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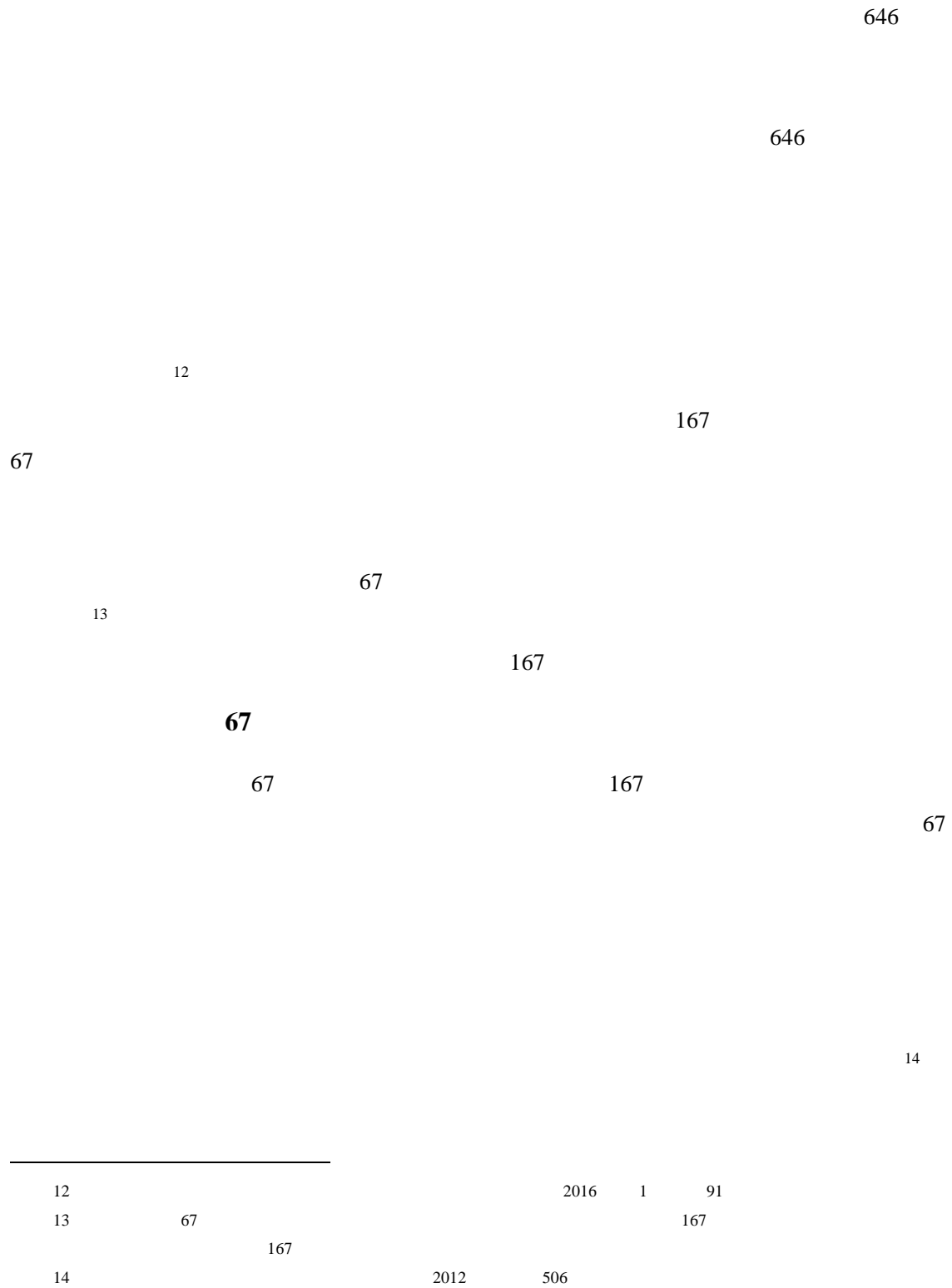
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Filling the Loophole in the Legal System of the Rescission of Instalment Stock Transfer Contract Based on the Supreme People's Court's Guiding Case No. 67

ZHANG Pinghua YU Hui

Article 634 of the Civil Code adds the requirements of putting in default on the basis of Article 167 of the Contract Law. Guiding Case 67 can provide a unique perspective to explore the intention of the legislator. As for whether Article 167 of the Contract Law can be applied analogously to the issue of the rescission of the instalment stock transfer contract, the negative answer given in the Guiding Case No.67 was criticized by the academic community. Analyzing Guiding Case No.67 from the perspective of legal loophole-closing, we can see that rescission of the instalment stock transfer contract is substantially similar to rescission of the instalment sale contract at the level of legal evaluation, but the application of Article 167 of the Contract Law by analogy is not in line with the value orientation that should be provided to deal with this issue. Though the judgment result of Guiding Case No.67 is correct, its insufficient reasoning and inappropriate opinions of the judicatory ground reflect the inadequacies of the judge to apply the analogy method to fill legal loopholes, and have adversely affected the subsequent judicial practice. To change the status quo of legislation on commercial unnamed contracts and judicial practices on legal loophole-filling, the efforts made in the Civil Code deserve recognition, but we should continue to attach importance to the special value of commercial law in legislation and strengthen the supervision and guidance of judges in the process of applying analogy.

Rescission of the Instalment Contract; Guiding Case No.67; Article 167 of the Contract Law; Filling the Loophole; Application by Analogy