

ИНСТИТУТ ГОСУДАРСТВА И ПРАВА  
РОССИЙСКОЙ АКАДЕМИИ НАУК

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RUSSIAN ACADEMY OF SCIENCES

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## ABSTRACTS AND KEY-WORDS

### THE THEORY AND PRACTICE OF INTERACTION BETWEEN CRIMINAL AND BUSINESS LAW

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Civil and criminal legal techniques in analyzing the same offences are compared. In the historical perspective Soviet criminal courts have found theft in situations where from the standpoint of business law it could not take place. This difference in approaches to the same situations has been preserved to our days, however, with the increasing complexity of legislation and relations regulated them this approach has diversified. Judicial practice in the field of private law should not be isolated from criminal. You should look for interdisciplinary links in the teaching of the mentioned industries. Quite timely would be the formation of research and training program «Legal security of business», which would contribute to strengthening the rule of law in the business environment and relation between business and state.

→ Business law, criminal law, judicial practice, liability, damage and theft, surety, bill of exchange, aval, legal security, contract, budget, guilt.

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### **JURISDICTIONAL FORM OF PROTECTION IN THE FIELD OF PATENT LAW**

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Jurisdictional form of protection of civil rights implies a situation when the person whose right is violated addresses him or herself to the competent state authorities. Generally, such protection is realized by resort to the court. In cases provided for by law, protection is realized in a specific administrative way. It is characteristic for protection in the field of patent law and presupposes application to Rospatent. Protection in respect of secret inventions is administered not only by the Rospatent, but also by other authorized governmental bodies.

Another feature of protection in the field of patent law is that individual disputes are dealt with by a specialized court — the Intellectual Property Court.

→ Court for intellectual property rights, Rospatent, the appeal, the decision to grant a patent, the decision to refuse to grant a patent, challenging the patent, inventions, utility models, industrial designs, secret inventions, the moment of occurrence of exclusive right.



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**THE RIGHT TO BE HEARD IN THE DISPUTS ARISING  
FROM THE LAW OF OBLIGATION IN ARBITRATION COURTS**

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The author studies the right to be heard as a fundamental characteristic of justice, reveals elements of this right, outlines its connection with the adversarial principle. The guaranties of the right to be heard are analyzed in the context of the simplified procedure of commercial courts (arbitration courts). The article examines how the reduced guaranties of the right to be heard affect the business behavior of contractors.

→ The right to be heard (*audiatur et altera pars*), adversary, summary procedure, proof, participant, parts of a trial.

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## BANKRUPTCY LAW: SUBJECT MATTER, METHOD, GOALS AND OTHER CHARACTERISTICS

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There are reasons to consider the bankruptcy law as a special law field. As a support to this idea the author notices the enforcement in insolvency as a specific element of the bankruptcy law. The bankruptcy law principles are formulated. The interaction and the intersection between the substantive and procedural provisions are marked as the distinctive features of bankruptcy law. Participants of insolvency procedure are described. The author identifies the subject matter of regulation by bankruptcy law, justified by the legislative unity of bankruptcy law.

→ Insolvency (bankruptcy), bankruptcy law, enforcement proceeding, proportionality, commensurability, the principles of bankruptcy law.

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## CARGO RETENTION RIGHT IN THE CONTRACT OF CARRIAGE OF GOODS BY SEA

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The research of the nature of the retention right is carried out in comparison with the right of pledge. The author expresses the opinion concerning the legal nature of retention right as a remedy and as a form of measure of operational impact related to the assurance of consideration. The article analyzes the practice of the MAC at the CCI RF on the issues of the proportionality of the application of retention rights on cargo and its implementation.

→ Carriage of goods by sea, retention of cargo by sea carriage, right of retention, measure of operational impact, Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation.

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## MANAGEMENT OF APARTMENT HOUSES: PAST AND PRESENT

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The article describes methods of apartment houses management used in Russia in different periods. Those methods are compared with the current situation with management of apartment buildings. Thus, ZhAKTs (housing and leasing cooperative partnerships), which appeared in 1924, are compared with modern homeowners associations (HOAs) and housing cooperatives. The author also analyzes the «pros and cons» of other ways apartment buildings management provided by the current legislation — in particular, the direct management by property owners.

→ Management of an apartment building, a homeowners association, a housing cooperative, direct management by property owners.

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### PARLIAMENTARY LIABILITY OF DEPUTIES

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The article deals with the problem of parliamentary responsibility of deputies in connection with the Rules of procedure of the Russian parliament that determine the disciplinary responsibility of deputies on the basis of a historical and comparative legal approach. It is substantiated that the parliamentary responsibility of deputies is a separate type of state legal responsibility and an important element of the status of a parliamentarian. There is a difference from the constitutional and legal responsibility, especially in the application of measures of responsibility and sanctions.

→ Parliamentary responsibility, the parliament, the Rules of procedure of the parliament, the internal organization of parliament, the discipline of deputies, the punishments.

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**TO THE 100TH ANNIVERSARY OF THE OCTOBER  
REVOLUTION:  
LATE SOVIET PERIOD OF THE DEVELOPMENT OF LEGISLATION  
ON CULTURAL-LINGUISTIC RELATIONS**

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The base of growth and development of Russia is cultural and intellectual potential of Russian society which requires proper attention including developing a system of measures intended to secure with the help of the law the space of spiritual life of citizen. The necessity of preserving the cultural identity for Russia has multiple aspects. Special attention should be drawn to legislation in the field of linguistic relations as an important part of social and cultural relations. The regulation of cultural and language relations in soviet times went through multiple stages. Ideological course on providing maximum of «trust in proletariat's class struggle on the side of foreigners» became a well prepared soil for language-building of 1920—1930. That was marked by objective significant improvements in development of languages of all nations of USSR. Though the regulation mostly concentrated on official usage of national languages.

→ Legal regulation of culture, the spiritual world of a person, cultural-language relations, cultural traditions of the peoples of Russia, use of languages, law on languages, collapse of the USSR

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## JUDICIAL REFORM AND PERSPECTIVES OF ARBITRATION PROCEDURE LAW DEVELOPMENT

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The article analyzes the reasons for emergence of independent system of arbitration courts, the place of arbitration courts in the modern judicial system of the

Russian Federation after establishment of the Supreme Court of the Russian Federation as the highest court both for the system of courts of general jurisdiction and arbitration courts. The judicial reform of the first decade of the XXI century is studied. The author reviews the changes in the arbitration procedure after the abolition of the Supreme Arbitration Court from the point of view of access to justice, legal certainty; the author asks questions regarding achievement of the goals of the reform, grounds need for a new concept for the reform of the court system.

→ Judiciary, arbitration courts, judicial reform, summary procedure, legal certainty principle, access to justice.

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### **COURT PROTECTION OF GENERAL PUBLIC INTERESTS (CERTAIN ISSUES)**

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The article is devoted to advocacy of general public interest in civil proceedings. The article raises the question of the right to file this kind of claims, appeal judicial decisions thereof an right to enter into a settlement agreement in such cases. The author critically assesses the existing practice of courts of general jurisdiction, the position of the Constitutional Court of the Russian Federation and gives recommendations on improving legislation and practice of its application.

→ Keywords General public, Judicial protection, settlement agreement, right to appeal a judicial act.

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# THE CONCEPT OF PRETRIAL DISPUTE RESOLUTION PROCEDURE IN THE WRITINGS OF THE SOVIET PERIOD AND ITS CONTEMPORARY SIGNIFICANCE

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The article considers the recent changes in the arbitration procedural legislation with regard to pretrial dispute resolution procedures. The author proves the need to develop new approaches to this procedure that would make the use of such procedure more effective. The attitude to the application for a pretrial dispute resolution procedure only as a prerequisite formal condition to comply with before going to court is critically assessed.

→ Pretrial dispute resolution procedure, arbitration court, arbitration process, alternative procedures, alternative dispute resolution.

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## JURISDICTION OVER FAMILY LEGAL DISPUTES

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Judicial practice shows that the problem of the jurisdiction over civil cases that emerged from family disputes is more than actual, since the cases of divorce and the division of common property of spouses are one of the most common categories of court cases. The most difficult problem in practice is the delineation of jurisdiction over divorce cases between magistrates and district courts, and the question of determining the territorial jurisdiction over disputes over the division of immovable property between spouses, when it is necessary to justify the choice between general and exclusive jurisdiction.

→ Patrimonial jurisdiction, exclusive jurisdiction, divorce, disputes on the division of common property of spouses, real estate, judicial practice.

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**PRINCIPLE 6 OF THE UN 1959 DECLARATION ON THE RIGHTS  
OF THE CHILD IN THE CONTEXT OF THE HAGUE CONVENTION  
ON CHILD ABDUCTION 1980**

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The main focus of this article is a correlation between the main provisions of the 1980 Hague Convention on Civil Aspects of International Child Abduction, to which Russian Federation acceded in 2011, and increasingly cited by the Russian courts Principle 6 of the UN 1959 Declaration on the Rights of the Child, under which a child of tender years shall not, save in exceptional circumstances, be separated from his mother.

→ The Hague Convention, child abduction, children's rights, parental rights, cross-border disputes, UN Declaration.

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### ARBITRATION IN CHINA

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The article highlights the organizational issues of arbitration of commercial disputes in China in the light of the Arbitration Act 1994, taking as well into account acts of judicial power of an instructive nature. The statistical information on the dynamics of the resolving of disputes by arbitration courts is updated, the pro-arbitration approach of state courts is shown when considering issues on enforcement of decisions of arbitration courts.

→ China, international commercial arbitration, arbitration proceedings, arbitration court, China International Economic and Trade Arbitration Commission (CIETAC).

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### **ON THE CHOICE OF A FORUM FOR RESOLVING INTERNATIONAL FINANCIAL DISPUTES IN THE APR COUNTRIES**

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The article outlines the main provisions of the Report of the Task Force of the Commission on Arbitration and Alternative Dispute Resolution of the International Chamber of Commerce (ICC) on the use of arbitration by financial institutions; The impact of the 2008 financial crisis, as well as the effects of the Brexit 2016 on the use of international commercial arbitration in resolving financial disputes, are shown. The article notes the creation of the Center for the Resolution of International Financial Disputes — P.R.I.M.E. Finance.

→ Arbitration, financial disputes, International Swaps and Derivatives Association — ISDA, Center for the Resolution of International Financial Disputes — PRIME Finance, the consequences of Brexit, the financial crisis of 2008.

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## ALTERNATIVE WAYS TO RESOLVE FINANCIAL DISPUTES IN MALAYSIA

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The article outlines the provisions of the Malaysian Financial Services Act of 2013 and the Malaysian Law on Islamic Financial Services of 2013 concerning alternative resolution of financial disputes; The characteristics of the main centers for the alternative settlement of financial disputes in Malaysia are the Financial Services Ombudsman, the Kuala Lumpur High Court Mediation Center, the Kuala Lumpur Regional Arbitration Center, the Securities Dispute Resolution Center.

→ Malaysian law, mediation in Malaysia, alternative dispute resolution methods, Islamic banking, Islamic arbitration, Islamic financial services, Islamic banks.

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