Bibikov Alexander Ivanovich

Roman legal model of building law and its perception in the domestic civil doctrine and legislation

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The article examines the history of the emergence and the legal nature of the institution of building law (superficies). The features of the formation of the Roman legal (classical) model of the right to build and the perception of this institution in foreign civil legislation are traced. It is noted that some countries use the classical Roman model of building rights, while others use the “shared ownership” model of the land plot and the real estate object erected on it. An analysis of the German model of inheritance law of development is given, on the basis of which a conclusion is made about its independence and uniqueness. The use of historical and comparative legal research methods makes it possible to reveal the substantive differences of the used building law models and the specifics of their implementation in the countries of the Romano-Germanic legal system and the CIS countries. The approaches of the domestic civil lawdoctrines for the construction of building rights and the peculiarities of its presentation in the draft of the new edition of the Civil Code of the Russian Federation. It is stated that the draft of the new edition of the Civil Code of the Russian Federation admits the existence of two models of building rights: design and classical. The design model of the building right is critically analyzed in comparison with its Roman and German legal structures, and recommendations for its improvement are given.

Borisova Olga Valentinovna

Modern problems of criminal legal provision of equality of forms of ownership

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The distinction is made between the form of ownership and the object of the crime. The author substantiates the inadmissibility of differentiation of criminal liability for property crimes by highlighting the signs of the subject, the victim, the method indicating the form of ownership in the law, as well as when interpreting the sign of a special subject of embezzlement in the resolution of the Plenum of the Supreme Court of the Russian Federation of December 27, 2007. various forms of ownership. The application of casuistic dispositions in the articles of Chapter 21 of the Criminal Code of the Russian Federation is criticized. The regulation of signs of crimes against property in the Criminal Code of the Russian Federation is considered from the point of view of compliance with the constitutional principle of equality of forms of ownership. The tendency of increasing responsibility for encroachments on state and municipal property is revealed - in the current and projected criminal legislation, as well as in the Code of Criminal Procedure of the Russian Federation. The legislator states that the legislator underestimates the importance of property as an object of crime. It is proposed to focus on the equality of ownership in scientific research and educational process.

Isaeva Nina Valentinovna

Problems of training professional lawyers in the context of legal identity

No. 1, 2015

The subject of the research is the processes of training graduates of law schools and faculties in accordance with the requirements of the Federal State Educational Standards aimed at forming a personality, new methods of diagnosing professional lawyers and new methods of forming highly qualified specialists in the field of jurisprudence, focused not only on professional competence, but also on achieving such a legal quality as legal identity, which ensures the attitude to law as a value capable of changing both the inner world of a person and his legal behavior. The work is based on the methodology of social anthropology, which

makes it possible to highlight both sociality and individuality in the subject, as well as an interdisciplinary method aimed at using the achievements of the social and humanitarian sciences on an equal basis with jurisprudence. The category of legal identity is introduced into scientific circulation. The concept of legal identity based on the identified shortcomings in the field of professional lawyers allows us to propose new approaches in teaching legal disciplines, to clarify the techniques for diagnosing professional aptitude, to identify the need for changes in symbolic forms (oaths) that mediate inclusion in the legal community. At the same time, the achievement of legal identity is considered as a necessary prerequisite for both changing the quality of professional lawyers, and increasing confidence in the law enforcement system and the rule of law in general.

Yulia Kapralova

Legislative regulation of the institution of public control in Russia

No. 1, 2015

This article is devoted to the analysis of the existing legislation on public control in Russia, the problems of developing and adopting a single law regulating public relations in the field of control, as well as theoretical issues of defining the concept of public control and the institutions that leave it. The subject of the study was the social relations that develop in relation to the implementation of public control, federal and regional legislation on public control. The practice of the work of various public control bodies was investigated: the Public Chamber of the Russian Federation, public chambers of subjects, public councils and public supervisory commissions. In solving the set tasks, general scientific and specific scientific methods of cognition were used in the work : systemic, structural, comparative legal, formal legal, problem-theoretical, etc. The complex application of these methods made it possible to carry out a systematic analysis of the main research issues. Currently, at the federal level, there is no single

legislative act on the system of public control, its subjects, objects of such control, powers and competence of control bodies. The possibilities of the institution of public control in the field of protecting the rights of citizens, combating corruption, developing alternative methods of monitoring the activities of government bodies seem to be quite extensive. In Russia, a certain practice of the work of public control bodies has been formed. However, it must be noted that this practice is of a heterogeneous nature. This is caused, first of all, by the absence of both a unified theoretical approach to the concept of "public control" and a unified legislation in this area. Public control operates at the federal, regional and local government levels. Public control gradually permeates all spheres of public relations (law enforcement and penitentiary system, public service, electoral system, environmental protection, etc.). A whole system of control institutions is gradually being formed: the Public Chamber of the Russian Federation and its constituent entities, public supervisory commissions, public councils under state and local government bodies. Public control is mentioned in various current regulatory legal acts. Legislative practice is moving in several directions. First, at the federal level, laws are being passed on public oversight in various areas. Secondly, the forms of public control are included in the form of separate provisions in special legislative acts dedicated to the regulation of certain public relations. Thirdly, certain forms of public control are regulated by bylaws. Fourth, due to the absence of a federal law on public control, the constituent entities of the Russian Federation independently adopt regional laws on public control. Of course, such a diverse regulation negatively affects the principle of the unity of the legislative system in Russia. Thus, the early adoption and signing of the federal law on public control will become an important stage in the systematization of legislative and, possibly, the emergence of an independent branch of Russian legislation - legislation on public (civil) control.

Karlyavin Ivan Yurievich

The methodological meaning of the categories fides (conscience) and bona fides (good conscience) in Roman private law.

No. 1, 2015

The study focuses on methodologically important aspects of categories such as fides and bona fides . The emphasis is on the formation of these categories in the works of Roman lawyers, as well as on the development of the doctrine of a good conscience in the works of German scholars - novelists. It was during the heyday of Roman private law that fides and bona fides acquire law enforcement significance. The final scientific substantiation of these categories is obtained in the works of German scientists - pandectists . Along with the study of the essential characteristics of the categories fides and bona fides , the author focuses on legal relations, the formation of which occurs under the influence of a good conscience. It is important to determine the directions of modern research fides and bona fides . The final goal is the competent formation of modern analogues of good conscience, in Germany, - Treu und Glauben , in Russia, - the category of conscientiousness and the principle of the same name. along with traditional methods of scientific research (analysis, synthesis, comparative jurisprudence), the author seeks to build his research mainly on the basis of the sources of Roman law and the works of German scientists. The methodological goal is to identify the continuity in the views of Roman lawyers and German (German-speaking) scientists of different generations. In modern Russian and foreign legal doctrine, comparative studies of such categories as fides and bona fides are not common. Both categories have independent legal and methodological significance. There is a certain connection and interaction between them. Due to their common moral origins, both categories have a strong influence on the construction of legal relations. Bona fides tends more towards private law. It is remarkable that bona fides serves as a form of realization of aequitas (justice).

Olga Kuzmina

Alternative ways of resolving criminal legal conflicts in modern Russian law

No. 1, 2015

The institution of alternatives to criminal prosecution is analyzed through the prism of an objective and universal tendency to differentiate the ways of the official reaction of the state to violation of the criminal law. The place of alternative measures in the criminal justice system has been determined. The problems of optimal procedural forms of exemption from criminal liability and termination of criminal cases are raised in the context of such areas of modern criminal procedural policy in Russia as the differentiation of the criminal process, democratization and reconciliation. The main provisions of the concept of restorative justice, as well as the experience of conducting mediation procedures in juvenile cases, have been investigated. The study was conducted in the historical and comparative legal aspects, taking into account the general trends in the development of criminal and criminal procedural law in most modern states. It revealed a tendency in the use of restorative procedures by the courts of the Russian Federation in proceedings on minors and established a general scheme for their use of conciliation programs based on generalization of law enforcement practice. There is a unity of global and Russian trends in the development of alternatives to criminal prosecution. It is necessary to use the extensive experience of foreign legal proceedings in their application. Alternatives to criminal prosecution are one of the forms of differentiation of the criminal process, this is the institution of criminal procedure law. Alternative measures should complement the classical criminal justice. The Russian version of alternatives are institutions of exemption from criminal liability and termination of criminal cases. Restorative justice is one of the possible alternatives to criminal prosecution. Russian criminal procedural legislation contains the potential for the development

of conciliatory forms of resolving criminal legal conflicts. It is necessary to introduce conciliatory procedures in the Russian criminal process. Mediation has direct connection with the institutions of traditional criminal justice. It is possible to implement the mediation procedure in the Russian criminal procedural legislation. It is necessary to develop a law on mediation in the framework of criminal proceedings. In some constituent entities of the Russian Federation, elements of restorative justice are successfully applied, taking into account the recommendations of international legal acts in juvenile proceedings.

Olga Lebedeva

Some problems of establishing the origin of children under the legislation of the Russian Federation and foreign countries

No. 1, 2015

The subject of the research is the legislation of the Russian Federation and the member states of the European Union, which regulates the establishment of the origin of children, including those born with the help of assisted reproductive technologies, as well as documents developed at the level of the Council of Europe, defining the basic principles of legal regulation of establishing the origin of children and aiming to harmonize European legislation in this area. In addition, the article analyzes certain aspects of the European legal doctrine that investigates the use of assisted reproductive technologies and certain aspects of establishing the origin of children. In preparing the article, first of all, such general philosophical and general scientific methods were used as the dialectical method of cognition, as well as comparative, formal-logical, systemic, statistical, analysis, synthesis, sociological, concrete-historical; special methods adopted in jurisprudence were also used, such as dogmatic, formal-legal, normative, etc. The scientific novelty lies in the fact that for the first time the analysis of the legislation of European states and documents of the Council of Europe regulating the establishment of the

origin of children was carried out, problems of legal regulation of the establishment the origin of children born using assisted reproductive technologies in European countries . Within the framework of the study, the author concludes that the countries of the European Union face the same problems of legal regulation of establishing the origin of children born using assisted reproductive technologies as Russia. Uniform approaches to their solution in the legal space of Europe have not yet been developed. Moreover, the European scientists themselves have not yet fully comprehended the basic legal values that should form the basis of the legal regulation of these relations, which complicates the formulation and principles of their legal regulation.

Petrova Ekaterina Alekseevna,

The main approaches to the structure of the rule of law in various legal traditions

No. 1, 2015

The subject of this research is the problem of the structural structure of the rule of law. The article analyzes the approaches to the elements of the structure of the rule of law that exist in various legal traditions: in the Romano-Germanic (by the example of the law of the Russian Federation) and Anglo-American (by the example of US law). Attention is also drawn to the specifics of international law in comparison with domestic law. Specific examples are given from the current regulatory legal acts and other formal sources, illustrating the specifics of the structural structure of the rule of law (three-link, two - link structure, etc.). The main research methods are the dialectical method, general logical methods (analysis, synthesis), comparative legal, formal legal (dogmatic), etc. The conclusion is drawn that the nature of the rule of law, traditionally distinguished in domestic jurisprudence, its three-tier logical structure is most accurately reflected. For the common law tradition, the establishment of such an element as

the ratio decidendi is of paramount importance . It is emphasized that the solution to the question of the structure of the norm is important not only from a theoretical, but also from a practical point of view, since only with the correct identification of all elements of the rule of law can one understand its true content and thereby ensure the effective operation of the law.

Olga Rodionova

Problems of the development of theory and practice of the modern welfare state

No. 1, 2015

We are talking about the universalization of the welfare state in the era of globalization, about the determinants and inevitability of the privatization of the social function of the modern state, about the criteria for various classifications of the welfare state, about changing the essence of the welfare state: it has abandoned (or is refusing) direct paternalism in the form of long-term unemployment benefits and offers to replace him with assistance in activating the able-bodied population in the form of programs for professional retraining of the unemployed in the event of persistent problems with employment in the originally acquired specialty. There is a conceptual revision of the basic principles of the theory of the welfare state, the transformation of its entire traditional system of categories. In the course of the study of the problem, the dialectical, deductive method and the method of comparative analysis were comprehensively used. The essential changes in the concept of the welfare state are revealed and the conditions for the convergence of its various models are determined. At the same time, the ethnocultural factor was especially taken into account, in the context of which a representative social state existed. Possible reception of the positive experience of building a welfare state in various countries will optimize the social function of the state in modern Russia.

Olga Sokolova

Stepanova Irina Borisovna

Labor as one of the means of correcting convicts to imprisonment: problems of legislative regulation

No. 1, 2015

The subject of the research is the system of public relations on the execution of imprisonment in connection with the provision of employment for convicts in correctional institutions. Despite the clear priority of social and psychological work established by the Concept for the Development of the Penitentiary System until 2020, the importance of labor as one of the means of correcting those sentenced to imprisonment is highly estimated. To date, the greatest attention has been drawn to the problem of creating new principles and approaches to the correction of convicts, which undeservedly overshadowed the issues of legislative regulation of their involvement in work, including individual entrepreneurial activity. The data of a study carried out by the authors of the article on the basis of four colonies in the Ivanovo region, allowing to get some idea of the results of the correctional process are presented. The conditions for individual employment of convicts, developed two decades ago by the federal executive authorities, correlate with modern legislative provisions and theoretical concepts. It is proposed to amend Art. 103 of the Criminal Executive Code of the Russian Federation, as well as in Art . 1, 17 of the Law "On institutions and bodies executing criminal sentences in the form of imprisonment"; to develop a new instruction regulating the organization of individual labor activity on the territory of correctional institutions.

Taibova Oksana Yurkinovna

The legal status of the commissions for minors and the protection of their rights: problems and development prospects.

The commissions for juvenile affairs and protection of their rights occupy a special place among the subjects of the system for the prevention of neglect and juvenile delinquency. It is possible to draw a well-grounded conclusion about the state nature of the commissions on minors' affairs and the protection of their rights, their affiliation with the executive branch. The legal status of commissions on minors' affairs and protection of their rights, formed in the constituent entities of the Russian Federation and on the territory of local self-government bodies, should be defined as the status of federal territorial bodies of the Government Commission on Minors and Protection of Their Rights. This will require detailed regulation in the federal law of the order of formation and activities, the rights and obligations of the said commissions. The federal law, of course, must resolve the issue of financing and material support of commissions on minors' affairs and protection of their rights at all levels. In order to constantly improve the level of education of employees of commissions on juvenile affairs and the protection of their rights, it is necessary to develop and regulate the mandatory implementation of ways of information awareness. Therefore, the highest requirements must be imposed on the staff of commissions on juvenile affairs and the protection of their rights, related to knowledge of both the legal issues of juvenile liability and the age-related psychology of deviant behavior. It is also necessary to define the competence of the commissions for juvenile affairs and protection of their rights at each level, their rights and obligations and forms of activity. The unresolved personnel issues of the commissions for juvenile affairs and the protection of their rights, defects in the organization of its activities, leading to a hasty, and sometimes incompetent resolution of specific cases of offenses, are not consistent with its authority to apply state coercive measures to offenders. In the federal law, it is also necessary to set out the procedure for considering materials (cases) of the CDN and the RFP. Commissions for juvenile affairs and protection of their rights of all three levels constitute a single system, therefore, decisions made on the materials under consideration, including in cases of administrative offenses, by

district (city), district in cities commissions on juvenile affairs and protection of their rights, can be appealed to a higher commission. In practice, the commissions for juvenile affairs and protection of their rights are not fully a coordinating body, but only perform a control function. The activities of commissions for juvenile affairs and protection of their rights should become effective and most effective in practice, for this purpose, it is necessary to introduce full-time inspectors. This is possible only when the State Duma of the Federal Assembly of the Russian Federation adopts a federal law regulating the activities of commissions for minors and the protection of their rights. Success is hardly possible without a solid, modern legal framework. Thus, there is an urgent need for the adoption of a federal law regulating the activities of commissions on minors' affairs and protecting their rights in the new conditions, including regulating the execution by them of state powers to coordinate the activities of bodies and institutions of the prevention system. The need to strengthen the legal status and role of commissions on minors' affairs and protection of their rights in the Russian Federation is also obvious. For this, it is necessary to develop and adopt normative legal acts regulating not only the procedure for the formation and functioning of commissions for minors and the protection of their rights, but also their staffing at the federal, regional and municipal levels.

Elena Trestsova

Modernization of real estate objects in the civil legislation of the Russian Federation

No. 1, 2015

The reform of Russian civil legislation has created serious preconditions for the development of real estate turnover, which is based on the concept of real estate and the criteria for its differentiation from other things. At the same time, the legislator did not take into account the requests of law enforcement practice and did not resolve questions about the interpretation of the qualifications of a strong connection between an object and the ground and the impossibility of moving it in

space without disproportionate costs to the intended purpose. The arsenal of legal remedies has been moved from the sphere of law to a practical one. It was there that the definitions of the future real estate and the criteria for its turnover were formed . In addition, the courts expressed their attitude to the connection between the land plot and the things located on it through the concept of improving the land plot.Taking into account the historical tradition of national legislation and foreign experience, the concepts of a single real estate object and a plurality of real estate objects were investigated, as well as special cases from judicial practice on composite immovable things, the main thing and accessories With the introduction of a novel about a single immovable complex into circulation, an attempt was made to establish its features and correlation with other civil law categories. The concept of a single real estate complex is correlated with the unit of technical accounting - home ownership. Conclusions are drawn about the need to build an institute on the turnover of real estate in the direction of the development of a single real estate object and requests of law enforcement practice