Ershova Inna Vladimirovna,
Frolkina Elizaveta Nikolaevna, No. 2 2018

Commercial law: new challenges of reality

Annotation. The presented article highlights the results of the work of the XIV International Scientific and Practical Conference "Modern Problems of Commercial Law in Russia", held on October 27, 2017 at the University named after O.E. Kutafina (Moscow State Law Academy). The abstracts of the speakers of the conference are presented. The main problems facing science, legislation, and the practice of its application are identified. Attention is drawn to the concept of teaching commercial (trade) law in the leading law universities in Russia.

Levushkin Anatoly Nikolaevich, No. 2 2018

Special contractual structures: framework, option and subscription contracts

Annotation. In the course of the reform of the legislation governing business and commercial relations, rules appeared on several new special contractual structures. The author makes a comparative characteristic, assesses the practice of applying these agreements, formulates conclusions regarding the current regulatory framework. The article discusses the theory and practice of using special contractual structures: framework,option and subscription agreements.

In law enforcement, individual results of the reform aimed at the application of special agreements are evident. These contractual structures make it possible to determine the standard conditions included in the content of contracts, to establish general rules for the contractual cooperation of the parties in the future. There are difficulties in qualifying a number of property and organizational contracts, determining their legal nature.

The agreement on granting an option to conclude a contract is of wide interest in the theory and practice of entrepreneurial interaction, which is explained by the postponement of its action, which depends only on the will of one of the parties to the contract.

It has been substantiated that the introduction of the institution of an option agreement, framework and subscription agreements in entrepreneurial activity should have a positive effect on the development of contractual entrepreneurial relations, as well as participants and shareholders of business entities.

Kondratyev Vladimir Alexandrovich, No. 2 2018

The legal nature of the contract for the provision of a trading place in the retail market

Annotation. The article examines the legal nature of an agreement on the provision of a trading place in the retail market. There is no common understanding on this issue either in doctrine or in law enforcement practice. There are three approaches to qualifying this agreement as a paid service agreement, as an unnamed agreement and as a lease agreement. The main difficulty in qualifying this agreement is that the legislator does not define the legal nature of a trading place as an object of law. When researching this issue, the author proceeds primarily from the economic orientation of this agreement, its purpose, which is to provide a trading place for temporary use, while a trading place should be considered as part of a building (land plot), depending on the type of market.

Andreeva Lyubov Vasilievna, No. 2 2018

Standardization in the system of legal regulation of trade activities

Annotation. The article gives a brief description of the subject of regulation Federal Law of December 28, 2009 No. № 381 "On the basics of state regulation of trade activities", considered the competence of federal government bodies and

government bodies of the constituent entities of the Russian Federation to regulate trade. The author notes the problem of determining the content of trade activities and differentiation of wholesale trade from retail trade, which has not been resolved in the legislation, and in this regard, the importance of standardization and the documents that make up its highest level - national standards - is considered. They areconcretize the basic concepts in the field of trade (wholesale trade, retail trade, trade facility, type of trade enterprise, forms of trade and others), contribute to the ordering of trade relations, a uniform understanding of trade terms. The legal nature of national standards, their importance as regulators of trade relations, the procedure for their application have been investigated. An essential feature of standardization in the field of trade is the adoption of the National Standard of the Russian Federation GOST R 56876.1 -2016 (part 1) and GOST R 56876.2 -2016 (part 2) "Guide to good practices in the relationship between retail chains and suppliers of consumer goods", which contains clarifications of terms and criteria for the good faith of the behavior of traders,

Batrova Tatyana Alexandrovna, No. 2 2018

State and prospects of legal regulation of trade in retail markets

Annotation. Retail trade has always been of particular importance to the economy. Based on the analysis of Russian and foreign legislation, the author comes to the conclusion about the existence of various approaches to the regulation of this sphere of public relations. Decentralization of its legal regulation and the presence of a unified approach to the regulation of trade in markets and fairs in Western Europe are noted, along with the dominance of unified legal norms enshrined in federal law, and the refusal to form a unified regulatory framework for market and fair trade in Russia. It is proposed to introduce into the Law on Retail Markets provisions that would clearly define the limits of the rule-making powers not only of state authorities of the constituent entities of the Federation, but also of local self-government bodies.

Molchanov Artem Vladimirovich, No. 2 2018

On the problems and significance of the legal definition of signs and classification of trades

Annotation. Hat the present stage, the importance of trading for the system of economic relations can hardly be overestimated. Bidding is the most effective form of doing business, as well as the participation of public entities in economic relations, providing equal access for all potential participants to public property and public finance. At the same time, in order to ensure an appropriate degree of certainty and stability of relations where tenders are used, it is necessary to resolve fundamental issues, namely: the definition of the concept of "tender", the consolidation of their features, and the unification of approaches to their classification. Based on the research conducted, the author comes to the conclusion that

Kirpichev Alexander Evgenievich, No. 2 2018

Aggregators of goods and services as new subjects of commercial law

Annotation. The State Duma of the Federal Assembly of the Russian Federation adopted in the first reading a draft law, the key novelty of which is to regulate the legal status of a new subject of commercial law - an aggregator of goods and services. Such entities (combining the offers of shops, hotels, taxi companies) are widely represented on the market. Their qualification from the point of view of the theory of commercial law as an organizer of trade turnover allows, by analogy with the legal status of other entities of the same type, to suggest a number of issues that also need to be settled, or they will lead to problems in the future: the ability of aggregators to determine the terms of contracts between performers and consumers and the qualification of aggregators' actions in terms of competition law. In addition, it is necessary to consider

Shishmareva Tatyana Petrovna, No. 2 2018

Subjects of German commercial law

Annotation. The article examines the concept of "merchant" as the main subject of commercial (commercial) law in Germany, which, along with civil law, regulates private law relations with the participation of business entities. The entity acquires the status of a merchant in Germany on various legal grounds: by virtue of engaging in commercial activities; by virtue of registration in the commercial register; by virtue of the creation of an organization in a certain organizational and legal form. The article analyzes the legal definition of the concept of "merchant" from § 1 of the German Commercial Code (HGB) as a subject that is engaged in commercial activity, as well as the signs of commercial activity, highlighted in the doctrine and jurisprudence of Germany. Voluntary registration in the Commercial Register of a company of an economic entity in accordance with §5 HGB, applied to artisans, peasants, farmers, is also considered as a constitutive sign of the status of a merchant. The status of a merchant can be acquired by business entities in accordance with § 6 HGB, regardless of the subject of activity, by virtue of the choice of a certain organizational and legal form of a commercial company. The article singles out trading companies as capital associations (joint-stock company, limited company on shares, European joint-stock company, limited liability company) and associations of persons (full commercial company, limited company). The concepts of "entrepreneur" and "merchant" are differentiated. The status of a merchant can be acquired by business entities in accordance with § 6 HGB, regardless of the subject of activity, by virtue of the choice of a certain organizational and legal form of a commercial company. The article singles out trading companies as capital associations (joint-stock company, limited company on shares, European joint-stock company, limited liability company) and associations of persons (full commercial company, limited company). The concepts of "entrepreneur" and "merchant" are differentiated. The status of a merchant can be acquired by business entities in accordance with § 6 HGB, regardless of the subject of activity, by virtue of the choice of a certain organizational and legal form of a commercial company. The article singles out trading companies as capital associations (joint-stock

company, limited company on shares, European joint-stock company, limited liability company) and associations of persons (full commercial company, limited company). The concepts of "entrepreneur" and "merchant" are differentiated. limited liability company) and associations of persons (full commercial company, limited company). The concepts of "entrepreneur" and "merchant" are differentiated. limited liability company) and associations of persons (full commercial company, limited company). The concepts of "entrepreneur" and "merchant" are differentiated.

Khabirov Artur Ilfarovich, No. 2 2018

Legal regulation of the loan agreement at the turn of times (1917-2017)

Annotation. In the article, the author examines the process of the historical formation of the institution of the loan. A comparison is made of the legal regulation of a loan agreement under the Code of Laws of the Russian Empire, the draft Civil Code of the Russian Empire, the Civil Code of the RSFSR of 1922 with the current norms. The reference to the history of law is not accidental, since the 2009 Concept for the Development of Civil Legislation draws attention to the need to take into account the historical development of Russian law. To substantiate the conclusions made by the author, examples are given of the appeal of the legislative and judicial authorities to the history of Russian law, namely to the norms of law and the doctrine of the pre-revolutionary and Soviet periods. Based on the analysis of the relevant norms, it was concluded that that the modern legal regulation of the loan agreement is based on the norms of Russian pre-revolutionary legislation and pre-revolutionary doctrine, as well as on the norms of the post-revolutionary period, which makes it possible to use the legal structures developed in the indicated periods by science and practice. So, the author proposed to fix in the Civil Code of the Russian Federation the possibility of concluding and establishing the consequences of refusal from a

preliminary agreement on the conclusion of a loan agreement in the future. In addition, the author, based on the analysis of the doctrine of the XIX-XXI centuries. substantiates the possibility of concluding a loan agreement on a consensual model. the author proposed to fix in the Civil Code of the Russian Federation the possibility of concluding and establishing the consequences of refusal from a preliminary agreement on the conclusion of a loan agreement in the future. In addition, the author, based on the analysis of the doctrine of the XIX-XXI centuries. substantiates the possibility of concluding a loan agreement on a consensual model. the author proposed to fix in the Civil Code of the Russian Federation the possibility of concluding and establishing the consequences of refusal from a preliminary agreement on the conclusion of a loan agreement in the future. In addition, the author, based on the analysis of the doctrine of the XIX-XXI centuries. substantiates the possibility of concluding a loan agreement on a consensual model.

Zatsepina Olesya Evgenievna, No. 2 2018

Classification of legal presumptions

Annotation. The article is devoted to the classification of legal presumptions on various grounds. In particular, classifications are considered by the method of consolidation, if possible, refutation, by the sphere of legal regulation, by the main purpose in protecting the interests of participants in legal relations and by the criterion of being obligatory for the court, the properties and functions of various types of presumptions are disclosed. Indirect presumptions are derived through the interpretation of legal norms and represent a reserve for the court.Irrefutable presumptions are only de jure irrefutable for the sake of stability of the rule of law.Substantive presumptions allow a case to be resolved on the merits and perform general procedural functions, and procedural presumptions - individual procedural functions, which contribute to the normal administration of justice. In addition to industry-wide and cross-industry presumptions, special (industry) presumptions are distinguished,optimizing legal regulation in accordance with the subject and objectives of a particular branch of law. Classification of presumptions**for the main purpose of protecting the interests of participants in legal relations**allows you

to choose the optimal model for regulating the relevant relations, and classification according to the criterion of being obligatory for the court is important for the correct application of presumptions. Each classificationplays a very important role in improving the efficiency of legal regulation.

Portnova Elena Vitalievna, No. 2 2018

Constitutional (statutory) courts of the constituent entities of the Russian Federation as bodies of judicial constitutional control

Annotation. The article proves that the constitutional (statutory) subjects of the Russian Federation have a dual nature. The basic laws of the constituent entities of the Russian Federation classify constitutional (statutory) courts at the same time as state authorities and judicial bodies of the constituent entities of the Russian Federation. In addition, there is an indication of their independence and autonomy in relation to other branches of government. Constitutional control, as a kind of state activity, has its own goals (detection, elimination of contradictions); carried out by special subjects (constitutional control bodies); has a scope (laws, other regulatory legal acts, law enforcement practice), and also has the necessary means (techniques and methods) for its implementation. The goals of constitutional review are not only to ensure the rule of law in the state, but also the expediency of a legislative act from the standpoint of ensuring human and civil rights and freedoms. On the basis of the decision of the constitutional review body, the unconstitutional act in whole or in part loses legal force and is removed from the legislative system. The nature of the decisions of the constitutional and statutory courts indicates that these bodies have a correcting function. However, one should take into account the fact that the bodies of constitutional justice of the constituent entities of the Federation do not create new legal norms in their decisions, but only correct, with the help of their legal positions, what is already in the legislation of the constituent entity of the Russian Federation. Consequently, these bodies resolve disputes through constitutional proceedings,

Mamatov Maxim Vladimirovich

Maslov Igor Alexandrovich, No. 2 2018

On the terms of detention in special institutions of foreign citizens and stateless persons subject to administrative expulsion

The article presents the results of the analysis of the provisions of legislation and law enforcement practice on the issue of determining the timing and other parameters for the implementation of such a measure to ensure proceedings in an administrative offense case as placing a foreign citizen or stateless person in a special institution for the purpose of executing a punishment in the form of forced administrative expulsion. As conclusions, the authors formulate specific proposals for improving the legislation on administrative offenses.

Bogdanova Elena Evgenievna, No. 2 2018

Certain problems of recognizing law as a way to protect civil rights

Annotation: The presented article analyzes the controversial issues of the application of such a method of protecting civil rights as the recognition of rights. FROMthe specifics of the requirement for the recognition of the right is that a person makes such a requirement when his subjective right has not actually been violated; this requirement is aimed, first of all, at establishing the existence of a legal relationship (the existence of a right) on the basis of a court decision. In this regard, it seems inappropriate to extend the provisions of the statute of limitations to the requirements for the recognition of law.

Recognition of the right is characterized by the fact that the court establishes the existence of a legal relationship between the participants, recognizes that the plaintiff has the right, and thus protects it. Recognition of the right does not require imposing any restorative measures on the defendant, since non-recognition of the

right is not accompanied by its violation and therefore, as a general rule, does not require restoration.

Gruzdev Vladislav Viktorovich, No. 2 2018

On the essence of civil personality

Annotation: This article is devoted to the study of the concept and essence of civil personality. Based on the results of the study, the author comes to the conclusion that the civil personality is the volitional ability of people and their groups, clothed in a legal form, i.e. the ability recognized by law and order for a legally significant manifestation of will in the field of property relations regulated by the civil law industry. Recognition by the state of legal personality means giving legal qualities to a person's volitional ability, formed by his inalienable natural and social properties. Legal personality is composed of volitional ability in the form of personal intangible benefits and legal forms of its expression, represented by legal capacity or legal capacity of a certain volume. At the same time, intangible benefits (personal rights and freedoms) are responsible for the physical, and legal capacity and legal capacity - for the legal existence of the individual. Equality of legal personality forms the goal that is necessary and at the same time realistically achieved by legal means only in a specific legal relationship. In particular, the carriers of civil legal personality must be legally equal as subjects of horizontal ties in relation to each other or as subject subjects of similar vertical ties.

Otcheskaya Tatyana Ivanovna, No. 2 2018

Procedural aspects of the participation of the prosecutor in the arbitration process

Annotation: The guarantee of judicial protection of human and civil rights and freedoms is the fundamental basis of any legal state.

As the complexity of social relations, the rapid development of the economy in the state the growth of civil turnover and, accordingly, the emergence of situations in which the rights and legitimate interests of both individual citizens and legal entities involved in economic and economic legal relations are violated have become inevitable.

Through the arbitration process, the norms of substantive law are implemented and the rights and interests of subjects of entrepreneurial and other economic activity are protected.

In the light of the ongoing reforms in the judicial system of the Russian Federation, the issues of economic justice and the role of the prosecutor's office in this do not lose their relevance.

The process of continuous improvement of procedural legislation is an important mechanism that ensures effective consideration of economic disputes by arbitration courts.

The participation of the prosecutor in the arbitration process is an important direction of the prosecutor's activity.

The degree of improvement of the judicial system, changes in the structure, role and status of the court, improvement of legislation on the participation of the prosecutor in the arbitration process, its compliance with the specific realities of society and the state largely determines the effectiveness and essence of justice[1]...

The article reveals the concept and content of the legal regulation of the participation of the prosecutor in the arbitration process.

The author focuses on the depth of the study of this problem in the period from 2002 to the present, pointing to the norms of procedural legislation and the current orders of the Prosecutor General of the Russian Federation on this issue.

A special place is given to the powers of the prosecutor in the arbitration process. Analysis of the law enforcement practice of the participation of the

[1]See: Justice in the modern world: monograph / Ed. V. M. Lebedeva, T. Ya. Khabrieva. M .: Norma, 2013.S. 320.

prosecutor in the arbitration process allows the author to draw a conclusion about specific ways to improve the current legislation.

Alimpiev Sergey Alexandrovich
Falkina Tatyana Yurievna, No. 2 2018

On topical problems of prevention of illegal consumption of narcotic drugs and psychotropic substances on the territory of the Sverdlovsk region

Annotation. The article analyzes the level of drug addiction prevalence in the Sverdlovsk region, establishes the degree of drug addiction in various age groups of the population, identifies the reasons for the spread of drug addiction and motives for drug consumption among various population groups, identifies the main mechanisms of drug addiction and the most common drugs, identifies the most popular places and methods of distribution drugs, analyzed the socio-cultural factors that contribute to and prevent the emergence and development of drug addiction, investigate modern problems of prevention of non-medical use of narcotic drugs and psychotropic substances in the region, analyze some of the main causes and conditions,

Tembotova Maryana Arsenovna, No. 2 2018

The register of new potentially dangerous psychoactive substances, the circulation of which is prohibited in the Russian Federation: issues of regulatory and legal regulation

Annotation. In the article, taking into account the relevance of legal regulation of the formation of the Register and exclusion from the Register of substances, recommendations are given for further improving this work, taking into account the actual situation.

An opinion is expressed about the need for the Ministry of Internal Affairs of Russia to adopt a regulatory legal act approving the Procedure for the formation and

maintenance of the Register, as well as the inclusion of the Ministry of Internal Affairs of Russia in this Register in accordance with the established Procedure for new potentially hazardous psychoactive substances.

The author comes to the conclusion that for the inclusion of a new potentially dangerous psychoactive substance in the Register, the results of a medical examination are not enough - special studies are required to determine the danger to life and health of intoxication caused by the use of such a substance, namely, the conduct of forensic medical examinations, within the framework of which psychoactive substances containing, for example, natural and synthetic cannabinoids, are subject to identification and determination of their degree of danger to life and health.

Kokotova Maria Alexandrovna, No. 2 2018

Comparison of ruling and opposition parties in the regulations of the lower chambers of the Russian and French parliaments

Annotation. The author compares the opportunities provided to factions and party groups by the regulations of the State Duma of the Russian Federation and the French National Assembly to ensure opposition to the majority and the prohibitions established for this purpose. It is noted that in addition to achieving this goal, the authors of the regulations seek to achieve the fullest possible expression of all existing positions, and these goals may require different measures.

A certain similarity of regulations ensures that both states belong to a multi-party system. At the same time, on the basis of a comparative analysis of the text of regulations with reference to the data on the practice of their implementation, it is concluded that the French regulations provide more guarantees than the Russian ones for the opposition's struggle against the majority in regulating the order of parliament's activities, but when regulating the order the formation of parliamentary groups, on the other hand, is focused on ensuring the expression of all available positions. This difference is explained, first of all, by the historical features of

parliamentarism in the countries under consideration, as well as by the chosen approach to legal regulation. In addition, it is logical to assume that, without establishing a particular requirement, the author of the regulation simply assumes that

Alexander Korobeev,
Chuchaev Alexander Ivanovich, No. 2 2018

China's Criminal Code: General Characteristics
(on the 20th anniversary of the adoption)

Annotation: The article is dedicated to the 20th anniversary of the adoption of the Criminal Code of the People's Republic of China. It outlines the history of the development of Chinese criminal legislation, with special attention paid to the so-called dynastic codes, gives a general description of the General and Special parts of the Criminal Code, shows the trends in the development of criminal legislation, its changes, which are primarily due to the social needs of China.

In a fairly short period of time, the country has become a leader on the world, European, regional arena in production, trade, agriculture, and investment attractiveness. In this regard, an extract from the Criminal Code of China is given in the appendix to the article, from which one can see the nature and features of the criminal law support for the normal functioning of the Chinese socialist market, and the penalization of the relevant acts.