美國契約法之理論與運用(下)

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關鍵詞:不正影響、約因、契約目的無法達成、可執行契約、詐欺防止法、禁止口 頭證據之原則、代物清償、停止條件、禁反言、債之更改

Keywords: Undue Influence · Consideration · Frustration · Enforceable Contract · Statute of Fraud · Parole Evidence Rule · Accord and Satisfaction · Condition Precedent · Estoppel · Novation

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摘 要

契約法為日常生活之一部與一切交易之基礎,在現代社會扮演極重要角色。美國契約法係有關商事交易之法律,(並無全國性之聯邦契約法),有不少特色與優點,可供我們參採,事實上若干原則或觀念已為我民法所採用。美國契約法比起物權法、家事法,甚至侵權行為法,與歐陸國家差異較少,但與大陸法系民法相較,仍有不少差異,值得我人研究與重視。惜國內有關此方面著作尚不多見,且或失之繁瑣,或欠缺動態之研究,更乏與大陸法系民法作比較之研究,致學子學習上每感難於問津。本文作者有鑒及此,爰努力就美國契約法之制度與原則,指陳其重點與特色,除理論外,更重視其實際運作情形,作動態之探討,同時設法隨時與我國法作比較。使讀者能易於掌握其全貌與重點,而不致有見樹而不見森林之憾。

A Glimpse of American Contract Law

Yang Chung-sen

Abstract

While American contract law is one of the basic courses in our law department curriculum, students, generally speaking, tend to have very blurred idea, for so far not many textbooks or articles do give them clear picture of this subject. They tend to be over complicated or too technical, consequently students often fail to see the wood for the trees. For these reasons, this article purports to present clear notions of American contract law, tries to grasp their features and points out how they really works. Moreover, whenever feasible, it tries to compare American law theories with relevant theories and rules of our civil code so as to give the readers an overall picture of American contract law.