor, the assignee can obtain the ownership of the lease items in accordance with Article 106 of Property Law<sup>20</sup> under such situation. In order to reduce the risk of lessor, there are four situations specified in Article 9 of the Interpretation of Financial Leasing Contract as an exception for the assignee to obtain the ownership: (a). where the lessor has made identification prominently on the leased item and, the third party shall know this when he or she made transaction with the lessee; (b). where the lessor authorizes the lessee to make mortgage to the lease item for the lessor, and the registration had be made in the registration authority; (c). where the third party did not inquire the financial leasing transaction from the appropriate agency that is required by relevant laws, administrative regulations or the provisions set by the industry or regional authorities when he or she made transaction with lessee; (d). where the lessor has evidence to prove that the third party knew the subject matter was the lease item.

### **2.4 Influences from the Development of Technology**

Information technology, especially the internet changes people's life in the 21<sup>st</sup> century. The development of internet promotes the rising of E-commerce, which is a new form of transaction. The difference between the e-commerce and traditional transactions are shown from the following two aspects: firstly, the transaction process is commonly

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<sup>19</sup> Cao Shouye, Guan Yu Shi Yong He Tong Fa Ruo Gan Wen Ti De Jie Shi(2) De Li Jie Yu Shi Yong( Comprehension and Application Regarding the Interpretation on Several Issues Concerning the Application of Contract Law( )), Ren Min Si Fa ( The People's Judicature, 2009(13), p.40.

<sup>20</sup> Article 106 of Property Law: Where a person unentitled to dispose a real property or movable property transfers the real property or movable property to an assignee, the owner has the right to recover the real property or movable property. Except it is otherwise prescribed by law, once it is under any of the following circumstances, the assignee shall obtain the ownership of the real property or movable property: The assignee accepted the real property or movable property in good faith; (2) The real property or movable property is transferred at a reasonable price; or. (3) The transferred real property or movable property shall have been registered in case registration is required by law, and shall have been delivered to the assignee in case registration is not required.

occurred via the internet, without any face to face consultations; secondly, it brings huge impact on the protection of consumers, especially in the aspect of information security and standard clause.<sup>21</sup> The recent development of contract law is trying to develop appropriate rules for transaction via the internet.

#### **2.4.1 Provisions on Electronic Transaction Contract**

The Interpretation of Sales Contract makes some rules on the electronic transaction contract. Article 4 states that the applicable law for the formation and validity of an electronic transaction contract is not just the contract law, but also includes the relevant provisions of the Law on Electronic Signatures that is enforced on April 1, 2005.

Regarding to the delivery of electronic product, Article 5 stipulates that if the parties have not explicitly agreed upon the delivery mode and the delivery mode also cannot be determined according to the provision of Article 61 of Contract Law,<sup>22</sup> then the delivery shall be deemed to occur when the buyer receives the agreed-upon electronic product or the certification of rights. It is clear to see that these provisions are regulated based on the feature of electronic transaction contract.

However, due to the continuous development of information technology, the rules on electronic transaction contract needs some further developments to meet the needs of the emergence of new problems, and the following aspects have been considered by the interpretation.

#### **2.4.2 Protection for Consumers**

In the situation of e-commerce, the protection of consumers mainly includes the provisions to protect the information security and restrict to the format clause, as well as some special rules on the electronic transactions. Article 15 of the Interpretation of Sales Contract makes a rule that if the consumer signs the delivery notes or confirmation forms that indicate that the quantity, model, and specification of the subject matter, then the buyer can be regarded as he has inspected the appearance defects of the subject matter, unless such determination can be invalidated by sufficient evidence to the contrary. However, in some online shopping practice, the sellers always agree with the express company that the consumer should sign before he or she inspects the subject matter. In such situation, the consumer's signing could not be recognized that he has inspected for

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<sup>21</sup> Song Xiaoming, Zhang Yongjian, Wang Chuang, Guan Yu Shen Li Mai Mai He Tong Jiu Fen An Jian Shi Yong Fa Lv Wen Ti De Jie Shi De Li Jie Yu Shi Yong((Comprehension and Application Regarding the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts), Ren Min Si Fa ( The People's Judicature), 2012(12), p,27.

<sup>22</sup> Article 61 of Contract Law: Where, after the contract becomes effective, there is no agreement in the contract between the parties on such contents as quality, price or remuneration, or place of performance etc., or such agreement is ambiguous, the parties may agree upon supplementary terms through consultation; if a supplementary agreement cannot be reached, such terms shall be determined in accordance with the relevant provisions of the contract or the transaction practices.

the quantity and appearance defects.<sup>23</sup>

## 2.5 Internationalization

With the development of market globalization, the transaction needs some uniform transaction rules in order to reduce the costs arising from different legal systems. Meanwhile, the development of continental law system and common law system is more convergent. The contract law in all countries also follows this trend to be more integrated. China has become a member of WTO since 2003, that the economic exchanges between China and other countries are more frequently. In order to promote the development of market economy, Chinese contract law must correspond to some legal requirements of international society in order to realize the economic globalization. The external motive is the need of contract system in commercial economy, while the internal motive is to cultivate private law spirit in a civil society; the technique motive is to unify the transaction rules in order to integrate the system.<sup>24</sup>

In order to meet the needs of international trade, Chinese Contract Law has learnt some successful experience from other countries since the drafting of Contract Law in the 1990s. A significant example is revealed from the provisions on the assumption of risk for the subject matter, which is transplanted from the CISG. Article 145 of Contract Law states that the assumption risk transfers to the buyer under the situation that both parties do not reach any agreement on the place of delivery and the seller has delivered the subject to the first carrier, of which the rule is the same as paragraph 1 of Article 67 of CISG.<sup>25</sup>

Article 13 of the Interpretation of Sales Contract is another obvious example on this issue. It states that where the seller sells the subject matter that has been delivered to a carrier for transport and it is in transit, and the seller knows or should have known that the subject matter has been damaged or lost at the time of the formation of the contract but fails to inform the buyer, if the buyer claims that the seller assumes risk of damage or loss of the subject matter, the People's Court shall support such claims. So at the time of concluding the sales contract, if the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.<sup>26</sup>

## 3. Summary

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<sup>23</sup> Fang Ming, Lun Xiao Fei Zhe Quan Yi Bao Hu Zai He Tong Fa Zhong De Fa Zhan (Consumer Protection in the Development of Contract Law, Shang Ye Jing Ji (Commercial Economy), 2005(9), p.48.

<sup>24</sup> Yin Tian, Shui Bing, Zhong Guo He Tong Fa Yu Guo Ji Jie Gui De Dong Yin (Motives for Contract Law of China to Correspond to International Rules), She Hui Ke Xue (Journal of Social Sciences), 2006(03), pp.144-148.

<sup>25</sup> Article 145 of Contract Law: Where there is no agreement between the parties as to the place of delivery or such agreement is not clearly, and the subject matter needs carriage according to the provisions of Item 1 of Paragraph 2 of Article 141 of this Law, the risk of damage to or missing of the subject matter shall be borne by the buyer after the seller has delivered the subject matter to the first carrier.

<sup>26</sup> Article 68 of United Nations Convention on Contracts for the International Sale of Goods (1980).

Accompanied with the development of globalization and e-commerce, the Contract Law of China will continue to be cultivated. It is safe to say that the features as described above would still be the leading trend in the future for a long period of time. The development of economy needs a secure and stable environment. The pursuit of contract justice and the principle of good faith would be more reflected in the development of Chinese Contract Law. Also, e-commerce will continue to bring the impact, and the advance of globalization will promote the internationalization of Chinese Contract Law.

Regarding to the form of Contract Law, more judicial interpretations about the specific contracts would be promulgated to meet the needs of society.<sup>27</sup> With the promulgation of Property Law and Tort Liability Law, China's civil law system gradually improved, and the Civil Code currently becomes a hot topic in the academic circle. Once China develops its own civil code, the Contract Law would be an essential part.

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<sup>27</sup> Wang Liming, Dian Xing He Tong Li Fa De Fa Zhan Qu Shi ( Development Trend of Typical Contract Legislation), Fa Zhi He She Hui Fa Zhan (Journal of Law and Social Development), 2014(02), pp.162-170.