

中南大学学报

JOURNAL OF CENTRAL SOUTH UNIVERSITY

社会科学版 SOCIAL SCIENCE EDITION

中国人文社科学报核心期刊 全国百强社科学报

+ 全文浏览

中南大学学报(社会科学版) ZHONGNAN DAXUE XUEBAO(SHEHUI KEXUE BAN) 2007年12月第13卷第六期

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文章编号: 1672-3104(2007)06-0681-07

从遗失物制度解读我国侵占遗忘物犯罪的法律规定

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摘要: 我国刑法界对侵占罪之遗忘物的界定存在着重大分歧, 严重阻碍了侵占罪的司法实践。通过考察国外及我国古代刑法与遗失物制度的有关规定可知, 民法上的遗失物在适用我国侵占罪中关于遗忘物的相关规定时存在着不合理性。刑法上的遗忘物应与委托他人保管的财物具有相同的地位, 拾得人违反其特定的从业要求和生活期待是认定遗忘物的关键。

关键字: 侵占罪; 遗忘物; 遗失物

Deciphering crime of misappropriation through the lost property system

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Abstract: The difference in comprehension of forgotten property in criminal law baffles the judicatory practice. The analysis of the law of the crime of misappropriation and the lost property system of China and foreign countries, explores the irrationality of equalling the lost property to the forgotten property. The forgotten property ought to be regarded as the same legal statues as the consignment. The doer infringing the specifical request of his profession is the key element to ascertain the forgotten property from lost property.

KeyWords: the crime of misappropriation; forgotten property; the lost property