

The Appraisal-Based Case Teaching Method in China's Legal Education

JIN Man^{[a],*}

^[a]Lecturer at the School of Law, Beijing Wuzi University, Beijing, China.
*Corresponding author.

Supported by the Educational and Teaching Reform Project of Beijing Wuzi University (The Introduction of Appraisal-Based Case Teaching Method to the Legal Education of Our University, NO.0542000725).

Received 6 January 2022; accepted 15 February 2022
Published online 26 April 2022

Abstract

In this article, the author introduces the steps of the appraisal-based case teaching method in legal education. As a new teaching method of law with emphasis on logic and demonstration, it is of great significance to break through the disadvantages of traditional law education. The article finds that compared with traditional case teaching methods, it is more helpful to cultivate and enhance students' analysis and expression ability. In view of the challenges faced by the appraisal-based case teaching method in China's legal education, the supporting functions of judicial practice is necessary.

Key words: Appraisal-based case analysis; Teaching method; Legal thinking; Syllogism

Jin, M. (2022). The Appraisal-Based Case Teaching Method in China's Legal Education. *Canadian Social Science*, 18(2), 1-4. Available from: <http://www.cscanada.net/index.php/css/article/view/12544>
DOI: <http://dx.doi.org/10.3968/12544>

1. INTRODUCTION

The appraisal-based case teaching method (Gutachtenstil) refers to a case analysis method or mode adopted by German law school in teaching, which is the fundamental tool of the German jurist. This teaching method is currently flourishing in universities of China (Xia, 2018). In recent years, with the rapid development of China's

higher legal education and the continuous improvement of its system, a large number of excellent legal talents have been cultivated, which has made an irreplaceable contribution to China's economic and social development. However, there exists imperfections in China's higher legal education, for instance, students' practical ability is not strong enough in general and the cultivation of applied and compound legal professionals is insufficient. The question on the quality of China's legal education is that the traditional education model cannot cross the gap between theory and practice. How to reform the traditional law education mode, cultivate the ability of law students to combine legal thinking with practical cases and guide them to integrate theory with practice poses a severe challenge to the traditional law teaching method.

In this regard, China has begun to implement the Excellent Legal Personnel Education and Training Plan in 2011, which aims to improve the quality of China's legal personnel training. For China, the appraisal-based case teaching method is a new mode for law teaching, compared to case teaching method and clinic education method. Although the latter two educational models have been introduced into China for many years, they root in common law system, which makes it difficult for localization in China's legal education. Therefore, the appraisal-based case teaching method, which combines the advantages of those two educational models above and originates from civil law countries, is a better choice for China's law teaching reform. As a kind of case teaching method, the appraisal-based case method has become increasingly important in China's legal education.

The appraisal-based case method is not only applied in law teaching, but also applied by lawyers, prosecutors, judges and other legal persons. It adopts the deductive legal reasoning of syllogism, which comprises three parts: a major premise (or norm), a minor premise (or condition of fact), and a conclusion (Samuelson, 1997). Early in this century, a scholar claimed that among all different forms

of logic in use, syllogism had greatest historic currency and exercised greatest influence on legal decisions (Dewey, 1914-1925). Modern theorists, albeit with misgivings, appear more willing to accept the logic of deduction as a means for at least partly understanding the dynamics of legal decision-making (MacCormick, 1978). One of the advantages of syllogistic logic is that this logic makes it easier to grasp the correctness of the judgment result.

2. STEPS OF THE APPRAISAL-BASED CASE METHOD

In China, the appraisal-based case teaching method has been applied in civil law, criminal law, administrative law and other departmental laws. As such teaching method is relatively well-established and mature in civil law of China, therefore, this part taking civil case as an example, discusses the steps of the appraisal-based case teaching method.

2.1 Major Premise

With regard to civil cases, the major premise is to raise the question about claim's basis toward intended arguments in a specific case. This is the first step to starting the appraisal case analysis, and plays an inherent role in commanding the overall situation. The appraisal-based case analysis usually begins with question "what is the basis of the case". Using sales contract for an example, a major premise could be stated as follows: "A may have the right to claim for payment under the sales contract from B in accordance with Article 595 of the Civil Code of the People's Republic of China." As we have noticed, the word "may" is used, since the major premise is a hypothesis.

To resolve civil disputes is the primary function of Civil Code, legal bases of claims are oriented to application of the law. In view of the significance of claim's basis to the application of law, in recent years it has become the focus of Chinese civil law dogmatics, and attracted increasing attention in civil law theory, teaching and judicial practice. It is noteworthy that Chinese judges have been actively engaged in the research of the right of claim. For example, senior judge Zou Bihua integrated the approach of claim into trial practice (Zou, 2010). In addition, from 1998 the National Academy of judges of China has had jointly held training courses on the application of law with the German international cooperation agency, and published a series of books on the application of law since 2012. On July 3, 2019, a member of the judicial committee of the Supreme People's court, made it clear in his speech at the national court civil and commercial trial work conference that "we should establish the basic thinking of the right of claim".

In a typical civil dispute, the plaintiff usually requests that the defendant perform or not perform certain conduct.

The norm to support the plaintiff's claim is the basis of claim. In this regard, claim right could be the "hub" in the remedy system of private law (Wu, 2019). For certain cases, different basis of claims may be involved, arising from contracts, similar contracts, management of the business of another under no obligation, property right, unjust enrichment and other provisions of laws. Thus, it is necessary to inspect these basis of claims individually.

2.2 Definition

At this stage, law students are required to clarify the constitutive elements for each claim of right. For instance, if a claim is based on contracts to sell, initially students need to define contracts to sell under civil law. According the concept of sales contract, it basically consists of two essentials- offer and acceptance. Then, offer and acceptance should be defined respectively. As we know, offer can be defined as a clear statement of the terms on which one party is prepared to do business with another party; and acceptance must fulfill some rules to be legally binding. Thus, to demonstrate the sales contract is established and effective, students should investigate the rules of offer and acceptance, and the validity of contracts. During the course, if there are academic disputes involved, students are required to list them and state their own opinions and reasons. When applying the appraisal-based case analysis, students are allowed to make reference to legal provisions, but not with annotations. This means that students can easily deconstruct the elements of the claim's basis by reference to articles, but because without annotation, it's required that students be familiar with not only the legal provisions but also the legal principles. By this way, it deepens the students' understanding to abstract legal theory.

2.3 Subsumption

Subsumption, involves minor premise of syllogism, is the most important technique in the appraisal-based case teaching method. As indicated above, subsumption follows a logic of rigid demonstration. Students need to determine whether there abstract constituent elements exist according to their definitions in specific cases. Based on the definition of each specific constituent elements (Tatbestand) stipulated by legal norms, students should compare it with the facts of concrete case (Sachverhalt). Thus students can judge whether the facts of the case come within the constituent elements (Schimmel, 2019).

Since the constituent elements of the basis of claim are abstract, while the fact of specific case is concrete, therefore, in the course of subsumption, a particularly difficulty question emerges—How to determine whether each element has achieved according to its definition in a specific case? To answer this question, students need to turn to repeating the four steps of the appraisal-based case method: the premise sentence—definition—subsumption—intermediate conclusion, and

inspect whether the facts of the specific case conforms to the abstract definition step by step. In the process of demonstration, controversial issues in legal theory will be inevitably involved. Under this situation, students should possess the ability to find problems, and understand the theoretical disputes concerning a certain issue. More importantly, it's necessary to list all the views, reasons and conclusions with respect to the certain issue (Hao, 2017). As a matter of fact, the appraisal-based case teaching is the teaching of legal reasoning. Through such repeating practice and improvements, students are expected to express their own viewpoints and demonstrate them.

2.4 Conclusion

If the facts of a specific case satisfies all the elements of the definition, an intermediate conclusion may be obtained. Still taking sales contract for example, the intermediate conclusion can be described as “a binding sales contract has come into being between A and B”. Furthermore, there are three questions to be investigated sequentially when examining the basis of claim: whether it exists, whether it is eliminated and whether it can be implemented. Specifically, as to the first question, it mainly involves illegality, incapacity, violation of law, violation of public interest, etc. The second question is to inspect whether right of claim has been extinguished, due to cancellation, loss of right, cancellation, performance, offset and so on. For the third question, it aims to find out if there exist a defense against the enforcement of the right of claim, for instance, the prescriptive period has expired. After the investigation concerning these three questions, a conclusion can be reached, which can be generally expressed as: “A enjoys the right of claim for payment under the sales contract from B in accordance with Article 595 of the Civil Code of the People’s Republic of China.”

The appraisal-based case study requires students to strictly follow the steps and analysis framework mentioned above. When analyzing a case, students must start from the empirical method to seek solutions, and may involve explaining the law and even filling the loopholes according to the recognized legal methodology, if they cannot simply draw a conclusion via syllogism. Emphasis on the reasoning and demonstration is a crucial feature of appraisal-based case teaching method. Students’ case analysis report completed according to the appraisal type usually presents progressive logic and critical thinking.

3. INFLUENCE OF THE APPRAISAL-BASED CASE TEACHING METHOD

With the increasing attention of universities of China to the appraisal-based case method in legal education, it gradually becomes one of the basic skill requirements for law students. In China many universities, such as Peking University, Shanghai University of Finance and economics, China University of political science and law,

East China University of political science and law, Central South University of political science and law, Southwest University of political science and law, etc., the law school of which has offered elective courses or summer classes on the appraisal-based case method. Besides, in order to promote the communication and localization development of the appraisal-based case method, the Law School of Central South University of political science and law, the Law School of East China University of politics and law, and the Civil and Commercial Economic Law School of China University of politics and law, jointly launched “the first national appraisal case study competition” in 2020. Currently, this competition has been successfully held for two consecutive years and aroused positive repercussions.

Distinct from the traditional case teaching of law, the appraisal-based case teaching method has greatly improved the efficiency and quality of practice teaching. By such teaching method, one important skill for students to master is information retrieval. Legal literature retrieval is of great significance for law students to master the origin of different theoretical disputes and systematize theoretical knowledge. The appraisal-based case study encourages students to try to exhaust all controversial theories and carry out rationality analysis when discussing controversial issues. This naturally requires students to master the ability of legal literature retrieval.

Some universities offer legal clinic courses and train students’ ability of legal literature retrieval. For example, in the teaching process, one of the assignments given by those universities is to build a “case learning material package” - that is, for the case discussed, sorting out the related laws and regulations, judicial interpretations, guiding cases, similar decisions, views of judges, Procuratorate indictments, policy trends, academic papers and successful defense of lawyers. On this basis, students are required to make a comprehensive analysis to the case under discussion (Chen & Wang, 2020). Similarly, students also need to deal with amounts of collected information in the process of appraisal-based case analysis. For instance, in order to make reasoned decisions, students need to search, sort out and read a large number of documents and even judicial decisions, and find relevant laws, regulations and judicial interpretations. By this way, it cultivates and enhances students’ retrieval and analysis ability. At the same time, writing of case appraisal report, group discussion, interactive discussion between teachers and students in class are helpful to students’ ability of verbal and graphic expression.

The appraisal-base case study emphasizes to analyze cases according to the empirical law. In other words, the whole case analysis must be based on the specific legal provisions of the empirical law, and cannot draw conclusions solely based on the legal theory or the simple sense of justice. As pointed out by more than a few legal practitioners, this method is conducive for students to be familiar with and systematically understand the provisions

of empirical law. In addition, it helps students to deepen the comprehension of theoretical knowledge, since faced with abstract legal theory and theoretical disputes, students often lack an adequate understanding, and for that the theoretical knowledge is fragmented, it is difficult for them to realize its internal relevance. As the appraisal-based case study is a process of applying legal theory to real life, by such training, students can naturally realize the role of different theories.

More importantly, the appraisal-based case study helps to cultivate and improve students' ability of legal thinking, which is the most significant role for legal education. The process of solving cases by appraisal-based case analysis method is the process of applying legal norms to specific cases. For this purpose, students are required to be capable of law application, according to the legal logic and with the thinking of value orientation and reasonable demonstration. Also, they need to handle the relation between norms and facts, and do subsumption in the way of syllogism. When there are doubts about the provisions of empirical law, a reasonable legal interpretation is needed. If the case issue cannot be resolved by empirical law, it's necessary to properly use legal methodology to continue legal construction or fill legal loopholes. In long-term training, students' ability of legal thinking will be greatly improved, a solid foundation will be provided for their legal profession (Xia, 2018).

Meanwhile, the appraisal-based case teaching method is facing some challenges in China's legal education. As noted, this case study method is based on the facts of a given case, whereas fact-finding is often the toughest problem in judicial practice.

Therefore, the development of the appraisal-based case teaching method calls for the supporting functions of judicial practice. The legal professional community is a legal professional group composed of judges, prosecutors, lawyers and legal scholars, who sharing the same legal knowledge background, professional training methods, thinking habits and professional interests. And the appraisal-based case method plays a constructive role in cultivating legal knowledge background, professional training methods and thinking habits. Although this method has not been deeply integrated into China's legal professional qualification examination at present, with the popularization of appraisal-based case analysis in law schools, it will imperceptibly positively influence the pattern of legal thinking.

4. CONCLUSION

Currently the decoupling between theory and practice in the teaching process of law is the key to affect the quality of China's law education. For the purpose of cultivating and improving students' legal practice ability, especially the ability of legal thinking, it's necessary to introduce the appraisal-based case analysis method to Chinese universities. This case analysis method basically comprises four parts: major premise, definition, subsumption and conclusion. By following these steps and analysis framework, students could master the ability of reasoning and demonstration, which is crucial for legal thinking, but also comprehend systematically the provisions of empirical law and the recognized legal methodology. What's more, it helps to cultivate and enhance students' ability of retrieval, analysis and expression. In view of multiple benefits of the appraisal-based case teaching method for students, Chinese universities tend to offer elective courses or summer course related to appraisal-based case analysis. It's noteworthy that such a teaching method also faces challenges in China's legal education and its development needs the supporting functions of judicial practice.

REFERENCES

- Chen, W., & Wang, Z. H. (2020). On the teaching method of appraisal case analysis. *Chinese Journal of Multimedia and Network Teaching*, 4, 131-132.
- Dewey, J. (1914-1925). Logical method and law. *The Cornell Law Quarterly*, 10(1), 17-27.
- Hao, L. L. (2017). A brief introduction to the analysis-based case method. *New West*, 30, 144-146.
- MacCormick, N. (1978). *Legal reasoning and legal theory*. Oxford: Oxford University Press.
- Samuelson, D. R. (1997). Introducing legal reasoning. *Journal of Legal Education*, 47(4), 571-598.
- Schimmel, Roland (2019). *How to solve legal problems* (M. M. Hu, Trans.). Beijing: Peking University Press.
- Wu, X. X. Systemization of legal bases of claims in the civil code codification. *Yunnan Social Sciences*, 5, 95-105.
- Xia, H. H. (2018). Appraisal case study: The pearl on the crown of German legal education. *People's Rule of Law*, 18, 35-37.
- Zou, B. H. (2010). *Trial procedure nine steps*. Beijing: Law Press.