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普通高等教育“十五”国家级规划教材

全国高等学校法学专业核心课程教材

行政法与行政诉讼法

Administrative Law and Administrative Litigation Law

(第二版)

姜明安 主编

北京大学出版社
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内 容 简 介

《行政法与行政诉讼法》是根据教育部高等学校法学学科教学指导委员会的要求,为高校法学专业14门核心课程编写的专门教材之一。

本书全面、系统、深入地阐释了行政法与行政诉讼法的基本理论和基本知识。研究的范围主要包括行政法的一般原理、原则及行政法、行政法学的历史发展;行政法主体的一般理论及行政主体的职责、职权、管理手段与行政相对人的权利、义务;行政行为的一般理论及行政行为的性质、特征、构成要件、合法要件与各种类别行政行为的运作程序;行政救济的一般理论及行政复议、行政诉讼的性质、功能,行政复议和行政诉讼的受案范围、管辖、程序与裁判标准;行政赔偿的一般理论及行政赔偿责任构成要件、归责原则、赔偿范围、方式、标准与程序等。本书主要以我国行政法治实践和行政法学说为基本研究素材,同时吸收、借鉴了国外行政法学研究的大量成果。本书在继承、批判和扬弃国外行政法学的控权论、管理论、行政权力本位论、相对人权利本位论等各种学术流派的基础上,初步形成和建立了有中国特色的行政法学理论体系框架。

本书第一版于1999年10月问世。自那时到现在,短短5年时间,本书已重印14次之多,说明其广受读者欢迎。但是,我国行政法治实践和行政法学理论研究进入21世纪以来,较20世纪末该书第一版出版时已有了重大发展,《立法法》、《行政许可法》、《行政法规制定程序条例》、《规章制定程序条例》等新的法律、法规发布,以及最高人民法院关于行政诉讼法、行政诉讼证据、行政赔偿等新的司法解释出台,使得本书第一版部分内容已经显现出某些陈旧、过时的问题。因此,本书编委会于今年年初决定对该书第一版进行全面修订,推出反映我国行政法治最新进展和行政法学最新研究成果的《行政法与行政诉讼法》第二版。《行政法与行政诉讼法》第二版对第一版的体系、内容进行了部分重构,但基本原理和基本知识并无大的变化,因而第二版与第一版具有继承性、连贯性。

ABSTRACT

Administrative Law and Administrative Litigation Law is one of the 14 key courses for college and university students majored in law, edited on commission of Guidance Committee on Legal Education of Higher Education of Education Ministry. The book completely, systematically and thoroughly articulates the basic theories and knowledge of administrative law and litigation law, including: (I) the general theories and basic principles of administrative law and the development of administrative law and administrative jurisprudence; (II) the general theories of administrative law subject, the duties, authorities and measures of administrative subject and the rights and obligations of private party; (III) the general theories and the natures, characteristics, constitutive elements and legal requirements of administrative action, and the particular procedures of several main administrative actions; (IV) the general theories of administrative remedies, the natures, functions, scopes, jurisdictions, procedures and judgment criteria of administrative review and administrative litigation; (V) the general theories and the constitutive elements, imputation principles, scopes, methods, standards and procedures of administrative compensation.

The book bases its studies mainly on the practices and doctrines of China's administrative law; at the meanwhile, the book assimilates and refers to a great deal achievements of foreign administrative law. Inheriting, criticizing and sublating various doctrines of foreign administrative jurisprudence, such as power-control theory, regulatory theory, power standard theory and right standard theory, etc, the book has preliminarily formulated a theoretical framework of administrative law with Chinese characteristics.

The first edition of the book came out in October of 1999. Ever since then, it has been reprinted 14 times in 5 years, which shows it is widely accepted by the readers. Whereas compared with that of the era when the first edition came out at the end of 20th century, both the practices and theories of China's administrative law has greatly evolved in the first years of 21st century for the promulgation of a batch of new laws and regulations, such as *Legislation Law*, *Administrative License Law*, *Regulation for Administrative Regulation Procedures* and *Regulation*

for Administrative Rule Procedures, etc, in addition to those new judicial interpretations on administrative litigation law, administrative litigation evidence and administrative compensation of the Supreme People's Court, part of the first edition has been outdated. Then at the beginning of this year, the editorial board decided to modify the first edition in order that the new edition would reflect the recent development of China's administrative law and the latest achievements of administrative jurisprudence. The system and content of the second edition is reformed in part while the basic theories and knowledge remains no great change, so that the second edition is the inheritance of the first edition and keeps consistent with it.

作者简介及本书编写分工

(以撰写章节先后为序)

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撰写本书第 1—10 章,负责全书的审稿、统稿。

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撰写本书第 11—13 章。

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撰写本书第16—17、19—22章。

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撰写本书第18章。

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撰写本书第 23、28、31—32 章。

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撰写本书第 24、30 章。

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撰写本书第 25—27、29 章。

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撰写本书第 33、37—38 章。

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撰写本书第 34—36 章。

北京大学法学院宪法与行政法专业硕士研究生毕洪海协助本书主编做了大量技术性和事务性工作，包括编辑、整理、翻译本书的目录、索引、附录以及部分文字的校对工作；博士研究生王贵松、毕雁英以及硕士研究生陈标冲、薛强参与了本书部分文字校对工作。此外，北京市高级人民法院法官程虎博士协助江必新博士对第 24 章和第 30 章进行了部分修订工作。在此一并表示感谢。

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Legal Science, 2003; etc.

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