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Abstract: The compound case-decision mode of multi-subject and multi-hierarchy within the People's court has hindered the collective advantage of the court as the subject of adjudication in the reality of the trial activities. The most important contemporary task with regard to the Chinese court reform is concerned with the achievement of various goals such as the proper allocation of powers to internal subjects and different hierarchies, the appropriate determination of the roles and functions of different subjects and hierarchies in the trial activities, and the establishment of the court adjudicative mechanism corresponding to the objective laws and requirements of adjudication and the present conditions of the courts.

Explorations have been made by C Intermediate Court with regard to the allocation of powers, the supervision of the adjudicative process, the supervision and guidance of the dynamic trial activities, the estimation and examination of the trial performance, and the introduction and exploitation of information technology. Such explorations aim at the establishment of the internal operative mechanism with the characteristics of "clear power allocation, determinate roles of different subjects, proper supervision and control, optimal resource allocation, transparent trial proceedings, effective internal process, rationally oriented guidelines and comprehensive technological support". Due to the significance of the construction of the internal operative mechanism of adjudication to the micro-foundation of the judicial system with Chinese characteristics and the normalization and renovation of the court activities, the explorations and practice of C Intermediate Court may provide beneficial implications in terms of the renovation and development of other judicial organs.

Key Words: court reform, operative mechanism of adjudication, administration of adjudication, allocation of trial powers

Abstract: Trial management is the organization, coordination and supervision of trial activities. Presently, the strengthening of trial management has several characteristics, that is, the strengthening of trial management organizations and measures, the improvement of the strictness and elaboration in management, the establishment of information platform and full exploitation of technological approaches, and the strengthening of administrative elements in management activities and its pervasion into trial activities. Such a situation results from both the macro-background of state management and the needs of

the court system itself. The positive side of this situation is that it can guarantee the fairness, efficiency and probity in trial and the unity of justice. However, it may also deprive personal experience in trial and hinder independence of judgment, thus affect the quality of decision. Moreover, it may cause unrighteous trial and trial management, suppress the initiative and sense of responsibility of trial personnel, and bring about some kind of “route-reliance” and a vicious circle.

From a relatively reasonable angle of view, the targets of judicial improvement should be based on the law of justice. For this purpose, we should seek common sense of judicial improvement in the“trial logic”. We should attach importance to the allocation of trial resources, strengthen basic awareness so as not to put the cart before the horse, and keep promoting court reform according to the law of justice. To find a relatively reasonable boundary between the power to adjudicate and the power of trial management, and to realize appropriate interaction between them, we should be aware that trail management should not interfere with the power to adjudicate, limit and regulate the interference in the substantial handling of cases by the trail management power, and handle correctly the method of and limits on performance appraisal.

Key Words: trial management, power to adjudicate, law of justice, relative reasonableness

Abstract: China is a nation with a strong moral atmosphere, thus the morality of judicature is evitable and needs to be taken seriously. In some cases with ethic factors, one of the important standards to evaluate the social effect of a judgment is whether the judge has a clear awareness of these ethic factors and responds correctly to the moral demands of the mass. But after all, the acceptability of a judgment has to be confirmed in both moral community and legal community. For that purpose, judges must use adjudicatory techniques and follow some principles of judicial methodology to mitigate the inherent tension between law and moral.

From the view of legal methodology, morality of judicature can be analyzed and tested in the following four perspectives. Firstly, judges should actively find moral demands incorporated in the legal rules when applying them, and use purposive interpretation and natural law interpretation to deliver the moral implication of the legislators to the case. Secondly, judges might declare the moral meaning of the legal system by way of adjudication according to principles, when legal rules are not adequate in hard cases. Methodological constraint is necessary to eschew subjectivity and over-moralization because the legal principles are too general and vague. Thirdly, when weighing different values, judges should take the mainstream moral ideas in the society as an objective basis and apply them in a balanced way to avoid value suppression. Lastly, adjudication with conscience ought to be permitted because judges’ self-consciences play an important role in complementing the inadequacies of the law, keeping the law to be obeyed properly, guiding the judges into the social value, and correcting the absurdity in the legal rules. Meanwhile, the adjudication with conscience should also be exercised in a regulated way.

Key Words: morality of judicature, rule application, adjudication according to principle, adjudication with conscience

Abstract: From the perspective of functionalism, the case-guiding system in China may be classified into the system of precedent in a broad sense. The formation and selection of our guiding cases mainly depend on the extra-judicial power of the Supreme People's Court, which are not rested on the judicial hierarchy and do not follow the approach of the general formalism. In order to promote the case-guiding system, the trial instance jurisdiction should be reformed accordingly, and the judicial function of the Supreme People's Court should be strengthened, while the legislative function reduced.

The Supreme People's Court and the Superior People's Court should have the power to select and set guiding cases from those decided by themselves. The standard of selecting guiding cases should be specific and flexible rather than general. A judge or the panel of judges who preside over the case should be granted the preliminary power to select guiding cases, so the case-load will be decreased, the efficiency will be promoted, and judges will be able to spend more time and efforts to write the opinions of guiding cases. It is impossible for a precedent to be followed virtually without being followed formally. Our case-guiding system should allow judges to cite guiding cases directly in their opinions, because without the formal requirement of direct citation, those guiding cases published by the Supreme People's Court will never be accepted as guiding ones in the sense of precedents.

The system of precedent is closely connected with and mutually decided by the whole judicial system, even the whole legal system. The case-guiding system in China, however, intentionally distances itself from a series of judicial system, such as the court system, the trial instance jurisdiction, the professionalization and independence of judges, so the actual effect of guiding cases could be doubted. The perfection of the case-guiding system in China should be joined with the judicial reform, and both the system and the reform will be promoted mutually and reciprocally.

Key Words: case-guiding system, system of precedent, formation of precedent, selection of precedent

Abstract: The pleasures of life due to wealth on the one hand reflect the primitive feelings of human beings, on the other hand, they reveal a fundamental issue of property theories. The capacity of property determines the eligibilities of the persons and legal entities to conduct some actions, while the acquisition, use of and limitation to the power of property lay down the foundations of property regime. If we look at the emotional values of wealth, the pleasures of life due to wealth may include a pleasure of possession, a pleasure of gain and a pleasure of exploitation. The pleasure of possession expresses the individual's

emotions about property rights serving the purpose to delineate the boundary of property rights. The pleasure of gain achieves the individual's value over their acquiring and enjoying the power accrued from property. The pleasure of exploitation is built on the capacity of property and materializes the social significance of property rights.

Nowadays, the social responsibilities attached to the property rights have been emphasized, and at the same time we can see the switch of the property regime from the primitive semi-commons to several and joint ownership, joint ownership, condominium ownership, the scheme of recognizing the manager's entitlements, and so on. The system of jus in re aliena has been redesigned and is fully fledged with more diverse types of rights. Besides the traditional usufructuary right and right of pledge, lease, loan and transfer of intellectual achievements have been utilizing the property concept to ensure the social demands and needs met and the industrial innovation continue. Only based on these values can property rights function as the instrument of the public policy, which could result in both the individual happiness and the social welfare growth.

Key Words: property right, emotional value, a pleasure of possession, a pleasure of gain, a pleasure of exploitation

Abstract: To implement WIPO Copyright Treaty, China and many other countries have amended the copyright law to protect both the "access control measures" which restrict unauthorized access to literal, artistic works or computer programs, and the "copyright protection measures" which prevent unauthorized reproduction, transmission or other infringing activities. The protection of the "copyright protection measures" by the copyright law is easy to be justified since this type of technological measure is a means to protect copyrights. However, unauthorized access to copyrighted works, including reading or watching pirated novels or movies, does not infringe the copyright, so the effect of the "access control measures" is not to protect copyrights. Therefore, the justification for protecting the "access control measures" by the copyright law becomes a highly controversial issue.

One explanation bases the justification on the view that the "access control measures" can directly protect the exclusive right of reproduction by restricting temporary copying and the so-called exclusive "right of access" by restricting unauthorized access to works. This explanation is not well grounded since the "access control measures" cannot protect the right of reproduction in a country such as China where the temporary copying is not covered by the right of reproduction, and the hypothetical "right of access" does not actually exist in the copyright law. Another argument is that the "access control measures" have the effect of indirectly preventing copyright infringement by restricting access to works. But the fact is that only very limited number of "access control measures" can protect copyrights indirectly.

This paper proposes that the justification for the copyright law to protect the "access control measures" arises from the fact that the measures can safeguard copyright owners' legitimate interests recognized by the copyright law, i.e., to receive

financial benefit from others' exploitation of the works. In accordance with this theory, if an "access control measure" does not safeguard such legitimate interests, it should not be protected by copyright law.

Key Words: technological measure, access control measure, copyright protection measure, right of access

Abstract: Chinese legal theorists and practitioners have some suggestions for the establishment of a system that distinguishes between the protection of rights and the protection of interests, but the Chinese legal field still lacks in-depth research on how to distinguish between rights and interests in the tort law. The existing discussion only argues for the necessity of such distinction, but there has been few discussion of how such distinction could be feasibly implemented, so the current theories have little power.

The German civil law offers three legal criteria for the distinction between rights and interests. Rights in the tort law should have the "allocation function", the "exclusion function" and the "typical social obviousness". The core of the "allocation function" is to assign a certain interest to a certain subject, while the center of the "exclusion function" is to exclude all the unlawful interference from others. Moreover, the "typical social obviousness" is to make general subjects have the general possibility of identifying the objects of interest, thus takes into account the freedom to act of the potential infringers. Those which satisfy the three criteria concurrently are rights in tort law, otherwise they are interests.

With tort law weighted towards protecting the rights and interests of the victim, the judges begin to tend to interpret some interests (pure economical interests) as rights, where the claimants are few in number and clearly defined, so as to produce more and convenient bases for claims. This has blurred in some instances the three doctrinal criteria discussed above. At this point, we should apply the perspective of legal policy to remedy and bolster the explanatory power of legal doctrine.

Key Words: tort law, right, interest, legal doctrine, legal policy

Abstract: "Ascertaining the Facts & Discerning between Right and Wrong" is one of the principles guiding the court mediation in the Chinese Civil Litigation Law, which is established to guarantee the impartiality of the court mediation. But

nowadays, the principle is challenged severely by the civil litigation theory and practice field and the voice to eliminate the principle is growing louder.

However, the principle has profound theoretical foundations. The court mediation, which is different in nature from conciliation, is one of the main patterns of the court executing its civil judicial authority. The legislature has provided that mediation and judgment are both the patterns for the court to accomplish the tasks provided by the Civil Litigation Law. The parties' expectation of justice, the mediation being based on judgment, mediation being part of the civil litigation procedure, and the potential compulsory nature implied in the system of the unification of mediation and judgment have provided sufficient theoretical foundations for this principle.

This principle is also supported by sufficient practical foundations. Only by conforming to this principle, can the court mediation be correctly directed and the result of the mediation be impartial and acceptable. Otherwise, the court mediation will be deviated from the right way and as a result, opportunist and unprincipled mediation will prevail. The history has proved repeatedly this conclusion from the Revolutionary Base Area mediation system to the current mediation system.

In litigation practice, the courts have mediated successfully certain types of cases and even those cases in which the facts cannot be ascertained, and some courts have adopted interim filing mediation. But these phenomena cannot constitute the reasons to negate or eliminate this principle. So far as the court mediation is not deconstructed and rebuilt into conciliation in civil litigation, the principle should still be insisted on in order to guarantee the impartiality of the court mediation.

Key Words: court mediation, to ascertain the facts, to discern between right and wrong, trial act, judicial justice

Abstract： In general, the Eighth Amendment of the Criminal Law of China on the one hand made modifications for the purpose of decreasing and restricting the use of the death penalty, regulating the crime-penalty structure and adjusting the criminal penalty system, which has made the criminal law system and the crime-penalty regulation more reasonable in formality. Those modifications in some sense accord with the worldwide trend of moderate criminal penalty and the progress of the rule of law. On the other hand, the Amendment responds effectively both to the domestic situation and the voices of the general public in a transformed society. It also expresses the expectations of the authority and the mainstream public opinion for the functions that the criminal law serves, and reflects the social fundamental collective moral feelings. Therefore, the promulgation of the Amendment aroused the criticism from the academic society. They thought the criminal law should be more rational rather than simply follow the populism.

Practically speaking, a modern society with highly complexity puts heavier burden on the law. A so-called legal issue may not be a pure one, yet other aspects of the social life may be involved in it. And so does legislation. The reform on legal system always takes place after the changes of the society and the collective living conditions. Therefore, to have an overall picture of the Amendment, it is more effective to take a dimensional vision, not only from the legal and logical aspect, but also from legal sociology, social psychology, legal economics and other aspects. Thus, it is possible to have a constructive reading on the said Amendment and the ideology that governs the Criminal Law of China.

Key Words: amendment of the criminal law, public recognition, expectation for function, moral bearing of the law, dimensional vision

Abstract: Compulsory investigation measures can be implemented directly by investigation agencies without the voluntary cooperation of the relative persons. As necessary and important tools to expose and punish the crimes, the compulsory investigation measures have legitimacy, but still have the disadvantage of infringing the basic rights of citizens. To avoid or alleviate this disadvantage, legislation should be enacted to regulate these measures, the principles and procedures to apply these measures should be set and the legal supervision over these measures should be strengthened.

In China, the current legal regulation of compulsory investigation measures suffers severe weakness, and for many measures there exist no laws for regulation. Accordingly, the legal supervision over compulsory investigation measures is limited to the compulsory measures such as arrest, and the effective supervision mechanism regarding many other compulsory investigation measures such as search, seizure and freezing has not been established yet. The legislation of compulsory investigation measures lags seriously, making the non-normative application possible and the prosecution agency get into the trouble of having no laws to follow. In order to strengthen the legal supervision over compulsory investigation measures, we should improve the normative system through legislation, reform the prosecution agency and optimize the investigation supervision working mechanism. That is, we should set up and improve the judicial review system, the record censorship system, the prosecution guiding investigation system and the citizen complaint system, so as to elevate the strength and actual effectiveness of the supervision over compulsory investigation measures.

Key Words: criminal investigation, compulsory investigation measure, legal regulation, legal supervision

Abstract: With the gradual deepening of China's judicial reform, the revision of Chinese Criminal Procedure Law is on going. It is necessary to reform the existing public prosecution system to make the criminal prosecution ruled by the law further. The reform of our public prosecution system must have the following three important aspects.

Firstly, the exclusionary rule should be put into practice. In the process of examination and prosecution, the establishment of the exclusionary procedure has an important effect on improving the value of procedural justice, eliminating the illegal evidence from the trial process, and avoiding the occurrence of miscarriages of justice. It is an important feature of Chinese prosecution system that the procuratorial organ has a duty to exclude illegal evidence in the process of examination and prosecution.

Secondly, the conditional non-prosecution system should be established. Compared to the doctrine of prosecutive discretion, the doctrine of conditional non-prosecution is more important and favored by many countries and districts. It should also be recognized by the revision of the Criminal Procedure Law to carry out the criminal policy of tempering justice with mercy, maintain the modesty of the criminal law, reflect the economy of litigation, and promote social harmony and stability. Legislation should confirm reasonably the scope and the test period of the conditional non-prosecution system.

Thirdly, the sentencing suggestion system should be created. As an important part of the prosecution system, the sentencing suggestion system has considerable universality in today's criminal justice practice in the world and should also be adopted by our country. It helps to achieve the justice of sentence and the effectiveness of defense, and can improve the efficiency, capacity and level of public prosecution. We must build a scientific and feasible operative mechanism to make sure the sentencing suggestion system, an innovative reform initiative, has maximum effect in the administration of justice.

Key Words: reform of the public prosecution system, the exclusion of illegal evidence, conditional non-prosecution, sentencing suggestion

Abstract: The Southern and Northern Dynasties are an important period for the development of ancient Chinese legal system. However, the research on the legal system of the Southern Dynasties before is very limited and underestimates its accomplishment. This paper aims to analyze the codifying style and layout, the important institutional innovations and the impact of the legal system of the Southern Dynasties.

In general, the Southern Dynasties inherited the content and style of laws and decrees of the Jin Dynasty. However, the Liu-Song Dynasty and later dynasties amended the legal system of the Jin Dynasty, and made a series of new laws and decrees. Laws and decrees of the Liang Dynasty achieved important innovations in the codifying style and layout. It is particularly worth noting that, laws and decrees of the Liang Dynasty created a precedent for the application of 30 chapters (juan) in codification

by cutting out and amending the chapters of the decrees of the Jin Dynasty, and unified the annotations by Zhang and Du of the laws of the Jin Dynasty. The Liang Dynasty and the Chen Dynasty also made many innovations in important institutions.

The legal system of the Southern Dynasties had a profound influence on the legal system of the Northern Zhou Dynasty and the Sui-Tang Dynasties, and became one of the main origins of the legal system of the Sui-Tang Dynasties. However, since the Tang Dynasty, the academic circle gave it a low appraisal, especially in the modern history. This paper holds that, whether its content is brief or not cannot be the only standard to estimate a code. The codes of the Southern Dynasties are not inferior to the ones of the Northern Dynasties in the degree of civilization, codifying style and layout, important institution innovations and impact on later legal system. Therefore, the popular view that the Northern Dynasties are superior to the Southern Dynasties in the legal system does not accord with historical facts and cannot be held on.

Key Words: legal system of the Southern Dynasties, laws and decrees of the Liang Dynasty, laws and decrees of the Northern Qi Dynasty, laws and decrees of the Chen Dynasty

Abstract: The humanization of international law means that the international community should not only concern the economic development and the growth of social welfare brought by transnational economic exchanges, but also pay attention to the environmental problems and human rights issues caused by economic activities. Whether from the perspective of substantive law or procedural law, most international investment treaties can’t meet the needs of humanization.

From the perspective of substantive law, the investment treatment clauses and the expropriation clauses are designed obscurely and it is very easy for investors to interpret these clauses very broadly. This constitutes a serious threat to the exercise of legislative, judicial and administrative power of host countries in the field of human rights protection and environment protection. It can even produce “chilling effect” on the future legislation of host countries.

From the perspective of procedural law, the investment arbitration system under the current investment treaties has many obvious defects, and host countries have to face more and more economic cost and risks because of the more and more arbitration cases. The citizens of host countries can’t protect their interests in the field of human rights and environment rights through the current dispute settlement mechanism and the legitimacy crisis of the investment arbitration system is becoming more and more prominent.

Therefore, reform is urgently needed and some reforms have been adopted in some countries in the field of international investment law. The tendency of international investment treaties which shows partiality for investors and ignores the

jurisdiction of host countries and the social values associated with the international investment should be changed. Strengthening the social responsibility of international investors, and giving the governments of host countries and their citizens the chances and rights to call the multinational corporations to account for their social responsibilities directly according to the international law will be important contents of the innovation of the international investment law in the future.

Key Words: humanization of international law, environment protection, human rights protection, international investment law, international investment treaty