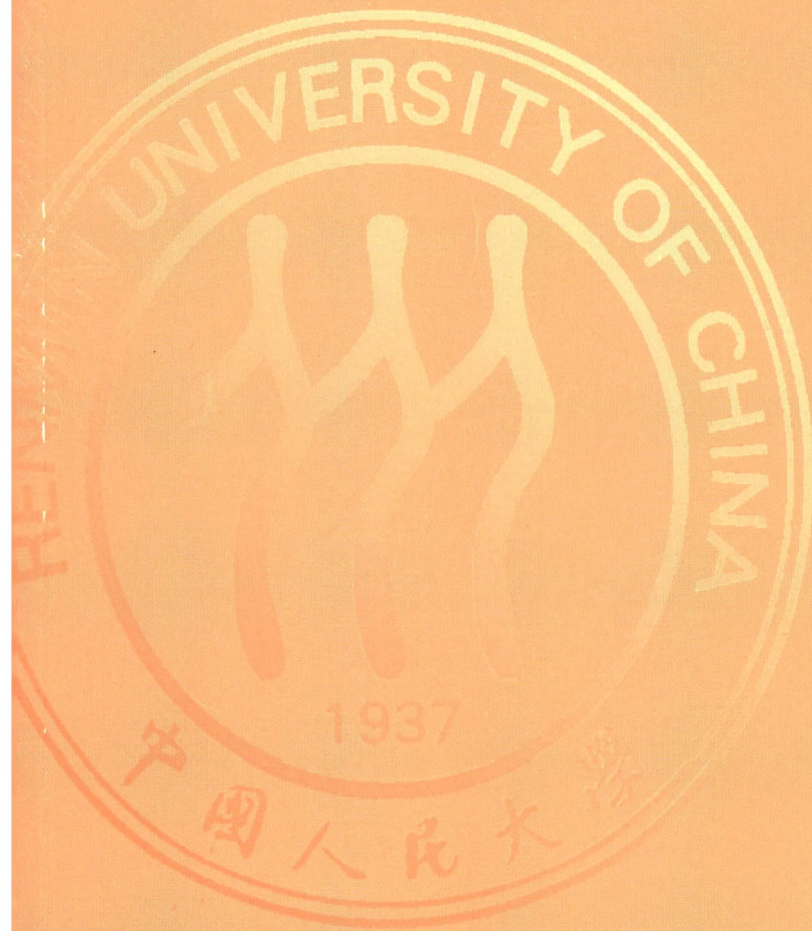




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ABSTRACTS

The Civil Legal Status of Smart Contracts

WU Ye · 1 ·

Smart contracts are computer protocols intended to digitally facilitate, verify, or enforce the negotiation or performance of contracts. Smart contracts allow the performance of credible transactions without third parties. The aim of smart contracts is to provide security that is superior to traditional contract law and to reduce other transaction costs associated with contracting. From the perspective of private law, considering the high dependency among members of smart contracts, the nature of smart contracts is similar to the status contracts. Smart contracts have become a new transaction type which is a combination of contract conclusions and contract performances. Smart contracts have caused a huge impact on the traditional contract law theories, but this is not enough to deny the legitimacy of private law remedy for smart contracts. By constructing the framework of private law remedy which is focused on the reliance interests protection, the synchronous development of law and technology will be promoted finally.

Key Words Smart Contract; Status Contract; Corporatism; Reliance Interests Protection

Wu Ye, Ph.D. in Law, Assistant Professor of Law Department of Northwestern Polytechnical University.

From the Traditional Contract to the Smart Contract: The Transformation

from Ex Post Court Judgment to Ex Ante Automatic Performance

XIA Qingfeng · 14 ·

The traditional contract requires the parties to perform specific obligations, in order to promote the realization of the contract's purpose, and allows the parties to add new agreement or modify the original terms when the actual environment changed. After the dispute, the relationship of rights and obligations can be balanced according to the judgment mechanism of the court. However, the rise of blockchain technology enables smart contracts to automatically perform all contents which agreed by the parties, and disputes can also be handled automatically in accordance with the remedies that determined at the time of signing the contract, even without the support of the court judgment. From the traditional contract to the smart contract, the most significant change is the transformation from the ex post court judgment to the ex ante automatic performance. The advance of technology has impacted the important position of the court system as the backing of rights protection. The ex ante automatic performance of smart contract has the advantages of high efficiency and low cost, which provides new possibilities for the performance of contracts in the commercial world and has great development potential.

Key Words Smart Contract; Ex Post Court Judgment; Ex Ante Automatic Performance; Inflexible

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The Basic Functions of Legal Dogmatic:

Reflections from the Perspective of Criminal Law Studies

JIANG Tao · 29 ·

Few domestic scholars have systematically made research on the function of legal dogmatic. Studying the

function of legal dogmatic is to answer the question of the service object of legal dogmatic. If the function is not clear, there are certain disputes over stance, method and subjectivity, making legal dogmatic become a “game without chassis”. Legal dogmatic is the theoretical construction and knowledge reserve made by jurists, who focus on the application, evaluation and shaping of norms, involving justice and legislation. Among them, the legal dogmatic of justice has three functions: the proper settlement of cases, the collaboration among case handling and the ideal of understanding social development. Based on the doctrinal analysis, the legal dogmatic of legislation identifies the contradictions in the criminal norms, the violation of the principle of definiteness, the loopholes of punishment, etc., making the legislation improved and the law better.

Key Words Function; Legal Dogmatic; Social Sciences of Law; Dogmatic of Criminal Law; Normative Loopholes; Good Law and Good Governance

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Subjective Value in Just Compensation For Taking

LIU Liantai · 45 ·

Fair market value is the most common standard for compensation, which is the price that a willing buyer would pay to a willing seller. It includes the average subjective value of property to owners, excluding special subjective value and autonomous value. It is technically impossible to compensate for special subjective values; property rights are legal rights and have social obligations. Laws do not compensate for allergic reactions of property owners. Compensation for some special subjective values is incompatible with constitutional values, and may also provide justification for strategic resistance to owners. Many extraterritorial expropriation laws provide that subjective value is not compensated, but subjective value can be compensated in individual cases through other concepts. China's expropriation law adopts the standard of fair market value and does not stipulate the compensation of subjective value, but the subjective value can be included in the compensation amount through the risk assessment of social stability, assistance and relocation incentives.

Key Words Compensation; Fair Market Value; Subjective Value; Autonomous Value

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The Rechtschein and the Determination of Fraud

CHEN Shaoqing · 57 ·

The perpetrator takes advantage of apparent authority or appearance of having the right (*Rechtschein*) to carry out the apparent behavior, resulting in that the third party builds reasonable trust in the appearance, thereby pays consideration to the perpetrator and obtains the corresponding property. Under the *Rechtschein Theorie*, the civil law protects that property of the third party, and the adverse consequences will be transferred to the authentic obligee. Nevertheless, the value orientation of criminal law, the relevant provisions of judicial interpretation and the penalty loopholes caused by the forcibly transformed legal relations have blocked the possibility of applying the theory to the determination of crimes. In the level of legal norms, property damage can be divided into damage occurrence and damage distribution. When regarding the recognition of the damage occurrence, the criminal law and civil law reowh the consensus that the third party is regarded

as the direct victim of the apparent behavior; meanwhile, on the damage distribution, the criminal law keeps silent, thus in the level of the relativity of legal fact, the criminal law and civil law are separate and discrete. The third party is the crime victim who suffers from property loss. In the cases of *bona fide* acquisition and apparent authority, by concealing the fact that he or she is not the authentic obligee, the perpetrator causes the third party to fall into the misunderstanding and deliver property, which constitutes the crime of fraud.

Key Words Appearance of Having the Right (*Rechtsschein*); Damage Occurrence; Damage Distribution; Direct Victim; Crime of Fraud

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The Status and Determination of "Trademark Use" in Trademark Infringement LV Bingbin · 73 ·

It is not only the practical need to solve new trademark disputes, but also a fundamental issue of constructing trademark law principles, to clarify the right and wrong of "trademark use". Based on the principle of *numerus clausus*, the "use" in the composition of trademark infringement should be "trademark use", that is, the use of trademarks in the sense of source identification. "Trademark use" is an independent element in the composition of trademark infringement that is juxtaposed with the likelihood of confusion. Theoretically, "trademark use" corresponds to the optimal degree of trademark-propertization, that is, to protect property interests resulted from the source distinction function of a trademark. The condition of "trademark use" is conducive to the correct delineation of the protection scope of trademark. Further, the independent status of "trademark use" depends on whether it has an independent criterion. The "trademark use" should be determined from the perspective of the user, rather than consumers. The nature of use should be analyzed by taking into consideration both the objective and subjective elements. The subjective intent of the user can be identified. What is needed in legal construction is to search for an objective method of determining subjective elements. The judgment standard from the perspective of user is quite adaptable in boundary cases, such as original equipment manufacture(OEM) and keyword advertising.

Key Words Trademark Infringement; Trademark Use; The Parallel & Independent Condition Theory; The User Standard; Boundary Cases

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On the Determination of Proportional Causation in Torts with Uncertain Actual Causation

WU Guozhe · 88 ·

Torts with uncertain actual causation means that whether the defendant's action in fact causes the plaintiff's damage is unable to be proved by the evidence which meets the standard of proof, so it is very difficult to determine the specific causation. Proportional causation is used to determine the possible relationship between the factors for damage caused by and the result of damage and the ratio of their causal forces, and it has the characteristics of inference and evaluation, and is a technical tool and key factor to solve the tort liability problems of this kind of torts. The determination of proportional causation needs to go through two steps: the determination of general causation and the comparison with the specific situation of the case. The

determination of the ratio amount is based on the comprehensive evaluation with reference to the relevant data on the basis of comprehensive consideration of various factual and discretionary factors, which is used for the proper distribution of the liability of the defendant. Proportional causation is the product of the transformation of legal thinking from certainty to flexibility, and has a considerable degree of acceptability.

Key Words Torts with Uncertain Actual Causation; Proportional Causation; Ratio Amount

Wu Guozhe, Ph.D. in Law, Professor of Xi'an Jiaotong University Law School.

On Interaction between Guiding Cases and Abstract Judicial Interpretation and Its Perfection

SUN Yue · 103 ·

The interaction between guiding cases and abstract judicial interpretation is mainly reflected in three levels: system, rules and legal methods. At the system level, there is a huge gap between the two systems in terms of system maturity and the connection between them is insufficient; at the rule level, the supply capacity of the two judgment rules is too wide, and there are some defects in the specific interaction mode; at the legal method level, the use of the two legal methods in the interaction is not enough, and the relevant standards need to be clarified. We can improve the interaction mode of guiding case and abstract judicial interpretation by clarifying the system status of guiding case, strengthening the system connection with abstract judicial interpretation, adjusting the supply structure of Supreme People's Court's judgment rules and regulating its specific ways, strengthening the application of legal methods in the interaction between the two and clarifying the relevant standards.

Key Words Guiding Case; Judicial Interpretation; Sources of Law; Legal Interpretation; Legal Method

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A Study on the Breaking of Agreements and Reversal of Procedures in the Pleniency System

MA Mingliang · 118 ·

A notable feature of pleading guilty from the lenient system is the existence of agreement for crime and penalty. In terms of legal attributes, the paper should not be simply understood as a guarantee or proof material, and should be regarded as a criminal agreement. In practice, it has multiple possibilities for breach: the remorse of the prosecuted, the prosecution's change of complaint, and the judge's disapproval. The breach of the agreement is a typical "fat tail risk" in the lenient system of pleading guilty, that is, an event with a small probability of occurrence but a great influence. Improper handling will lead to an incalculable risk of countering, affecting the normal operation of the confession and punishment process. In the future, the improvement of the system should be based on the principle of judicial justice, judicial credibility and the legitimate expectation of interests, and construct a reasonable regulatory mechanism and a proper reversal procedure for the breakdown of the agreement. The right of redress of the accused should be limited, divided into righteous repentance and improper remorse, and different reversal procedures should be applied; the prosecutor should follow the principle of estoppel; the judge who does not accept the stipulations should follow the due process of "advance notification, debate and retraction". Only in this way, the system of pleading guilty and confess-

ing to the lenient system will not let the accused misunderstand as a delicate arrangement for obtaining guilty confessions and fighting crimes, and the system can go further.

Key Words Pleading Guilty; Agreement for Crime and Penalty; Repent; Withdraw; Judicial Credibility; Expected Interest; Program Reversal

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The Legal Regulation Paths of Life Settlement

WU Yiwen · 133 ·

Compared with the other means of liquidating the policy, there are advantages by way of the life settlement, which in essence is to transfer the life insurance contract to the life settlement companies or the policy investors and to change the beneficiary as the transferee of the life policy. However, based on the particularity of the life policy, the general rule of the transfer including right and obligation isn't applied to the transaction of life settlement, thus making it unnecessary to get consent of the insurer. The principle of the insurable interest and the waiting period can serve as the tool to solve the problem which is caused by the STOLI. For the purpose of regulating the STOLI and reducing the disputes between the parties, the waiting period should be set as 2 years since the insurance contract is formed. In order to ensure the benefit of the life settlement party, the minimum discount rates for the sale of insurance policies are supposed to be set. Besides, companies which are occupied with the life settlement should get the permission so that the life settlement market can be well regulated and the insurance consumer can be protected. The physicians' declaration and document aren't necessary.

Key Words Life Settlement; Transfer of the Contract; Ways of Regulating; Insurable Interest

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The Procedural Rules for the Incorporation of the Third-Party Revocation Action into the Retrial Procedure—A Study Centered on Article 301 & 302 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China

LIU Dong · 149 ·

Laws and judicial interpretations in China put forward different requirements for commencing a retrial and a third-party revocation action, which leads to different facts constituting the essential elements between the two types of proceedings. In view of this, it is acceptable that a retrial and a third-party revocation action may yield different judgments on the same case. Such different judgments are not contradictory to each other because the identification of contradictory adjudication must be combined with the referee's main text and the reasons for the adjudication, and the essential facts are an important part of the reasons for the adjudication. Therefore, there is no need to incorporate a third-party revocation action into the retrial of the same case unless there is a risk of contradictory judgments. And the effect of litigation actions before the incorporation shall be decided subject to the principle of procedural guarantees.

Key Words Retrial Procedure; Third-Party Revocation Action; Contradictory Judgments; Incorporation; Procedural Rules

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Challenges and Solutions to Antitrust Litigations against Chinese Enterprises in USA:

Based on the Questioning Relevant Judgments

JIN Meirong · 160 ·

A series of antitrust lawsuits against Chinese enterprises in the United States took place under the background of the escalating friction in trade and economy between China and the United States after China's accession to the WTO. These lawsuits focus the issues such as extraterritoriality of American antitrust laws, the principle of international comity, the identification of foreign laws, and the effect of foreign government's interpretation of its domestic laws. Concerning above issues, we can find loopholes and biases in some judgments and rulings of American courts concerned, in terms of the application of the "real conflict" requirements and the lack of objectiveness in the identification of foreign law, etc. As Chinese enterprises will increasingly become the focus of American antitrust enforcement, they may face more challenges, which need to be actively dealt with from the aspects such as American domestic legal system, international law, our own relevant policies and regulations and the anti-monopoly compliance of Chinese enterprises.

Key Words Chinese Enterprises; Antitrust Litigation in USA; the Case of Vitamin C

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Comment to Article 261 of Contract Law of the PRC

(Handover and Acceptance of the Work)

HUANG Zhe · 175 ·

Contracted work may not be delivered realistically, so it cannot be generalized under the consideration that the contractor's delivery of work is the precondition for the performance of the debt. The ordering person possesses the right of acceptance. Under the premise of meeting the acceptance conditions, the ordering person has the obligation of conducting the acceptance. The core content of the acceptance is to approve by the ordering person that the accepted work is basically in accordance with the contract, which may also include the physical receipt of the entity where possible. In addition to typical acceptance, there are some special types of acceptance, such as partial acceptance, acceptance after the ordering person's exercise of the right to cancel, and fictional acceptance. The prerequisite for the acceptance obligation is the completion of work. Unreasonable refusal to accept incurs delaying effects on both the debtors and the reception. After acceptance, the contractor's performance phase ends, the right to claim remuneration expires, and the liability for price risk and defect certification is transferred to the ordering person.

Key Words Work Contract; Delivery; Acceptance; Fictional Acceptance

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