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ABSTRACTS

Systems for Ensuring Full Compliance with the Constitution and Their Implications: An Interpretation on the Essence of “Better Implementing the Constitution and Conducting Constitutional Oversight” in the Report to the 20th National Congress of the Communist Party of China

WANG Xi · 1 ·

The report to the 20th National Congress of the Communist Party of China proposed “improving the systems for ensuring full compliance with the Constitution”. Such systems are important theoretical innovations based on the system of socialist rule of law with Chinese characteristics. They not only represent the significant development of the Marxist constitutional theory of “enforcing the Constitution through legislation”, but also systematically renew the connotation of the enforcement of the Constitution in terms of subject, mode, object, method, etc. “Systems for ensuring full compliance with the Constitution” fall into two categories. To improve the systems, further exploration is required to figure out four issues, including fundamental direction, work arrangement, key contents, and institutional guarantee.

Key Words Xi Jinping Thought on the Rule of Law; Implement the Constitution; Institutional System; the System of Socialist Rule of Law; Constitutional Review

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Consideration Requirements in Public Neighbor Protection

ZHAO Hong · 11 ·

With the intervention of administrative organs in the distribution of urban space interests, public neighboring law and public neighboring rights also appear in addition to private neighboring law and private neighboring rights. German law initially appealed the derivation of public neighboring rights to fundamental rights, but after being heckled by the distribution order of constitutional law, the German federal administrative court put forward a theory called Consideration Requirements in the judgment of the Pigsty case. This theory creatively realizes the transformation from objective law to the subjective public rights of neighbors, and also makes the norms of construction law have the effect of neighborhood protection since then. In the subsequent development and succession, it gradually retreats from the core of the public neighborhood protection system to the auxiliary position, and evolves into the partial neighborhood protection opposite to the universal neighborhood protection. The application of the Consideration Requirements includes such elements as significance, individuality and scope limitation, legal protection and prediction possibility. These elements make the theory not only continue the general thinking of the Protection Norm theory, but also expand its application in the specific field of law. Consideration Requirements is beneficial not only to expanding the scope of the plaintiff's qualification of neighbors in planning permission litigation, but also to resolving the tension between the factual impacts on the judgment of plaintiff's qualification in general administrative litigation and the normative basis.

Key Words Public Neighboring Right; Consideration Requirements; Area Maintenance Claim; Principled Neighbor Protection; Partial Neighbor Protection

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Study on the Damages for Opportunity Interests

CUI Jianyuan · 27 ·

As to the damages for expectation interests, the loss of opportunity interests is a common concept. It is acceptable for the compensation of the opportunity interests loss since it is easy to ascertain by objective methods of calculation. However, it is doubtful whether the loss of opportunity interests exists in the damages for reliance interests, as well as to its certainty, which leads to different opinions on whether to agree on the damages or not. In individual cases, the certainty of opportunity interests loss can be addressed by rules of proof. The damages for opportunity interests can not be denied by the present theory of the purpose and function of damages for reliance interests. As to the issue of culpa in contrahendo, whether the loss of opportunity interests, which is out of the expectations of the parties, should be decided specifically rather than giving a uniform answer. Should the measures to exclude compensation costs be taken, the victim will not get double compensations/reimbursements. Judges should set strict limitations to the constituent elements of the damages to the opportunity interests loss, thus the wave of litigations can be avoided. When it comes to the public policy related to the damages of opportunity interests, Chinese law and its theory should treat it carefully. In particular cases, the loss of opportunity interests should be real and substantial instead of speculative ones, which is the core of damages to the opportunity interests. In determining the loss of opportunity interests, it is very useful to use the the probability balance approach, the loss of opportunity approach and the operational techniques of “chains of events” and “alternative events”, which come from foreign countries but are worthy of application in Chinese law and theory.

Key Words Opportunity Interests; Certainty; Balance of Probability; Method of Chance Loss; Chain of Events; Alternative Events

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Legal Readiness for Technological Transmutations in Data Processing Activities :**A Relational Contract Perspective**

TANG Linyao · 42 ·

Data processing activities are usually of long-time range, multiple stakeholders related, obligations and contents of which are constantly changing due to technological improvements; economic law scholars use *relational contract* to describe aforementioned extraordinary nexus. In recent years, emerging technologies such as multi-party computation and Federated Learning are expecting to alleviate the tension amongst data utilization and privacy protection in a decentralized data processing stance, but they in turn induced problems of low-efficient negotiations, balancing measures out-of-order, non-calculable earnings and chargeable failure, breaking the status quo of information protection laws serving as the overall failsafe for the *relational contract*. Facing the above fundamental changes, various traditional legal mechanisms should be upgraded or even reconstructed by correcting procedural data configurations, introducing fundamental data-processing rules, averaging residual rights and renewing the liability system, so as to form a dynamic norm in times of constant changes. The bottom line of such a dynamic norm is to release the value of data in a compliant and orderly manner, yet not sacrifice the stability of the *relational contract*.

Key Words Relational Contract; Data Processing Activities; Personal Information Protection Law; Procedural Data; Residual Rights

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Chinese Legislative Logic for Safe Harbor Rule for Vertical and Horizontal***Agreements under Antitrust law : The Information Cost Approach***

WANG Huiqun · 57 ·

The safe harbor rule is used differently under China's antitrust laws as it is in the US and the EU for vertical and horizontal agreements. An interpretive framework is provided by the multi-stage decision-making model, which stipulates safe harbor rules differently in an effort to strike a balance between the cost of information and the cost of errors. The safe harbor rule can successfully reduce false positive mistakes and prevent over-deterrence by antitrust laws in the antitrust decision-making process when compared to the per se rule. However, pursuant to the newly passed Antitrust Law, China's safe harbor rule adopted a defense model, unlike other jurisdictions. The main idea behind this paradigm is to make the undertaking bear the initial burden of proof required by the regulator such as market share. On the one hand, this legislative logic is based on the path dependence of China's existing "principle prohibition + exception exemption" system, and on the other hand, it is based on the practical consideration of China's antitrust regulatory authorities with weak investigation capacity, insufficient personnel and lack of evidence rules. Its essence is that regulators allocate high information costs to the regulated.

Key Words Antitrust Law; Safe Harbor Rule; The Multi-Stage Decision Process; Information Cost; Defense Model

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Grotius, the Dutch Colonial Empire, and the Rediscovery of Subjectivity in the***Writing of the History of International Law***

ZHANG Yongle · 74 ·

Since the 19th century, Grotius has gained the image of "father of international law" and even "pacifist" in Western academic and public opinion circles. However, following the approach of "Empire and International Law", it can be found that Grotius' writing on "natural law" and "law of nations" self-consciously served the Dutch national interest, and was updated to match the evolving Dutch colonial practice of his time. The reshaping of Grotius' image since the 19th century was influenced by the participation of the US elites, Dutch nationalism, and the professionalization of international law. With the "de-contextualizing" method of reading, the historical connection between Grotius and Dutch colonialism has been ignored or even erased. Under the "great changes unseen in a century", it is necessary to reveal the deep logic of the formation of the ideological narrative of international law through in-depth exploration of the relationship between the texts and contexts of international law thinkers, so as to enhance the independent consciousness of China's subjectivity and actively promote contemporary reform toward a more just international legal order.

Key Words Grotius; History of International Law; Law of Nations; Raison d'empire; International Legal Order

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The Dualistic Model Theory of the User's Liability and Independent***Contractor's Liability in the Civil Code of China***

CAO Xianfeng · 90 ·

The user's liability stipulated in Article 1191 and Article 1192 of the Civil Code corresponds to the independent contractor's liability stipulated in Article 1193, which constitutes a "1:1" dualistic model of the user's vicarious liability and the independent contractor's own liability. This kind of dualistic model has evolved through certain history. As the basis for distinguishing the two responsibilities, the employment relationship and the independent contract relationship are mutually defined and should be distinguished accord-

ing to the control test. When there is a relationship of control, domination or subordination, it constitutes an “user-used person” relationship, and thus applies the user’s liability rule; Otherwise, it constitutes an “ordering party-independent contractor” relationship, and thus applies the independent contractor’s liability rule. If it is not an employment relationship, it is a contracting relationship. When the perspective is turned beyond the civil law, it can be found that with the gradual enhancement of subordination and control, service relationship, relationship which not fully corresponds with labor relationship and labor relationship constitutes a progressive trichotomous pattern.

Key Words User’s Liability; Vicarious Liability; Employer’s Liability; Independent Contractor’s Liability; Control Test

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The Institutional Mechanism of Civil Liability for the Misrepresentation of Verification Institutions

—*The Realization of Deterrence Function as the Logical Axis*

WANG Qi · 100 ·

The main function of the civil liability of the verification institutions is to form an effective deterrence to the potential wrongdoers and urge them to fulfill the gatekeeper function of the securities market diligently, rather than to fill the damages. The legal joint and several liability plays a positive role in ensuring that investors get sufficient compensation for damages, but it may cause “deep pocket” effect and make it dissimilar to guarantee liability, which will cause improper interference to the normal business activities of the verification institutions. Although the application of proportional joint and several liability and the attempt of judicial interpretation to limit the fault identification standard of verification institutions alleviate the negative impact of joint and several liability to some extent, they are faced with the problems of insufficient legitimacy basis and failure to fully respond to the practical disputes. In order to ensure that the verification institutions’ responsibility is consistent with the fault, and realize the deterrence function of using civil liability mechanism to urge the verification institutions to be diligent and responsible, the Securities Law should change the form of civil liability of verification institutions into proportional liability, so as to achieve a proper balance between urging the verification institutions to be diligent and responsible and avoiding interference with its normal operation.

Key Words Verification Institutions; Misrepresentation; Deterrence Function; Joint and Several Liability; Proportional Liability

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The Establishment of the Jurisdiction Objection System in Supervision

Investigation and Criminal Procedure

ZHANG Zetao · 115 ·

In practice, there are quite a few irregularities in jurisdiction among supervisory organs and public security judicial organs, and it is also relatively common for subjects of supervision, criminal suspects, and defendants to raise jurisdictional objections. However, except for the Pre-Trial Conference Regulations, neither the legislation nor the judicial interpretations give the prosecuted person the right to object to jurisdiction. Judging from the empirical status quo, whether in supervision investigations or criminal procedures, the jurisdictional objections raised by the prosecuted persons and their attorneys have not been taken seriously, and are more embodied in a state of fiction. The lack of jurisdictional objection systems in supervisory investigations and criminal procedures not only violates the basic requirements of procedural fairness, infringes on many rights of the subjects of supervisory investigation, criminal suspects, and defendants, but also leads to

many drawbacks such as the public's difficulty in accepting the results of adjudications. Legislation and judicial interpretations should give parties such as subjects of supervisory investigation, criminal suspects, and defendants the right to object to jurisdiction; clearly stipulate the subjects, periods, and methods for raising jurisdictional objections; the organs reviewing jurisdictional objections and the procedural legal consequences that should be borne by the establishment of jurisdictional objections must be treated differently; and further clarify and limit the provisions of the Supervision Law, the Criminal Procedure Law, and the judicial interpretations on the jurisdictional discretion of supervisory organs and public security judicial organs.

Key Words Objection to Jurisdiction; Lack of System; Legal Procedure; Jurisdictional Discretion

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The Effect of the Expansion of Appointed Defense

—*Empirical Research Based on Robbery Crime in Pilot Cities*

WU Yuhao · 130 ·

With the advancement of the full coverage of lawyers in criminal cases, the coverage of appointed defense in criminal cases has expanded significantly. The examination of its effectiveness has both theoretical and practical meanings. While the rate of appointed defense in robbery cases in most areas increased significantly after the pilot, quantitative analysis using propensity score matching reveals that the appointment of defense counsel does little to improve the defendant's treatment, either in pretrial detentions or in sentencing outcomes. In some pilot areas, the effect of appointed defense lawyers is significantly weaker than that of the entrusted lawyers. The results of the qualitative interview reveal that the delayed intervention of appointed defense lawyers, insufficient incentives for lawyers, and relative lack of defense experience and skills have hindered the realization of the defense effect in appointed defense. At the same time, the caseload of legal services surged after the program was carried out, which further exacerbated the strain on human, material, and financial resources in appointed defense. The above empirical findings can provide "evidence-based" policy implications for the improvement of the appointed defense system in the new era.

Key Words Appointed Defense; Policy Evaluation; Qualitative Interview; Evidence-Based Research

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On the Dogmatic Analysis of "Evading Investigation or Trial" in the

Limitation of Prosecution

CHEN Wei · 146 ·

The limitation of prosecution has the legal effect of directly limiting criminal responsibility. How to determine the limitation period, as a key link affecting criminal responsibility, plays an important role in criminal justice. As the legislative expression of the termination of limitation of prosecution, "evading investigation or trial" in the limitation of prosecution needs to be interpreted in combination with the essence of criminal prosecution and the logic of rule construction. "Evasion of investigation or trial" superimposed on the criminal investigation or the court's acceptance of a case should not be understood and applied as a positive element, otherwise it will not integrate with the original meaning of the prescription system to urge the exercise of criminal power, and the evasion behavior limited to the actor's perspective can end the prescription, which makes the progress of criminal prosecution subject to external factors, and at the same time, the evasion of time point and the uncertainty of behavior types bring about the confusion of application. "Evading investigation or trial" as a passive element is the reflection of returning to the essence of criminal prosecution, which not only makes

up for many logical questions, but also better fits the systematic consideration of association rules.

Key Words Prosecution Limitation; Termination of Limitation; Punishment Power; Passive Element
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The Exertion and Restriction of Guaranty in Bankruptcy Procedure

HE Xinyue · 159 ·

The Civil Code and its judicial interpretations have strengthened the restrictions on guarantee by releasing guarantor from postpetition interest in principle's bankruptcy procedure. However, whether insolvency risk, including its interest, constitutes guarantor's liability shall depend on the interpretation of contract, and the mere fact that principle bankrupts shall not diminish such liability legally or intentionally. Judicial interpretations shall take effect within the framework of the Civil Code, and pay due respect to the value of splitting risk of guaranty. Actually, the commencement of bankruptcy procedure will deter guarantor's privilege of order, as well as accelerate the expiration of guarantor's liability. Creditors are thus entitled to reimbursement both from principle and guarantor with two parallel rights not affected by each other, which thoroughly cuts off any interaction in joint and several liability. In this way, while bankruptcy procedure maintains the homogeneity of secondary liability, it denies the subordinate nature of guaranty. Simply treating bankruptcy as exceptional interference in subordination rules will create discrimination. Conversely, bankruptcy is the signal of debtor's lacking of capacity, so the limitation of bankruptcy rules adjusting legal rights shall all be based on this standpoint. Therefore, the topic of exertion and restriction of guaranty shall be reexamined in the context of bankruptcy.

Key Words Guaranty; Subordination; Postpetition Interest; Privilege of Order; Limitative Principle of Bankruptcy Rules

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Comments on Article 17 of the Criminal Law (Age of Criminal Responsibility for the Minors)

CHEN Haoming · 176 ·

Article 17 of the Criminal Law is the basic norm for the minors to bear criminal responsibility. If a minor commits the same crime during the adjacent responsible age-period, if he has the obligation to prevent the consequences of the crime but fails to perform the obligation, he shall bear criminal responsibility. If a minor commits several crimes of the same kind, the latter crime that should be penally imputed should be given preferential consideration in sentencing. Persons between the age of 14 and 16 shall bear criminal responsibility for the co-occurrence of one statutory provision and three legal fictions of the crime of robbery. A person between the age of 12 and 14 who bears criminal responsibility should be subject to a combination of subjective and objective elements. The approval procedure of Young Minors should be initiated after the case is filed. The right to deny approval is not exclusive to the Supreme People's Procuratorate. Defense attorneys are involved. The Minors can be sentenced to life imprisonment in exceptional circumstances. The interpretation of the "innocence of childhood-friends clause" should be "special policy theory". The specialized education committee, the decision-making body for specialized correctional education, shall be led by the administrative department of education. There is no lower age limit for the applicable objects. The execution period is generally six months to three years, and the scope of the right subjects applying for relief shall be expanded.

Key Words Age of Criminal Responsibility; Crime of Transformed Robbery; Approval Procedure of Young Minors; Specialized Correctional Education

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