《环球法律评论》2024年总目录

法理学、法律史学

法官责任的层次及展开 丁亮华 (第3期) 精神隐私可以成为新兴权利吗? 陈鲁夏 (第5期)

宪法学、行政法学、行政诉讼法学

全国人民代表大会兜底职权的界定 赖伟能 (第1期) 规范性文件附带审查制度的实效困境及化解路径 于 洋 (第1期) 行政协议显失公平规则的解释论重构 颜冬铌 (第1期) 论全国人大授权其常委会制定法律的基础和界限 钱 坤 (第2期) 行政法上信赖保护原则的具体化 王子晨 (第2期) "根本法"考论 王本存 (第3期) (第4期) 性质 王 锴 (第4期) 备案审查的制度变迁及其原因 林 彦 全国人大常委会《备案审查决定》的法律性质 论备案审查的效力 张 翔 (第4期) 论比例原则在备案审查中的展开 王 旭 (第4期) 宪法社会权的价值属性与规范定位 陈 征 (第5期) 法律关系在行政法上的功能定位与体系结构 赵 宏 (第5期) 我国行政诉讼继续确认判决论——基于最高人民法院相关判决展开 查云飞 (第6期)

民商法学、民事诉讼法学、知识产权法学

以公司自治为本源的认缴资本制的发展 邹海林 (第1期)公司减资规则的反思与重构 主毓莹 (第1期)未缴纳出资股权转让的责任规则构建 林一英 (第1期)功能主义视野下的董事勤勉义务 叶 林 (第1期)违约金调整的规则体系

- ——以《合同编通则解释》第 65 条为切入点 陈龙业 (第 2 期) 农村集体经济组织股权继承规则构建
- ——以反思现行地方试点模式为切入点 肖新喜 (第2期) 我国创设软件版权侵权"开源抗辩"之质疑
- ——兼评"未来案"和"亿邦案" 张韬略 (第2期) 提高损害赔偿数额能否威慑专利侵权?
- ——基于 19596 份裁判文书的实证分析 边仁君 (第 2 期) 论和解协议与原合同之间的关系 王利明 (第 3 期) 我国侵权法上"相应的责任"的体系解释 程 啸 (第 3 期) 离婚诉讼中儿童最大利益的实现层次与规则完善 张爱桐 (第 3 期) 著作权法上单纯获酬权的制度逻辑与规范构造 朱 冬 (第 3 期) 论知识产权懈怠抗辩引入的必要性与规则构建 戴 哲 (第 3 期) 职务代理权行使超越职权限制的效果归属 朱广新 (第 4 期) 论股东回购请求权对利益冲突交易之规制功能 曾 思 (第 4 期)

公司利益相关者保护的务实路径:重申股东至上原则 邹星光 (第4期) 案例群方法的重构 雷槟硕 (第5期) 有限公司中的强制购买股权

——以《公司法》第89条第3款为中心 徐方亮 (第5期) 形成诉权行使方式的反思与重构 宋史超 (第5期) 预约亦约:缔约协议的法解释论 韩世远 (第6期) 合同违法无效规则中行为规范与权限规范的区分

——以《合同编通则解释》第18条为中心 易 军 (第6期) 不当得利法的体系重构——兼论合同无效、撤销后的法律效果 许德风 (第6期) 商标混淆判断要件的功能定位及考察方法 许 清 (第6期)

经济法学、社会法学

我国长期护理社会保险的保障范围及其规则构造 谢冰清 (第1期) 法治与德国福利国家的发展 [德] 理查德·吉森 (第2期) 论慈善法中的公益——从"二要素说"到"四阶层说" 吕 鑫 (第2期) 《欧盟人工智能法案》的背景、主要内容与评价

- ——兼论该法案对劳动法的影响 [德]沃尔夫冈·多伊普勒 (第3期) "不完全劳动关系"的合同性质与从业者的相对性保护
- ——以法律适用的"二分法"及"三分法"为分析视角 田思路 (第5期) 劳动法对生产率、就业和失业及劳动收入份额的影响
- ——基于剑桥 Leximetric 数据库的新证据 「英」西蒙·迪肯 「伊朗」卡德利亚·普尔克曼尼 第6期)

刑法学、刑事诉讼法学

重构正当防卫的法理基础 徐万龙 (第1期)

论假释实质条件的合目的性解释 曾文科 (第1期)

论诈骗罪中的财产处分行为——处分意识不要说之提倡 王 静 (第1期)

刑事证据抽样分析的理论阐释与实践方法 罗维鹏 (第1期)

双层区分制的理论反思与共犯体系模型的再建构 杨建民 (第2期)

论刑事诉讼中的程序特别与特别程序 蔡元培 (第2期)

比较法视野下程序出罪的功能与结构 吴 桐 (第2期)

非法实物证据排除的模式重构 杨 焘 (第2期)

刑法教义学中的当然推理 陈兴良 (第3期)

生活主义刑法观的价值立场与方法构造 焦艳鹏 (第3期)

重申刑法谦抑主义——兼对反思论的辩驳 石聚航 (第3期)

事后不可罚行为与自洗钱入罪的规范适用 陈 伟 (第3期)

刑事诉讼中被告人最后陈述权的保障 韩 旭 (第3期)

概念的误区与辨正:从"刑事合规"到"刑事适法" 左卫民 (第4期)

论集体法益向个人法益的比例还原 欧阳本祺 (第4期)

洗钱罪目的犯属性证成与司法认定 时 方 (第4期)

同一数据在诉讼程序转化后的使用限制及证成 李 倩 (第4期)

行贿罪与受贿罪的关系 张明楷 (第5期)

行贿罪特殊从宽情节研究 孙国祥 (第5期)

自动驾驶汽车交通肇事的刑法归责 魏 超 (第5期)

共同犯罪归责的社会功能进路

- ——以京特·雅各布斯的共同犯罪理论为切入点 王志坤 (第5期) 两种概括故意概念的区分与适用
- ——以《刑事审判参考》第 1243 号指导案例为切入点 汪雪城 (第 6 期) 环境犯罪保护法益的再识别 戴小强 (第 6 期) 行贿罪从重处罚情节的规范适用
- ——兼论个罪从重处罚情节的功能定位 姜 涛 (第6期) "缠扰行为"刑法规制的域外实践和中国路径 姜 敏 (第6期)

国际法学

非 ICSID 投资条约仲裁司法审查的困境及其应对

--以法院对投资条约的解释与适用为视角 芳 (第1期) 肖 提单管辖条款的法律效力:实践审视与规则续造 荆 鸣 (第2期) 全球治理区域转向视域下国际法发展的新趋势及中国因应 杨泽伟 数字贸易协定中的源代码规制与中国因应 黄世席 (第4期) 论外国中央银行资产的国家豁免与其他国家的没收和集体反措施 李庆明 (第5期) 欧盟干预内部投资仲裁的国际法批判与中国因应 黄丽萍 国际投资法中的社会许可问题与中国因应 张金矜 (第6期) 中国知识产权法域外效力的理论阐释与实现进路 (第6期)

COMPOSITE TABLE OF CONTENTS: 2024

JURISPRUDENCE, LEGAL HISTORY

Analysis of the Hierarchy of Judges' Responsibility Ding Lianghua (No.3) Can Mental Privacy Become an Emerging Right? Chen Luxia (No.5)

CONSTITUTIONAL LAW, ADMINISTRATIVE LAW, ADMINISTRATIVE PROCEDURE LAW

Definition of the Miscellaneous Provision in the Chinese Constitution on the Powers of the National People's Congress Lai Weineng (No.1)

The Effectiveness Dilemma of Incidental Review of Regulatory Documents and the Way Out Yu Yang (No.1)

The Reinterpretation of the Unconscionability of Administrative Agreements Yan Dongni (No.1)

The Basis and Limit of the Power of the National People's Congress to Authorize its Standing Committee to Enact Laws Qian Kun (No.2)

The Concretization of the Principle of Reliance Protection in Administrative Law Wang Zichen (No.2)

On Fundamental Law Wang Bencun (No.3)

The Evolution of the Recordation Review System and Its Causes Lin Yan (No.4)

The Legal Nature of the Decision of the Standing Committee of the National People's Congress on Improving and Strengthening the Recordation Review System Wang Kai (No.4)

The Effect of Recordation Review Zhang Xiang (No.4)

Elaboration of the Principle of Proportionality in Recordation Review Wang Xu (No.4) The Value Attributes and Normative Positioning of Constitutional Social Rights

Chen Zheng (No.5)

Functional Position and Systemic Structure of Legal Relations in Administrative Law Zhao Hong (No.5)

Theory of Continued Confirmation of Judgments in Administrative Litigation in China - Based on Relevant Judgements of the Supreme People's Court Zha Yunfei (No.6)

CIVIL AND COMMERCIAL LAW, CIVIL PROCEDURE LAW, INTELLECTUAL PROPERTY LAW

Developments of the Subscribed Capital System Based on Corporate Autonomy under the New Company Law of China Zou Hailin (No.1)

Rethinking and Restructuring Corporate Capital Reduction Rules Wang Yuying (No.1)

Responsibility for the Transferred Equity of Unpaid Contributions Lin Yiying (No.1)

Directors' Duty of Diligence from a Functionalist Perspective Ye Lin (No.1)

The System of Rules on the Adjustment of Liquidated Damages - Taking Article 65 of the Interpretation of the General Provisions of the Contract Law in the Civil Code as the Starting Point Chen Longye (No.2)

The Construction of Equity Inheritance Rules for Rural Collective Economic Organizations - Taking the Current Local Pilot Models as a Point of Reflection Xiao Xinxi (No.2)

The Infeasibility of Creating an Open Source Defense in Software Copyright Infringement Litigations in China - Also a Commentary on Weilai Case and Yibang Case Zhang Taolue (No.2) Can Increased Damages Deter Patent Infringement? - An Empirical Study of 19,596 Judgments Bian Renjun (No.2)

Relationship between the Settlement Agreement and the Original Contract Wang Liming (No.3)

Systematic Interpretation of the "Corresponding Lability" in the Chinese Tort Liability Law Cheng Xiao (No.3)

The Criterion and Improvement of Rules of the Best Interests of the Child in the Trial of Divorce Cases Zhang Aitong (No.3)

Pure Remuneration Right in Copyright Law - Institutional Logic and Normative Structure Zhu Dong (No.3)

The Necessity of Introducing Intellectual Property Laches Defense and the Construction of Its Rule Dai Zhe (No.3)

The Effect Attribution of Exercising the Authority of Duty Agency beyond the Restrictions of Authority Zhu Guangxin (No.4)

Regulating Conflict-of-Interest Transactions through Share Buyback Rights Zeng Si (No.4) Pragmatic Approaches to Corporate Stakeholder Protection: Reiterating Shareholder Primacy Zou Xingguang (No.4)

Reconstruction of the Case Group Method Lei Binshuo (No.5)

Compulsory Acquisition of Shares in Limited Liability Company: An Analysis of Article 89 (3) of the Chinese Company Law Xu Fangliang (No.5)

Rethinking and Reconstructing the Way of Exercising the Formative Action Right Song Shichao (No.5)

Preliminary Agreement as a Contract: An Interpretive Analysis Han Shiyuan (No.6)

The Distinction between Mandatory Rules and Enabling Rules in the Rule of Invalidity of Illegal Contract - Centered on Article 18 of the Judicial Interpretation of the General Provisions of the Book on Contract of the Civil Code Yi Jun (No.6)

Reconstructing the Framework of Unjust Enrichment Law: A Discussion on the Legal Effects of Failed Contract Xu Defeng (No.6)

The Functional Positioning of and Examination Approaches to Elements of Trademark Confusion Xu Qing (No.6)

ECONOMIC LAW, SOCIAL LAW

The Coverage of Social Insurance for Long-Term Care in China and Its Legal Construction Xie Bingqing (No.1)

The Rule of Law and the German Welfare State Richard Giesen (No.2)

Public Benefit in the Chinese Charity Law - From the "Two-element Theory" to the "Four-tier Theory" Lyu Xin (No.2)

Background, Main Contents, and Evaluation of the EU Artificial Intelligence Act - Also on Its Implications for Labor Law Wolfgang Däubler (No.3)

The Contractual Nature of "Incomplete Labor Relationship" and the Relative Protection of Workers - From the Analytical Perspective of the "Dichotomy" and "Trichotomy" of Law Application Tian Silu (No.5)

The Effects of Labour Laws on Productivity, Employment, Unemployment and the Labour Share of National Income: Analysis of New Evidence from the Cambridge Leximetric Database Simon Deakin & Kamelia Pourkermani (No.6)

CRIMINAL LAW, CRIMINAL PROCEDURE LAW

Reconstructing the Jurisprudential Basis of Self-Defense Xu Wanlong (No.1)

The Purposive Interpretation of Substantive Conditions for Parole Zeng Wenke (No.1)

Property Disposition in the Crime of Fraud - A Case for the Doctrine of Unnecessity of Disposition Consciousness Wang Jing (No.1)

Theoretical Interpretation and Practical Method of Sampling Analysis of Criminal Evidence Luo Weipeng (No.1)

Reflections on the Theory of the Two-layer Distinction System and Reconstruction of the Accomplice System Yang Jianmin (No.2)

Procedure Specialization and Special Procedures in the Criminal Procedure Cai Yuanpei (No.2)

The Functions and Structures of Procedural Non-Prosecution from a Comparative Law Perspective Wu Tong (No.2)

The Model Reconstruction of Exclusion of Illegal Real Evidence Yang Tao (No.2)

Ex Officio Reasoning in Dogmatics of the Criminal Law Chen Xingliang (No.3)

The Value Position and Method Construction of Life-Oriented Criminal Law View Jiao Yanpeng (No.3)

Reaffirming the Doctrine of Modesty of Criminal Law - Also a Refutation of the Reflection Theory Shi Juhang (No.3)

Doctrinal Analysis of Post-Event Unpunishable Behavior and Criminalization of Self-Money Laundering Chen Wei (No.3)

Guaranteeing the Defendant's Right to a Final Statement in Criminal Procedure Han Xu (No.3)

Conceptual Misunderstanding and Correction: from "Compliance with Criminal Norms" to "Compliance with Criminal Law" Zuo Weimin (No.4)

On the Proportional Reduction of Collective Legal Interests to Individual Legal Interests Ouyang Benqi (No.4)

Argumentation on and Judicial Determination of the Attribute of the Purpose Crime of Money Laundering Shi Fang (No.4)

Use Restrictions and Certification of the Same Data after Transformation of Proceedings Li Qian (No.4)

The Relationship between the Crime of Offering Bribes and the Crime of Taking Bribes Zhang Mingkai (No.5)

Research on the Special Mitigating Circumstances of Bribery Crimes Sun Guoxiang (No.5) Criminal Liability for Traffic Accidents Caused by Autonomous Vehicles Wei Chao (No.5) The Social Functional Approach to the Imputation of Complicity - Taking Günther Jakobs's Complicity Theory as the Entry Point Wang Zhikun (No.5)

The Distinction between and Application of Two Types of General Intent - Taking Guiding Case No.1243 of the Reference to Criminal Trial as the Starting Point Wang Xuecheng (No.6)

Re-identification of the Protected Legal Interest of Environmental Crunes Dai Xiaoqiang (No.6)

Standardized Application of Aggravating Circumstances to Bribery Crimes: Also on the Functional Orientation of Aggravating Circumstances in Individual Crimes Jiang Tao (No.6)

Foreign Practice of and Chinese Path to the Prohibition of Stalking by Criminal Law Jiang Min (No.6)

INTERNATIONAL LAW

The Dilemma in Judicial Review of Non-ICSID Investment Treaty Arbitration and Response Thereto: From the Perspective of Treaty Interpretation and Application by Courts Xiao Fang (No.1)

The Legal Effect of Jurisdictional Provisions on Bill of Lading - Practical Examinations and Rule Continuation Jing Ming (No.2)

New Trends in the Development of International Law and China's Response against the Background of Regional Shift in Global Governance Yang Zewei (No.4)

The Regulation of Source Codes in Digital Trade Agreements and China's Response Huang Shixi (No.4)

On the State Immunity of Foreign Central Bank Assets and Confiscation and Collective Countermeasures by the Other States Li Qingming (No.5)

An International Law Critique of EU Interventions in Intra-EU Investment Arbitrations and Solutions from a Chinese Perspective Huang Liping (No.5)

Social License Issues in International Investment Law and China's Response Zhang Jinjin (No.6)

Theoretical Interpretation of and Realistic Path to the Extraterritorial Effect of China's Intellectual Property Law Liu Yunkai (No.6)