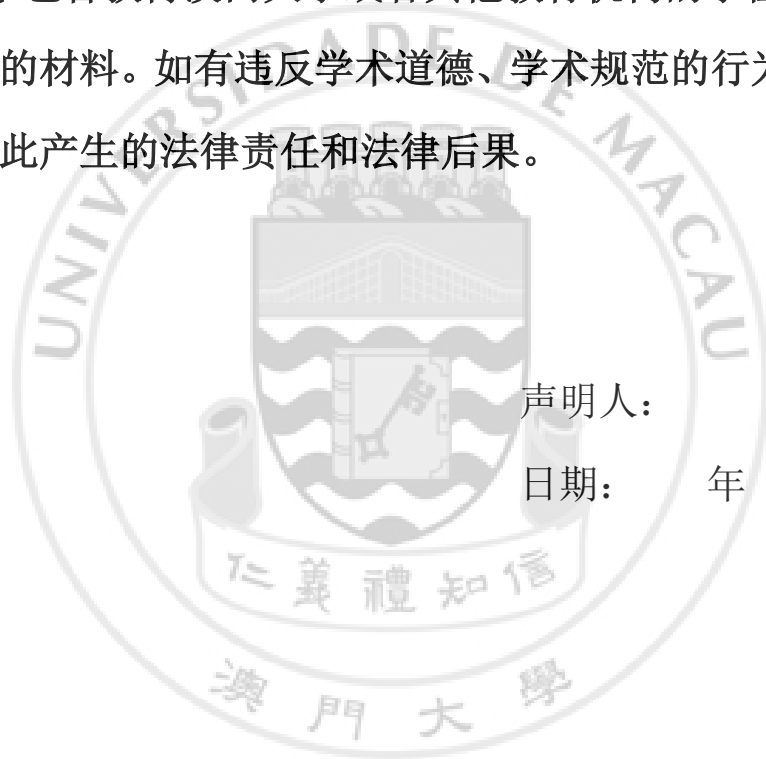


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声明人：

日期： 年 月 日



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夫妻违反忠诚义务的法律与社会学浅析

中文摘要

近年来离婚率呈持续上升的趋势。2011年北京、上海的离婚率分别高达39%、38%。其中，由婚外恋导致的离婚诉讼占80%以上。高离婚率反应的婚姻不稳定甚至破裂，不仅提升个人情绪危险，而且挑战社会稳定，这个问题的成文司法规制体系内，显然，法律并没有贴切地反映社会对这种行为的规制需要。为了适度地调协这个法律问题，本文将通过探讨以下几个具体问题，开展研究。首先，甄别通奸行为对夫妻双方的固有婚姻关系是否构成法律上的侵权？通过国别、历史纵深研究，将给予这种行为法律上的定性。进而，文中将基于我国《侵权责任法》第六条和《婚姻法》第四十六条内容，对因第三者而导致的离婚法律关系中，当事人的利益归属，进行法理分析。最后，由于现实行为发生后，夫妻双方时常采取报复第三者的行为，这种违法的私力救济在司法实践中，应该如何对待？对上述问题答案的求探过程中，本文将借此丰富相关立法、司法准则，提出法律求善方案，以期针对这个问题，凝聚法律道德共识。

同时，本文也是对文化道德标准与法律互动的一种具体实践性的学术尝试。法社会学的研究方法，渐渐被我国学者所认识并重视。法律的形成及行效离不开社会文化环境和道德判断，诸多学者论证并介绍了这种观点，在法律层面考量，不应贬抑习惯规则，理应重视道德标准与法律准则的互通，似乎已经被主流学界所接纳。值得注意的是，在这种进程中，不仅需要宏观的方向辨识，更重要的是利用这种更为客观的理论解决实务中的问题，提供务实的方案。在个别领域或问题上，善用这种务实的视野去探求具体问题的合理法律趋向，构建高效、公平的实务解决途径，或许才是真的贯彻了法律文化论的重要性。本文试图利用这种法律与文化背景交融的研究方法，寻求针对婚外性关系这一法律矛盾的立法、司法解决方案，并将其视为法律与社会文化细节之间应互相参照的一个佐证。

关键词：婚外性关系法律属性，离婚利益归属，道德标准与法律的互动

The law and sociology Analysis of Husband and wife in violation the duty of loyalty

Abstract

In recent years the divorce rate was rising. The divorce rate in Beijing and Shanghai in 2011 were as high as 39%, 38%, of which, caused by an affair of the divorce proceedings more than 80%. High divorce rate in the reaction of marital instability and even rupture, not only to enhance their emotional danger, and challenge the social stability, documented judicial rules system, obviously, the law does not aptly reflect the social regulation of such acts need. To moderate co-ordination of the legal issues, this paper will explore the following specific issues and conduct research. First, the screening of adultery on the couple's inherent marriage constitute infringement on the law? Through the country, the history of in-depth study will be given on the law of this behavior qualitatively. Furthermore, the text will be based on our tort law and Article 46 of the Marriage Law of divorce caused by third party legal relations, the interests of the parties attributable to a legal analysis. Finally, because the reality in the act occurred, the couple often take revenge acts of a third party, such illegal private relief in judicial practice, it should be how to deal with? Seek probe of the above answers, we will take the relevant legislation, standards of justice, the proposed law seeking good solutions, in order to address this issue, to unite legal and moral consensus.

Same time, this is also the cultural and ethical standards and legal interaction between a specific practical academic attempt. Research methods of sociology of law, and gradually our scholars to recognize and attach importance to. Legal formation and line efficiency can not be separated from social and cultural environment and moral judgment, the many scholars argument and introduced to this view, the legal level considerations, should not belittle the customary rules should attach importance to the interoperability of ethical standards and legal norms of the mainstream seems to have been academics are accepted. It is noteworthy that this process requires not only the

macro-direction identification, more importantly, is this more objective theory to solve the problem in the practice to provide a pragmatic solution. Individual areas or issues, to make the best use of this pragmatic perspective to explore the specific issues of reasonable legal trends, build an efficient, fair and practical solution, may be the true implementation of the importance of legal culture on. This paper attempts to take advantage of this legal and cultural background blend of research methods, and seek legislation for the legal contradictions of sexual relations outside marriage, judicial solutions, and as between the legal and socia-cultural details should be cross-referenced to the evidence.



KEY WORDS: Legal property of the extra-marital sexual relations Divorce vesting Interaction of ethical standards and legal