

# 目 录

## 【论文】

没 产 ..... 黄 风 ( 1 )

—— “ ” ..... 施鹏鹏 ( 15 )

人 ..... 冉克平 ( 30 )

分保 : ..... 朱 虎 ( 44 )

人 ..... 郑晓剑 ( 60 )

保 : ..... 马 宁 ( 76 )

安

—— 2010 ..... 王 钢 ( 89 )

..... 王彦强 ( 108 )

“ ” 成 ..... 陈 刚 ( 125 )

历史 分

—— ..... 胡加祥 ( 140 )

:变 、

—— 31 3 e ..... 吴 卡 ( 149 )

## 【法政时评】

..... 王 丹 ( 165 )

..... 张亚平 ( 177 )

## 【人文对话】

..... 吴如巧 ( 190 )





---

" "

" "

" "

" "

" "

"

"

" "

"

"

"

"

"

"

"

---

" " "

"

" "

*La confisca per equivalente*

---

”

”

”

”

”

”  
”

”

”

”

”

”

”

”

”

---

”

”

---

" "

"

"

"

"

"

"

"

"

"

"

"

"

"

"

---

"

"

"

"

"

"

*La confisca le confische — Funzioni politico criminali natura giuridica e problemi ricostruttivo applicativi*

See

. . .



“ ”

“

“ ”

“

“

“

“

“

“ ”

“

“ ”

“

“

“

“

“

“

“



“

“

“

“

---

" "

"

"

"

"

"

"

"

"

"

"

---

• •



" "

" "

"

"

"

" "

" "

" "

"

"

" "

"

"

"

"

---

" "

• •

---

" "

" "

"

"

" "

" "

"

"

"

"

" " " "

"

"

"

"

"

"

"

"

"

"

"

"

---

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

" "

'

'

"

"

"

"

"

"

"

"

"

"

"

"

" "

"

"

"

—

"

"

• •

---

"

"

"

"

"

"

---



"

" "

"

"

" "

"



á á á





\_\_\_\_\_ " "

\*

" "

" "

é é

"

" " "

"

é ...

é

'

" ...

...

'

éé

" "

---

\* " "  
" "

---

.....

---

é  
" "

«  
*législation comparée*

" "

é é

é

é

» *Journées de la société de*

. .



---

"

"

à

" "

é

é

é

" "

é

é

---

,

*ibid*

°

é

*ibid*

. . .



"

"

"

"

é

"

"

"

"

'

é

é

é

é



« é " à — é " é ° »  
Recueil Dalloz. " " . .

---

"

"

"

"

"

"

• •

é

"

....."

"

"

" "

" "

" "

"

"

é é "

"

" "

" " "

"

" " "

*op. cit.*

« ' » *Code pénal et Code d' instruction criminelle Livre du bicentenaire*  
*op. cit.*

«

» RSC

"

"

"

"

"

"

"

"

"

"



---

" "

" "

---

---

---

---

---

---

---

°  
°  
*op. cit.*  
" ' " é é é

---

---

---

---

---

---

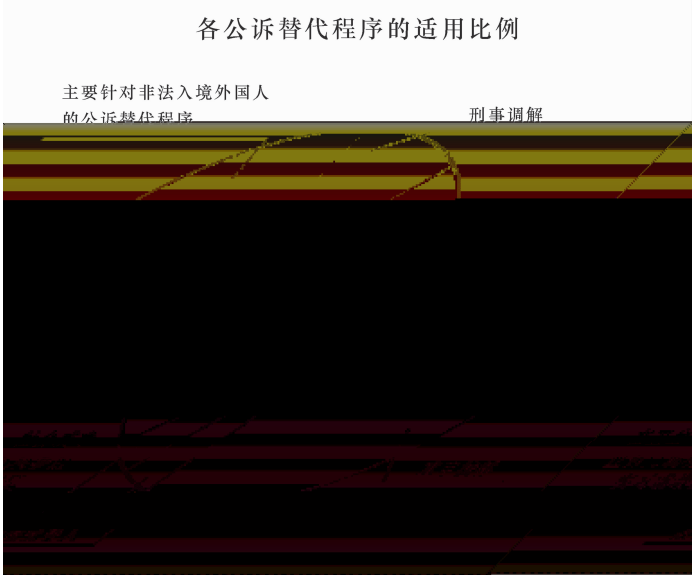
---

---

---

---

---



---



---

é é

“ ”

é

’ é

“ ”

“

---

é ° é  
» *ALD*  
*Recueil Dalloz*  
*Dalloz*

*op. cit.*  
« é °  
» *Droit et Société*  
» *Droit et Société*

é « ’ é é  
« ’ é à ’ é »  
« ’ é » *Recueil*  
« é é é à ’  
« é é





" " " "

"

....."

" "

" "

" "

" " " " " "

## A Study on *Procédures Alternatives aux Poursuites* in France

**Abstract** *Procédures Alternatives aux Poursuites*  
*Composition Pénale Réparation du Dommage*

*Médiation Pénale* *Composi-*

*Alternatives aux Poursuites*

*Procédures*

" "

**Keywords** *Procédures Alternatives aux Poursuites* *Médiation Pénale* *Composition Pénale*

---

*op. cit.*

*The Gradual Convergence. Foreign Ideas Foreign Influences and English Law on the Eve of the 19th Century*

é

\*

" "

" "

" "

" " " "

---

\*

" "

" "

- .



" "

---

" "

" "

" "

---

*Brox/Walker*

" "

• •



“ “ “ “ “

“ ”

“ ”

“ ”

“ ”



*William v. Walker Thomas Furniture Co.*

*In Defense of Unconscionability*

---

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

---

• •



"

"

"

"

"

.....

"

"

"

"

.....



"

"

"

"

.....



■ 〆 〆

■ 〆 〆

---

"

"

"

"

"

"

"

"

"

---

"

"

"

"

"

---

" " " " " "

" "

" " "

---

• •



" "

" "

" "

---

---

" " " "

" "

---

*Rüthers* ü

" "

*Bydlinski*

" "



" "

" "

" "



"

"

"

"

"

"

"

"

*Brox/Walker*

---

" "

---

*Dieter Medicus*

*Bydlinski*

---



\*

"

"

"

"

"

"

"

"

"

"

"

"

---

\*

"

"

"

"

.

.

“ ”

“ ”

“ ” “ ” “ ” “ ” “ ”  
“ ” “ ” “ ” “ ” “ ”

“ ” “ ” “ ”

“ ”

“ ”

“ ” “ ” “ ” “ ” “ ”

“ ” “ ” “ ” “ ” “ ”

“ ” “ ” “ ” “ ” “ ”

---

“ ” “ ” “ ” “ ” “ ” “ ” “ ” “ ” “ ”

“ ” “ ” “ ” “ ” “ ” “ ” “ ” “ ” “ ”

“ ” “ ” “ ” “ ” “ ” “ ” “ ” “ ” “ ”

“ ” “ ” “ ” “ ” “ ” “ ” “ ” “ ” “ ”

*Canaris*

ü

ü *Wagner*  
*Larenz/Canaris*

§

II

" "

"

.....

"

" " " " " "

9

"







"

"

"

"

"

.....

,

,

"

"

"

"

"

"

"

---

“ ” “ ” “ ”

—

—

---

• •

“ ”  
“ ”  
“ ”

---

“ ”

“ ”

“ ”

“

“

“

“ ” “ ”

---

ü Wagner §

“

“

“

“

“

“

“

“

• •

" "

" "

---

*Mugdan*

ü ü

ü " *Wagner*

" § "

" " " "





---

---

" " " "

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

---

?

"

"

. .

"

' ' "

"

" " "

---

*Larenz/Canaris*

"

"

"

"

*See J' Aire Corp. v. Gregory*

"

"

"

"

"

"

.

.



" " " " " " " " " " " "

## **The Distinct Protection of Different Legal Interests in Tort Law Thought and Technique**

### **Abstract**

" "

### **Keywords**

:

.

\*

“ ”

“ ’ ’ ”

---

\* p

• •









"

"

\_\_\_\_\_"

"

"

" \_\_\_\_\_

"

"

\_\_\_\_\_

\_\_\_\_\_"

"

"

"

\_\_\_\_\_

"

'

"

"

"



"

"

*See New York Times Co. v. Sullivan*

*See*

*supra*

"

"

*Freedom of the Press*

. . .

---

"

"

"

"

"

"

"

"

"

"

---

• •



---

" "

"

" "

"

"

---

"

"

"

"

---

"

"

"

"

"

"

"

"

"

"

---

.

.



"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"



"

" See *Time v. Hill*

*General Public Figures Since Gertz v. Robert Welch*

*See Rosanova v. Playboy Enters*

"

"

See

*supra*





"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"



"

"

"

"

"

"

" "

"

"

See

*supra*





---

" "

" "

" "

" "

" "

" "

" "

" "

" "

"

.....

"

" "

"

" "

" "

---

" "

" "

" "

"

"

"

"

"

"

"



---

" "

" "

"

"

" " "

" " "

" "

"

"

" " "

" "

" "

---

.

.

" "

" "



“

”

”

”

“

”

”

”

See *Insurance as Contract: The Argument for Abandoning the Ambiguity Doctrine*  
MacGillivray on Insurance Law

See II *Insurance, Contract, and the Doctrine of Reasonable Expectation*

See *The Responsive Model of Contract Law*

See *Why There Is No Law of Relational Contracts*

“ . . . ”

See *A Realistic Consensus Approach to the Insurance Law Doctrine of Reasonable Expectations*

---

" "

" " " "

"

"

"

"

"

"

"

"

---

See *Contract Theories and the Rise of Neoformalism*

"

.....

" See *The*

*Nature of the Judicial Process*

See *Relational Contract Theory in Context*

See *The Effect of Legal Institutions upon Economics*

See *Contracts of Adhesion — Some Thoughts about Freedom of Contract*

.



“

”

“

”

,

“

”

“

”

“

,

”

”

”

.....

.....

”

”

*supra*

”

---

" "

"

"

.....

.....

"

" "

\_\_\_\_\_  
" "

---

*Youell v. Bland Welch & Co. Ltd.*  
*Kievit v. Loyal Protection Life Insurance Company*  
See *Insurance Law Rights at Variance with Policy Provisions Parts I and II*

*supra*  
*supra*  
See *Reasonable Expectations Revisited*  
See *Judge Made Law and Judge Made Insurance Honoring the Reasonable Expectations of the Insured*

. .

"

"

"

.....

"

①

②

—

—

"

—

" " "

—

*supra*

*Id.*

*See*

*A Critique of the Reasonable Expectations Doctrine*

*supra*

*supra*

---

" "

"

"

---

*supra*  
"

"

See *Protecting the Insured from an Adhesion Insurance Policy: The Doctrine of Reasonable Expectations in Utah*

See *The Doctrine of Reasonable in Insurance Law: What to Expect in Wisconsin*

. . .

”

”

”

”

”

”

---

See  
*Coverage*

*Why Court Enforce Insurance Policyholders' Objectively Reasonable Expectations of Insur-*

See

*Interpretation of Insurance Contracts Law and Strategy for Insurers and Policyholders*

See

*The Doctrine of Inequality of Bargaining Power Post Benthamite Economics in the House of Lord*

See

*Economic Analysis of the Law*

See

*Reasonable Expectations after Thirty Years A Failed Doctrine*

---

—

"

"

"

---

See

*Consumer Insurance Law Pre Contract Disclosure and Misrepresentation*

See

*Unfair Terms in Insurance Contracts Regulation Impact Statement*

*supra*

See

*Freedom Contract and Choice of Law in Insurance*

"

"

”

”

”

”

”

---

See

*The Doctrine of Reasonable Expectations in Insurance Law after Two Decades*

---

”

”

---

"  
.....

"

"

"

---

• •



---

"

"

" "

---

*supra*

• •



\_\_\_\_\_

\*

" "

" "

\_\_\_\_\_

\*

• •



“

”

---

*Krey/Hellmann/Heinrich*

*Schroth*

*Kutzer*

*Dölling*  
*Ingelfinger*

*Duttge*  
*Schöch*

*Kutzer*

*Schöch/Verrel*

*Sinn*  
*Otto*

*Kutsch*

§

§

. . .

---

" "

" "

---

*Otto*

*Roxin*

*Schöch*

. . .







" "

"

—

—

'

'

.....

'

' "

"

"

"

"

"

"

"

"



“ ”

.....

”

”

‘ ‘ ‘ ‘

‘ ‘ ..... ‘ ‘

”

”

”

” ”

”

.....

”

” ”

”

”

”

‘ ‘ ‘ ‘ ..... ‘ ‘

‘ ‘ ..... ”

” ”

”

”

”

.....



"

"

"

"

---

" "

" "

---

*Schöch/Verrel*

• •



" "

"

"

" " " "

" "

"

"

" "

" "



"



*Brunhöber*

*Rosenau*

*Eschelbach*  
*Eidam*

ü

S

. .

"

"

"

"

"



" "

" "

" "

---

*Engländer*

*Engländer*

*Gaede*

*Dölling*

*Schneider*

SS

*Walter*





“ ” “ ” “ ” “ ”

“ ” “ ” “ ”



Kühl  
Roxin  
Frisch  
Engisch  
Stree/Bosch

S  
S

ü

SS

ü

. .





\*

" "

" "

" " " "

" "

---

\*

• •

---

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

.

---

"

"

.

.

---

.

" "

" " " "

" " " "

" "

" "

---

"

"

.



" " " "

“ ” “ ”

---

\_\_\_\_\_ " \_\_\_\_\_ \_\_\_\_\_ " "

" "

" "

" "

" "

" "

" "

" "

" "

---

.





---

" "

" " " "

" "

---

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

.

.

---

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

---

.

---

" "

" "

" "

" "

---

• •

"

"



---

" "

" "

" " "

" " "

" "

---



---

“

”

”

”

”

”

”

”

---

---

" " " "

" " "

" " "

" "

" "

---

" " "

" "

---

" " "

" " "

" " "

" " "

" " "

" " "

• •

---

"

— —

"

"

"

"

"

—

— "

"

" " " "

" "

" " " "

---

" " " "

" " " "

" " "

• •

---

" "

## **Research on the Theory of Culpable Illegality**

**Abstract**

**Keywords**

“

”

\*

“

”

“

”

”

“

”

”

”

——

“

”

“

”

——

“

”

“

”

“

”

“

”

—————

\*

· ·

" "

" "

"

"

.

"

"

"

.....

"

"

"



“

.....

”

“

”

藥”

”

”

——

‘ ‘ ‘ ‘

”

”

”

”

·





"

"

—

"

"

—



---

" "

.

"

"

"

"

.

"

"

"

"

"

"

---

.

"

"

"

"

"

"

"

"

"

"

---

"

" "

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

---



---

“ ”

.

“

”

“

”

“

”

“

”

“

”

”

‘ ‘ ‘ ‘

”

---

“

”

”

“

”

”

. .





---

" "

—

" "

" " "

"

" "

---

• •

" "

" "

" "

" " " "

" "

" "

## The Development of England' s " King Under Law" Idea

### Abstract

" " " " " "

" "

### Keywords

\_\_\_\_\_

\*

"

"

"

"

"

"

"

"



---

\_\_\_\_\_ "

"

"

"

"

"

"

"

---

See *E. P. A. Announces New Rules in Genetically Altered Corn*  
 See *Cautious Support on Biotech Foods by Science Panel*  
*Biotech Foods Aren't Out of the Woods Yet*  
 See *Consumer Acceptance of Biotechnology: An International Perspective*  
 See *A War Against Techno Food*  
 See *A Tomato by Any Other Name: U.S. and EC Grapple with Labeling*

. . .





" "

" "

.

"

" " " "

"

"



See *France the United States and the Biotechnology Dispute*

See —

See *Round of the Food Fight Genetically Altered Items*

See *The Right to Know What We Eat*

. .

---

"

"

" "

" " " " " "

" "

" "

" "

" "

" "

---

*An Uncontrolled Experiment*

*See Sticky Label*

" " See ' *The Precautionary*

*Principle in UK Environmental Law and Policy UK Environmental Policy in the s*

*Le gouvernement peaufine un plan d' interdiction des farines animales*

" " " "

" "

" "

" "





" " " " " "



"

" "

.....

" " "

" "

" "

" "

" "



" "

See Mad Coke Disease

Communication from the Commission on the Precautionary Principle

See supra

See Social Decision Making under Conditions of Scientific Controversy Expertise and the Precautionary Principle Integrating Scientific Expertise into Regulatory Decision Making

See ' supra

---

"

"

"

**On the Historical Evolution and Realistic Analysis of EU Regulation on GM Food**

**Abstract**

**Keywords**

—

---

"

"

"

"

"

"

"

"

"

---

*The Principle of Systematic Integration and Article 31 of the Vienna Convention*

*The Vienna Convention Rules on Treaty Interpretation*     *The Oxford Guide to Treaties*

"

"

"

"

"

"

"

"

"

"

"

"

"

赞

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"





---

" " " "

" "

" "

" " "

'

'

.....

"

"

"

"

" "

" "

"

"

.....

.....

'

'

.....

"

"

" "

"

"

"

"

"

---

*Conflict of Norms in Public International Law How WTO Law Relates to Other Rules of International Law*

*Case concerning Oil Platforms Iran v. U. S.*

*Specialized Rules of Treaty Interpretation Human Rights The Oxford Guide to Treaties*

*Al Adsani v. The United Kingdom v. Ireland*

*Forgarty v. The United Kingdom*

*McElhinney*

" " "

"

. .

"

"

"

"

"

"

"

"

"

"





---

"

"

" "

" " " " " " "

" " " " " "

" "

" " " " "

" "

---

*Dispute concerning Access to Information under Article 17 of the OSPAR Convention Ireland v. the United Kingdom*  
*supra*  
*Shrimp supra*  
*Dudgeon v. United Kingdom*  
*Arbitration Regarding the Iron Rhine Railway Belgium/Netherlands*  
*supra*













---

" "

" "

" "

" "

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

---

*supra*

1 1 "

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

"

" "

**Treaty Interpretation Variation Technique and Trend**  
**A Study of Article c of the VCLT**

**Abstract**

"

"

【法政时评】



\*

摘要：公司董事、高级管理人员在执行职务过程中，因违反法律、行政法规或者公司章程的规定，给公司造成损失的，应当承担赔偿责任。但是，如果董事、高级管理人员能够证明其已经尽到了忠实和勤勉义务，则不承担赔偿责任。此外，如果董事、高级管理人员的行为符合公司的利益，或者其行为是为了公司的利益而采取的，则也不承担赔偿责任。

关键词：董事、高级管理人员、赔偿责任、勤勉义务、忠实义务、公司利益

\*

12SFB5039

- 1 Roberta Romano *The Shareholder Suit: Litigation without Foundation* 7 J.L. Econ. & Org. 55 (1991) .
- 2 Arad Reisberg *Derivative Actions and Corporate Governance* 63 Oxford University Press 2007 .

---

"

"

"

"

"

"

"

.....

.....

\_\_\_\_\_

\_\_\_\_\_

"

"

"

"

"

---

*Id.*

*Company Law*

*supra*

. . . . .



---

" "

—

"

"

---

*supra*  
*supra*

*Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law through Class and Derivative Actions*

---

"

"

"

"

"

"

---

*supra*

• •



---

" "

" "

" " " "

" "

" "

" "

"

---

*The Law of Corporations*

*supra*

*supra*

*supra*

*Id.*

*Id.*

. . .



---

" "

" "

" " " "

" " " "

" "

---

*supra*  
*Id.*

*Teaching Corporate Governance through Shareholder Litigation*  
*A Necessary Gatekeeper The Fiduciary Duties of the Lead Plaintiff in Shareholder Derivative Litigation*

*supra*  
*supra*

. .

---

"

"

---

*supra*

*supra*

*supra*

*The Death Knell of Stockholders Derivative Suits in New York*

*Do the Merits Matter A Study of Settlements in Securities Class Actions*

*Id.*

*Pleading Securities Fraud Claims with Particularity under Rule 9(b)*

*supra*





---

"

"

"

"

"

"

---

---

*Shareholder Derivative Litigation and Corporate Governance*

*Id.*

*Saylor v. Lindsley*

*supra*

---

" "

" " —

**The Analysis of Establishing Adequate Funding Incentive of  
Shareholder Derivative Litigation**

**Abstract**

**Keywords**

\*

“

”

---

\*

“

”

“ ”

“ ”

«

'

é

» *Revue pénitentiaire et de droit pénal*

---

”

”

”

”

”

”

”

”

”

”

”

”

---

«

’ é

é

» *Revue pénitentiaire et de droit pénal*

« é »

*Le Droit en Prison*

*La réforme du droit de l' application des peines* é

é é

*Surveiller et punir naissance de la prison*

*Pénologie*

*Ibid.*

" " " " é

U



“ ”

p

"

"

"

"

"

"

"

"

"

"



及

及

”

”

---

"

"

"

"

"

"

"

---

*op. cit.*

"

"

"

"

"

"

"

"

x Ä



"

"

"

"

"

"

"

"

"



"

"

• •



---

## The Judge of Penalty Application of France and Its Inspiration

### Abstract

### Keywords

\*

“ ”  
“ ”  
“ ”  
“ ”  
“ ”

---

\*  
“ ”  
*Civil Juries and the Politics of Reform*  
*A Bad Press on Bad Lawyers The Media Sees Research Research Sees the Media Social Science Social Policy and the*  
*Law*



---

" " " "

" " " " " " " "

---

*Risk Analysis and the Construction of News*  
*Estimating Liability Risks with the Media as Your Guide A Content Analysis of Media Coverage of Tort*  
*Litigation*  
*Product Liability Punitive Damages Business Decisions and Economic Outcomes*  
*Helping Jurors Determine Pain and Suffering Awards*  
*supra*

---

“  
”

“ ”

---

“ ”

“ ”

" "

" "

" "

"

"

"

"

"

---

*Media and Agenda Setting Effects on the Public Interest Group Leaders Policy Makers and Policy*

*Public Opinion about the Civil Jury Can Reality Be Found in the Illusions*

*Jurors' Attitudes about Civil Litigation and the Size of Damage Awards*

*Punitive Damages Decision Making The Decisions of Citizens and Trial Court Judges*

*Tort Reform in South Carolina The Effect of Empirical Research on Elite Perceptions Concerning Jury Verdicts*

*Decisionmaking about General Damages A Comparison of Jurors Judges and Lawyers*

*Availability A Heuristic for Judging Frequency and Probability Judgment under Uncertainty Heuristics*

*and Biases*

---

"

"

"

"

"

"

"

"

"



---

& A. De Lisa

"

"

"

"

---

*Attitudes toward Tort Reform Scientific Jury Selection and Juror Bias Verdict Inclination in  
Criminal and Civil Trials  
Insurance Advertising and Jury Awards  
Air Bag Safety Media Coverage Popular Conceptions and Public Policy*

---

*Prejudicial Publicity Its Effects on Law School Mock Juries*

*A Preliminary Inquiry into the Effects of Potentially Biasing Information on Judges and Jurors in Civil*

*Litigation*







---

" " " "

**Civil Litigation in the Eyes of US Media**

**Abstract**

**Keywords**