
CONTRACTS AS TOOLS TO PROMOTE MORALITY AND SOCIAL ORDER: THE TANG DYNASTY'S REGULATION OF CONTRACTUAL RELATIONSHIPS

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Abstract

This article examines the laws regulating contractual relationships during the Tang Dynasty (618-907 CE). Based on an examination of contemporaneous laws and statutes on contractual relationships, as well as archaeological evidence of extant contracts from the Tang Dynasty, this article concludes that dynastic China had developed a body of sophisticated contract laws by the Tang Dynasty. The Tang rulers' regulation of contracts was aimed at maintaining the desired social structure and stability, and promoting the moral teachings about trustworthiness.

I. INTRODUCTION

The U.S. legal scholarship¹ has devoted little attention to dynastic Chinese contract law history.² This lack of attention is glaringly obvious considering China's important role in the world economy. China is projected to become the largest economy in the world in a few years.³ Because contract law governs economic relationships, a thorough understanding of Chinese contract law is necessary in our globalized economy and interconnected world. Understanding the past of the Chinese contract law will shed more light on its present.⁴

¹ Professor Valerie Hansen, a history professor with Yale University, researched and wrote about how dynastic Chinese used their contracts in their daily lives from about 600 to 1400 CE. VALERIE HANSEN, *NEGOTIATING DAILY LIFE IN TRADITIONAL CHINA: HOW ORDINARY PEOPLE USED CONTRACTS 600-1400* (Yale Univ. Press 1995).

² Some legal scholars apparently believed that dynastic China did not develop any contract laws. D. BODDE & C. MORRIS, *LAW IN IMPERIAL CHINA* 4 (Harv. Univ. Press 1967) (noting the penal nature of the imperial Chinese law and suggesting that the law ignored civil matters such as contracts); Lin Lin, *The Evolution of Partnerships in China from the Perspective of Asset Partitioning*, 18 *STAN. J.L. BUS. & FIN.* 215, 240 (2013) (noting that "the state's restrictions and SANCTIONS on commercial activities, and agriculture-based economic policy, hindered the development of commercial law in Ancient China."); John H. Matheson, *Convergence, Culture and Contract Law in China*, 15 *MINN. J. INT'L L.* 329, 335 (2006) ("Prior to the economic reforms in 1978, contract law effectively did not exist in China."); Zhu Ni, *A Case Study of Legal Transplant: The Possibility of Efficient Breach in China*, 36 *GEO. J. INT'L L.* 1145, 1160 (2005) (pointing out that no "sophisticated civil law rules" existed in ancient China); Alice E.S. Tay, *Struggle for Law in China*, 21 *U.B.C. L. REV.* 561, 563 (1987) (noting that the Chinese dynastic codes created no civil law).

³ *China to Leapfrog U.S. as World's Biggest Economy by 2028: Think Tank*, REUTERS (December 26, 2020), <https://www.reuters.com/article/us-health-coronavirus-china-economy/china-to-leapfrog-u-s-as-world-s-biggest-economy-by-2028-think-tank-idUSKBN29000C>.

⁴ This article focuses on the dynastic Chinese regulation of contractual relationship during the Tang Dynasty without engaging in a comparative examination of the dynastic practices with the modern Chinese contract law because of time and space constraints. A comparative examination will be part of my subsequent research on this topic.

This article represents a pioneering effort in the United States to study dynastic Chinese contract law by examining contractual regulations during the Tang Dynasty (618–907 CE).⁵ It focuses on the Tang Dynasty for three reasons. First, historians agree that the Tang Dynasty represents the height of the Chinese dynastic era.⁶ Second, the Tang rulers created the earliest Chinese legal code which survived in its entirety (hereinafter the “Tang Code”). Chinese historians believe that the Tang Code represents a watershed moment in the Chinese legal history — the culmination of legal experiences from all previous dynasties and a strong influence for all subsequent dynasties.⁷ Finally, archaeological discoveries of extensive written records including extant contracts from the Tang Dynasty make it feasible to examine actual Chinese contract practices during that time.⁸

Based on an examination of contemporaneous records of laws and rules on contractual relationships as well as archaeological evidence of extant contracts from the Tang Dynasty,⁹ this article concludes that dynastic China had

⁵ Hugh Scogin wrote about Chinese contracts during the Han dynasty (202 BCE–220 CE), about 400 years earlier than the period on which this article focuses. Scogin did not articulate contract law rules due to lack of records. He examined archaeological records of contracts carved on bamboo, wooden, stone, or metal surfaces from the Han Dynasty and concluded that dynastic Chinese at that time did not share concepts of autonomy and free choice, the core concepts essential to modern western legal traditions, because the dominant thinkers of the time advocated subordination to either the natural process or to the familial or social relationships. See Hugh T. Scogin, Jr., *Between Heaven and Man, Contract and the State in Han Dynasty China*, 63 S. CAL. L. REV. 1325 (1990). Geoffrey MacCormack explored the development of a law of contract during the period of the Warring States (481–771 BCE) and the Qin/Han dynasties (221 BCE–220 CE) in his article, ‘Agreement’, ‘Contract’ and ‘Debt’ in *Early Chinese Law*, 2 COMP. L. HIST. 1, 4 (2014). He studied technical terms used by ancient Chinese such as *zhai* (debt), *dai* (loans), *mai* (sales), *yue* (agreement) and *quan* (document in two parts) and concluded that the early Chinese law recognized distinct types of agreement with legal consequences, but no law of contract existed comparable to that developed in Rome around the same time. *Id.* at 25–27.

⁶ HANSEN, *supra* note 1, at 17.

⁷ ZHANG JINFAN (张晋藩) ET AL., *ZHONGGUO FAZHI TONGSHI (DISIJUAN: SUI TANG) (中国法制通史 (第四卷: 隋唐))* [COMPLETE HISTORY OF CHINESE LAW (BOOK IV: SUI AND TANG DYNASTIES)] 2–3, 729–30 (Falü Chubanshe (法律出版社) [Law Pub. House] 1999).

⁸ The archaeological records including contracts examined in this article are primarily excavated from caves in the Dunhuang region in the early twentieth century and tombs in the Turfan region in the mid twentieth century. These written records were accidentally preserved in tombs (some of the paper appeared to have been discarded from government offices and used to make burial clothes) because of the hot dry climate in those regions. For a more detailed discussion of the regions and how the documents were preserved, see HANSEN, *supra* note 1, at 19–24, 47–50. These documents required painstaking reconstruction by archaeologists and historians. In the past few decades, Chinese archaeologists and historians have devoted tremendous efforts to making those archaeological documents available and accessible to modern Chinese readers by deciphering and translating the dynastic Chinese characters into modern simplified Chinese. This article relies on their works in trying to understand the contracts in light of applicable Tang laws.

⁹ When I cite Chinese sources in this article, I rely on my own translation of a Chinese text even where the Chinese text has already been translated into English by another person. For example, Professor Wallace Johnson has translated a Chinese version of the Tang Code into English. I THE TANG CODE (Wallace Johnson trans., Princeton Univ. Press 1979) and II THE TANG CODE (Wallace Johnson trans., Princeton Univ. Press 1997). I nonetheless use my own translation of the Tang Code based on my understanding of the Chinese text. I use the standard *pinyin* system of romanization for Chinese characters in this article. The Chinese *pinyins* are italicized in this article except when they appear as Chinese names or part of a proper noun, such as the *pinyin* word “Tang” in the Tang Dynasty. The Chinese characters used in this article are standard simplified Chinese

developed a body of sophisticated contract laws by the Tang Dynasty (618–907 CE).¹⁰ The Tang rulers' regulation of contracts was aimed at maintaining the desired social structure and stability, and promoting the moral teachings about trustworthiness.¹¹

A few caveats are necessary. The research and conclusions herein depend on and are limited by the availability and quality of historical records. Despite the progress made during the past few decades by Chinese and international historians and archaeologists, knowledge of the Tang Dynasty and its laws remains fragmented and subject to revision based on the discovery of new documents and/or interpretations. The conclusions in this article may appear synchronic. However, evidence suggests that Tang laws evolved within the 300-year period examined in this article.¹² Due to a lack of consistent archaeological records, this article does not attempt to trace any legal changes during this time period. For the same reason, this article does not address possible geographic differences which existed during the Tang Dynasty.¹³

This article begins by introducing relevant aspects of the Tang society to provide proper cultural, economic, social, and political context for the understanding of Tang laws on contractual relationships. Section I provides an overview of the Tang Dynasty including a brief description of the massive administrative systems and general information about industrial and commercial activities as well as landownership. Section II briefly describes the

characters adopted by mainland China instead of traditional Chinese characters used in Chinese speaking areas such as Taiwan.

¹⁰ This article does not engage in a debate about the pros and cons of criminalization of contractual breaches. It also does not intend to examine issues related to legal orientalism as pointed out by Teemu Ruskola. See Teemu Ruskola, *Legal Orientalism*, 101 MICH. L. REV. 179 (2002). It is beyond the scope of this article to examine any debate related to Henry Maine's comment that the hallmark of "progressive societies have hitherto been a movement from Status to Contract" and where dynastic China would fit in the debate. See Scogin, *supra* note 6, at 1330–31.

¹¹ See discussions *infra* Sections III and IV.

¹² Gu Lingyun (顾凌云), *Cong Dunhuang Tulufan Chutu Qiyue Kan Tangdai Minjian Tudi Maimai Jinling de Shixiao* (从敦煌吐鲁番出土契约看唐代民间土地买卖禁令的实效) [*On the Effectiveness of the Tang Dynasty Private Land Sale Ban According to Unearthed Dunhuang-Turfan Contracts*], 157 DUNHUANG YANJIU (敦煌研究) [DUNHUANG RSCH.] 74, 76–77 (2016) (discussing the potential differences in the government regulation of land sales contracts between the early Tang Dynasty and the mid-Tang Dynasty). MARK EDWARD LEWIS, *CHINA'S COSMOPOLITAN EMPIRE: THE TANG DYNASTY*, 2 (Harv. Univ. Press 2009) (discussing the state's abandonment of its efforts to regulate land ownership after the An Lushan rebellion in 756 CE).

¹³ Dunhuang and Turfan regions where the archaeological documents were excavated are located in the northwestern regions of modern China in what is now known as Xinjiang Province where the dry climate was conducive to paper preservation. HANSEN, *supra* note 1, at 19–20. These contractual documents reflected the contractual practices in those regions. Despite their limitations, these contracts allow us to at least form some conclusions about contract practices during that time. A lot of work remains to be done on this subject matter as new archaeological discoveries shed more light on the topic. In addition, this article also refrains from drawing extensive comparisons between the Tang laws and the U.S. contract law. As Professor Scogin warned, one needs to be "careful [...] not to view Chinese practices that are superficially analogous in terms of Western concepts. Rather, one must place such practices within the context of the Chinese values and concepts from which they sprang." SCOGIN, *supra* note 5, at 1334. However, for lack of an alternative vocabulary, this article has relied on the U.S. contract vocabulary to describe certain Chinese contract practices.

legal reforms in the early Tang Dynasty, sources of law and the development of the Tang Code.

Section III sets forth applicable Tang laws and regulations on contractual relationships. Tang rulers regulated contractual relationships extensively. They issued rules on people's capacity to contract and on subject matters of contracts. The laws required certain formalities — written contracts and government approval — for important transactions, and prohibited coercive behavior in sales transactions. Tang laws also imposed warranties of quality in some sales transactions. When a party failed to perform under a contract, the breaching party would be punished by lashes with sticks, the number of lashes depending on the amount of money owed and length of delay, in addition to being required to pay.¹⁴ The contract laws were designed to maintain the hierarchical social structure and morality.¹⁵

Section IV examines dynastic Chinese contract practices as revealed by archaeological evidence of extant contracts from the Tang Dynasty in light of applicable Tang laws. The records show that Tang Chinese engaged in consistent contract practices and viewed contracts as the private ordering of their affairs.¹⁶ They conceptualized their contractual relationships in legal terms and used contracts to allocate risks between themselves, similar to their modern counterparts.

II. DYNASTIC CHINA'S GOLDEN AGE

To understand a country's laws, one has to understand the context which gave rise to them.¹⁷ This section offers a general overview of the Tang Dynasty with a brief introduction about life and relevant cultural and social practices during that period.¹⁸ In addition, this section briefly introduces the administrative systems to provide the necessary context for laws governing commercial relationships and the judicial systems enforcing the laws. Because contractual relationships arose out of commercial activities and Tang regulations of the contractual relationships varied depending on the activities,

¹⁴ See discussions *infra* Section III.

¹⁵ See QIAN DAQUN (钱大群), *Preface to TANG LÜ SHUYI XINZHU* (唐律疏议新注) [NEW ANNOTATIONS OF THE ANNOTATED TANG CODE] 3 (Nanjing Shifan Daxue Chubanshe (南京师范大学出版社) [Nanjing Normal Univ. Press] 2007), and discussions *infra* Sections II (A) and III. ZHANG ET AL., *supra* note 7, at 125–26, 194–95.

¹⁶ Chen Yongsheng (陈永胜), *Dunhuang Maimai Falü Zhidu Tanxi* (敦煌买卖法律制度契约探析) [Examination of Legal System Through Dunhuang Sales Contract], 66 DUNHUANG YANJIU (敦煌研究) [DUNHUANG RSCH.] 95, 102 (2000).

¹⁷ Janet E. Ainsworth, *Categories and Culture: On the "Rectification of Names" in Comparative Law*, 82 CORNELL L. REV. 19, 28 (1996) (commenting that the author considers "any culture's legal order a unique and finely tuned product of the overall cultural context in which it is embedded"); ZHANG ET AL., *supra* note 7, at 4.

¹⁸ For a more detailed description of life during the Tang Dynasty, please read CHARLES BENN, *CHINA'S GOLDEN AGE, EVERYDAY LIFE IN THE TANG DYNASTY* (Oxford Univ. Press 2001).

this section discusses briefly land ownership and commercial and industrial activities during the Tang Dynasty.

A. *An Overview of the Tang Dynasty*

The Tang Dynasty began in 618 CE when Li Yuan, one of the powerful generals in the Sui Dynasty (581–619 CE), rebelled against the Sui Dynasty rulers.¹⁹ Li Yuan, also known as Tang Gao Zu, established his capital in Chang'an (now Xi'an City, Shaanxi Province).²⁰ The Tang Dynasty lasted close to 300 years, until 907 CE.²¹

The early Tang emperors engaged in a series of political and legal reforms including drafting the Tang Code.²² They focused on legal reforms because they believed the short-lived Sui Dynasty failed because of the cruelty of the Sui laws which led to increased social conflicts and lack of law and order.²³ The early Tang emperors wanted to create transparent laws which focused on generosity and mercy (以宽仁治天下).²⁴ Chinese historians believed that these reforms led to a stable society which allowed the population to grow and the economy and commerce to flourish.²⁵ The Chinese population was less than three million households at the beginning of the Zhen Guan Reign (about 627 CE).²⁶ It increased to over 9.6 million households (estimated 52.8 million people) in the 13th year of the Tian Bao Reign (754 CE).²⁷

The Tang Dynasty was described as one of the most important dynasties in China.²⁸ Historians described the Tang society as an open society.²⁹ The Tang capital, Chang'an, was praised as the most prosperous political, economic, and cultural center in the world at the time.³⁰ Major roads connected Chang'an with surrounding countries including India, Vietnam, and Korea.³¹

¹⁹ ZHANG ET AL., *supra* note 7, at 112.

²⁰ *Id.*

²¹ The Tang Dynasty experienced a brief 15-year interruption (690–705 CE) when Empress Wu Zetian, after assuming the throne, changed the dynasty's name to Zhou. Empress Wu later allowed her son to succeed the throne and the Tang Dynasty resumed. VALERIE HANSEN, *THE OPEN EMPIRE: A HISTORY OF CHINA TO 1600* 200, 202 (W.W. Norton & Co. 2000).

²² ZHANG ET AL., *supra* note 7, at 113.

²³ Zhang Jinfa (张晋藩), *ZHONGHUA FAZHI WENMING DE YANJIN* (中华法制文明的演进) [The Evolution of the Chinese Legal Civilization] 371–72 (Falü Chubanshe (法律出版社) [Law Press, China] 2010).

²⁴ *Id.* at 372.

²⁵ ZHANG ET AL., *supra* note 7, at 114–15.

²⁶ *Id.* at 331.

²⁷ *Id.* at 334.

²⁸ *Id.* at 1; BENN, *supra* note 18, at ix; LEWIS, *supra* note 12, at 1 (pointing out that the Tang Dynasty is viewed as the “high point” of the dynastic China); HANSEN, *supra* note 11, at 196 (mentioning the Tang Dynasty's reputation as “the most glorious dynasty”).

²⁹ ZHANG ET AL., *supra* note 7, at 106.

³⁰ *Id.* at 106, 116.

³¹ *Id.* at 116.

Prosperity and stability of the Tang Dynasty lasted until the devastating 8-year-long An Lushan Rebellion from 755 to 763 CE.³² Historians suggested that the rebellion marked the beginning of the end of the dynasty.³³ Thereafter, the Tang Dynasty gradually declined until a large-scale peasant uprising in 874 CE further undermined the dynasty, leading to forced abdication of its last emperor in 906 CE.³⁴

B. Strong Influence of Confucianism

Confucian ideology dominated the Tang society. Confucianism had been adopted as the official state ideology during the reign of Han Wu Di (汉武帝) (141 to 87 BCE.).³⁵ Tang rulers embraced it wholeheartedly as well.³⁶ They devoted extensive resources to publishing books on Confucian teachings to guide people's behavior.³⁷

Confucius (551–479 BCE) and his followers advocated a social structure defined by five relationships: fathers and sons, emperors and subjects, husbands and wives, brothers and brothers, and finally friends and friends.³⁸ Central to the five relationships is the concept of “*li*” (礼) whose broad scope seems to defy easy definition, but which captures the core teachings of Confucianism with regard to how people should behave toward each other, such as filial piety, loyalty, chastity, and benevolence. Some scholars described “*li*” as the soul of the Chinese culture.³⁹

Confucius emphasized that trustworthiness (信; *xin*) is important in managing the state and in human relationships.⁴⁰ He believed that a country cannot exist without people's trust.⁴¹ The ideal *junzi* (君子) follows his conscience; only a *xiaoren* (小人) follows profit.⁴² He urged people to use loyalty and trustworthiness as a guide for friendship.⁴³

³² *Id.* at 122.

³³ *Id.*

³⁴ *Id.* at 123.

³⁵ ZHANG, *supra* note 13, at 214–15 (discussing the eventual adoption of Confucianism after the rejection of the School of Huang Di and Lao Tzu (黄老学说) which influenced the early Han Dynasty); Jialue Charles Li, *China, A Sui Generis Case for the Western Rule-of-Law Model*, 41 GEO. J. INT'L L. 711, 735 (2010).

³⁶ ZHANG ET AL., *supra* note 7, at 125–26.

³⁷ *Id.* at 444.

³⁸ MA XIAOHONG (马小红), LI YU FA, FA DE LISHI LIANJIE (礼与法, 法的历史连接) [LI AND LAW — LAW'S HISTORICAL LINK] 115–16, (Beijing Daxue Chubanshe (北京大学出版社) [Peking Univ. Press] 2017).

³⁹ *Id.* at 108.

⁴⁰ The Analects of Confucius 1 (trans. R. Eno), <http://hdl.handle.net/2022/23420> (last visited May 18, 2021).

⁴¹ *Id.*

⁴² *Id.* at 16, para. 4.16. *Junzi* has often been translated as “gentleman,” but is a term used to denote an ideal ethical person with a lot more nuance than that conveyed by the word “gentleman”. Some translators have preferred to leave the term untranslated. *Id.* at vi. *Xiaoren* has been translated into “small man” or villain. Those terms do not capture all the nuances with which Confucius used the term. Confucius frequently used *xiaoren* as the opposite of *junzi*. See *id.* at 7, para. 2.14 (and its explanations).

⁴³ *Id.* at 2.

C. Strict Hierarchical Class System

Consistent with the teachings of Confucianism, the Tang dynasty regulated its people based on a strict class system.⁴⁴ The society was divided into two broad classes: officials (官; *guan*) and commoners (民; *min*).⁴⁵ The emperors relied on a large number of officials to manage the country.⁴⁶ The officials were ranked from the first to the ninth level, with the ninth level being the lowest.⁴⁷ They enjoyed different privileges under Tang laws depending on their ranks.⁴⁸

Commoners were divided into the free class (良; *liang*) and the inferior class (贱; *jian*).⁴⁹ Members of the free class were allowed to engage in four different types of professions: scholars (士; *shi*), farmers (农; *nong*), workers (工; *gong*), and merchants (商; *shang*).⁵⁰ State laws and regulations kept the groups in their places to maintain the social structure based on their status.⁵¹ Scholars enjoyed higher status and were prohibited from engaging in activities pertaining to workers or merchants which were deemed to be below their status.⁵²

The inferior class consisted of low-level guards (部曲; *buqu*), government-indentured workers (官户; *guanhu*) or miscellaneous indentured servants (杂户; *zahu*), and slaves (奴婢; *nubi*).⁵³ The inferior class members came from families of criminals who committed serious offenses, children of inferior class members.⁵⁴ Slaves could be family members of criminals convicted of treason, hereditary slaves from previous generations, *e.g.*, children of former prisoners and their families that were sentenced to slavery, slaves donated as gifts from other countries or regions, and captives of wars.⁵⁵ Slaves were the lowest of the inferior class and the law designated slaves as livestock that could be sold.⁵⁶

⁴⁴ ZHANG ET AL., *supra* note 7, at 447; FENG ZHUOHUI (冯卓慧), TANGDAI MINSHI FALÜ ZHIDU YANJIU: BOSHU, DUNHUANG WENXIAN JI LÜLING SUOJIAN (唐代民事法律制度研究: 帛书、敦煌文献及律令所见) [THE STUDY OF THE CIVIL LAW SYSTEM AT TANG DYNASTY-OBSERVATIONS FROM SILK SCROLLS, DUNHUANG DOCUMENTS, LAWS AND STATUTES] 23 (Shangwu Yinshuguan (商务印书馆) [The Comm. Press Beijing] 2014); BENN, *supra* note 18, at 19.

⁴⁵ ZHANG ET AL., *supra* note 7, at 445.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ ZHANG ET AL., *supra* note 7, at 173, 247. The Chinese character *liang* (良) literally means good while the character *jian* (贱) means bad or inferior. For a detailed description of the different groups which constituted the free class, *see* BENN, *supra* note 18, at 19–38.

⁵⁰ FENG, *supra* note 44, at 23–24.

⁵¹ *Id.*; BENN, *supra* note 18, at 19.

⁵² FENG, *supra* note 44, at 24.

⁵³ ZHANG ET AL., *supra* note 7, at 446.

⁵⁴ *Id.* at 447.

⁵⁵ QIAN, *supra* note 15, at 552–53, art. 248 (stating that the relatives of criminals convicted of treason would be confiscated by the government as slaves); ZHANG ET AL., *supra* note 7, at 449.

⁵⁶ FENG, *supra* note 44, at 25. Under the Tang Code, slaves had certain rights such as property ownership and to get married under certain conditions. ZHANG ET AL., *supra* note 7, at 450–51. The government slaves

Other members of the inferior class had no personal freedom, but enjoyed a slightly higher status than slaves.⁵⁷

D. Massive Administrative Structures at the Emperor's Service

Like emperors in all Chinese dynasties, Tang emperors held all the legislative, executive, and judicial powers. They depended on a sophisticated and large administrative system and government officials to manage the country and to enforce the laws. Tang emperors controlled the country through central and regional administrative systems.

1. The Central Administrative System. The Tang central administrative system was divided into three ministries (省; *sheng*):⁵⁸ the Secretariat (中书; *zhongshu*), the Oversight and Review (门下; *menxia*), and the Government Administration (尚书; *shangshu*).⁵⁹ The Secretariat was responsible for the drafting of laws and orders on behalf of the emperor. The Government Administration was the ministry entrusted with executing laws and managing the country's affairs. The Oversight and Review was responsible for reviewing decisions from the Secretariat and the Government Administration.⁶⁰ In addition to the three ministries, there were also nine agencies (九寺; *jiusi*) and five supervisory departments (五监; *wujian*) which managed various affairs at the central level.⁶¹ Historians pointed out that this system was designed to avoid concentration of power in one administrative position and allowed the emperor to be the most powerful person in the country.⁶²

The Government Administration managed the country through six departments (六部; *liubu*). They consisted of the Department of Personnel (吏; *li*), the Department of Households (户; *hu*), the Department of Rites (礼; *li*), the Department of Military (兵; *bing*), the Department of Punishments (刑; *xing*), and the Department of Works (工; *gong*).⁶³ Each department had four agencies underneath it.⁶⁴

could be released from slavery upon the emperors' amnesty and private slaves could be released by their masters. *Id.* at 451.

⁵⁷ FENG, *supra* note 44, at 27–28.

⁵⁸ ZHANG ET AL., *supra* note 7, at 285. The character “省; *sheng*” has been translated into “province” in many articles. This translation can be confusing because the same character in modern Chinese is being used to describe administrative regions in China. The dynastic meaning of “省; *sheng*” refers more broadly to office. Therefore, I chose to use the word “ministries” instead of “provinces”. I translated the names of the various administrative agencies based on their functions instead of literal translations because literal translations of those Chinese characters would have been incomprehensible to readers.

⁵⁹ *Id.* at 116. This administrative structure first began during the Sui dynasty. The Tang Dynasty adopted the structure with minor changes. *Id.* at 6.

⁶⁰ *Id.* at 116.

⁶¹ *Id.* at 295–96.

⁶² *Id.* at 116–17, 285.

⁶³ *Id.* at 291–94.

⁶⁴ *Id.* at 291.

2. The Regional Administrative System. Tang rulers divided the entire country into prefectures and counties.⁶⁵ Each county was further divided into smaller administrative units: towns (乡; *xiang*), blocks (里; *li*), sections (保; *bao*), and neighborhoods (邻; *lin*). A town consisted of five blocks; one block consisted of five sections; one section consisted of five neighborhoods, and each neighborhood was made up of four families.⁶⁶ In addition, there were naturally formed villages (村; *cun*).⁶⁷

The smallest unit in dynastic China was the family.⁶⁸ Chinese rulers controlled the society through the family unit.⁶⁹ Each family was governed by a head of household — generally the father. When family members committed certain crimes, the head of household could be held liable for the crimes.⁷⁰

The concept of family was important to the dynastic Chinese identity and had multiple meanings.⁷¹ Family could be used to refer to the entire country in the broad sense and to the small bloodline-connected family in the narrow sense.⁷² The country was conceived as an extension of the smaller family and obedience to the head of household translated directly to loyalty to the emperor at the state level.⁷³

Tang laws aimed to maintain the family structure in multiple ways. For example, the Tang Code⁷⁴ stipulated different punishments for crimes depending on the offenders' relationship to the victims. Crimes committed by a father against a son called for lesser punishment than *vice versa*.⁷⁵ To maintain family unity, Tang laws permitted family members to choose not to report crimes committed by other family members (except for crimes related to treason).⁷⁶ Filing a lawsuit against grandparents or parents in some situations could be punished by hanging.⁷⁷ The Tang Dynasty's regulation of the contractual relationship reinforced this family structure by allowing only the heads of households the capacity to enter into contracts for sale.⁷⁸

⁶⁵ *Id.* at 299.

⁶⁶ *Id.* at 303.

⁶⁷ *Id.* at 303.

⁶⁸ *Id.* at 175–76.

⁶⁹ Zhou Ziliang (周子良), *Zhongguo Chuantong Shehui Zhong "Hu" de Falü Yiyi* (中国传统社会中“户”的法律意义) [*The Legal Significance of "Household" in Traditional Chinese Society*], 12 FALÜ WENHUA YANJIU (法律文化研究) [RSCH. ON LEGAL CULTURE] 217–18 (2019).

⁷⁰ Luo Tonghua (罗彤华), “Zhu Huzhu Jieyi Jiazhang Weizhi” — Tangdai Huzhu Zhi Shenfen Yanjiu (诸户主皆以家长为之——唐代户主之身份研究) [“Every Registered Head of Household Is the Patriarch of the Family” — Research on the Identity of the Head of Household in Tang Dynasty], 12 FALÜ WENHUA YANJIU (法律文化研究) [RSCH. ON LEGAL CULTURE] 128, 133 (2019).

⁷¹ Zhou, *supra* note 69, at 216.

⁷² *Id.*

⁷³ *Id.* at 217.

⁷⁴ See a more detailed introduction of the Tang Code *infra* Section II (A).

⁷⁵ See, e.g., QIAN, *supra* note 15, at 563–64, art. 253 (specifying different punishments for attempted murder or murder of relatives based on their relationship to the victim).

⁷⁶ ZHANG ET AL., *supra* note 7, at 131, 178–80.

⁷⁷ QIAN, *supra* note 15, at 748–49, art. 345.

⁷⁸ See discussions *infra* Section III (A).

Government administrative offices were staffed by a large number of officials selected through imperial examinations (科举; *keju*) or recommendations.⁷⁹ All students were allowed to sit for the exams regardless of their family background, status, or possessions.⁸⁰ In order to pass the exams, people had to be well versed in all Confucian teachings. Passing the imperial exams alone was not sufficient to qualify for an official position.⁸¹ A candidate had to pass the selection exam (铨试; *quanshi*) administered by the Department of Personnel.⁸² One portion of the selection exam specifically focused on examinees' ability to write verdicts resolving legal cases presented by the examiners.⁸³ Once appointed, government officials were examined on a regular basis to ensure proper use of talents and efficient administration of state affairs.⁸⁴

E. Complicated Forms of Landownership

The Tang Dynasty regulated land transactions extensively among its subjects.⁸⁵ Many surviving contracts involve sales of land among the Tang Chinese. This section offers a brief introduction of landownership during the Tang Dynasty to provide proper context for the regulations of land sales contracts.

During the Tang Dynasty, all land belonged to the state in theory, and the state collected taxes based on land ownership.⁸⁶ At the beginning of the Tang Dynasty, the country experienced numerous wars and conflicts.⁸⁷ Related migration of people resulted in the abandonment of vast stretches of arable land.⁸⁸ The state suffered serious reductions of taxes. Tang emperors decided to continue the same land policy as the Sui Dynasty, known as the equal land allocation system (均田制; *juntianzhi*), which allocated the land within their control to farmers. In return, farmers would pay taxes and fulfil other obligations to the state, such as free labor and military services.⁸⁹

⁷⁹ ZHANG ET AL., *supra* note 7, at 304–05. The Tang Dynasty began the imperial examination system whereby talent was selected based on merit instead of genealogy. *Id.* at 305; LEWIS, *supra* note 12, at 274–75. The imperial examinations took place during regularly scheduled times (常科; *changke*) or ordered by the emperors for special talent selection (制科; *zhike*). ZHANG ET AL., *supra* note 7, at 305–06.

⁸⁰ *Id.*

⁸¹ *Id.* at 306.

⁸² *Id.*

⁸³ *Id.* at 306.

⁸⁴ *Id.* at 312–13.

⁸⁵ See discussions *infra* Section III (F).

⁸⁶ FENG, *supra* note 44, at 32, 35.

⁸⁷ Wu Xiaofeng (武晓风), *Tangdai Tudi Qiyue Zhong de Qiyue Guannian* (唐代土地契约中的契约观念) [Contract Concepts from the Tang Dynasty Land Sales Contracts] 4 (May 20, 2019) (M.A. dissertation, Shandong University) (CNKI).

⁸⁸ ZHANG ET AL., *supra* note 7, at 115.

⁸⁹ It is beyond the scope of this article to discuss in detail the taxation policies during the Tang Dynasty. The tax system based on land was later abandoned during Tang De Zong's reign (780–805 CE). *Id.* at 367. The new tax system collected taxes based on the number of people in the household and the amount of assets, not the size of the land, and the taxes were collected during the summer and fall seasons. *Id.* at 367–68; Feng,

Under the equal land allocation system, the state generally allocated land to each family based on the number of male members in the household. Each male at least 18 years old up to middle-aged would be allocated 100 *mu*⁹⁰ of land, 20 *mu* of which was treated as permanent land which could be inherited (hereinafter the “Permanent Land” (永业田; *yongyetian*), and the remaining 80 *mu* had to be returned to the state upon death (hereinafter the “Household Land” (口分田; *koufentian*)).⁹¹ Old, sick, or handicapped males as well as widows (寡妇; *guafu*) and concubines (妾; *qie*) also received allocations, albeit in reduced size.⁹² In addition, land was also allocated to monks, nuns, government officials, and merchants.⁹³ The size of the allocation generally depended on the areas’ population density, with people in densely populated areas receiving less than those in sparsely populated areas.⁹⁴ Historians believed that land allocation stabilized people’s lives and agricultural production and paved the way for the country’s growth.⁹⁵

As a result of the various land policies, land ownership during the Tang dynasty was complicated. A family could own a piece of land as an award from the emperor (“Awarded Land” (赐田; *citian*)), by virtual of the official positions (“Official Land” (职分田; *zhifentian*)), or as Permanent Land or Household land.⁹⁶

F. Diversified Commercial Activities

Contracts govern parties’ economic relationships. To provide context for Tang Dynasty’s regulation of economic relationships, this section offers a brief introduction of the commercial and industrial activities during the relevant time period. The Tang Dynasty saw vibrant market and trading activities, both domestically and internationally.⁹⁷ People were engaging in sales activities in designated market places or as wandering sales merchants.⁹⁸

supra note 44, at 21. There is a debate as to exactly what the two taxes referred to. Some scholars suggested that they referred to the two collection times; some suggested that they referred to taxes based on the land and household assets. ZHANG ET AL., *supra* note 7, at 368.

⁹⁰ *Mu* is a Chinese measuring unit of land and equals about one-sixth of an acre. HANSEN, *supra* note 1, at 246 (Glossary).

⁹¹ NIIDA NOBORU (仁井田升), TANG LING SHIYI (唐令拾遗) [TANG STATUTES RECONSTRUCTED] 540 (Li Jin (栗劲) et al. trans., Changchun Chubanshe (长春出版社) [Changchun Pub. House] 1989); FENG, *supra* note 44, at 15, 33.

⁹² FENG, *supra* note 44, at 15.

⁹³ NIIDA, *supra* note 91, at 548.

⁹⁴ *Id.* at 540–41 (issued during the Wu De Reign (618–626 CE)), 548.

⁹⁵ ZHANG ET AL., *supra* note 7, at 446.

⁹⁶ ZHANG, *supra* note 23, at 413.

⁹⁷ *Id.* at 374; YUE CHUNZHI (岳纯之), TANGDAI MINSHI FALÜ ZHIDU LUNGAO (唐代民事法律制度论稿) [THESIS ON TANG DYNASTY CIVIL LAW SYSTEM] 264 (Renmin Chubanshe (人民出版社) [People’s Press] 2006).

⁹⁸ YUE, *supra* note 97, at 270; LEWIS, *supra* note 12, at 114–15 (describing commercial activities in the Tang cities at the time).

1. Domestic Industrial and Commercial Activities. Domestic industrial activities during the Tang Dynasty were very active. They included textile, construction, mining and refineries, metal casting, ceramics, salt manufacturing, leather production, wine making, ship building, paper making, sugar making, painting and lacquering, weapons manufacturing, and transportation tools.⁹⁹ Chang'an City had over two hundred different types of trades.¹⁰⁰

Following the previous dynasties, the Tang government itself was also engaged in industrial activities both at the central and the local level.¹⁰¹ The activities covered three broad manufacturing categories: items for daily life, products for military use, and construction and building materials.¹⁰² In addition, there were manufacturing activities specifically to meet the needs of the emperors and their courts.¹⁰³

Archaeological evidence shows that the Chinese were engaged in extensive sales transactions involving movable goods and real estate.¹⁰⁴ People were exchanging goods for money or goods for goods.¹⁰⁵ Many sales transactions were facilitated by brokers.¹⁰⁶ The Tang Dynasty continued the previous dynasties' tradition of using goods such as silk products in addition to coins (silver or copper) as official currencies.¹⁰⁷

Tang Chinese were also engaged in other commercial activities. Loan transactions were common at the time, and debtors used land or other personal possessions as security for their loans.¹⁰⁸ People were also leasing or renting

⁹⁹ ZHANG ET AL., *supra* note 7, at 375.

¹⁰⁰ *Id.* at 116.

¹⁰¹ *Id.* at 375–76.

¹⁰² ZHANG ET AL., *supra* note 7, at 375.

¹⁰³ *Id.* at 376.

¹⁰⁴ Yue, *supra* note 97, at 272; *see also* discussions *infra* Section IV.

¹⁰⁵ ZHANG ET AL., *supra* note 7, at 425 (currency during the Tang dynasty could be either goods such as silk products, grains or coins made of copper or silver); YUE, *supra* note 97, at 276–77.

¹⁰⁶ ZHANG ET AL., *supra* note 7, at 442; YUE, *supra* note 97, at 285–86.

¹⁰⁷ ZHANG ET AL., *supra* note 7, at 425–26; Zheng Xianwen (郑显文), CHUTU WENXIAN YU TANGDAI FALÜSHI YANJIU (出土文献与唐代法律史研究) [ARCHAEOLOGICAL DOCUMENTS AND THE STUDY OF TANG DYNASTY LEGAL HISTORY] 169 (Zhongguo Shehui Kexue Chubanshe (中国社会科学出版社) [China Soc. Sci. Press] 2012), citing an emperor's order issued in 741 CE specifying that silk products and coins both be used as currency and forbidding people from insisting on accepting only coins as exchange medium. The currency also had regional variations. In some areas, people used silver coins as an official currency.

¹⁰⁸ YUE, *supra* note 97, at 273; Wu, *supra* note 87, at 12–13; ZHONGGUO LIDAI QIYUE CUIBIAN (中国历代契约粹编) [FINE COLLECTION OF CONTRACTS THROUGHOUT CHINESE HISTORICAL PERIODS] 167–73, 301–69 (Zhang Chuanxi (张传玺) et al. eds., Beijing Daxue Chubanshe (北京大学出版社) [Peking Univ. Press] 2014) (listing loan agreements spanning the years 602 to 956 CE) [hereinafter COLLECTION OF CONTRACTS]. This book has not been translated into English although some of the contracts were collected in some other scholars' books and/or described in Professor Hansen's book. *See, e.g.*, HANSEN, *supra* note 1, at 54–55; COLLECTION OF CONTRACTS, *supra* note 108, at 207–08. For purpose of this article, I have relied on my own translations of all Chinese contracts.

land or various other properties such as livestock.¹⁰⁹ In addition, Tang Chinese hired others to fulfil their military service duties, or to work as laborers.¹¹⁰

2. Permanent Market Places Subject to Extensive Regulations. Tang rulers created permanent market places and regulated them extensively.¹¹¹ Tang laws specified exactly where markets could be located and when they could open.¹¹² Markets could only be located in prefectures or county capital cities.¹¹³ A market supervisor office had to be created if a prefecture had over 10,000 families.¹¹⁴ Market supervisors were responsible for supervising the markets and preventing any illegal activities.¹¹⁵ They were also responsible for certifying certain sales transactions.¹¹⁶

Market supervisors were required to value goods every ten days.¹¹⁷ Goods were classified into three categories (good, average or low).¹¹⁸ Market supervisors were also required to ensure the accuracy of measuring instruments at market places and to certify privately-owned measuring instruments before they could be used.¹¹⁹ If a market official's measuring instruments were wrong or unfair, he could be punished with 70 lashes with a big stick (杖; *zhang*).¹²⁰

3. Overseas Trading Activities. In addition to domestic commercial activities, the Tang Chinese were also actively engaged in international trades.¹²¹ Through the use of the land trade route, also known as the Silk Road which began at Chang'an City, and through maritime route, Tang Chinese were able to trade with foreign countries.¹²² For example, Tang rulers created a harbor shipping office in the southern port of Canton (now Guangzhou City, Guangdong Province) to regulate international trading activities.¹²³ Foreigners purchased Chinese goods such as silk products, lacquer wares, and porcelain

¹⁰⁹ COLLECTION OF CONTRACTS, *supra* note 108, at 252–300 (contracts for renting or leasing of land), 378–79 (contracts for renting of camels).

¹¹⁰ *Id.* at 369–78 (contracts for military services and hiring of labor).

¹¹¹ ZHANG ET AL., *supra* note 7, at 383, 463–64.

¹¹² *Id.* at 464.

¹¹³ *Id.*

¹¹⁴ *Id.* at 116.

¹¹⁵ *Id.*

¹¹⁶ QIAN, *supra* note 15, at 879–80, art. 422.

¹¹⁷ YUE, *supra* note 97, at 288.

¹¹⁸ *Id.*

¹¹⁹ ZHANG ET AL., *supra* note 7, at 464; FENG, *supra* note 44, at 72.

¹²⁰ QIAN, *supra* note 15, at 872–73, art. 417. In dynastic China, punishments can be meted with different types of sticks. *Chi* (笞) is a small stick, reserved for light offenses while *zhang* (杖) is a bigger stick for greater offenses. *Id.* art. 1 (five levels of punishments with *chi*) and art. 2 (five levels of punishments with *zhang*). *Id.* at 10–13.

¹²¹ *Id.* at 416.

¹²² *Id.* at 116.

¹²³ *Id.*

wares. Merchants from all over Asia formed temporary or permanent communities in several Chinese cities.¹²⁴

Tang Chinese engaged in large-scale production for overseas export. In 1998, fishermen discovered a well preserved shipwrecked Arabian dhow in the Gaspar Strait near Belitung, Indonesia, containing over 60,000 artefacts from the Tang Dynasty. The shipwreck “confirms the existence of a direct maritime trade route (alluded to in ancient Chinese and Arabic texts) from China to the Persian Gulf and beyond” during in the ninth-century.”¹²⁵

III. TANG LAWS, SOURCES OF LAWS, AND JUDICIAL SYSTEM

This section offers a brief introduction to the Tang laws and the mechanism responsible for the enforcement of the laws. The early Tang rulers were keen on adjusting social relationships to avoid conflicts.¹²⁶ The early Tang Dynasty saw extensive legislative activities, resulting in the issuance of legal codes and other laws.¹²⁷

A. Tang Laws and the Tang Code

Following the Sui Dynasty, Tang rulers classified their laws as code laws (律; *lǚ*), statutes (令; *ling*), decrees (格; *ge*), and agency rules (式; *shì*).¹²⁸ Code laws referred specifically to formal laws governing criminal offenses.¹²⁹ Statutes were laws related to organizations and systems of the state and were intended to supplement the formal code laws.¹³⁰ Decrees referred to a formal collection of emperors’ temporary orders on certain specific issues.¹³¹ Decrees were often used to supplement existing laws.¹³² Agency rules were detailed rules related to government agencies’ processes and administrative activities.¹³³ Agency rules did not address criminal matters.¹³⁴

Another body of laws consisted of emperors’ temporary orders (敕; *chì*) which had not been formally collected and recognized as decrees.¹³⁵ For example, during the Tang Dynasty, emperors frequently issued orders forgiving

¹²⁴ *Id.* at 423.

¹²⁵ *Smithsonian and Singapore Organize World Tour of Shipwreck Treasure*, SMITHSONIAN (July 28, 2010) (describing the discovery of the shipwreck and its historical significance), <https://www.si.edu/newsdesk/releases/smithsonian-and-singapore-organize-world-tour-shipwreck-treasure>.

¹²⁶ ZHANG ET AL., *supra* note 7, at 141.

¹²⁷ *Id.* at 142–44.

¹²⁸ *Id.* at 153.

¹²⁹ Zhang Zhongqiu (张中秋) & Jin Mei (金眉), *Shilun Tangchao Sifa Shenpan de Falü Yijü* (试论唐朝司法审判的法律依据) [*On the Legal Bases of Tang Dynasty’s Judicial Trials*], 4 SHI LIN (史林) [HIST. REV.] 19, 19 (1987).

¹³⁰ *Id.*; ZHANG ET AL., *supra* note 7, at 154.

¹³¹ *Id.*

¹³² ZHANG ET AL., *supra* note 7, at 155–56.

¹³³ *Id.* at 156; Zhang & Jin, *supra* note 129, at 19.

¹³⁴ ZHANG ET AL., *supra* note 7, at 156.

¹³⁵ *Id.* at 155; Zhang & Jin, *supra* note 129, at 19.

debts upon assuming the throne.¹³⁶ Emperors' orders had the force of law, but were limited to specific situations and did not enjoy the same status as decrees.¹³⁷ If an official's wrongful reliance on an emperor's order led to improper sentencing, the official would be subject to criminal penalties under the Tang Code.¹³⁸

Emperor Gao Zu, the first Tang emperor, ordered that the legal code from the Sui Dynasty be revised and promulgated the revised code in 624 CE of the Wu De Reign (618–626 CE) (the "Wu De Code").¹³⁹ The Wu De Code underwent extensive revisions during the Zhen Guan Reign (627–649 CE) of Emperor Tai Zong who promulgated the further revised code as the Zhen Guan Code in 637 CE.¹⁴⁰

The Zhen Guan Code underwent further revisions during the Yong Hui Reign of Emperor Gao Zong (650–655 CE).¹⁴¹ Emperor Gao Zong also ordered that the code be annotated.¹⁴² The annotations were intended to explain the rationale for the code laws and clarify certain words so that the laws could be precisely implemented.¹⁴³ Emperor Gao Zong promulgated the annotated code, known as the Annotated Yong Hui Code (永徽律疏; *yonghuilǚshu*), in 653 CE.¹⁴⁴

The Annotated Yong Hui Code is the earliest complete surviving code in the Chinese legal history.¹⁴⁵ Historians later referred to the legal code as the Annotated Tang Code (唐律疏议; *tanglǚshuyi*).¹⁴⁶ This article refers to the legal code as the Tang Code.¹⁴⁷ The Tang Code contained about 500 articles

¹³⁶ ZHANG ET AL., *supra* note 7, at 462–63; Wu, *supra* note 87, at 29; Huo Cunfu (霍存福) et al., *Tang Wudai Dunhuang, Tuluhan Maimai Qiyue de Falü yu Jingji Fenxi* (唐五代敦煌、吐鲁番买卖契约的法律与经济分析) [*Legal and Economic Analyses of Dunhuang, Turfan Sales Contracts During the Tang Five Dynasties*], 6 FAZHI YU SHEHUI FAZHAN (法制与社会发展) [L. & SOC. DEV.] 51, 53 (1999).

¹³⁷ Zhang & Jin, *supra* note 129, at 19; Zhang Zhongqiu (张中秋), *Weishenme Shuo Tanglǚ Shuyi Shi Yibu Youxiu de Fadian* (为什么说《唐律疏议》是一部优秀的法典) [*Why the Annotated Tang Code Is An Excellent Legal Code*], 31 ZHENGFA LUNTAN (政法论坛) [TRIB. OF POL. SCI. & L.] 121, 124 (2013).

¹³⁸ Zhang & Jin, *supra* note 129, at 19, citing QIAN, *supra* note 15, at 984, art. 486. Apparently, after the middle Tang Dynasty, this was no longer the case. Many officials favored reliance on the emperors' orders instead of the preference as specified by the Code. *Id.* at 23.

¹³⁹ ZHANG ET AL., *supra* note 7, at 146. According to Chinese scholars, the Tang Code was based on the Kai Huang Code first created in the Sui Dynasty in about 583 CE. *Id.* at 9–11.

¹⁴⁰ *Id.* at 147.

¹⁴¹ *Id.* at 146.

¹⁴² *Id.* at 149–150.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Scholars agree that the surviving version originated from the Annotated Yong Hui Code, but disagree about precisely when the surviving version was finalized. Yue Chunzhi (岳纯之), *Lun Tanglǚ Shuyi de Xingcheng, Jiegou he Yingxiang* (论《唐律疏议》的形成、结构和影响) [*On the Creation, Structure and Impact of Tang Lǚ Shu Yi*], 2 ZHENGFA LUNCONG (政法论丛) [J. OF POL. SCI. & L.] 81, 82 (2013). Some believed that the surviving version existed as of the Yong Hui Reign (653 CE) while others believed that the surviving version was finalized in the Kai Yuan Reign (737 CE). *Id.*

¹⁴⁶ The name "*Tang Lǚ Shu Yi*" was first used most likely during the Yuan Dynasty (1271 CE). *Id.*; ZHANG ET AL., *supra* note 7, at 150.

¹⁴⁷ The Tang Code has been reprinted and/or interpreted with notes multiple times by different scholars. This article relies on the Chinese edition by Professor Qian Daqun (*supra* note 15). The original Tang Code

specifying different crimes and penalties ranging from ten lashes with a small stick, one hundred lashes with a big stick, imprisonment, exile, penal servitude, to execution. It organized crimes related to specific subject matters into twelve volumes.¹⁴⁸ The first volume set forth the general governing principles and the names for crimes (名例律; *minglilǚ*). The remaining eleven volumes set forth laws governing crimes related to the following areas: Imperial Guards (卫禁律; *weijinlǚ*), Government Offices (职制律; *zhizhilǚ*), Household and Marriages (户婚律; *huhunlǚ*), Stables and Warehouses (厩库律; *jiukulǚ*), Unauthorized Activities (擅兴律; *shanxinglǚ*), Theft and Robbery (贼盗律; *zeidaolǚ*), Assaults and Disputes (斗讼律; *dousonglǚ*), Deceit and Counterfeit (诈伪律; *zhaweilǚ*), Miscellany (杂律; *zálǚ*), Arrests and Escapes (捕亡律; *buwanglǚ*) and Judgments and Imprisonments (断狱律; *duanyulǚ*).

The Tang Code was heavily influenced by Confucianism and aimed to protect the hierarchical social and family structures and Confucian ethical and moral rules.¹⁴⁹ It also sought to maintain the country's economic foundation — agriculture.¹⁵⁰ Describing “*de* (德) and *li* (礼)” as the foundation of political education, the Tang Code often referred specifically to Confucian thoughts when explaining certain provisions.¹⁵¹

Chinese scholars suggest that the Tang Code's theoretical foundation rested on the concept of *li* while the social foundations rested on the concept of family.¹⁵² Professor Zheng Xianwen identified two major themes of the Tang Code.¹⁵³ One theme was the severe punishment of any behavior which endangered the emperor's dignity or personal safety, or the social order of the Tang society.¹⁵⁴ The second theme was the severe punishment of any behavior which violated the prevalent ethical and moral rules or family order.¹⁵⁵

Consistent with the Confucian teachings, the Tang Code distinguished different levels of severity in punishment when different members of the social and political hierarchy committed the same crime. For example, the punishment was more severe when a younger person murdered an elderly member of the household than *vice versa*.¹⁵⁶

did not have article numbers. Article numbers were later added for ease of reference when the Tang Code was reprinted. Professor Qian's version also contains article numbers. The Tang Code citations in this article will be to the specific article number (where applicable) followed by a page number reference to Professor Qian's book for ease of reference.

¹⁴⁸ QIAN, *supra* note 15, at 1–16.

¹⁴⁹ ZHANG ET AL., *supra* note 7, at 125–26, 194–95.

¹⁵⁰ *Id.* at 256.

¹⁵¹ *Id.* at 123, 126; QIAN, *supra* note 15, at 3 (stating that “*de* and *li* serve as the foundation of political education; punishments serve as the tool of political education (德礼为政教之本，刑罚为政教之用)”).

¹⁵² Zhang & Jin, *supra* note 129, at 22.

¹⁵³ ZHENG XIANWEN (郑显文), TANGDAI LÜLINGZHI YANJIU (唐代律令制研究) [THE STUDY OF TANG DYNASTY LAWS AND STATUTES] 15 (Beijing Daxue Chubanshe (北京大学出版社) [Peking Univ. Press] 2004).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See, e.g., QIAN, *supra* note 15, at 562–63, art. 253.

In addition to the Tang Code, Tang rulers also issued statutes on various topics. However, no complete record of the statutes survived to this day. Instead, the statutes were recorded in other contemporaneous books such as the Six Codes of Tang (唐六典; *tangliudian*) which contained a detailed description of all the administrative offices and their functions with applicable legal provisions.¹⁵⁷ Certain statutes promulgated during the Tang Dynasty appeared in legal compilations in the subsequent Song Dynasty.¹⁵⁸ Japanese scholar Niida Noboru reconstructed the Tang statutes by relying on contemporaneous records and dynastic Japanese laws which adopted many of the Tang statutes.¹⁵⁹

The Tang Dynasty did not create a separate body of law governing contractual or commercial activities. Instead, laws governing commercial activities appeared in multiple code sections and statutes. For the purpose of this article, the surviving Tang laws were reviewed for articles applicable to contractual relationships, *i.e.*, conducts which would have been regulated by contract law from a U.S. perspective.

B. The Tang Judicial System

Similar to preceding Chinese dynasties, the Tang Dynasty did not have an independent judicial system.¹⁶⁰ Tang rulers created offices responsible for handling criminal matters and disputes for administrative purposes. The central level offices consisted of three adjudicative agencies: the Office of Justice (大理寺; *dalisi*), the Department of Punishments (刑部; *xingbu*), and the Bureau of Judicial Supervision (御史台; *yushitai*).¹⁶¹ The Office of Justice was responsible for cases involving crimes committed by all central government officials, as well as cases within the capital city involving crimes calling for punishment with imprisonment or above. In addition, the Office of Justice had jurisdiction to review death sentences rendered by the regional offices subordinate to the Department of Punishments.¹⁶² The Department of Punishments was responsible for reviewing decisions by the Office of Justice involving banishment or imprisonment, and decisions involving imprisonment or above from county or prefecture levels.¹⁶³ Death sentences had to be reported to the emperor directly for review.¹⁶⁴ The Bureau of Judicial Supervision was the highest supervisory agency, overseeing the adjudicative

¹⁵⁷ ZHANG ET AL., *supra* note 7, at 152–53. Chinese scholars disagree whether this book should be treated as an administrative code or a book describing official positions during the Tang Dynasty. *Id.* at 153.

¹⁵⁸ See, e.g., SONG XING TONG (宋刑统) [CRIMINAL CODE OF SONG DYNASTY] (The Law Pub. House 1998).

¹⁵⁹ NIIDA, *supra* note 91. This article relies heavily on Professor Noboru's compilations as sources of statutes related to commercial relationships.

¹⁶⁰ FENG, *supra* note 44, at 158.

¹⁶¹ Zhang & Jin, *supra* note 129, at 18.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

activities of both the Office of Justice and the Department of Punishments.¹⁶⁵ It could also participate in the adjudication of important cases and handle administrative lawsuits.¹⁶⁶

The three central adjudicative agencies were designed both to perform their assigned tasks and to check on each other's power.¹⁶⁷ In exceptionally important cases, the head of the Office of Justice could initiate a joint adjudication by the three agencies and their decisions on those cases would be submitted to the emperor for final review.¹⁶⁸

The regional judicial offices were instituted at prefecture and county levels. China had a total of 228 prefectures and 1573 counties during the 28th year of the Kai Yuan Reign of the Tang Dynasty (740 CE).¹⁶⁹ At the county level, county magistrates had both administrative and judicial powers. They were assisted by officials responsible for handling cases on a day-to-day basis.¹⁷⁰

Tang statutes set forth the jurisdictional scope at each level, and violation of the statutes would be punished as a crime.¹⁷¹ County magistrates had the final decision over crimes calling for punishment with lashes and below.¹⁷² For crimes involving punishment with imprisonment or above, county magistrates could render a judgment, but had to submit it to the prefecture level for review before the judgment could be carried out.¹⁷³ Heads of the smaller administrative units (towns, blocks, sections, and villages) were responsible for reporting violations of law and had the authority to resolve small disputes and handle smaller criminal offenses.¹⁷⁴

Tang rulers tried to select individuals who possessed right skills to handle judicial matters through exams. Candidates had to be virtuous — following Confucian teachings with regard to familial piety and being incorruptible, fair, upright, and knowledgeable about the law.¹⁷⁵ To qualify for official positions, candidates had to pass an exam analyzing legal cases to demonstrate their legal reasoning and analytical abilities.¹⁷⁶ Mock cases were prepared to assist candidates with their exam preparations.¹⁷⁷

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ ZHANG ET AL., *supra* note 7, at 300, 302.

¹⁷⁰ Sun Zonglong (孙宗龙), *Tangdai Faguan Zhiye Lunli Chuyi* (唐代法官职业伦理刍议) [*Preliminary Comments on the Tang Dynasty Judicial Professional Ethics*], 5 BEIJING SHEHUI KEXUE (北京社会科学) [BEIJING SOC. SCI.] 118, 120 (2019) (providing a chart setting forth the different titles for such judicial officers during the Tang Dynasty).

¹⁷¹ QIAN, *supra* note 15, at 982, art. 485 (referring to a Tang statute regarding the scope of jurisdiction); Zhang & Jin, *supra* note 129, at 18.

¹⁷² Zhang & Jin, *supra* note 129, at 18.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Sun, *supra* note 170, at 122–23.

¹⁷⁶ Li, *supra* note 35, at 741.

¹⁷⁷ Zheng Xianwen (郑显文), *Cong Dunhuang Tulufan Panwen Kan Tangdai Sifa Shenpan de Xiaoli he Zhiliang* (从敦煌吐鲁番判文看唐代司法审判的效率和质量) [*A Look at the Efficiency and the Quality of*

IV. THE TANG REGULATIONS OF CONTRACTUAL RELATIONSHIPS

Regulation of contractual relationships in the Tang Dynasty reflected the social, economic, and political relationships of the time.¹⁷⁸ Tang laws recognized and enforced contracts, but restricted people's ability to contract and regulated the terms of some types of contracts between people. Tang laws also attempted to balance the rights of contractual parties in some situations. Breach of contract and violation of the laws were subject to punishment by lashes with small or big sticks.¹⁷⁹

A. *Capacity to Contract*

Under Tang laws, only heads of households could enter into contracts for sale of slaves, houses, land, livestock, or other properties, or use them as collateral for loans.¹⁸⁰ Family members (children, grandchildren, brothers, or nephews) were prohibited from engaging in those transactions if the parents lived within 300 *li*¹⁸¹ and in the country.¹⁸² All transactions in violation of the law would be invalid, the property returned and the money confiscated by the government.¹⁸³

Tang laws also prohibited princes, princesses, and concubines from entering into sales contracts on their own.¹⁸⁴ In addition, they were not allowed to direct their relatives, employees, servants, or guards to engage in sales or loan activities on their behalf.¹⁸⁵

B. *Prohibition of Certain Sales Transactions*

In addition to restrictions on capacity to contract, Tang laws also limited certain types of sales transactions. They sometimes forbade private transactions involving certain goods. Certain sales, though allowed to proceed, were regulated extensively.¹⁸⁶

the Tang Dynasty Judicial Trials from Dunhuang-Turpan Judicial Decisions], 44 XINAN DAXUE XUEBAO (SHEHUI KEXUE BAN) (西南大学学报(社会科学版)) [J. OF SOUTHWEST UNIV. SOC. SCI. ED.] 157, 161 (2018).

¹⁷⁸ *Id.* at 4.

¹⁷⁹ See QIAN, *supra* note 15, at 11–12, arts. 1 & 2.

¹⁸⁰ NIIDA, *supra* note 91, at 788 (“诸家长在(在谓三百里内非隔关者)，而子孙弟侄等不得辄一奴婢六畜田宅及余财物私自质举，及卖田宅(无质而举者亦准此)。其有质举卖者，物即还主，钱没不追。”); see also, Chen, *supra* note 16, at 102. The Tang Code also restricted family members from setting up their own separate households while the parents were still alive. Violation of this provision would result in punishment of three-year imprisonment. QIAN, *supra* note 15, at 399–400, art. 155 (“父祖在子孙别籍异财及以子孙妄继人后 诸祖父母，父母在，而子孙别籍，异财者，徒三年。”); FENG, *supra* note 44, at 81.

¹⁸¹ One Chinese *li* is the equivalent of about a third of a mile. HANSEN, *supra* note 1, at 245.

¹⁸² NIIDA, *supra* note 91, at 788; Zhao Xiaohui (赵晓辉), *Tang Wudai Maimai Qiyue Wenshu Yanjiu* (唐五代买卖契约文书研究) [*Research on Sales Contracts During the Tang Five Dynasties*] 23–24 (May 29, 2018) (M.A. dissertation, Zhengzhou University) (CNKI); Chen, *supra* note 16, at 99.

¹⁸³ NIIDA, *supra* note 91, at 788.

¹⁸⁴ *Id.* at 792; FENG, *supra* note 44, at 76–77; YUE, *supra* note 97, at 239.

¹⁸⁵ *Id.*

¹⁸⁶ ZHANG ET AL., *supra* note 7, at 469; Gu, *supra* note 12, at 74–75.

For example, Tang laws forbade private possession and manufacturing of weapons such as armor, mechanical bows, different types of long spears, and horse armors.¹⁸⁷ Sale of any official stamps, official seals, talisman (符; *fu*) (an object made of gold, jade, copper, bamboo, or wood used to issue orders from the court or to issue orders to the army), and emblems (节; *jie*) (insignia from the court) was also illegal.¹⁸⁸

Sale of free people against their will was illegal.¹⁸⁹ Sellers who sold free persons to become slaves against their will could be punished by hanging.¹⁹⁰ Those who sold free persons to be wives, concubines, children, or grandchildren would be punished by three-year imprisonment.¹⁹¹ Sale of children under 10 years old were presumed to be involuntary even if children gave their consent because they were deemed too young to make their own decisions.¹⁹²

The Tang Code also prohibited using free people as slaves as collateral for loans.¹⁹³ Violators (both the borrower and the creditor with knowledge of the free status) would suffer various criminal punishments.¹⁹⁴

The state prohibited private sales of daily necessities such as salt, liquor, and tea at certain times.¹⁹⁵ Sometimes, the state restricted private sales of copper, zinc, and lead, materials used in making coins.¹⁹⁶ There is evidence that emperors occasionally prohibited sales of unripe crops¹⁹⁷ and carps.¹⁹⁸ However, these restrictions could be lifted depending on the emperor or the perceived market needs at the time.¹⁹⁹

Sometimes, Tang laws prohibited the sale of certain merchandise to foreigners. For example, Emperor Xuan Zong in 714 CE issued an order prohibiting the sale of various silk products, yak tails, pearls, gold, and iron to foreigners.²⁰⁰

¹⁸⁷ QIAN, *supra* note 15, at 541, art. 243 (“诸私有禁兵器者，徒一年半；谓非弓，箭，刀，楯，短矛者。【疏】议曰：“私有禁兵器”，谓甲，弩，矛，稍，具装等，依今私家不合有[···]弩一张，加二等；甲一领及弩三张，流二千里；甲三领及弩五张，绞。私造者，各加一等。”）。

¹⁸⁸ *Id.* at 790–91, art. 365; YUE, *supra* note 97, at 241.

¹⁸⁹ QIAN, *supra* note 15, at 637, art. 292 (“略人诱卖人与和诱人及和同卖人。诸略人，略卖人：不和为略，十岁以下，虽和，亦同略法，为奴婢者，绞；为部曲者，流三千里；为妻妾子孙者，徒三年。因而杀伤人者，同强盗法。”）。

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* Despite the prohibition against sale of free people and children, there is some evidence that children were being sold around that time. ZHANG, *supra* note 108, at 222–23 (contract evidencing sale of the seller’s seven-year-old son in year 916 CE).

¹⁹³ QIAN, *supra* note 15, at 849, art. 400 (“诸妄以良人为奴婢，用质债者，各减自相卖者罪三等；知情而取者，又减一等。仍计庸以当债直。【疏】议曰：[···]不知情者，不坐，亦不计庸以折价值。”）。

¹⁹⁴ *Id.*

¹⁹⁵ YUE, *supra* note 97, at 224–25.

¹⁹⁶ *Id.* at 240.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 240–41.

¹⁹⁹ *Id.* at 240.

²⁰⁰ NIIDA, *supra* note 91, at 643; YUE, *supra* note 97, at 241.

C. Mutual Agreement Recognized by Tang Laws

Tang laws explicitly recognized private collateralized loan agreements based on mutual agreement.²⁰¹ One statute issued in the 25th year of the Kai Yuan Reign (738 CE) stated: "All public or private loan agreements with collateral will be governed by private contracts; the government will not intervene."²⁰² The government also deferred to the terms of private loan agreements where debtors used grains as collateral and paid creditors back with grains.²⁰³

Tang laws prohibited coercion in purchase or sales transactions. The Tang Code set forth criminal penalties for coercing purchase or sales.²⁰⁴ Article 421 states:

Punishment by 80 lashes with a big stick, and if profited thereby, the profit is calculated and punished as having committed the crime of theft: Where a person monopolized or coerced a sale or purchase without an agreement, *i.e.*, "monopolized" (较; *jiao*) means for his sole profit and "coerced" (固; *gu*) means interfering with free transactions; where a person controlled access to the market and limited sales or purchase to one party only, *i.e.*, selling some cheap items expensively or purchasing some expensive items cheaply; where a person interfered with other sales transactions, *i.e.*, creating confusion or disturbances by claiming high or low prices during an ongoing sale, in order to profit thereby.²⁰⁵

Some Chinese scholars interpreted the above article as requiring mutual agreement in sales contracts.²⁰⁶ It appears that the article was more concerned about coercive sales practices which would interfere with the functioning and the stability of the market place as opposed to whether the parties mutually agreed to the terms of a contract.

D. Contract Formalities for Sales of Slaves and Livestock

Under Tang laws, sales of slaves and livestock such as horses, cattle, camels, mules, and donkeys, had to be in writing and certified by market supervisors.²⁰⁷ If buyers failed to have the transaction certified officially after

²⁰¹ NIIDA, *supra* note 91, at 789–91.

²⁰² *Id.* at 789.

²⁰³ *Id.* at 790.

²⁰⁴ QIAN, *supra* note 15, at 878, art. 421 ("诸卖买不和，而较固者；较，谓专略其利。固，谓障固其市。及更出开闭，共限一家；谓卖物以贱为贵，买物以贵为贱。【疏】议曰：卖物及买物，两不合同，"而较固取者"，谓强执其市，不许外人买，故注云"较，谓专略其利。固，谓障固其市"；"及更出开闭"，谓贩鬻之徒，共为奸计，自卖物者贱为贵，买人物者以贵为贱，更出开闭之言，其物共限一价，望使前人迷谬，以将入己。若参市，谓人有所卖买，在旁高下其价，以相惑乱。而规自入者；杖八十。已得赃重者，计利，准盗论。"); Chen, *supra* note 16, at 100.

²⁰⁵ QIAN, *supra* note 15, at 878, art. 421.

²⁰⁶ ZHANG ET AL., *supra* note 7, at 461.

²⁰⁷ QIAN, *supra* note 15, at 879–80, art. 422 ("诸卖奴婢，马牛驼骡驴，以过价，不立市券，过三日，笞三十；卖者，减一等。立券之后，有旧病者三日内听悔，无病欺者市如法，违者笞四十。【疏】议曰：[···]三日外无疾病，故相欺罔而欲悔者，市如法，违者笞四十；若有病欺，不受悔者，亦笞四十。令无私契之文，不准私券之限。即卖买已讫，而市司不时过券者，一日笞三十，一日加一等，罪止杖一百。"); ZHANG ET AL., *supra* note 7, at 464.

three days, they were subject to 30 lashes with a small stick. Sellers would be subject to criminal punishment without the certificate, but one degree less than that meted out to buyers.²⁰⁸

Tang laws also held market supervisors responsible for failing to certify the above specified transactions in a timely manner. If a market supervisor failed to certify a sales transaction upon its completion, the supervisor would be subject to 30 lashes with a small stick for each day of delay, the punishment increased by one level with each day's delay until a maximum level of 100 lashes with a big stick.²⁰⁹

To prevent free people from being sold as slaves, Tang rulers imposed additional requirements when a contract involved sale of a slave.²¹⁰ Two government agencies had to certify sales of slaves.²¹¹ In addition, county magistrates had to physically inspect and question the slaves.²¹²

E. Regulation of the Terms of Certain Contracts

Tang laws also regulated certain terms of contracts. Certain products had to comply with specific quality requirements. The laws also regulated interest rates charged in collateralized loan agreements.

1. Quality Requirements for Certain Goods. The Tang Code required that certain products such as items for use or various silk products such as cloth, brocade, or cloth with print patterns comply with quality requirements.²¹³ Selling bad quality or fake products would be punished with 60 lashes of a big stick.²¹⁴ The Tang Code defined "bad quality" as "not sturdy" and "fake" as "not authentic." For example, using soft metal to manufacture knives or arrow heads was deemed fake.²¹⁵

Tang laws also required that silk products be manufactured to specific measurements. They had to measure one chi (尺) and eight cun (寸) wide;²¹⁶ each roll (匹; pi) of cloth had to be 40 chi long; each big roll (端; duan) of cloth

²⁰⁸ QIAN, *supra* note 15, at 880, art. 422.

²⁰⁹ *Id.* at 879.

²¹⁰ ZHANG ET AL., *supra* note 7, at 466 (detailing an application for the sale of a slave); Chen, *supra* note 16, at 100.

²¹¹ NIIDA, *supra* note 91, at 648.

²¹² ZHANG ET AL., *supra* note 7, at 466; Chen, *supra* note 16, at 100.

²¹³ QIAN, *supra* note 15, at 874, art. 418 ("诸造器用之物及绢布之属，有行滥，短狭而卖者，各杖六十；不牢谓之行，不真谓之滥。即造横刀及箭鏃用柔铁者，亦为滥。【疏】议曰："[...]短狭"，为绢疋不充四十尺，布端不满50尺，幅宽不充一尺八寸之属而卖[...]"得利赃重者，计利，准盗论。贩卖者，亦同之。市及州，县官知情，各与同罪；不觉者，减二等。【疏】议曰："得利赃重者"，谓卖行滥，短狭等物，计本以外，剩得利者，计赃重于杖六十者，"准盗论"，谓准盗罪，一尺杖六十，一疋加一等[...]"。")

²¹⁴ *Id.*

²¹⁵ *Id.*; ZHANG ET AL., *supra* note 7, at 465.

²¹⁶ The measures "chi" and "cun" are traditional Chinese measurements and have been translated into "foot" and "inch" respectively. HANSEN, *supra* note 1, at 243. One chi measures 1.094 feet and one cun 1.312 inches. A MODERN ENGLISH-CHINESE CHINESE-ENGLISH DICTIONARY 830 (Foreign Language Teaching and Rsch. Press, 2007). However, their lengths varied depending on the time periods.

had to be 50 chi long.²¹⁷ Violations of the rules would be subject to criminal punishment, with severity of punishment dependent on the amount of profit.²¹⁸ The quality and exact quantity of silk products were especially important because silk products were used as one of the official currencies at the time.²¹⁹

Tang laws regulated quality of products manufactured for the government. The laws imposed criminal punishment for bad quality products if the products were being manufactured for the government.²²⁰ For example, Tang laws required that the government create samples for manufacturers of bows, arrows, long knives, and all other weapons. The products were required to bear the craftsmen's names before the sale.²²¹

In all contracts for the sale of slaves and livestock such as horses, cattle, camels, mules, or donkeys, the Tang Code imposed a three-day period after the issuance of an official certificate, during which time a buyer could change his mind if the slaves or animals suffered from prior disease, *e.g.*, if slaves or animals refused to eat or drink water within three days.²²² If slaves or animals were sick and the seller refused to accept the return, the seller would be punished with 40 lashes with a small stick. If slaves or livestock exhibited no disease after three days and parties wanted to change their minds, they would be subject to 40 lashes with a small stick.²²³

2. Regulation of Terms of Collateralized Loan Agreements. While deferring to the terms of private collateralized loan agreements explicitly, Tang laws limited maximum interest rates in loan transactions and would intervene if an illegally high interest rate was charged.²²⁴ At one point, the monthly interest rate was limited to a maximum of six percent.²²⁵ The cumulated interest could not exceed 100 percent of the principal amount regardless of the length of a loan.²²⁶ Where a loan was made using grains as collateral and the interest was also paid in grains, the loan term could not exceed one year.²²⁷ The

²¹⁷ QIAN, *supra* note 15, at 874–75, art. 418 n.3.

²¹⁸ *Id.*

²¹⁹ ZHANG ET AL., *supra* note 7, at 425–26.

²²⁰ QIAN, *supra* note 15, at 539–40, art. 242. (“工作不如法不任用及应更作诸工作有不如法者，笞四十，不任用及应更作者，并计所不任赃，庸，坐赃论减等。其供奉作者，加二等。工匠各以所由为罪。监当官司，各减三等。【疏】议曰：“工作”，谓在官司造作。辄违样式，有不如法者，笞四十[...].”）

²²¹ NIIDA, *supra* note 91, at 648; YUE, *supra* note 97, at 241.

²²² QIAN, *supra* note 15, at 879–80, art. 422; ZHANG ET AL., *supra* note 7, at 464–65.

²²³ QIAN, *supra* note 15, at 879–80.

²²⁴ NIIDA, *supra* note 91, at 789.

²²⁵ *Id.*; ZHANG ET AL., *supra* note 7, at 481. However, the regulated interest rates apparently varied sometimes. NIIDA, *supra* note 91, at 789–90; ZHANG ET AL., *supra* note 7, at 482.

²²⁶ NIIDA, *supra* note 91, at 789; ZHANG ET AL., *supra* note 7, at 481.

²²⁷ NIIDA, *supra* note 91, at 790.

law prohibited compounding of loan interest.²²⁸ If unable to pay the debt, the male member of the debtor's family could pay with his own labor.²²⁹

When a debtor used his property as a pledge, a creditor could not sell the property to third parties without the debtor's consent.²³⁰ If the interest owed on the loan exceeded the principal without the property being redeemed, a creditor could sell the pledged property after obtaining approval from a market supervisor. The Tang Statutes further provided that the guarantors would be liable for the debt if the debtor absconded.²³¹

Sometimes, Tang emperors would issue orders providing for broad amnesty for public or private debts.²³² Several records of such orders existed in the Tang Dynasty. For example, during the sixth year of the Wu De Reign (623 CE), Emperor Gao Zu issued an order temporarily suspending or forgiving public and private debts.²³³ Debtors would be excused from having to pay back their debts. Recognizing the social problems caused by high interest debts, one of the emperor orders pointed out that many of the wealthy families took advantage of poor people's urgent needs and caused generations of poverty, death, or flight, exhausting principals' and guarantors' assets, disturbing government offices, and harming private families.²³⁴

F. Regulations of Real Property Transactions

Tang laws regulated real estate sales transactions extensively. As dynastic China had an agrarian society, land was very important for the Tang rulers.²³⁵ The government collected taxes based on the size of the land held by households.²³⁶ When land ownership was transferred, taxes would follow the ownership.²³⁷

1. Restrictions on Sales of Real Property. Tang rulers regulated land transactions based on types of landownership. Laws generally prohibited sale of Household Land with certain exceptions as explained below.²³⁸ Sellers

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*; YUE, *supra* note 97, at 234–35.

²³¹ NIIDA, *supra* note 91, at 789.

²³² The earliest record of such an order was apparently in year 511 CE during the 4th year of the Yong Ping Reign of Emperor Xuanwu during the North Wei Dynasty. Huo Cunfu (霍存福), *Dunhuang Tulufan Jiedai Qiyue de Dishe Tiaokuan yu Guojia dui Minjian Zhaiwu de Shemian* (敦煌吐鲁番借贷契约的抵赦条款与国家对民间债负的赦免) [*The Anti-Amnesty Clauses in the Dunhuang and Turfan Loan Agreements and the State's Forgiving of Private Loans*], 91 GANSU ZHENGFA XUEYUAN XUEBAO (甘肃政法学院学报) [J. OF GANSU POL. SCI. & L. INST.] 1, 3 (2007).

²³³ *Id.* at 7 n.1, n.2.

²³⁴ *Id.* at 10.

²³⁵ ZHANG ET AL., *supra* note 7, at 332; FENG, *supra* note 44, at 36.

²³⁶ ZHANG ET AL., *supra* note 7, at 358.

²³⁷ *Id.* at 471–72; Zhao, *supra* note 182, at 23–24.

²³⁸ The restrictions against sale of land apparently began to weaken toward the end of the Tang Dynasty. Pu Jian (蒲坚), ZHONGGUO LIDAI TUDI ZIYUAN FAZHI YANJIU (中国历代土地资源法制研究) [THE STUDY

could be punished with lashes depending on the size of the land sold, with 100 lashes with a big stick being the maximum punishment.²³⁹ Buyers of illegally sold land had to return it to the sellers, and the sales proceeds would be confiscated by the state.²⁴⁰

Government officials above fifth grade were allowed to sell their Permanent Land and Awarded Land without restrictions.²⁴¹ Commoners were not allowed to sell their Permanent Land unless the sale was to raise money for funeral expenses as a result of necessity, or for the building of houses, mills, hotels, or stores.²⁴² In addition, sale of Permanent Land and Household Land was also permitted if the sale was to allow the seller to move from densely populated areas with shortages of land to sparsely populated areas with abundant land.²⁴³

However, even where a land sale was permitted, a buyer could not purchase land which exceeded what the buyer was legally entitled to.²⁴⁴ Laws also prohibited a seller from applying for more land from the government after the sale.²⁴⁵

Tang laws prohibited the leasing of Household Land or the use of Household Land as collateral for a loan with certain exceptions.²⁴⁶ Violations would result in confiscation of the property, and the land would be returned to the owner.²⁴⁷ The prohibition did not apply to the Permanent Land and Awarded Land of government officials.²⁴⁸ The law also allowed the leasing or collateralization of the Household Land if there was nobody to work on the land due to household members being assigned to remote military posts or other assignments from the government.²⁴⁹

Occasionally, Tang emperors would issue orders which would affect contracts involving sales of land between the parties. For example, one emperor issued an order in 752 CE stating that buyers could return the land to sellers at any time, and the government would reimburse the buyers' purchase price if the sales were evidenced by written contracts.²⁵⁰

2. Procedural Requirements for Sales of Real Property. In addition to restrictions, Tang laws also imposed certain procedural formalities for real

OF CHINESE LAWS RELATED TO LAND RESOURCES THROUGHOUT THE DYNASTIES] 230 (Beijing Daxue Chubanshe (北京大学出版社) [Peking Univ. Press] 2006).

²³⁹ QIAN, *supra* note 15, at 411, art. 163 (“诸卖口分田者，一亩笞十，二十亩加一等，罪止杖一白，地还本主，财没不追。即应合卖者，不用此律。）。Zhao, *supra* note 182, at 23–24.

²⁴⁰ QIAN, *supra* note 15, at 411, art. 163.

²⁴¹ ZHANG ET AL., *supra* note 7, at 469.

²⁴² NIIDA, *supra* note 91, at 560; ZHANG ET AL., *supra* note 7, at 469.

²⁴³ NIIDA, *supra* note 91, at 560.

²⁴⁴ *Id.* at 561.

²⁴⁵ *Id.*

²⁴⁶ *Id.* at 564 (“诸田不得贴赁及质，违者财没不追，地还本主。若从远役，外任，无人守业者，听贴赁及质。其官人永业田及赐田，欲卖及贴赁者，皆不在禁限。）。Gu, *supra* note 12, at 75.

²⁴⁷ NIIDA, *supra* note 91, at 564.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ Zhao, *supra* note 182, at 12.

property sales even where the sales were legally permitted. Tang laws required that before anyone sold their houses or land, the seller had to ask his family members first if they wanted to purchase the property.²⁵¹ If family members declined, the seller had to offer their houses or land to their neighbors next. If the neighbors declined, then the property could be sold to others.²⁵² There is evidence that the law would allow a seller to sell his land to an unrelated buyer offering a higher price if the price offered by the family or neighbors was lower.²⁵³

The above family-neighbor priority rule reflects the importance of the family structure in the Tang society as advocated by Confucianism. Some Chinese scholars suggested that Tang laws imposed such a requirement for a practical reason as well, *i.e.*, for tax-related considerations. When someone was unable to pay taxes, the person would be tempted to migrate to a different area. Local governments would then attempt to recover lost taxes from the family and neighbors.²⁵⁴ Therefore, family members and neighbors had a stake in the disposition of the land.

In addition to complying with the family-neighbor priority rule, parties had to apply for approval from the responsible government office before land could be sold.²⁵⁵ If someone sold land without government approval, the purchase price would be confiscated and the land would be returned to the seller.²⁵⁶

G. Tang Laws Related to Contract Breach and Liability

Tang laws imposed criminal liability for failure to perform certain contracts. Breach of a contract for sale of slaves and livestock would result in punishment with 40 lashes with a small stick if the party refused to perform after the legal three-day warranty period.²⁵⁷

Failure to pay back debt in violation of a contract would also result in criminal penalty under Article 398 of the Tang Code.²⁵⁸ Severity of punishment depended on the amount of debt and the length of delay in repayment. The number of lashes would increase with additional delay. The debtor was still required to pay the debt in addition to criminal penalty.²⁵⁹ However, Article 398 did not apply to collateralized loan transactions involving

²⁵¹ SONG XING TONG, *supra* note 158, at 231–32 (explaining that the rule came from emperor's order during Yuanhe Reign (811 CE) (Appendix II); ZHANG ET AL., *supra* note 7, at 470; HAN WEI (韩伟), TANGDAI MAIMAI ZHIDU YANJIU (唐代买卖制度研究) [STUDY OF SALES LAW IN THE TANG DYNASTY] 113 (Shehui Kexue Wenxian Chubanshe (社会科学文献出版社) [Social Sci. Acad. Press] 2014).

²⁵² SONG XING TONG, *supra* note 158, at 231–32.

²⁵³ *Id.*; ZHANG ET AL., *supra* note 7, at 471.

²⁵⁴ ZHANG ET AL., *supra* note 7, at 360.

²⁵⁵ NIIDA, *supra* note 91, at 561; *see also* ZHANG ET AL., *supra* note 7, at 470–71.

²⁵⁶ NIIDA, *supra* note 91, at 561.

²⁵⁷ QIAN, *supra* note 15, at 879–80, art. 422; ZHANG ET AL., *supra* note 7, at 464.

²⁵⁸ QIAN, *supra* note 15, at 846, art. 422 (“诸负债违契不偿，一疋以上，违二十日笞二十，二十日加一等，罪止杖六十；三十疋，加二等；百疋，又加三等。各令赔偿。【疏】议曰：负债者，谓非出举之物，依令合理者，或欠负公私财物，乃违约乖期不偿者[...].”). FENG, *supra* note 44, at 86–87.

²⁵⁹ *Id.*

interest payment.²⁶⁰ The Tang Code did not provide any reasons for the exclusion. Perhaps the drafters of the Tang Code felt that creditors' rights were protected by the terms of the loan agreements. Tang laws explicitly deferred to the terms of private collateralized loan agreements.²⁶¹ Those agreements gave creditors the right to take possession of debtors' properties in case debtors failed to repay the loans.

For example, in 665 CE, Teacher Bo borrowed 10 coins from Gao Weili, with a monthly interest rate of one coin. The agreement provided that the debtor was to pay the principal with interest when the creditor needed the money. If the debtor failed to pay, the creditor could look to the debtor's wife and children for repayment and could seize the debtor's properties for repayment.²⁶²

Tang laws imposed criminal punishment if a creditor tried to take a debtor's properties without informing the government official and the value of the properties seized by the creditor exceeded the amount owed by the debtor.²⁶³ It appears that if a creditor sought permission from the government or repossessed a debtor's property without exceeding the value of the debt, the repossession would not be treated as a crime.²⁶⁴

Where creditors accepted debtors' properties as pledge for a loan, the law prohibited them from selling the pledged properties to third parties.²⁶⁵ If the interest owed by a debtor exceeded the principal and the debtor failed to redeem his property, the creditor was permitted to sell the debtor's property after obtaining approval from a market supervisor.²⁶⁶

In cases of a contract breach, Tang laws held guarantors and other intermediaries involved in the contract criminally liable in certain situations.²⁶⁷ If a guarantor provided fake guarantee or the guarantee was inconsistent with the object of the guarantee, he would suffer criminal punishment of a lesser

²⁶⁰ QIAN, *supra* note 15, at 846 (annotations), art. 422.

²⁶¹ NIIDA, *supra* note 91, at 789.

²⁶² For numerous examples of loan agreements with similar terms, see COLLECTION OF CONTRACTS, *supra* note 108, at 301–26.

²⁶³ QIAN, *supra* note 15, at 847–48, art. 399 (“诸负债不告官司，而强牵掣财物过本契者，坐赃论。【疏】议曰：谓公私债负违不偿应牵掣者，皆告官司听断。若不告官，而强牵财物若奴婢，畜产过本契者，坐赃论。”).

²⁶⁴ *Id.* See the explanations and annotations; Shao Haifeng (邵海峰), *Tang Song Shiqi Helong Diqu de Minjian Jiu Fen Jie Jue Jizhi — yi Dunhuang Wenshu wei Zhongxin* (唐宋时期河陇地区的民间纠纷解决机制——以敦煌文书为考察中心) [*The Dispute Resolution Mechanism in Helong Area During the Tang and Song Dynasties — Focusing on the Dunhuang Archeological Documents*] 17 (Oct. 1, 2016) (M.A. dissertation, Soochow University) (CNKI).

²⁶⁵ NIIDA, *supra* note 91, at 789.

²⁶⁶ *Id.*

²⁶⁷ QIAN, *supra* note 15, at 828–29, art. 386 (“保任不如所任及虚假人为保诸保任不如所任，减所任罪二等；及保赃重以窃盗，从窃盗减。若虚假人为保者，笞五十。”). Some Chinese scholars suggested that the Tang laws required that the sales transactions be guaranteed by third parties. ZHANG ET AL., *supra* note 7, at 475. The scholars cited a comment in QIAN, *supra* note 15, at 150–51, which only acknowledged the reality that the sales transactions had guarantors. My research has not yielded any laws during that time requiring that a sales transaction be guaranteed even though it appeared to be common practice for sale transactions to have guarantors.

degree than that of the guaranteed.²⁶⁸ If the debtor fled, the guarantor would be held liable.²⁶⁹ Tang law also stipulated criminal liability for brokers where the brokers failed to get the buyer to pay the purchase price to the seller.²⁷⁰

Tang laws terminated creditors' right to collect debts in certain situations. One statute instructed government officials not to accept a petition to collect a private debt in the capital city where a debtor had already paid interests in an amount double the principal loan if the principal debtor and guarantors had already died and the debtor had no property.²⁷¹ A statute of repose for debts incurred more than 30 years before was also stipulated.²⁷² Government officials were instructed not to accept a petition for collecting debts more than 30 years old where the debtor and guarantors had absconded even if the loan was evidenced by a written contract.²⁷³

Tang law explicitly allowed a third party who was not a party to a loan transaction to file a complaint in case of a loan transaction charging illegal interest rates.²⁷⁴ When a private agreement sought interest rates exceeding the legally allowed amount, anyone could file a complaint with the government. To provide an incentive, Tang laws specified that the illegal interests would be paid to the petitioner.²⁷⁵ Research has not yielded any cases where a third party challenged an illegal interest rate or where the government had refused to enforce a loan agreement with an illegally high interest rate, even though many of the Tang loan agreements charged ten percent monthly interest rates, higher than the six percent legal interest rate.²⁷⁶

H. Regulation of Government Officials' Contracts with Commoners

Tang laws singled out one group of people — government officials who were responsible for the management of commoners — for special regulations related to their contracts with people under their supervision. The laws applied to officials upon their appointments even if they had not officially assumed their offices.²⁷⁷ Tang rulers apparently recognized potential for coercion in transactions between a government official and those under his control.

²⁶⁸ QIAN, *supra* note 15, at 828–29, art. 386.

²⁶⁹ NIIDA, *supra* note 91 at 789; Chen, *supra* note 16, at 101 (citing SONG XING TONG). It is not clear what would happen when the debtor did not flee. Presumably, in that situation, the debtor could still be held liable and therefore, there was no need to look to the guarantors or other intermediaries of the contract.

²⁷⁰ Han, *supra* note 151, at 133.

²⁷¹ YUE, *supra* note 97, at 330.

²⁷² SONG XING TONG, *supra* note 158, at 470.

²⁷³ *Id.*

²⁷⁴ NIIDA, *supra* note 91, at 791.

²⁷⁵ *Id.*

²⁷⁶ See COLLECTION OF CONTRACTS, *supra* note 108, at 302–13.

²⁷⁷ QIAN, *supra* note 15, at 374, art. 142 (“诸贷所监临财物者，坐赃论；授讫未上，亦同。余修取受及相犯，准此。若百日不还，以受所监临财物论。强者，各加二等。余条强者准此[...]. 若卖买有剩利者，计利，以乞取监临财物罪论。强市者，笞五十；有剩利者，计利，准枉法论[...]. 【疏】议曰：官人于所部卖物及买物，计时估有剩利者，计利，以乞取监临物论。“强市者笞五十”，谓以威若力及强买物，虽当价，犹笞五十；有剩利者，计利，准枉法论[...]. 即断契有数，违负不

The Tang Code prohibited government officials from borrowing money from people under their supervision.²⁷⁸ The transactions would be treated as accepting dirty money under Article 389, which called for punishment with lashes depending on the amount involved.²⁷⁹ If an official borrowed money through coercion, he would suffer double the punishment.²⁸⁰

If an official entered into sales contracts with commoners within his supervision and profited thereby, the profit would be treated as if he had solicited the property from them in violation of Article 140.²⁸¹ If he entered into a sales transaction by coercion, he would be punished with 50 lashes by a small stick, and if he profited thereby, he would be treated as guilty of accepting bribery as if he had committed the crime under Article 138.²⁸² Even if an official engaged in a prohibited transaction unknowingly (for example through a third party on his behalf), then he would still be punished as if he were an ordinary person having committed the crime of “doing something he should not have done” under Article 450.²⁸³

If officials failed to pay back under contracts with the commoners under their supervision on time, failure to pay within 50 days after the agreed-upon deadline would be treated as a crime of accepting property from people under their supervision in violation of Article 140.²⁸⁴ If he borrowed clothes or equipment and failed to return them within 30 days, it would be treated as a crime of accepting dirty money under Article 389.²⁸⁵

Even after officials left the office, the Tang Code prohibited them from engaging in loan or sales transactions for profit with their subordinates or other people within their supervision.²⁸⁶ These officials would suffer punishment three degrees less than when they were in office.²⁸⁷

The same prohibition applied to officials' family members.²⁸⁸ If an official's family member engaged in borrowing or sales transactions with people under the official's supervision, the family member would be punished

还，过五十日者，以受所监临财物论。即借衣服，器玩之属，经三十日不还者，坐赃论，罪止徒一年。”)

²⁷⁸ *Id.* at 374–76.

²⁷⁹ *Id.* at 374–76, 834 (art. 389).

²⁸⁰ *Id.* at 374, art. 142.

²⁸¹ *Id.* at 375.

²⁸² *Id.* at 374–76.

²⁸³ *Id.* at 375 (art. 142), 918 (art. 450). Despite the prohibitions by law and emperors' orders, there are numerous accounts of government officials engaging in various misconducts such as forcefully taking goods without payment. YUE, *supra* note 97, at 262–63, 298 (recounting stories about government officials' misconducts).

²⁸⁴ *Id.* at 376, 371–72 (art. 140).

²⁸⁵ QIAN, *supra* note 15, at 376 (art. 142), 834 (art. 389).

²⁸⁶ QIAN, *supra* note 15, at 385, art. 147. The Tang Code also prohibited officials from engaging in other conducts such as accepting donations from their subordinates or other people within their supervision; however, this article focuses only on Tang laws' regulation of contractual relationships between government officials and the people within their supervision.

²⁸⁷ *Id.*

²⁸⁸ QIAN, *supra* note 15, at 383, art. 146.

two degrees less than the official.²⁸⁹ The official would be punished the same as his family member if he knew about the transaction. He would be punished five degrees less if he did not have any knowledge of the transaction.²⁹⁰ The restrictions applied even after officials retired from office, but the punishment would be three degrees less than when they were in office.²⁹¹ These rules demonstrate Tang rulers' awareness of the power imbalance in contractual relationships between the commoners and the officials responsible for supervision.

V. FROM LAWS TO CONTRACT PRACTICE — HOW TANG CHINESE USED CONTRACTS IN THEIR COMMERCIAL TRANSACTIONS

Contracts from the Tang Dynasty²⁹² excavated from archaeological sites in Dunhuang and Turfan regions made it possible for scholars to examine actual contracting practices.²⁹³ Over the last few decades, many scholars have painstakingly organized these archaeological documents.²⁹⁴ These documents cover numerous commercial transactions including contracts for sale of land or goods, employment, leases, care-taking services, donations, etc.²⁹⁵

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* at 385, art. 147.

²⁹² Although it is beyond the scope of this article to examine contract practices prior to the Tang Dynasty, it is interesting to note that sporadic historical records show that the Chinese had been using written instruments to evidence their transactions since the Zhou Dynasty (1029–770 BCE). Xie Donghui (谢冬慧), *Zhongguo Gudai Minshi Jiufen Jiejue Jizhi de Fa Wenhua Jiedu* (中国古代民事纠纷解决机制的法文化解读) [*Analyses of Legal Culture Related to Ancient China's Civil Dispute Resolution Mechanism*], 5 XIBU FAXUE PINGLUN (西部法学评论) [Western L. Rev.] 7, 13 (2012). Evidence of written records of contracts traces back to the Zhou dynasty based on the carvings in the excavated copper vessels from the Zhou era. Those writings described the contracting process, not the written contracts themselves. In addition, there is also evidence that the government required a written contract in order for a petition to be heard during the Zhou Dynasty. *Id.* at 15–16. During the Han Dynasty (202 BCE–220 CE), contracts were written on bamboos, stones, lead, or other metal surfaces. Paper was used to record agreements at the beginning of Wei Jin Dynasties (220–420 CE), but few survived. Wu, *supra* note 87, at 1; Gao Chao (高潮) & Liu Bin (刘斌), *Dunhuang suo Chu Maimai Qiyue Yanjiu* (敦煌所出买卖契约研究) [*Analysis of Dunhuang Sales Contracts*], 19 ZHONGGUO FAXUE (中国法学) [China L. Stud.] 112, 112 (1991).

²⁹³ Before the discovery of the documents in Dunhuang and Turfan, written contracts primarily from the Song Dynasty (960–1279 CE) were known to have survived relatively intact. Gao & Liu, *supra* note 292, at 112.

²⁹⁴ The archaeological documents were often in fragments and had to be pieced together in many cases. In addition, these documents were in dynastic Chinese and some used local dialects. They are difficult to understand for modern Chinese native speakers without extensive explanations and notations from historians. Li, *supra* note 35, at 731.

²⁹⁵ The archaeological documents contain evidence of over 300 contracts covering diverse transactions. See COLLECTION OF CONTRACTS, *supra* note 108, at 190–430. The collection of documents includes actual contracts or some evidence of contracts such as petitions or certificates evidencing sales contracts. About 70 contracts evidenced sales transactions. The collection also contains close to 100 loan agreements and over 70 lease or rental agreements. The remaining contracts evidenced pawnshop and hiring agreements. Even though some of them are missing characters or incomplete, they are clearly recognizable as contracts. New documents are becoming available as additional archaeological documents are still being discovered.

Extant contracts show that the Tang Chinese were skilled at using contracts consistently with the Tang laws to facilitate their transactions.²⁹⁶ The contracts followed a similar format and adopted similar terms. The similarity suggests that the Tang Chinese were using standardized agreements. Contracts recorded a diversity of sales transactions — simultaneous exchange of money for goods,²⁹⁷ sales of goods on credit,²⁹⁸ or upfront payment for promise to deliver goods.²⁹⁹ The loan agreements involved loans of copper or silver coins, grains, or silk products.³⁰⁰ Despite prohibitions and restrictions against land sales,³⁰¹ historical documents show that land sales were common.³⁰² These contracts show that the Tang Chinese were aware of the Tang laws regulating contractual relationships, conceptualized their commercial relationships in legal terms, and used contracts as a tool to manage and allocate certain risks, just like their modern counterparts.

A. *Short and Uniform Contract Formats*

All of the extant contracts are short, no more than one page long. They typically follow the same format: the contract date, the names of the parties, the subject matter, a short description of the transaction, and a few standard phrases dealing with product quality or other issues depending on the transactions. This contract for sale of a camel dated 673 CE is typical of such a sales transaction:

The fourth year of the Xian Heng Reign [673CE],³⁰³ the twelfth day of December, Xi Zhou Military Officer *Dui Zheng*³⁰⁴ Du [...] paid 14 *pis* of silk for the purchase of a yellow neutered camel, 10 years old from State of Kang foreign merchant Kang Wu Po [Yan Bian]. The said camel and the silk have already been exchanged. If someone claims that the camel was stolen, it is the responsibility of the owner and

²⁹⁶ There is evidence that people treated private agreements as laws for the parties since the Han Dynasty (202 BCE–220 CE). Xie, *supra* note 292, at 13.

²⁹⁷ For example, on January 5, the 21st year of Kai Yuan Reign (733 CE), commoner Shi Randian from Xi Zhou City purchased a six-year-old horse from Kang Sili, also from Xizhou City, with a purchase price of 18 rolls (*pis*) of silk. The silk and the horse were exchanged on that day. COLLECTION OF CONTRACTS, *supra* note 108, at 199.

²⁹⁸ For example, on February 12, the fifth year of Da Zhong Reign (851 CE), Monk Guang Qing purchased a bracelet for the purchase price of one hundred feet of silk cloth. The buyer promised to pay the purchase price by October and agreed to pay penalties if he failed to pay the purchase price on time. *Id.* at 212–13.

²⁹⁹ For example, on June 3 during the first year of Zong Zhang Reign (668 CE), Zuo Chongxi from Chonghua Township paid forty silver coins to Zhang Pandui from Shunyi Township for the purchase of 90 *weis* of grass. The seller agreed to deliver the grass at the time specified by the contract and agreed to pay penalties if the delivery was not on time. *Id.* at 195.

³⁰⁰ *Id.* at 301–68.

³⁰¹ Towards the middle of the Tang Dynasty, the restrictions against land sales apparently began to weaken. Gu, *supra* note 12, at 78.

³⁰² It is difficult to assess based on extant contracts only whether those sales of land were legal or illegal. Because Tang laws did allow certain sales of land, it is possible that the land sales were legal. See discussions *infra* Section III (F) (1).

³⁰³ The year was not contained in the original contract; it was supplied by historians based on the description in the contract or other clues provided by other items excavated at the same time.

³⁰⁴ *Dui Zheng* is the title of a low-ranking military officer responsible for 50 soldiers underneath him. See COLLECTION OF CONTRACTS, *supra* note 108, at 197 n.3.

the guarantors. Du has no knowledge of the claim. If the camel fails to eat or drink within three days, the buyer can return the camel to the owner. Not all guarantors are present and we sign this private agreement. Once all guarantors are present, we will ask for a market certificate. The agreement was mutually agreed upon and here is the finger print as proof.

Camel owner: Kang Wu Po/Yan □³⁰⁵/

Buyer: Du

Guarantor: Dun from Duhu

Guarantor: From the same village Kang/Mozhe/

Witness: Zhang Guiduan³⁰⁶

Scholars have suggested some practical reasons for the contracts' short length and remarkable similarity. Paper was expensive at the time, so words were kept to a minimum.³⁰⁷ Because the illiteracy rate was high, parties had to hire a scrivener to write down their agreements.³⁰⁸ Among the preserved contracts in the late Sui Dynasty and early Tang Dynasty, one scrivener, Wang Shiyou, wrote three.³⁰⁹ Another scrivener, Monk Fa Xian, wrote four.³¹⁰ This practice would also explain the uniformity of wording for similar transactions because the same scrivener might have recorded many agreements.³¹¹ In addition, there is evidence that the scribes underwent similar training in order to pass the government exams to qualify for the position.³¹²

B. *Contracts Viewed as Private Laws Between the Parties*

The extant contracts suggest that the Tang Chinese were aware of the Tang laws and conceptualized their contractual relationships in legal terms. Many of the contracts contained this phrase: "The government has its laws and commoners have their private contracts" (官有公法，民有私约).³¹³ Chinese scholars have suggested that the preceding customary phrase or a variation of the phrase shows that ancient Chinese recognized private contracts as important and equally binding as laws enacted by the government.³¹⁴

One example of such a contract is as follows:

June 5, the 13th year of Tian Bao Reign [754 BE], the Long Xing Temple abbot borrowed eight *shuos* of wheat from □□ because of lack of seed grains. The

³⁰⁵ Following the practices of Chinese archaeologists and historians, I use the symbol □ to represent characters missing from damage or deterioration in the text of the recovered contracts.

³⁰⁶ COLLECTION OF CONTRACTS, *supra* note 108, at 196–97.

³⁰⁷ HANSEN, *supra* note 1, at 49.

³⁰⁸ Chen, *supra* note 16, at 96; HANSEN, *supra* note 1, at 49.

³⁰⁹ COLLECTION OF CONTRACTS, *supra* note 108, at 150, 166, 168.

³¹⁰ *Id.* at 169, 171, 175, 190. This practice of recording the scrivener's name on the contracts seemed to have stopped later in the Tang Dynasty.

³¹¹ HANSEN, *supra* note 1, at 49.

³¹² ZHENG, *supra* note 177, at 161.

³¹³ COLLECTION OF CONTRACTS, *supra* note 108, at 205, 209, 219.

³¹⁴ Li Xiandong (李显冬), "Min You Siyue ru Lilong" Kao ("民有私约如律令"考) [An Examination of "People Have Their Private Contracts as Laws and Statutes"], 25 ZHENGFA LUNTAN (政法论坛) [TRIB. OF POL. SCI. & L.] 88, 97 (2007).

wheat will be returned in August. If the wheat fails to be returned by the deadline, the □□ has the right to take wagon, cattle, or other miscellaneous items from the temple to make up for the value of the wheat. ***The government has its laws; the commoners have their private agreements.*** This agreement is mutually agreed upon and finger prints as proof.

Wheat owner: □□

Wheat borrower: Long Xing Temple Abbot Yang Sheng [Yue]

Guarantor: Monk Fan Zhideng, 35 years old

Guarantor: □□

Guarantor: Zi Ji Temple Monk He Tong □³¹⁵

C. *Complying with the Legal Requirements for Certain Contracts*

Contracts from the Tang Dynasty demonstrate Tang Chinese' awareness of laws governing contractual relationships. Archaeological records show that Tang Chinese complied with certain legal requirements concerning contracts.

Under Tang laws, livestock sales contracts had to be certified by market supervisors and sales of land had to be approved by the government. Some sales contracts for the sale of livestock in the early Tang Dynasty specifically mentioned the need for official certificates.³¹⁶ There is also evidence that a buyer of a vineyard filed a petition for approval with the county magistrate when purchasing the vineyard.³¹⁷

Tang laws also required that the sales of slaves had to be approved by two government agencies with official certification and the slaves had to be physically inspected and questioned by the magistrates.³¹⁸ There is evidence that parties to slave sales contracts followed the legal requirements.³¹⁹ Historical records include multiple market certificates related to the sales of slaves.³²⁰ An official market certificate from 732 CE granted a seller's petition for permission to sell a thirteen-year-old foreign female slave.³²¹ The certificate pointed out that the slave admitted that she belonged to the inferior class upon questioning and that the sale was guaranteed by five people who all certified that the slave was not a member of the free class or coerced. The certificate further stated that the seller and the guarantors would be liable if the information was false.³²²

³¹⁵ COLLECTION OF CONTRACTS, *supra* note 108, at 314 (emphasis added).

³¹⁶ *Id.* at 194–96.

³¹⁷ 6 TULUFAN CHUTU WENSHU (吐鲁番出土文书第六册) [6 ARCHEOLOGICAL DOCUMENTS EXCAVATED IN TURFAN] 426 (Guojia Wenwuju Guwenxian Yanjiushi (国家文物局古文獻研究室) [The Nat'l Bureau of Archeology Ancient Documents Rsch. Inst.] et al. eds., Wenwu Chubanshe (文物出版社) [Archeology Press] 1985) [hereinafter 6 TURFAN DOCUMENTS].

³¹⁸ ZHANG ET AL., *supra* note 7, at 466 (detailing an application for the sale of a slave); Chen, *supra* note 16, at 100.

³¹⁹ Shao, *supra* note 264, at 15.

³²⁰ See, e.g., COLLECTION OF CONTRACTS, *supra* note 108, at 193, 197, 198, 202.

³²¹ *Id.* at 198–99.

³²² *Id.* See also ZHANG ET AL., *supra* note 7, at 466 (describing a petition to the government for the purchase of a slave around 900 CE).

Tang laws restricted the creditor's ability to seize the debtor's property upon failure to pay back the loan. There is evidence that creditors applied for approval prior to seizing the debtor's property. In 648 CE, some creditors sued the debtor because the debtor had failed to pay for three months.³²³ Even though the debtor had used his house as collateral for the loan, the creditors did not exercise their right to sell the house until after they had reached a mediated agreement after the petition.³²⁴

D. *Availing Themselves of Legal Protections*

Tang Chinese's awareness of the laws is also reflected in the fact that they availed themselves of the protections that Tang laws offered contractual parties. The extant sales contracts incorporated Tang laws' three-day right of return for sale of livestock and slaves if they failed to eat or drink three days after issuance of a market certificate.³²⁵ The contracts were modeled upon the language of the Tang Code including the prohibition against changing of minds after the three-day right of return period. The following contract from 822 CE is a typical example:

One neutered dark brown bull, six-year-old, no brand marks.

On the twentieth day of January [Chinese calendar] in the year of Yin [822CE], Linghu Chongchong sold the above referenced bull to Wu Guanghui from the same tribe,³²⁶ in exchange for 19 *shuos*' worth of wheat. The bull and the wheat were exchanged on the same day and nothing else is owed. If in the future someone claims that the bull was stolen, it is the responsibility of the seller and the guarantors, not the buyer's. ***If three days after the agreement, the bull has a hidden disease and does not eat grass or drink water, the bull will be returned to the seller. After the three days, the agreement controls and no changing of the mind is allowed.*** Whoever changes his mind has to give five *shuos* of wheat as a penalty to the other person. Because of concern of lack of proof, this agreement is signed. This agreement is mutually agreed upon and finger prints here as proof. Three *shuos* of other grains are included in the 19 *shuos* of wheat.

Bull owner: Linghu Chongchong, 29 years old

Brother: He He, 34 years old

Guarantor: Zong Guang, 52 years old

Guarantor: Zhao Rijin, 55 years old

Guarantor: Linghu Xiaolang, 39 years old³²⁷

³²³ 2 TULUFAN CHUTU WENSHU (吐鲁番出土文书第二册) [2 ARCHAEOLOGICAL DOCUMENTS EXCAVATED IN TURFAN] 152 (Guojia Wenwuju Guwenxian Yanjiushi (国家文物局古文献研究室) [The Nat'l Bureau of Archeology Ancient Documents Rsch. Inst.] et al. eds., Wenwu Chubanshe (文物出版社) Archeology Press 1994) [hereinafter 2 TURFAN DOCUMENTS].

³²⁴ Shao, *supra* note 264, at 31–32; COLLECTION OF CONTRACTS, *supra* note 108, at 247.

³²⁵ QIAN, *supra* note 15, at 879–80, art. 422.

³²⁶ In the Dunhuang region during the Tang Dynasty, the residents were organized into tribes. COLLECTION OF CONTRACTS, *supra* note 108, at 208 n.1.

³²⁷ *Id.* at 207–08 (emphasis added).

E. Using Contracts to Minimize or to Allocate Transactional Risks

Tang Chinese were also using contracts to minimize or to allocate certain transactional risks, similar to their modern counterparts. Contracting parties faced multiple risks at that time. Tang Chinese attempted to use their contracts to proactively address those risks and, in some cases, allocated the risks between the parties.

1. Risk of Invalidity of Transactions Under Tang Laws. The extant contracts show that Tang Chinese were aware of the circumstances in which a transaction could be declared invalid under Tang laws. For example, under Tang laws, a contract could be declared invalid as a result of a lack of mutual agreement. The Tang Chinese addressed this risk by preemptively declaring that the agreement was a result of mutual agreement between the parties. Almost all of the extant contracts contained a clause stating that the agreement was mutually agreed upon, or other variations of language indicating that the agreement was a result of mutual agreement.³²⁸ The language used in the contracts echoed the Tang Code's provision prohibiting coercion in sales contracts.³²⁹

The following is an example of a sales contract dated 733 CE:

One horse, red with black manes and tail, six years old.

The 21st year of Kai Yuan Reign [733 CE], January 5, Xi Zhou commoner Shi Randian paid 18 rolls of silk to purchase the above referenced horse from Kang Sili of Xi Zhou City. The silk and the horse have been exchanged. If later someone claims that the horse was stolen, it was the responsibility of the seller and the guarantors, not the buyer's. Because of concern of lack of proof, we sign this private contract. ***This agreement was mutually agreed upon*** and we use finger prints as proof.

Silk owner: □□

Horse owner: *Bie Jiang* Kang Sili, 34 years old

Guarantor Foreign Merchant: Luo Yena, 50 years old

Guarantor Foreign Merchant: An Dahan, 55 years old

Guarantor Xi Zhou commoner: Shi Zaohan, 50 years old³³⁰

The inclusion of the mutual agreement clause shows that the parties were aware of the Tang Code's prohibition of coercion in sales contracts. They tried to make sure that the contract on its face complied with the law, thereby making it more likely that the contract would be enforced in case of a dispute.

Another risk faced by contractual parties during the Tang Dynasty is the Tang laws' expressed preference of relatives and neighbors in the sale of real

³²⁸ FENG, *supra* note 44, at 62–65 (reprinting many contracts which adopted the language literally translated into “mutual shared equal negotiations” (两共平章; *liang gong ping zhang*) to demonstrate mutual agreement).

³²⁹ The Tang Code stipulates criminal penalties for sales out of coercion or sales intended to manipulate market place or price. QIAN, *supra* note 15, at 878, art. 421.

³³⁰ COLLECTION OF CONTRACTS, *supra* note 108, at 199–200 (emphasis added).

estate. The legal preference could allow a seller's relatives and neighbors to challenge the transaction after the sale, essentially invalidating the transaction. Tang Chinese resolved this issue by allocating the risk of a post-sale claim to the sellers.³³¹

For example, in a contract for the sale of a house dated January 12 (Chinese calendar) during the fourth year of the Qian Ning Reign (897 CE), after setting forth a detailed description of the house, the contract provided: "After the sale of the house, if any brothers related by blood or marriage, or anyone else claims ownership, it is the responsibility of the former house owner [...] to pay back, not the buyer's."³³²

2. Risk of Invalidation of Contracts Through Amnesty. A potential risk faced by contracting parties during the Tang dynasty was the emperors' amnesty orders excusing private debt payment, a *post facto* invalidation of contracts.³³³ Tang Chinese attempted to address this risk by specifying in the contract that the debtor would still be obligated to pay despite any amnesty orders (hereinafter the "anti-amnesty clause").³³⁴ Here is an example of an agreement from 834 CE with an anti-amnesty clause:³³⁵

April 5 of the year of Yin [834 CE], the above tribe commoner Zhao Pengpeng due to lack of seeds borrowed two *shuos*' and eight *dous*' worth of seeds.³³⁶ The seeds will be returned before lunar calendar August in the fall. If no return in violation of this agreement, the creditor can take possession of family property to pay off the value of the beans. If the debtor escapes, the guarantors are responsible for repayment. ***If there is any amnesty from the emperors, the amnesty does not apply to the agreement.*** Because of concern about lack of proof, we sign this agreement. This agreement was mutually negotiated and we use our finger prints as proof.

Bean owner: □□

Borrower: Zhao Pengpeng, 30 years old

Guarantor: Brother Monk Yi Chao

Witness: Monk Fa Ji

Witness: Monk Hui Lang

It is not clear if anti-amnesty clauses would be enforced by the government in case of a dispute.³³⁷ Research has not yielded any archaeological record of a

³³¹ QIAN, *supra* note 15, at 399–400; ZHANG ET AL., *supra* note 7, at 470–71; Han, *supra* note 251, at 115.

³³² COLLECTION OF CONTRACTS, *supra* note 108, at 217.

³³³ ZHANG ET AL., *supra* note 7, at 462–63 (citing various emperors' orders forgiving or reducing public or private debts); Huo et al., *supra* note 136, at 52.

³³⁴ *Id.*

³³⁵ COLLECTION OF CONTRACTS, *supra* note 108, at 337–338 (emphasis added).

³³⁶ *Shuo* (碩) (also used interchangeably with the word *dan* (石)) and *dou* (斗) are dynastic Chinese measuring units. One *dou* is the equivalent of approximately 6,500 grams today. One *shuo* is 10 *dous*.

³³⁷ Chinese scholars suggested that the anti-amnesty clauses were legally valid, citing as apparent support many contracts that used the anti-amnesty clauses. See, e.g., Chen, *supra* note 16, at 102. However, the fact that the contractual parties used a clause in a contract does not mean that the clause would be enforced by the government. Contractual parties in western countries have often tried to push the legal limits as well and commonly used clauses such as liability waivers, which have often been struck down as invalid by the courts.

judicial decision whereby a judicial officer addressed the validity of the clause. It is likely that the judicial officer would not enforce an anti-amnesty clause.³³⁸ Emperors' orders had the force of law and allowing private parties to contract around amnesty orders would undermine the purpose of those orders.³³⁹ The Tang Code anticipated attempts by parties to contract around laws in a different context and prohibited such attempts. For example, the Tang Code specifically prohibits private contracts from varying the conditions imposed by Article 422 requiring issuance of official certificates for sale of slaves and livestock.³⁴⁰

3. Risk of Defects in the Title Conveyed in a Sale. In a sales transaction, a risk to the buyer is that the title to the property purchased in the transaction is defective. In many of the Tang contracts, the sellers offered warranties of title to buyers — agreeing that they would be responsible if third parties claimed against properties post sale in certain situations.

For example, one risk in a sales transaction is that third parties could claim against the property post sale by alleging theft. The presence of language addressing this issue in Tang sales contracts suggests that theft of livestock might have been a common problem during the Tang Dynasty.³⁴¹ The sales contracts allocated the risk of a theft claim to sellers and guarantors. The following contract offers an example:

June 10, the 29th year of the Kai Yuan Reign [741 CE], Zhen Rong Temple in the City of Chen paid eight *pis* of white silk (large) to purchase a four-year-old bull from foreign merchant An Husha. The bull and the silk have been exchanged on the day. ***If anyone claims that the bull was stolen, it is the responsibility of the seller and the guarantor, not the buyer's.*** Both parties in each other's presence set down their finger prints as evidence.

Silk owner: □□

Bull owner: An Husha, 30 years old (finger print)

Guarantor: An Shiyue, 32 years old

Witness: Gong Sunce³⁴²

It is difficult to draw any conclusion regarding the validity of the anti-amnesty clauses based on the currently available archaeological records.

³³⁸ Wu, *supra* note 87, at 38.

³³⁹ There is some evidence that Tang judicial officers were following amnesty orders to forgive debts. In the year 977 CE, three debtors petitioned the government for relief from debt based on an amnesty order. The judge granted the petition. 2 DUNHUANG SHEHUI JINGJI WENXIAN ZHENJI SHILU (敦煌社会经济文献真迹释录 第二册) [2 EXPLANATIONS AND NOTES RELATED TO AUTHENTIC DUNHUANG SOCIO-ECONOMIC DOCUMENTS] 256 (Tang Geng'ou (唐耕耦) & Lu Hongji (陆宏基) eds., Quanguo Tushuguan Wenxian Suowei Fuzhi Zhongxin (全国图书馆文献缩微复制中心) [Nat'l Library Microfilm Reproduction Ctr.] 1990). Even though this petition occurred after the Tang Dynasty, it sheds some light on how the emperors' orders granting amnesty were treated in case of a dispute. Unfortunately, because the contract for the loan did not survive, it is not possible to tell whether the contract had an anti-amnesty clause. However, at a minimum, the judicial officer enforced the emperor's amnesty order by forgiving the debt.

³⁴⁰ QIAN, *supra* note 15, at 879–80, art. 422.

³⁴¹ ZHANG ET AL., *supra* note 7 at 461–62.

³⁴² COLLECTION OF CONTRACTS, *supra* note 108, at 201 (emphasis added).

F. Using Contracts to Deter Non-Performance

A perpetual problem in contractual relationship is non-performance. Tang Chinese attempted to mitigate the problem in contracts, similar to their modern counterparts. Many of the contracts contained a penalty clause setting forth penalties in case of non-performance. In loan transactions, creditors tried to ensure payment of debt by taking the debtors' property as collateral for the loan.

1. **Penalty Clauses to Deter Breach.** Many of the contracts specified penalty for failure to perform.³⁴³ Penalty for breach could be additional payment of money or equivalent.³⁴⁴ A contract dated 690 CE offers an example:

The first year of Tian Shou, January 18 [690 CE], Wu Cheng Villager Zhang Wenxin leased five *mus* located at Zao Shu Qu Bu 4 [from Kang] Haiduo [lease price per *mu*] one *hu*³⁴⁵ of wheat. Lease for three *mus* has already been paid. Lease payment for the remaining two *mus* will be paid within the month of June. ***If Lessee fails to pay by June, double penalty of the amount owed will be paid to Kang. When it is time to plant the field, but if the lessee is unable to, one hu will be paid as two hus as a penalty to Zhang Wen.*** The agreement was mutually agreed upon and finger prints are used as signs. Two copies of the contract, one for each party.

Land owner: Kang Haiduo

Lessee: Zhang Wenxin

Witness: Zhai Yinwu

Witness: Bai Liuluo

Witness: Zhao Hudan³⁴⁶

2. **Use of Collateral to Ensure Performance.** A risk faced by lenders in loan transactions is debtors' breach of their promises to pay back loans. Extant loan agreements addressed this risk by providing that if debtors failed to pay, lenders had the right to take the debtors' properties as payment, as provided in the following contract from 670 CE:

March 21 of the third year of Zong Zhang Reign [670 CE], Bai Huanluo from Shunyi Township borrowed 10 pieces of silver coins, with monthly interest rate of 1 piece of coin. Bai must make the interest payment each month. Bai must pay back interest together with the principal when Zuo needs the money back. ***If Bai delays payment or fails to pay, Zuo has the right to take Bai's property including Household Land, as payment. Household Land and Vineyard are used as collateral. If neither the debtor nor the property is available to make payment, the debtor's wife and children will pay back the money.*** The agreement is mutually agreed upon and finger prints as evidence.

³⁴³ ZHANG ET AL., *supra* note 7, at 461.

³⁴⁴ Huo et al., *supra* note 136, at 52.

³⁴⁵ *Hu* is a measuring unit used in dynastic China. During the Tang Dynasty, one *hu* is worth one *dan*.

³⁴⁶ COLLECTION OF CONTRACTS, *supra* note 108, at 277–78 (emphasis added). See also additional complaints containing such penalty clauses. *Id.* at 213–14.

Creditor: Zuo

Borrower: Bai Huailuo

Guarantor: Yan Shiluo

Witness: Zhang Guiduan

Witness: Suo Wenda³⁴⁷

The above contract created a security interest in the debtor's properties in favor of the creditor while leaving the properties in the debtor's possession, similar to the security interest created under Article 9 of the Uniform Commercial Code in the U.S. Tang laws explicitly recognized these types of private collateralized loan agreements.³⁴⁸

3. Use of Guarantors and Other Intermediaries to Ensure Performance. Tang Chinese took full advantage of laws imposing guarantor or intermediary liability when contracting with each other. Many contracts had multiple guarantors and witnesses.³⁴⁹ The guarantors' ages were usually between 26 and 59. The age choice is probably influenced by a law which reduced punishment for people younger than 21 and older than 59.³⁵⁰

The presence of guarantors made it more likely that contracts would be performed in multiple ways. Guarantors could serve as witnesses to testify to the existence of contracts.³⁵¹ They had a personal stake in making sure that contracts were performed. Contractual parties would be less willing to breach a contract where doing so would expose the guarantors — possibly their family and friends, to legal liability, violating the teachings of Confucianism in a relationship-oriented society. Because guarantors tended to be sellers' family members or neighbors, they might have also served to ease buyers' concern that sellers' family and neighbors would claim the property subject to the sales contract, and to deter *post facto* challenge of the sale based on the family-neighbor priority rule under Tang laws.³⁵²

VI. CONCLUSION

Although many questions remain unanswered regarding the Tang Dynasty contract laws,³⁵³ archaeological evidence shows that a body of sophisticated

³⁴⁷ *Id.* at 309 (emphasis added).

³⁴⁸ NIIDA, *supra* note 91, at 789.

³⁴⁹ Han, *supra* note 251, at 131–32; YUE, *supra* note 97, at 243.

³⁵⁰ Han, *supra* note 251, at 132.

³⁵¹ YUE, *supra* note 97, at 243.

³⁵² ZHANG ET AL., *supra* note 7, at 475; Chen, *supra* note 16, at 96; Han, *supra* note 251, at 129; Chai Rong (柴荣), *Zhongguo Gudai Xiewen Qinlin Zhudu Kaoxi* (中国古代先问亲邻制度考析) [Examination and Analysis of Ancient China's Family and Neighbor Priority Rule], 4 FAXUE YANJIU (法学研究) [LEGAL STUD.] 131, 132 (2007) (noting that the signing requirement by neighbors can be used as an acknowledgement and guarantee on behalf of the seller that the neighbors gave up their priority right).

³⁵³ One unexplored area is how the Tang Chinese enforced private contracts. Archaeological records show that contracts were enforced in multiple ways in the Tang Dynasty. Village and/or neighborhood elders played an active role in resolving contract disputes. Xie, *supra* note 292, at 8; ZHENG, *supra* note 177, at 159. Tang

contract laws emerged at least 1,400 years ago in China. Tang laws recognized private contracts, but the right to contract was limited to heads of households only. The laws prohibited coercion in sales transactions, explicitly deferred to the terms of contracts mutually agreed upon between the parties in collateralized loan transactions, and limited government officials' ability to enter into transactions with those under their supervision. In addition, Tang laws sought to protect certain important economic transactions, such as sales of slaves, land, houses, or livestock, by requiring those agreements to be in writing and mandating government approval. Imposing guarantor or intermediary liability also made it harder for debtors to breach the contract because of the cultural emphasis on relationships.

In conclusion, the Tang laws regulating economic relationships are consistent with the Tang Code's themes to promote social order and moral rules of trustworthiness.³⁵⁴ The limitation on capacity to contract showed that the Tang rulers were keen on preserving the family structure endorsed by Confucianism. The Tang laws' official recognition of contracts entered into through mutual agreement served to promote social harmony. The restriction on government officials' transactions with those under their supervision showed that Tang rulers recognized the potential for abuse in that context, and the regulations were necessary to maintain social stability. The harsh criminal remedies for breach and extensive guarantor liability served to promote performance of contracts, thereby promoting trustworthiness consistent with the Confucian emphasis on the importance of keeping one's promises. The Tang Chinese contract practices also demonstrated that the Tang laws were effectively incorporated into daily practices. Private contracts essentially acted as tools to allow the Tang rulers to maintain the hierarchical social structure and to promote social harmony, social order, and moral teachings on trustworthiness in human relationships.

laws also provided a formal mechanism for contract disputes. QIAN, *supra* note 15, at 771, art. 355; FENG, *supra* note 44, at 166. Archaeological evidence shows that the government intervened when parties were unable to resolve their dispute. 6 TURFAN DOCUMENTS, *supra* note 317, at 525, 527; COLLECTION OF CONTRACTS, *supra* note 108, at 310–11. However, lack of sufficient archaeological evidence of judicial opinions makes it difficult to draw any conclusions regarding judicial approaches to resolving contract disputes.

³⁵⁴ ZHENG, *supra* note 153.