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Abstract: Chinese environmental law researchers have deviated their recognitions of law from its nature. They confuse the relationship between law and morality, and deal with legal issues in moral thought. They confuse the relationship between law and discipline, and can't realize the effective transformation from the laws of nature to the law of society. They copy the western experience mechanically, and lack of local reflection and self-position. They separate legislation from law enforcement, and offer legislative proposals without regard to the social foundations and conditions. And they break up the connection between environmental law and traditional law, and depart from the basic rules of law when innovate, which subvert the entire legal order.

The deviation of legal concept makes the environmental law research only play an enlightenment role in practice. The results of their research are in fact the expression of their dream of ideal environmental order, rather than the application of the legal rule in the judicial practice. Although these studies are wide in topics and large in quantity, it is difficult for them to form consensus through effective argument to promote legal theory, and they are not benefit to the development of the rule of environmental law. Due to the complexity of environmental protection, environmental practices need urgently clear, specific, and practicable environmental laws and regulations to settle environmental disputes institutionally. Thus Chinese environmental jurisprudence must transform from an enlightenment theory to a theory of rule of law by narrowing the research objectives and range, grasping the essential characteristics of law firmly, strengthening the localization of studies, respecting for the existing law, and adopting a realistic thinking mode.

Key Words: environmental law, environmental jurisprudence, environmental rule of law, legal method

Abstract: According to the law interpretation of the Standing Committee of the NPC and the Supreme Court, the "law" in Paragraph 3, Article 22 of the Amendment of the Constitution, which says "state may, for the public interest, expropriate or take over private property of citizens for public use, and pay compensation in accordance with the law", belongs to its narrow sense. Governmental departments have no power to enact a law, thus they have no power to create a

requisition and compensation system.

Article 12 of the Emergency Response Law says that governmental departments can be the subject of emergency requisition. However, Article 52 of this Law and other current separate laws of emergency response has no such provision. Compared to Article 12, Article 52 and those current separate laws belong to special laws. Based on the interpretation principle that the special law derogates the general law, governmental departments are not the subject of emergency requisition and cannot make refinements to the emergency requisition article in the Emergency Response Law. As to compensation, those separate laws have different provisions from Article 12. As the provision of Article 12 is more effective to protect the interests of the citizens, the purpose interpretation must be applied to exclude those provisions in the separate laws. Moreover, this interpretation will not override the conclusion that governmental departments cannot make refinements to the emergency requisition article, because no power of requisition means no obligation of compensation, and hence no power to refine the compensation article.

The phenomena of refining emergency requisition and compensation articles without power, or even copying rules of higher level law are already quite prevalent. It will lead to the wasting of rule-making resources and the dismemberment of legal provisions, and then destroy the rule of law. The refinement of rules and the local legislation should be based on the authorization of law or local power. To those rules that are forbidden or unnecessary to refine, we should strengthen the work of law interpretation and case guidance. General provisions in law, regulation and rule should also be more scientific and reasonable.

Key Words: emergency affair, requisition, compensation, legislation law

Abstract: The public order contract is a typical mode of the participation of the private sector in the police task in China, which, as an important and controversial topic in the administrative law, has faced many disputes. This paper therefore analyzes its jurisprudential bases from the perspectives of the constitutional law, the administrative law and the society.

Firstly, the participation of the private sector in the police task has legitimacy in the constitution. When we interpret the basic policy article of our constitution, we can find that although the constitution hasn't stimulated such practice, it hasn't forbid it either. The privatization of the police task can accord with the principles of the democratic, legal and social state so long as the reform can abide by the principle of reservation of law and strengthen the supervision by the government. Secondly, it also has legitimacy in the administrative law. There are many articles concerning to "the state and the society" in our administrative law system. And the privatization of the police task should be valid according to the interpretation of the principle of subsidiary and the theory of administrative process. Lastly, it still has its root in society. As far as the historic tradition of Chinese political and legal work is concerned, following the mass line is our lasting policy. And the problem of lacking of policemen arises along with the rapid development of the society. In order to fulfill the heavy police task, some local governments have to make use of the private section.

This paper also points out the legal limits of the participation of the private sector in the police task. Thus we cannot put the reform plan into practice immediately. As far as Chinese administrative law research is concerned, the participation of the private sector in the police task is still an unfulfilled topic.

Key Words: privatization, public order contract, participation of private section in police task, reform of governmental administration

Abstract: Punitive damages substantially impose a higher amount of damages than the compensatory one. However, the facial “extra compensation” operates virtually to compensate the victims as well as the society as a whole, for their intangible loss hidden behind the conspicuous actual damage. As is well accepted, one of the fundamental functions of punitive damages is compensation, by means of which the goals of both deterrence and retribution are well served.
Among several inherent chronic diseases of the stock market in China as well as in any other country, the worst and most hazardous is insider trading, which by depriving the other investors of their legitimate profits or shifting the tort-feasors’ imminent loss upon the other investors, exploits the general investors so severely as to unbalance the stock market, jeopardize not only the functions of fund collecting, capital asset pricing and capital disposing, but also the faith and incentive of the general investors. So grave is the intangible loss brought about by the insider trading that itself thereafter suffices the social damage, which is not adequately recognized and covered by both the traditional tort law theory and current law practice. The punitive damages can offer the most efficient and effective alternative to negate the impact brought by the threat of adversely substantiating the tortfeasor’s right to trample over the others, which couldn’t be more manifest in the cases of insider trading when the dominant tort-feasors exert their overwhelming influence upon the helpless general investors. To be specific, the victims are entitled to plead for damages as much as several times of the profit gained or the loss avoided by the insider traders. Only by this way can the law realign the balance, restore the order of the stock market, address the transaction security, promote the prosperity of the financial system, then eventually facilitate and protect the general investors.
Key Words: insider trading, punitive damages, damage compensation

Abstract: Article 16 is one of disputed issues in Chinese Company Law, and it is regarded as a norm about the conduct of corporate guarantee or investment in theory and practice. According to this view, whether the conduct of corporate guarantee or investment violating Article 16 is effective or not depends on the nature of this norm, that is, whether it is a compulsory norm or not. But this explanation is not in accord with the legislative purpose of Article 16. In fact, Article 16 concerns to the inner decision-making procedure of a company about the affair of corporate

guarantee or investment, rather than the conduct of guarantee or investment between a company and a third party. Accordingly, Article 16 is just the basis on which the effectiveness of the decision of the shareholders' meeting or the board of directors with respect to the affair of guarantee or investment should be decided. The decision that has violated item 1 of Article 16 is voidable due to its violation of the association of the company, and the decision that has violated item 2 of Article 16 is invalid because its violation of the company law.

The conduct of corporate guarantee or investment which violates the inner decision-making procedure provided by Article 16 is the act *ultra vires* in its nature. Its effectiveness should be determined according to Article 50 of the Contract Law. The fact of violating the provision of Article 16 may become an important basis on which whether the third party is bona fide or not should be judged. When the decision of the shareholders' meeting or the board of directors is revoked or confirmed to be invalid, the conduct of corporate guarantee or investment will still be effective except that the third party knows or ought to know the fact of *extra vires*.

Key Words: Article 16 of Chinese Company Law, corporate guarantee, corporate investment

Abstract: The duty to act should be determined by way of combining both the formalized examination based on law and the substantive examination based on substantive legal reasons. In the traditional classification of duties to act, the prior conduct is classified as a formalized duty under law (as the defendant of the omission offense is exact the actor commits the prior conduct), therefore, so long as the prior conducts are restricted substantially, certain prior conducts can establish the duty to act that entails criminal liability.

In China, the requirement of the "equal seriousness" of the omission and the commission by a positive act only means that an omission should also satisfy the constitutive requirements as prescribed by the criminal law. In the context of commission, the killing by a positive act is the cause of the death, and the defendant has control over such cause. Therefore, to establish an omission constitutes murder also requires the defendant has control over the cause of death. In this sense, it is right and acceptable to restrict the substantive requirement of a duty to act to the control over the cause. When the defendant commits a dangerous prior conduct and takes no positive measures to prevent the occurrence of the actual harm, he or she still has control over the cause. Specifically, if a prior conduct creates a source of danger to the legal interest protected by the criminal law, and the danger is so magnified that will be imminently materialized into actual harm without positive measures, the defendant has control over the cause of the actual harm.

Omissions, offenses with justificatory defenses, offenses of negligence and intentional offenses may all become the prior conduct which results in the duty to act. Dangerous prior conducts give rise to the duty to act not only for a derivative omission offense, but also for a non-typical genuine omission offense.

Key Words: offense of omission, duty to act, prior conduct

Abstract: Promoted by the methodology of natural science and the rationalism of science tool, motivated by constitutionalism, humanitarianism, market economy value, popularization of technology and education, penalty reform, etc., the doctrine of education-oriented penalty comes into being.

As a kind of foundational concept of penalty, the doctrine of education-oriented penalty has its given connotation, that is, education is regarded as the essence and objective of penalty and should be run through the whole process of criminal punishment. However, the existence of the doctrine cannot be equal to its due merit. According to the aforesaid claim, there is lots of insuperable puzzlement in theory.

The doctrine of education-oriented penalty is short of realistic ground all the same in China. One side, the centuries-old ceremony tradition is not its proper soil. Confucian orthodoxy pursues incrimination on the nature of the guilty rather than civilization based on subjective intention, so the criminal law insists on social safety and neglects personal freedom, thinks much of incriminating than out-crimination, pays much attention on deterrence and is remiss of education. On the other hand, the minor's especial protection cannot prove the reasonableness of the doctrine. As far as the theoretical criterion is concerned, the doctrine cannot be implemented from the beginning to the end. In the practical manipulation, the doctrine will probably overturn the relationship of "education at first, castigation secondly" on minor offenders.

The theoretical deficiency and practical quandary of the doctrine of education-oriented penalty can not deny the educative function of penalty. We should distinguish the educative function of penalty from the education-oriented penalty, which will help us survey the education rationally in penalty theory and practice and facilitate the educative function of penalty after this clarification.

Key Words: education-oriented penalty, essence of penalty, purpose of penalty, educative function of penalty

Abstract: In China, there is little serious discussion on the issue about the logical basis of the fact-finding course based on evidence. There are practical shortcomings in the traditional philosophy and logical theory of evidence and proof. That is, the facts of the case can never be obtained by precise logical reasoning, and the deductive and inductive reasoning of formal logic can not explain the fact-finding course by evidence reasonably. In fact, evidence can not be used to restore the truth, but can only provide support for certain hypotheses. In the judiciary, the method used to determine the facts is actually the so-called speculation in our daily language and psychology, whose logical form is abduction. As the third type of logical reasoning, this defeasible and contextual reasoning fits the logical form of the fact-finding proceedings.

Charles Sanders Peirce, the founder of American pragmatism, was the first philosopher to give abduction a logical form. Abduction is a reasoning process invoked to explain a puzzling observation. Unlike deduction or induction, it is a non-monotonic reasoning. This theory well

integrates the sharp distinction between the so-called “discovery” and “justification”.

The notion of abduction is a powerful tool for the analysis of legal evidence. Although not all the defeasible argumentations are abduction, the importance of abduction in legal evidence is not hard to understand. The theory of abduction will impact the traditional theory of evidence law. From this perspective, we will form a new understanding about a lot of concepts and issues such as the standard of proof and the burden of proof, the direct evidence and the circumstantial evidence, the primary-face proof and the fishing expedition, the presumption of fact and the rule of thumb. Only with the awareness and understanding of the nature of fact-finding as abduction, and with a clear recognition of its defects, can we argue and compare various hypotheses carefully and test them with comprehensive information to avoid mistakes.

Key Words: abduction, legal proof, logical reasoning, pragmatism

Abstract: From the condition of the development of the laws in the West Zhou Dynasty and the Chunqiu Period which The Book of Odes had reflected, we can find out that the Zhou people were provided with clear legal conceptions and strong legal consciousness. The majority of those various appellations to the laws of that time had gradually become the various appellations to the forms of the written laws in the later ages.

The dominant legal thought of holy and centralized monarchical power took shape from the development of the theory of Tianming and Tianfa in the Xia, Shang and Zhou Dynasties and had profound and lasting influence on the later ages. The ruler of the Zhou Dynasty put forward the theory of “advocating morals and applying penalty cautiously” and put the doctrine of “regarding the people as the basic of the country” into the legal system of the Zhou Dynasty, which at once affected the point of views of the legal system of the Confucian school and the Fajia school, and also became the source of the legal thought of “morals be chief and penalty be supplement” since the Han Dynasty. Depending on the guidance of the theory of comprehensive governance by Li, Yue, Politics and penal law, the West Zhou Dynasty realized the effective governance over the whole society.

The Book of Odes also reflected the legal systems in the West Zhou Dynasty from many angles and aspects. The West Zhou Dynasty had established a complete set of legal systems in compliance with the rule of Li. The abundant materials and examples in The Book of Odes had written footnotes for the developing history of the laws in the Zhou Dynasty.

Key Words: The Book of Odes, legal system of West Zhou and Chunqiu, Chinese history of legal though