

Synergizing Litigation and Conciliation in Disputes Resolution

——A Sino-Japanese Comparison——

Doctoral Program in Law
Graduate School of Law
Ritsumeikan University

じょ ふん かい
XU WENHAI

In comparison to litigation that is strict and formal, conciliation is various and flexible, and easy for the parties' using. It makes disputes settlement easy, effective and low cost. In China, in addition to people's conciliation, there are court-entrusted conciliation, pre-litigation conciliation and judicatory affirmation in the procedure for civil cases. However, according to Civil Conciliation Law and Domestic Relations Case Procedure Law in Japan, the court can refer the cases to conciliation and the preposition of conciliation is recognized in several cases. For an appropriate settlement of the civil disputes, synergizing litigation and conciliation are necessary. Therefore, this thesis addresses some critical issues such as the relationship between the parties' right of access to courts and the conciliation, the necessity of preposition of conciliation, and res judicata of conciliation. In order to do this effectively, this thesis is structured as four parts:

Chapter one summarizes and analyses the development and alteration of synergizing litigation and conciliation in China, It has a particular focus on the People's Conciliation Law (2010) and the Civil Procedure Law (2012).

Chapter two introduces and analyses the civil conciliation system in Japan, and determines the role of referring cases to conciliation.

Since the family conciliation has its uniqueness, chapter three lays special stress on analyzing the preposition of conciliation, separated conciliation and present conciliation, and the family court probation officer's operation.

Chapter four formulates the comparative study on the basis of the above three chapters and gives some proposals for the legal reform in China, such as legislating the Civil Conciliation Law, leading-in the family court probation officer, and abolishing judicatory affirmation.