

## **Developments in the Law in 2010: Civil Law**

*Chung-Wu Chen*<sup>\*</sup>

### **Abstract**

This article reviews and analyses the important developments in Taiwan's civil law in 2010, especially focusing on the legislative amendments and judicial practices.

The amendments of the Civil Code concern Law of Obligations, Property Law and Family Law. The Law of Obligations amendments are connected to such as contracts of guaranty and employment guaranty. How to reasonably limit the scope of liability of the guarantor is the legislator's main concern. As regards the Property Law amendments, it is the final step of a series of amendments on Part III 'Rights in rem' of the Civil Code. The usufructuary rights such as Superficies, Agricultural right, Servitude, traditional 'Dian right' and the Possession are all involved. Many articles are modified. In general, the legal policy would be to ensure or promote not only the freedom and efficiency of property right, but also the stability and security of property right. The Family Law amendments are centered on two issues: the exemption or relief of the obligation of maintenance and the determination of children's surname. For the first issue, the legislator introduces a concept of 'mutuality' as the basis of the maintenance system, taking into account more elements of individualism and accountability between the obligor and obligee. For the second issue, it seems that the legislator wishes to redefine the problem from the angle of 'children's personality right protection'. Therefore, the 'children's best interest principle' would gradually play a more important role than the 'parents interest principle'.

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<sup>\*</sup> Professor of Law, College of Law, National Taiwan University.  
E-mail: chungwu@ntu.edu.tw

The Supreme Court's decisions are reflective of judicial developments in 2010. Among others, the most significant development would be that the Supreme Court applies more and more the 'Principle of Good Faith' to resolve many issues in the areas of civil law. The reference to this general Principle means the private rights are no more absolutely protected and some traditional rules in civil law are too rigid which may have difficulties to solve the emerging social problems.

**Keywords: guaranty, guarantor's right to refuse performance, employment guaranty, usufructuary rights, freedom and efficiency of property rights, stability and security of property rights, possession, bona fide emptor for personal property, exemption or relief of the obligation of maintenance, determination of children's surname, extinctive prescription, principle of good faith, privity of contract**