

Reflections on the Functional Positioning of the Claims Analysis Method in the Teaching of Civil Law

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Abstract: Traditional civil law teaching mostly adopts theoretical lectures, and the lecture method with the goal of knowledge transfer has become the mainstream method of teaching civil law courses. Although the academic community once criticized this theoretical, abstract teaching method, its mainstream status has not been shaken. On the one hand, it is because the lecture method is an effective way for teachers to impart systematic knowledge and students to receive indirect knowledge; on the other hand, it is because China is a traditional statutory country, and although the civil law is an imported product, it is still formulated in a codified and cultural way. With the promulgation of the Civil Code, the teaching method of claim basis as the analysis method was gradually introduced to China by researchers studying in Germany and has become a more popular teaching method in the teaching of civil law. As an important successor of German civil jurisprudence, whether the claim-based analysis method, which is more in line with the legislative structure of the Civil Code, should be promoted as a necessary teaching method has become a more important topic. In the German legal education system, the analytical method of claim basis covers almost all stages from theory to practice and has a very important supporting role for German jurisprudence. However, it is undeniable that the claim basis analysis method itself has limitations. On the one hand, it provides an omniscient judge's perspective, which does not belong to the norm of real judicial practice; in addition, from the inherited situation of other countries in the civil law system, the complete adoption of the claim basis analysis method will raise the cost of the whole legal education. From the viewpoint of the actual requirements of legal education in China, the claim basis analysis method can only be used as one of the means of legal teaching and requires the relevant curriculum system to cooperate to complete the reasonable positioning of the claim basis analysis method.

Keywords: Basis of a claim, General theory of civil law, Limitation, Reasonable positioning.

1. Introduction: The Method of Analysis of The Basis of The Claim

In recent years, claim-based thinking training has gained attention and rapidly expanded influence in China's legal education. The practical community equally welcomes it for its straightforward approach to the essence of case adjudication and the judge's perspective as the entry point. [1] With the promulgation of the Civil Code, this case analysis method with distinctive German law characteristics has become increasingly popular. Therefore, the debate about making the claim-based analysis method the mainstream method of civil law teaching has been incessant. [2] Therefore, as a crossroads of methodological succession in integrating the two legal systems, it is necessary to give an in-depth discussion on the specific positioning of the claim-based analysis method in civil law education. [3]

The basis of claim analysis cannot be equated with the basis of law but has a much richer connotation and requirements. In short, the basis of a claim is the basis on which a person claims a right from a person. And the rights in this, the exercise of the way, is the need for the other party to assist, so the basis of the claim is named. That is civil disputes to the plaintiff "request" the defendant for some payment as typical, according to the normative basis or legal act to support the plaintiff's right to claim, called "basis of claim". The search for the basis of the claim constitutes the basis for the civil judge to find the law, which reflects the legal thinking, then can be called the basis of the claim thinking (claim thinking). [4]

The structure of thinking about the basis of claims can be expanded into normative categories, which contain primary

norms, secondary norms, and defensive norms; intrinsic structure, which contains positive elements and negative defenses; extrinsic structure, which is based on alternative claims of contract, contract-like, causeless management, property law, unjust enrichment, and tort; and multiple claim bases, which contain competing claims and competing norms of claims. [5]

The basic formula for the training of thinking about the basis of claims in the law classroom is to lock the main premises (legal norms) through the search for the basis of claims in the framework of the given minor premises (facts of the case), and thus to use the judicial tried to reach the applicable conclusions. This solution scheme is not only found in the teaching of civil law but is also considered present in civil procedure, administrative, and even commercial law.

In addition to the law teaching classroom, the judicial practice field also recognizes the claim-based thinking approach. The Supreme People's Court of China has explicitly recognized claim-based thinking as adjudicative thinking in the Minutes of the National Conference on Civil and Commercial Judicial Work and the Speech at the National Conference on Civil and Commercial Judicial Work of the Courts, and has published the "Guidelines on the Application of Causes of Action and the Regulation of Claims in Civil Cases" as a special topic. As of January 29, 2023, there were more than 40,000 civil adjudication documents containing the words "basis of claim" on the website of the Chinese Judicial Documents, of which more than 300 were issued by the Supreme Court, more than 2,000 by the High People's Court, and more than 17,000 by the Intermediate People's Court. [6]

In easy words, there is room for teaching practice and

judicial practice to use the method of thinking based on a claim. Therefore, there is a great demand for a claim-based methodology as a way of knowledge dissemination and case distillation. However, the evolution of this methodology into a pedagogical tool, which has been developed only in some institutions by legal researchers studying in Germany, has led to a discussion of whether there is an alternative relationship between the traditional method of teaching law and the claim-based analysis.

Specifically, the traditional method of teaching jurisprudence puts the emphasis on the abstract transmission of the knowledge system, while the analysis method of the basis of the right to claim favors the details of cases, which requires a clear positioning of the analysis method of the basis of the right to claim in terms of functional orientation.

2. The Functional Position of The Claim Basis Analysis Method

First of all, the analytical method of the basis of the claim has important doctrinal values for the whole civil law norms, namely, normative value and systemic value. By normative value, we mean that the legal expression of the rules of claim basis is often indefinite, but there are characteristic expressions, which can be distinguished from request perspective, obligation perspective, and right perspective; the normative expression of claim goal is mostly developed in the form of describing legal effects; the normative expression of claim goal is multi-level. The claim basis approach reorganizes the logical structure of the entire civil law norms. In addition, answering cases according to the claim basis approach is a way of answering cases based on a specific logical thinking and interpretation path, the essence of which is the inner system of civil law. Avoiding contradictions in evaluation, norm identification, and theoretical screening is the value of the system of claim-based thinking. Normative identification, i.e., no contradiction in logic, is the requirement of external system coherence; avoiding contradiction in evaluation, i.e., no contradiction in value, is the requirement of internal system coherence; theoretical screening shows that the basic thinking of the right of appeal has the function of system maintenance and renewal, i.e., new interpretation paths and theories proposed need to be screened and identified by the basic thinking of the right of appeal, so that the external system and the internal system do not exist with the existing law. In this way, the system is not in conflict with the existing law, thus rejecting the wrong theory to maintain the system and absorbing the right theory to develop the system. [6]

Secondly, as far as civil law norms are concerned, the way of thinking underlying claims, i.e., legal doctrine, also plays the role of a communicator in legal practice, in this case, communication in legal practice. Communication in law practice is, first of all, teaching, i.e., training future law practitioners. Secondly, communication here also includes communication in judicial and legislative activities, guiding judges in the practice of deciding cases, making proposals for legislation, etc. The function of legal doctrine is positioned in communication in legal practice, which is not a general statement, but a highly condensed theoretical overview from a sociological perspective. [7] The method of analysis of the basis of claims as legal doctrine is of great significance, as it builds a bridge between law students and legal practitioners that can eliminate misunderstandings and shorten the gap of

knowledge, making it easier for the legal community to transfer knowledge. Whether for the doctrinal value of civil law norms or the communication function of legal practice, the analytical method of claim basis is very important for legal education and judicial decision.

3. The Application of The Claim Basis Approach in German Law

The claim basis approach has grown in popularity in China because of its widespread use and pivotal position in German legal education and legal practice.

To practice law in Germany, whether as a judge, prosecutor, lawyer, or notary, one must first qualify as a judge. According to Section 5 of the German Judges Act, the qualification to be a judge is obtained by completing a law degree at the university level, passing the first state examination, and then completing a "trainee service" and passing a second state examination. Accordingly, German legal education is divided into two stages: (1) university education. According to Section 5a, paragraph 2 of the German Judges Act, university education consists of compulsory subjects, including civil law, criminal law, public law, and procedural law, and optional subjects, which supplement and deepen the compulsory curriculum, as well as interdisciplinary and international subjects. (2) Apprenticeship Service. Section 5b of the German Judges Act provides for a two-year apprenticeship in the general courts, public prosecutors' offices, administrative offices, law firms, etc.

German university law education is aimed at scientific education and oriented to practical application, and its curriculum includes the following types: (1) Large lectures. (1) Large lectures. The lectures are mainly delivered by teachers and listened to by students. Due to the limited class time and many students, teachers rarely use question-and-answer methods, and classroom interaction varies according to the teacher's style. (2) Seminar. A course in which the instructor leads and students discuss. Students participating in the course must present a research paper under the instructor's guidance and answer questions from the instructor and participants. (3) Case Study Course. This course is based on the analysis of cases and systematic training. Lectures and seminars focus on theoretical learning, while case study courses focus on practical training. Constitutional law and the various branches of law have corresponding study courses. For example, case studies must be completed in the classroom or in the examination within a certain period, with little academic information and evidence to support the view, also known as classroom exercises. Moreover, researchers in class do case analysis, that is, homework, to more literature and jurisprudence, to deepen the scientific nature of case solutions and to achieve the same quality requirements as the usual legal science research. (4) Study groups. This group tutorial accompanies the main course, roughly divided into civil, criminal, and public law disciplines. It is conducted by teaching assistants or doctoral students, aiming to solve difficult problems and train in case studies. Participants are usually freshmen, and each group has about 20 participants.

From the perspective of a Chinese law student or teacher, the format, quality, and quantity of the case study sessions struck participants in the above courses. Such courses present legal issues in the form of cases and require students to do many practice problems and present the answers in a step-by-step and hierarchical manner. German university law students

are trained in this way from the moment they enter the university until they pass the examination for the qualification of judges. The method of analysis of the basis of claims is seamlessly integrated into working legal education and legal practice.

On the surface, the case study courses in German legal education are aimed at examinations because the national examination for the qualification of judges is based on such case questions, and the daily case study in universities is in line with it. However, it is through this precise and even boring case study training that German law students are trained to think legally: first of all, in the process of case analysis, they seek legal norms for the facts of the case, step by step, they incorporate the facts under the constitutive elements of the legal norms, correspond the minor premises to the major premises, and deduce the conclusions. In this regard, the strict logic of the trilogy ensures the scientific application of the law. Moreover, the solver should objectively and carefully compare the facts with the legal norms without omitting or adding any factual factors or legal normative elements to ensure the accuracy of the application of the law. Secondly, in a solving, the constituent elements of legal norms are unfolded through various methods of legal interpretation, including textual interpretation, legislative purpose interpretation, system interpretation, objective interpretation, etc. These are the basis of connotation.

Students thus learn to adopt an appropriate approach to interpreting the meaning of legal norms. Again, in the solution of difficult cases, the student may find that the facts of the case cannot always be resolved by existing statutory law due to the facts' complexity and the law's incomprehensiveness. In this regard, the solver must consider various methods of filling legal loopholes or legal continuity to supplement the norms, including analogy, lighter and lighter. Case studies make students aware of the inadequacy of codes or statutory laws and the need to develop the content of the law in a critical spirit and in accordance with the purpose of the law. Finally, in case of solving, especially if there is ample time for homework preparation, the solver will use various legal materials for writing, including codes, textbooks, doctrines, precedents, etc., to develop and improve legal writing and research skills.

In short, through this case study course, German law students can graduate with a systematic knowledge of the law, memorize the code and its interpretation, understand the relevant jurisprudence and doctrine, and share the legal professional community's thinking.

4. Limitations of the Claim Basis Analysis Method

Despite the absolute authority and importance of the claim analysis method in German law, this does not mean that it is inevitable for other countries in the civil law system to use the claim analysis method in their teaching. Some scholars have pointed out that case teaching is not unique to the United Kingdom and the United States, and that German-style doctrinal analysis, in its biased perspective and cognitive limitations, sometimes tends to make some very undeserved mistakes on some obvious issues. Limitations of the claim basis analysis approach include:

First, the perfect perspective of omniscience. As a methodological approach to claim-based thinking, civil law doctrine presupposes that the user is the judge; to see almost

every case from the judge's standpoint. In the linear model of claim-based analysis, the parties' considerations do not seem to be the focus of the analysis: doctrine wants to restore the truth of the case in the judge's eyes by putting the behavior in practice into a conceptual drawer as an important pedagogical tool. This is certainly right, but considering cases only from the perspective of the omniscient judge sometimes needs to pay attention to other perspectives. Also, it does not contribute to students' correct and rich understanding of the dispute and reality. [8] For example, in the Menu Case and the Wine Estate Sale, the facts are legendary, and the core elements, while reflecting the subtleties of civil law analysis, are not part of the normal way of life.

Second, important information may need to be included. Although the information in real cases may not belong to the legal elements of conceptual jurisprudence, it is of great importance to the legal consequences: it may completely change the judge's judgment of the case. For example, in the "Withered Flowers Case." [9], since the context of the case is the purchase of flowers by A in pursuit of B, it is easy to misjudge the liability limits of the parties in the case if the context of this emotional line is taken away. Thus, there is a possibility that the claim-basis thinking approach needs to be more abstract and include important factual details of the case itself.

Third, it may have raised the overall cost of legal education. As a typical example of succession doctrine, the civil-related regulations in Taiwan and the civil legislation in Japan are heavily influenced by Germany, and although they are not shy about borrowing from Germany in terms of hermeneutics, in terms of legal education, there has not been a large-scale development of appraisal-based case study courses in the field of civil law so far. Even if we ignore the choices of Japan and Taiwan for the moment and look back to mainland China, we can find that no school has yet been able to replicate the German model in its entirety in the teaching of appraisal-based case analysis in full swing, whether by offering summer classes or elective courses, it is obvious that only the initial stage of teaching appraisal-based case analysis has been completed. [10] An important issue here is the overall educational cost of legal education. Promoting the claim-based analysis method as an important teaching method has increased the corresponding cost of legal education in civil law countries. From the perspective of professorial costs, despite being excellent learners of German law, Taiwan and Japan are limited by cost factors, whether it is the faculty in the relevant fields or the difficulty of starting at the undergraduate level considering the acceptance of all undergraduate students. Legal education in mainland China, although there are numerous existing law schools, may not be the absolute majority of graduates who end up as professional lawyers either. If most law students do not go on to become professional lawyers in the future, then training students at the undergraduate level with the stated goal of becoming professional lawyers and with a relatively low pass rate on the legal professional exams will certainly result in a great waste of resources. At the same time, from the supply side, the promotion of professional legal education at the undergraduate level is also very much in conflict with the current rigorous teaching and research evaluation system. The application scenario of the basic way of thinking about the right to request should be linked with the legal professional qualification examination, and the training should be focused on the target after the screening mechanism of low passing

rate. Alternatively, after the undergraduate level, from the postgraduate level onward, the basic way of thinking about the right to claim becomes a necessary skill for advanced civil law students to conduct targeted training.

Claim-based thinking certainly has high academic value and practical significance. However, implementing the claim-based way of thinking alone cannot accomplish the heavy task of bridging the practical operation of jurisprudence, especially civil law education. Therefore, it is necessary to give a certain degree of distinction and outlook to the areas where the claim-based way of thinking functions.

5. Conclusion: Analysis of Scenarios for The Application of The Claim Basis Analysis Method

In the context of our legal system's general civil law model, the German-style case study teaching is very important. However, some scholars have pointed out that this code-determined way of teaching has its drawbacks, i.e., teachers and students have to start teaching and learning from the most abstract general principles, and students do not have a complete image of civil law until after their junior year. However, it is unrealistic for civil law countries to leave the codes behind and introduce common law education with cases or topics as the starting point. Moreover, teaching activities such as moot courts and legal clinics consume the time and energy of teachers and students and take up law school resources more efficiently than the training results achieved. The disadvantage of learning law from abstract principles in the civil law system can be overcome by increasing the number of case studies, which serve as a kind of knowledge review and reintegration in small classes. Through case studies, students can continuously understand abstract concepts and rules figuratively and eventually achieve a degree of integration.

Based on the above reasons, the author believes that our law schools' future teaching and examination formats can be planned as follows. In terms of curriculum, a multi-level design should be adopted, including lecture courses, seminar courses (or book reports), case study courses, and practical training courses, to meet the learning needs of students at different stages. The case study courses should be in legal theory education rather than skills education. The practical training courses can compensate for the need for more theoretical education. In terms of the examination system, objective questions without any scientific nature should be abandoned, and subjective questions, including expository questions, formative questions, and case studies, should be adopted. The expository questions focus on students' mastery of principles and writing skills, the formative questions examine the design of contracts or other legal documents, and the case studies examine legal thinking and dispute-resolution skills.

As for the specific setting of case teaching, it must be clear that the case teaching classroom in China at this stage only partially applies to the claim-based way of thinking. Suppose the background is only an introduction to the system or an extended theoretical discussion. This type of case-based case-teaching classroom applies to something other than the claim-based way of thinking. The law-interpretation type of teaching scenario is a typical application scenario of the claim

basis. For the discussion of the legal basis or solution of difficult cases, considering the mixed succession of civil law norms and the original local style, we should be cautious in using the claim-based thinking approach in this context because the lack of general doctrine in this scenario may lead to more controversial conclusions when applying the claim-based thinking approach.

In conclusion, although the claim-based analysis method is the best choice for civil law teaching in civil law systems, especially in Germany, it is optional for all civil law countries to adopt the claim-based analysis method as a necessary choice for civil law teaching. From the perspective of accumulation of knowledge and transmission of academic views, the claim-based analysis method can only be one of the methods in the civil law teaching system and in the teaching system where there is a division of labor between special topics and case studies, the claim-based analysis method can only be an important option for students who prefer to study cases in depth.

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