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Abstract: The coverage and protection of constitutional rights are logically different questions. Only when the conduct of individual falls within the coverage of constitutional rights, then the question whether the conduct is protected by the constitutional law arises. Thus, delineating the coverage of constitutional right is the threshold question implicit in every constitutional right case.

There is an inverse relation between the coverage of constitutional right and its protection, that is, the less limited range of the coverage, the less protection awarded by the constitution, and the more limited range of the coverage, the more protection by the constitution. Because free speech is broader than criticism in ordinary meaning, the coverage of § 35 (free speech) of Chinese Constitution is broader than that of § 41 (supervision right). Thus the constitutional protection of supervision right is higher than that of free speech.

With the different protective degree for free speech and supervision right, the limitation on governmental discretion also differs. To limit supervision right which is highly protected, the exercise of governmental power must provide more compelling justification than to limit freedom of speech. The higher protection of supervision right embodies the purpose and intention of the framers of Chinese Constitution, that is, the expectation of democratic supervision and the confidence in democratic construction, which is the outstanding characteristic of socialist constitution.

Key Words: constitutional right, freedom of speech, supervision right

Abstract: As the non-professional judge participating in the trial, the people's assessor system has suddenly entered into a period of strong recovery since 1998 when the judicial professionalization heated up in China. From the perspective of Sociology of law, emerging, transforming and declining of the legal system always depend on the relationship between its potential functions, social requirements and social environments. Accordingly, this paper provides a positive study on the recovery and practices of people's assessor system, which finds that the recovery of this system maybe the product of various social needs, bearing many expectations such as supervising judges, promoting judicial justice and advancing judicial authority. However, under the influences of formal and informal power structures in the judicial process, people's assessor always could not effectively participate in the judicial decision-making. Therefore, in contemporary judicial practices, the people's assessors mainly act as human resource supplement, mediator and knowledge supplier in special cases, and other expectations are unaffordable for them.

Those roles undertaken by the people's assessors are out of the expectations of the institution designers and the common people, which may be called as "function dissimilation". Future reform efforts should be made to achieve "function differentiation". On the one hand, the importance of people's assessors' current role in special cases and minor cases ought to be advanced. On the other hand, it is necessary to enhance the people's assessors' representation and ensure they can play a practical role in important cases.

Key Words: people's assessor, practical effect of people's assessor system, reform of people's assessor system

Abstract: If we take the roles of administrative agencies, stakeholders, experts and the general public as the variables, we can type the risk governance mode of food safety as the mode of top-to-down and the mode of mutual cooperation. The traditional risk governance mode of food safety in China is the top-to-down mode, and the promulgation and implementation of the Food Safety Law further enhances this mode. In the face of frequent incidents of food safety nowadays in China, this mode has been plunged into a crisis of legitimacy. As the mutual cooperation mode is not only held up by the concepts of political philosophy, the contemporary public theories and the foreign experiences of food safety risk governance, but also consistent with the requirement of

an appropriate balance between ration and emotion and between science and democracy which is determined by the dual attributes of food safety risk, the mutual cooperation mode hits the heart of the problems of current food safety risk governance in China.

The institution framework of the mutual cooperation mode is composed by the core systems, the support systems and the technical ones. The core systems include the consultative participation system, the multilateral risk assessment coordination committee system, the food safety risk communication system, the participatory risk management system and the motion system. The supporting systems include the multi-centered information publicity system and the accountability system. And the technical systems include the consensus meeting among the representatives of the general public, the expert seminars and hearing systems and the consensus meeting system among the representatives of experts, stakeholders and the general public.

Key Words: food safety risk governance, food safety law, administrative law

Abstract: Custom is one of the very important norm types in multilateral adjustment culture. In default of law, custom is used to be an important supplement for legal loopholes. But it does not mean that custom has become the law. It is still the custom before being absorbed into law. After being admitted, custom will obtain a legal status, which is important because custom therefore becomes behavior rule and basis of adjudication in default of law. Thus custom has acquired a legitimate status in legal structure, which is of legal significance to statute law countries such as Switzerland, Japan and China. Differing from case law countries based on the development of customary law, a legitimate basis is very important both to people's behaviors and judges' adjudications in statute law countries.

The breakthrough made by sporadic legislations, judicial interpretations and practices of grassroots courts has provided foundations to establish the due status of custom in our contemporary legal system, but there still exist some problems. To solve these problems radically and make custom play more important role in Chinese future legal course, the way-out still lies in legislation. The provision of Article 1 of Swiss Civil Code on custom has become the example of world's civil law, which can be used for reference by China's future civil code. To begin with, we can make a breakthrough in civil law level by stipulating custom's legal status in civil legislation

Abstract: Presumption of right should be explored from the perspective combining procedural law with substantial law. Presumption of right can be based on the possession and registration. The former aims to relief possessor's difficulty to prove property right and the latter aims to establish the effect of publicity of real property and maintain transaction security. Although having different purposes, they adopt the same legal technology of presuming property rights which are difficult to prove according to the facts easy to prove, such as acquisition of possession and registration.

Under the legislation in which possession and registration constitute prerequisites for the effective transfer of real rights, it is probable that the appearance coincides with the real situation of right, so it is reasonable to presume right according to possession and registration. Presumption of right means presumption of the acquisition of right, which is supplemented by the presumption of subsistence. Rights which can be presumed are usually with the function to possess and take the acquisition of possession as an element of acquiring real right. Obligatory rights cannot be presumed.

According to the rule of presumption of right, the beneficiary of presumption is exempt from burden of proof, but the other party can overturn the presumption by counter evidences. When the beneficiary himself makes a statement about acquisition course, the other party can overturn the presumption by counter evidences concerning to such acquisition course. In the legal procedure, the possessor must explain his acquisition course and sometimes has to explain why he can't provide information related. If he rejects to explain and still quotes the rule of presumption, his behavior will constitute abuse of right.

Key Words: presumption of right, burden of proof, presumption of right acquisition, to overturn of presumption

Abstract: After 100 years development, except for concrete personality rights, personality right law also includes non-concrete personality rights such as general personality right, personality's commercial use right, and self-determination right. They are the supplement to the concrete personality rights, not the result of systemic construction, so the system made up of them and concrete personality rights is full of contradictions. The construction of personality right

system should be based on the classification of personality, so that the corresponding relation between concrete personality rights and abstract personality rights can take form and the above-mentioned contradictions will be overcome.

Personality can be divided into three aspects, that is, free will, internal personality, and external personality. Traditional civil law focuses on the protection of external and internal personality through concrete personality rights, but free will is not under its protection. Because the determinative freedom of will is the essence of personality, which determines the attribute and development of an individual and is confirmed by constitution, it must be protected by civil law. Abstract personality rights including self-determination right, general personality right and personality's commercial use right can supply full protection for the determinative freedom of will. In the system of personality right, abstract personality rights are the functions of concrete personality rights, but also have relative independence. Thus the whole system of personality right is made up of abstract personality rights and concrete personality rights, and supplies full protection for free will, internal personality, and external personality.

Key Words: abstract personality right, self-determination right, general personality right, personality's commercial use right

Abstract: The notarial certification has legal effect both on the court and the parties. The facts in the case under notarial certification have binding forces to the court, which means the court should make decisions on the basis of these facts. At the same time, the party who has provided the notarial certification can be released from the burden of proof. The probative force of the notarial certification is higher than other evidences, because the legal effect of the notarial certification arises from legal presumption. Such presumption is based on following reasons. The notarial office exercises the state notarial functions, and the Notarization Law ensures the authenticity and impartiality of the notarial certification by means of substantive and procedural rules. There are two modes of proof that the notarization can prove the facts of the case, i.e., multi-mode of proof and single-mode of proof. However, the notarial documents in both modes are all one kind of evidence. The evidential property of notarial document is documentary evidence. Actually, it's a kind of public document and reportorial documentary evidence.

The authenticity of the notarial document directly brings the problem whether the civil rights and obligations exist, thus the Civil Procedure Law ought to prescribe that the parties can use civil action to settle the dispute over its authenticity. The matters proved by the notarial certification are immune to cross-examination, except for the authenticity and legality of the notarial document itself, the matters with strong subjectivity, and other matters which is hard to be certificated authentic or legal by the notarization. And last, there are two possible ways to remedy the illegal notarization, i.e., to build up an extraordinary proceeding in the civil procedure law, or to build up a non-judicial proceeding organized and exercised by the Notary Association.

Key Words: notarization, probative effect, evidential property, notarial document

Abstract: It has been insisted that right of action should have some conditions, but attaching one or more conditions to right of action would make it unworthy of its name, meaningless, and paradoxical. Those defects are severe and fatal. All the theories of conditional right of action should be abandoned, even if they regard right of action as a human right or argue it to be a constitutional right.

At the beginning of litigation, court is in the state of ignorance. It must accept a case unconditionally and hear all the procedural and substantial issues in due process. For this reason, theory of abstract right of action, which does not annex any requirement to right of action, has inherent rationality. Most of criticism to it is unreasonable. It can strongly sustain remedy to right of action and truly highlight the defect of setting conditions for filing and accepting a case. Theory of right of demanding judicial action does not attach requirement to right of action either, but it is a revisionary abstract theory of right of action, which makes up the defect of the theory of abstract right of action and has more practical significance.

By the two kinds of abstract theory, we can clarify the relationship between right of action and condition of making substantial judgment, right to judicial verdict. The right of action contains only two kinds of right, i.e., unconditional right to bring an action, and right of demanding impartial judicial trial. We should wipe off the heavy burden on right of action exerted by theories of conditional right of action and return to abstract theory of right of action.

Key Words: theory of conditional right of action, theory of abstract right of action, theory of right of demanding judicial action

Abstract: Chinese criminal law scholars have some misapprehensions about the relationship between Chinese crime constitution and German-Japanese crime constitution. Actually, the basic difference between them lies in the value theory. German-Japanese three-tier criminal system bases on norm theory and appraisal concepts. The object of value appraisement is fact, its formal standard is Tatbestand and its material standard is alterable, such as Neo-Kantian transcendental reason, Roxin's criminal policy, Jakobs' social norm and so on. However, Chinese four-element system bases on ontology and descriptive concepts. The object of value appraisement can not be distinguished from the standard of value appraisement, and fact judgment equates to value appraisement.

Ontological system and its descriptive concepts restrict the function of value appraisement. This kind of system cannot harmonize the relationship between value appraisement and fact judgment, thus induces the superabundance of fact judgment but the insufficiency of value appraisement. Accordingly, the insufficiency of value appraisement in Chinese system is complemented by the concept of social harm. Secondly, the descriptive concepts in Chinese system cannot leave enough space for theoretical development. Again, the descriptive concepts cannot describe "no", which is the reason why Chinese crime constitution cannot contain the justifiable acts. Chinese crime constitution system should transfer from ontology to norm theory, from descriptive concepts to appraisal ones, and harmonize the relation between positive appraisement and negative appraisement.

Key Words: crime constitution system, value appraisement, ontology, norm theory

Abstract: In countries adopting the Principal and Accomplice Offender System, the Theory of Subservience of Instigator has legal foundations and becomes the dominant theory. However,

because the Chinese Criminal Law adopts a Unitary Principal Offender System, such theory has no legal foundations in China. But some scholars make interpretations to Article 29, Paragraph 2 of Chinese Criminal Law according to this theory, and deny the assertion that this paragraph focuses on the penalties of individual instigators. One of the most well-known opinion is to explain "if the instigated person has not committed the instigated crime" as the instigated person has got down to commit the crime but not accomplished. Another opinion is to explain it as the instigated person has no capacity of responsibility and does not commit the instigated crime, so the instigator should be deemed as unaccomplished indirect principal offender with the act of instigation.

Both of the two interpretations are unjustified. "If the instigated person has not committed the instigated crime" should be explained as the instigated person has not committed crimes in accordance with the intention of the instigator, which includes four cases. Firstly, the instigator has implemented the act of instigation but the instigated information (or content) has not reached the instigated person. Secondly, the instigated person refuses the instigation of the instigator. Thirdly, the instigated person accepts the instigation, but has not made preparation for the crime. And lastly, the instigated person accepts the instigation, but later, due to changing the criminal intention or misunderstanding the instigator's intention, the instigated person commits other crime which cannot contain the instigated crime.

Key Words: instigator, the instigated, crime, interpretation

Abstract: The implicative effect of previous conviction refers to the fact that, under provisions of laws and regulations, some specific rights or qualifications of the criminal's near relatives or other family members are restricted or deprived as a result of the normatively implicative evaluation imposed on them based on the criminal's previous conviction. This kind of criminal record orients normative evaluation extend the unfavorable legal consequence, which should be born by the criminal himself independently, to the criminal's near relatives or other family members. This system is the extending and distention of the effect of criminal record to the criminal's family, whose purpose lies in crime prevention, not bearing the criminal responsibility jointly and severally.

The implicative effect of previous conviction influences not only the criminal's rehabilitation, but also the living environment of the criminal's relatives. On the one hand, such implicative effect forms a barrier blocking the criminal's rehabilitation. On the other hand, it damages the criminal's family relation seriously. Due to the comprehensive existence of such effect in Chinese current legal system, the criminals and their near relatives or other family members may run opposite to normal society and become potential criminal group to commit crimes again. Therefore, the proportion principle should be insisted in concrete cases to prevent the unfair implicative evaluation on the relatives or families of all the criminals. In the long run, the implicative system of previous conviction should be abolished in the end.

Key Words: previous conviction, implication, crime prevention, recommitment, punishment effect

Abstract: Similar as other evidences, expert conclusions have no previous proving effect in litigations. In essence, expert conclusions are the recognitive judgment of the experts, embodying their ability to apply their special knowledge, which can also be false. Therefore, the reform of our judicial verification system should be advanced in the direction of safeguarding the creditability and reliability of expert conclusions.

In order to safeguard the creditability of expert conclusions, it is necessary to reinforce the neutrality of verification agencies and the independence of experts. The verification agency in the investigation organ should be abolished to change the "selfinvestigation and selfverification" situation. The admittance threshold of experts should be increased and their practicing scope should be limited. Still, the monopoly by authority organs to start the verification procedure should be broken and the parties should be endowed with the right to select verification agencies and experts, based on a national uniform roll system.

In order to safeguard the reliability of expert conclusions, on the one hand, it is necessary to establish the admittance system of special knowledge verification and the standard system of apparatus, equipment and laboratory, and to unify the method, standard and procedure of verification. On the other hand, the comprehend judging ability of courts concerning to the disputed expert conclusions and other evidences should also be increased so as to exclude incredible expert conclusions, based on the establishment of the procedure of inquiry by parties,

the procedure of expert assisting the inquiry by parties, and the procedure of expert serving as an assessor in law case.

Key Words: judicial verification, expert conclusion, creditability, reliability

Abstract: The concept and practice of universal civil jurisdiction originates from the interpretation and application of the Alien Tort Claims Act in Filártiga v. Pena-Irala in 1980 by the United States federal court. After this new dimension emerged, especially after the decision of the United States Supreme Court delivered in Sosa v. Alvarez-Machain, it has attracted attentions of some other states and international organizations. Whether universal civil jurisdiction should correspond to the criminal dimension, and whether it should depend on the absence of effective remedies in jurisdiction with traditional links to the prescribed conduct, have become the most important questions for its further application and expansion.

Practices of exercising universal civil jurisdiction have great challenge to the principles of sovereign equality and non-interference. Although some narrators allege that states' practices in this field support of a customary rule, for neither the Torture Convention nor the Proposed Hague Judgments Convention obliges states to do so, there is no evidence that there are general and consistent state practices in support of this conclusion. However, considering that providing civil redress for alien is not prohibited by Article 14 of the Torture Convention and the perpetrators of torture should not escape from punishment, there is a possibility that more states would be urged to provide effective redress for all torture victims.

This kind of doctrine and practice has caused great challenge to China both for its national interest and for its legal adjustment. It's necessary for China to introduce this new doctrine into its legal system and participate more effectively in the UN Assembly debate on the issue of universal jurisdiction.

Key Words: universal civil jurisdiction, universal criminal jurisdiction, the Torture Convention, the Proposed Hague Judgments Convention

Abstract: Interpretation of foreign law differs from proof of foreign law. While the primary concern of the latter lies in the procedural matters concerning how to obtain foreign law materials, the former focuses on understanding the meaning of foreign law. The aim, subject, object and approach of interpretation of foreign law can be integrated systematically through the concept of interpretation pattern, which can be explored in the dual context of private international law and the theory of law interpretation.

In the present interpretation pattern of foreign law, the aim of interpretation is normally regarded as ascertaining the meaning of foreign law in its origin country. The judge should interpret and apply foreign law in the same way as the foreign judges do. In this way, the judge is expected to act as a faithful outer observer in the adjudicating process, and this pattern of interpretation is branded with the mark of complete division between the subject and object of interpretation.

However, this pattern encounters dilemma in the judicial practice. The problem can be traced back to its deviation from the inherent character of law interpretation in some sense. Reflection needs to be made with regard to the aim of interpretation that plays a key role in the interpretation pattern. In the context of resolving the cross-board dispute, the interpretation of foreign law should serve for the just and fair application of foreign law so as to maintain the legal interests and legitimate expectation of the parties effectively. Accordingly, the theory of argumentation of law needs to be introduced to reconstruct the pattern of interpretation, thus the parties and the judge will equally take part in the interpretation process and jointly construct the meaning of foreign law in accordance with the law argumentation rules.

Key Words: interpretation of foreign law, pattern of interpretation, aim of interpretation, argumentation of law