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法律经济学

及其在中国运用的若干问题研究

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**The Research on the Related Problems
of Economics of Law And
Its Application in China**

By

Dou Mei

序

法律经济学是 20 世纪中期开始出现的一个新的分支学科，它将经济学和法学结合起来，主要研究法律制度如何促进资源配置优化和经济效益提高，研究如何降低制订和实施法律的成本。这个学科对中国的经济体制改革和现代化建设同样是有用的。在中国，社会主义市场经济体制正在建立起来，与之相适应的法律制度也正在建立起来。完善和健全经济法制，是克服旧体制遗留下的弊端和市场经济本身的弱点，规范国家对经济生活的干预所必需的。法律经济学的研究能够为实现这一目标提供有益的帮助。

奚梅这部著作是国内较早运用法律经济学研究中国法制建设的著作之一，它概述了法律经济学的形成过程和主要观点，运用法律经济学阐述了法律的供给与需求，分析了法律实施的成本和收益，对中国由计划经济转变为社会主义市场经济时期如何完善法律制度的若干问题进行了深入的探讨，提出了富于创新的见解和建议。这对中国法律建设特别

是经济法制建设是有积极意义的。但是，法律经济学的研究还任重道远。这不仅因为法律经济学出现的历史还不长，不论内容还是体系都还不完备、不成熟，都有待充实和完善；尤其是中国与西方国家的情况不同，社会制度、意识形态、经济结构和经济发展水平、市场经济发育程度等都不相同，法律制度必然存在差异，因而在应用法律经济学的时候必须从中国实际出发仔细加以研究，弄清楚什么是可以借鉴的，什么是不适合中国的，需要增加什么内容等，这样才有可能在实践中获得成功。我们或许可以提出这样的任务：应当解决法律经济学中国化的问题或者说创立有中国特色的法律经济学。

李 裕 宜

2000年8月15日

内 容 摘 要

本文以马克思主义为指导，借鉴西方法律经济学的合理成份，从理论研究和实证分析两个方面，对法律中的立法和实施问题，特别是就如何提高中国法律制度的效率，以促进经济改革与发展，进行了研究。

论文分导论和上、下两篇。导论部分对法律经济学的含义和主要内容，以及法律经济学的发展轨迹作了一般性的评介，重点阐述了法律经济学对中国经济改革的现实意义。上篇理论研究部分，系统地归纳了法律经济学的基本理论和分析方法，并运用经济学中的“供给与需求”、“成本与效率”理论，对法律的制定和实施进行了研究。论文特别对影响法律实施的成本因素，以及如何降低法律实施成本作了理论分析。在此基础上，对影响中国司法诉讼效率的成本进行了剖析并提出了提高中国司法效率的若干对策。下篇在理论研究的基础上，针对制约中国经济改革与发展中的几个重点法律制度，以实证分析的方法着重研究了农民法律权利的需求

与供给、自然资源产权的保护与效率、电信的垄断与效益三个问题，指出要通过法律制度的创新，建立自然资源产权的市场交易制度、公平与开放的市场竞争制度，并对中国法律在实施中效益与成本问题，提出了相应的立法和政策建议。

关键词：法律经济学 运用研究

Abstract

The dissertation is written under the guidance of Marxist Economics. Based on the reference of the reasonable portion of western law economics, from the angles of theoretical research and case analysis, the writer has studied legislation and law enforcement and, specially, studied how to make the Chinese law system more effective so that economic reform and development can be promoted.

The dissertation is divided into introduction, part one and part two. In the introduction, the author has made general comment on the connotation and main content of law economics and its trail of development, and has elaborated how practically meaningful law economics can be to the Chinese economical reform. Part one is the part of theoretical research. In this part the author has systematically studied and summed up the basic theories of law economics and its analytical methods . Also the writer has applied the

theories of “supply and need” and “cost and efficiency” from economics to study legislation and law enforcement. The author has made a theoretical analysis of both the factor of cost which influences law enforcement and how to lower the cost. Based on the result of the study, the author has made a further analysis of the cost that influences the efficiency of the judicial procedure in China and has proposed some ways to make the judicial procedure in China more efficient. In part two, based on the previous systematical theoretical analysis and aimed at a few important law regulations that restrict China’s economic reform and development, the author has studied, with the method of case analysis, the three special subjects — the peasants’ need of law and the supply of their right of law, protection and efficiency of the property right to natural resources, and the monopolization and benefit of telecommunication. The author has proposed in

this dissertation to establish a market trade system for environmental resource property right and a system of fair and open market competition through the renovation of our law system. In order to solve the problems related to benefit and cost of law enforcement in China, the author has also made some relevant suggestions of legislation and policy setting.

Key words: law economics applied research

CONTENTS

INTRODUCTION

1 THE GENERAL THEORIES OF LAW ECONOMICS AND THEIR PRACTICE

1.1 Law and Law Economics

1.1.1 Science of Law, Law and Its Classification

1.1.2 Connotation and Main Content of Law Economics

1.1.3 Track of Development of Law Economics

1.2 China's Economic Reformation and Law Economics

1.2.1 Marx and Engles' Remarks on the Dialectical Relationship of Law and Economy

1.2.2 Deng Xiaoping's Law Ideology about Economical Reformation

1.2.3 Sluggish Law System in China's Economical Reformation

1.2.4 Meaning of Law Economics to the Construction of China's Economic Law System

1.3 Structural Design of the Thesis

PART I THEORETICAL RESEARCH

2 ANALYTICAL METHODS AND MAIN THEORIES OF LAW ECONOMICS

2.1 Basic Theories and Analytical Methods of Law Economics

2.1.1 General Principles of Micro Economics

2.1.2 Economic Analysis of Law Standard

2.1.3 Economic Analysis of Law Confirmation

2.2 R. H. Coase's viewpoints of Law Economics

2.2.1 Raise of the Theory of Transaction Cost

2.2.2 Development of the Theory of Transaction Cost

2.3 Richard A. Posner's viewpoints of Law Economics

2.3.1 Basic Principles

2.3.2 Main Viewpoints

2.4 Oliver E. Williamson's viewpoints of Law Economics

2.4.1 Source of the Theory of Law and Economic Organization

2.4.2 Main Viewpoints of Law and Economic Organization

2.5 Comments on Analytical Methods and Main Theories of Law Economics

3 ECONOMICAL RESEARCH ON LAW FORMULATION

3.1 Law Formulation and Legislation

3.1.1 Law Formulation

3.1.2 Foundation of Legislation – Need of Society

- 3.2 Law Acknowledges Natural Rights
 - 3.2.1 Natural Rights
 - 3.2.2 From Natural Rights to Legal Rights
- 3.3 Analysis of the Needs of Legal Rights
 - 3.3.1 About the Theory of “Needs”
 - 3.3.2 Need of Legal Rights
 - 3.3.3 Economical Nature of Legal Rights
 - 3.3.4 Basic Reason (s) of the Needs of Legal Rights
- 3.4 Analysis of the Supplies of Legal Rights
 - 3.4.1 Public Goods and Legal Rights
 - 3.4.2 Ways of Supplying Legal Rights
 - 3.4.3 Ways of Supplying Legal Rights and Effect of Legislation
- 3.5 Conclusion: Balance of Law Supplies and Needs
 - 3.5.1 “Supplies” of Constitutional System and “Needs” of Civil Rights
 - 3.5.2 Balance of Supplies and Needs of Legal Rights

4 ECONOMICAL RESEARCH ON LAW PRACTICE

- 4.1 Law Practice
 - 4.1.1 Law Enforcement
 - 4.1.2 Law Obedience
- 4.2 Analysis of Law Practice Cost
 - 4.2.1 Cost, Transaction Cost and Law Practice Cost
 - 4.2.2 Definition and Content of Law Practice Cost
 - 4.2.3 Analysis of the Factors That Affect Law Practice Cost
 - 4.2.4 Thinking of Lowering Law Practice Cost

- 4.3 Analysis of Law Practice Effect
- 4.3.1 General Analysis of Law Practice Target
- 4.3.2 Analysis of Judicial Lawsuit Efficiency in Law Practice
- 4.3.3 Main Factors That Affect Judicial Efficiency

PART II CASE ANALYSIS

5 ANALYSIS OF ONE OF LAW ECONOMICS CASES: SUPPLIES AND NEEDS OF PEASANTS' LEGAL RIGHTS

- 5.1 The Change of Peasants' Income and Consumption Structure Since Foundation of the People's Republic of China
- 5.2 The Change of Peasants' Needs and Supplies of Legal Rights
 - 5.2.1 The Period of Imbalance of Needs and Supplies of Peasants' Legal Rights
 - 5.2.2 The Period of Great Change of Needs and Supplies of Peasants' Legal Rights
- 5.3 Legislation Thinking Based on Peasants Needs and Supplies of Legal Rights
 - 5.3.1 Supplies for Peasants' Needs of Legal Rights of Social Security
 - 5.3.2 Supplies for Peasants' Needs of Legal Rights of Property
 - 5.3.3 Supplies for Peasants' Needs of Legal Rights of Working
 - 5.3.4 Supplies for Peasants' Needs of Legal Rights of Education
 - 5.3.5 Supplies for Peasants' Needs of Legal Rights of Politics

6 ANALYSIS OF ONE OF LAW ECONOMICS CASES: ECONOMICS ANALYSIS OF ABUSING ENVIRONMENTAL RESOURCES

- 6.1 A Whole Case of Environment
- 6.2 Environmental Resources and Their Property Right
 - 6.2.1 Environmental Resources
 - 6.2.2 Definition of Environmental Resources Property Right
- 6.3 Public Ownership of Environmental Resources and Environment Deterioration
- 6.4 Arrangement and Abuse of Environmental Resources Property Right
- 6.5 China's Natural Resources Property Right and Its Relocation
 - 6.5.1 Defining Natural Resources Property Right from the Beginning
 - 6.5.2 Low Efficiency of the Initiative Natural Resources Property Right
 - 6.5.3 Setting Natural Resources Property Right when From Planned Economy to Market Economy
- 6.6 Thinking about China's Natural Resources
 - 6.6.1 Defining and Clarifying Natural Resources Property Right
 - 6.6.2 electing Marketable Transaction of Natural Resources Managing Right
 - 6.6.3 Setting System of Natural Resources Managing Right Transaction
 - 6.6.4 Public Ownership of Natural Resources and Government Control

7 ANALYSIS OF ONE OF LAW ECONOMICS CASES: LEGAL MONOPOLY OF CHINA TELECOMMUNICATION

7.1 China's Telecommunication Market System Setting and Situation

7.1.1 Mixture of Government and Enterprise, Legal Monopoly

7.1.2 Structure of the Market and Large Scale Monopoly out of Legal Monopoly

7.2 Cost Caused by Legal Monopoly of China's Telecommunication

7.2.1 Huge Cost of Telecommunication of Consumers

7.2.2 Huge Cost of China Telecommunication Itself

7.2.3 Cause of Citizens' Unequal Social Rights

7.2.4 Cause of Unfair Social Distribution

7.2.5 Restriction of the Development of China's Information Enterprise

7.3 Basis for China Telecommunication's Legal Monopoly and Analysis of Breaking the Legal Monopoly

7.3.1 Does Telecommunication Industry Belong to the Trades of "Natural Monopoly"?

7.3.2 Repeated and Redundant Construction and Efficient Usage of Social Resources

7.3.3 Legal Monopoly and Realization of National Interests

7.3.4 Analysis of the Benefit of Breaking the Monopoly

7.4 Ways of Breaking China Telecommunication's Legal Monopoly

7.4.1 Opening the Market for Telecommunication Competition, Allowing More Subjects with Independent Property Ownership to Enter Telecommunication Market