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主 論 文 の 要 旨

論文題目

Development of Real Property Law in Mongolia: Toward a Uniform Foundation
(モンゴル不動産法の発達：基礎の統一に向けて)

氏 名

NYAMDORJ Bayarmaa

論 文 内 容 の 要 旨

Abstract

While property law development plays important role in growth of country's economy, certainty of the principles in real property transfer are a decisive factor for setting up strong property rules. Perhaps, land is the only common concept that constitutes a real property, regardless of a legal jurisdiction and a family of law in which the country belongs. Also, land may be the only property, a natural function of which to human life is unchangeable. Vast of contribution to a progress of real property law goes to settled lifestyle, which welcomed to the Mongolian society with its classic meaning more than a half century ago. In this regard, Mongolian government has burdened twice for the task to absorb property rules of market economy and to protect as it presented in urbanized states.

This research examined development of the real property law of Mongolia in focusing on dilemmas emerged from in compliance between state property law

and private property law, specifically, land related regimes in both areas. While the Land Law is a main legal resource for state land relations, the Civil Code contains basic and specific norms for private property relations at same time. Types of land rights that created on the state land are formulated by the Land Law as a direct reflection of wordings in the Constitution, while the property rights in the Civil Code are formulated based on the theoretical concepts of the Germanic legal family. As it originally purported to be, the property rights in the Civil Code protect activities, and are directed towards recognized ends, whereas terminologies and content of land rights over state land, creation of the state land right recording system, lack of a theoretical approach to land right transfer or termination and consequences are the main failures of the Land Law.

Regardless of its flaws the Land Law is a main resource provided handful rules for land relation in Mongolia, on the other hand, the real property rights in the private property law have not been an optimal for this society because of the insufficient scale of privately-owned land, the constitutional approach to limit private land ownership, and the legal interpretation encouraging the tendency of viewing the land as a public property. The basic principle of the real property law to foster private property is a concise reflection of a liberal concept of the Constitution of Mongolia. Yet, in addition to state dominancy of land ownership, stagnancy in development of state property law which doesn't recognize basic principles in real property transfer such as *superficies solo cedit*, a principle of publicity and a formal approach to real property transactions, has been fading a significance of protection provided by the private property law of Mongolia. The main findings of the research can be summarized in the notion that regardless of

an ownership type, urban land development requires different legal treatment from rural land, being provided with equal protection for land related rights in both areas created on the private and state-owned land along with the crystal-clear restrictive rules by public law. Lack of a unified foundation for development of state and private land relation produced serious problems in real property market in Mongolia.

From a structural point of view, the thesis examines parallel regimes for public and private land from historical, comparative and typological perspectives in each six chapters, not including the introduction and the conclusion parts. The thesis performed its first task to identify the problems underlined parallel regimes for real properties of Mongolia by means of analyzing respective provisions in the Constitution and implementation of a land reform and a detailed examination on the most relevant two laws of the Land Law and the Civil Code by its initial three chapters. Next three chapters served for a general task to find a solution and suggesting alternatives on the basis of findings from comparative study on the selected jurisdictions' real property law and a uniqueness of Mongolia.

The thesis is the first work on the country level for considering the real property rights both in private and state land relation focusing on urban areas under the application of basic principles of property law. The previous works implemented by the local experts in property law area can be divided into two general sections as some focused on the specific categories such as the concepts of possession or hypothec individually from a private law perspective, while others concentrated on land as an administrative and an environmental law aspect such as land management or as being scarce natural resource. Therefore, outcomes of the

current research are significant to look at entire framework of the real property regime established so far under the new Constitution and may contribute to rebuild successful land reform in urban areas.