

Conceptual clarification and practical application on commercial law concepts

Lei Li

Department of International Law, China Foreign Affairs University, Beijing, 100037, China

ABSTRACT

The concept of commercial law is inseparable from the thinking of commercial law, and the concept of commercial law is the core spirit of the operation of commercial law thinking. Its contents include profit-making thinking, businessmen's autonomy, prioritizing efficiency and guaranteeing safety. Compared with civil law norms, commercial law concept has a comparative advantage for the application of rules of commercial practice, in terms of company law, the establishment of the company and the goodwill of the company is not effectively protected in the traditional civil law. The teaching practice of business law concepts is currently structurally deficient and needs to be optimized in the design of future teaching reforms. At the practical level, the overall work of optimizing the business environment cannot be separated from the support of the rule of law, and the value guidance of the concept of business law is even more indispensable.

KEYWORDS

Commercial law concepts; Business law thinking; Business teaching; Business environment

1. DEFINITION OF COMMERCIAL LAW CONCEPTS

1.1. The Relationship Between Business Law Thinking And Business Law Concepts

Commercial legal thinking is inextricably linked to commercial concepts, which are the centralized expression of commercial thinking. The manifestation of commercial law thinking in its underlying content is a "resource pool and organism" composed of many aspects such as commercial customs, commercial concepts, commercial beliefs and convictions, commercial purposes, commercial values, and commercial ideas. What "substantive commercial law" reveals is the "objective law" and "reason" of the respective existence and operation of commercial law facts, norms, etc., and is the objective attributes contained in the reality of commercial law and its practice itself and presented piecemeal. It is the objective attributes and the organic connection between these attributes which are presented in fragments, and one of the tasks of the researcher of commercial law theory is to systematize and rationalize these attributes and connections through continuous understanding, summarizing, inducting and refining. The internal system of substantive commercial law is the scientific understanding of the essence of commercial law and its internal objective law, which exists after the system of positive law such as rules and principles of commercial law, and is the soul and spirit of commercial law and sectoral law, and also the fundamental driving force of commercial law research [1].

At the formal level, commercial thinking refers to the concepts of commercial law, its rules and institutions, its principles, and the framework of an internally harmonized body of knowledge that follows the logic of commercial law itself. The concepts of commercial law are the "cornerstones" for understanding the rules and systems of commercial law. The norms of commercial law are the

basic units of the knowledge structure of commercial law, and its unique structure of "rights-obligations-responsibilities" is the basic thinking model on which commercial thinking and commercial law adjudication are based. Commercial law principles are important tools for overcoming the limitations of commercial law, and play a unifying and cohesive role for all commercial legal systems and all commercial law norms. The framework of the knowledge system of commercial law is the key and support for the organic unity and scientific internal logic of the above three aspects.

1.2. Definition of the Content of the Concept of Commercial Law

Commercial law concept is the core spirit of commercial law thinking. Commercial law concept is the rational understanding of the intrinsic nature and objective law of commercial law, and it is a kind of belief, expectation and pursuit of the ultimate way, path and goal that commercial law should achieve in adjusting the practice of commercial life. The operation process of commercial law thinking is under the guidance of the goal of commercial law concept, with its spiritual conversion, the use of commercial law norms to solve the facts of the disputed cases. In the author's opinion, the concepts that truly reflect the uniqueness of commercial law mainly include the following four aspects.

(1) Profit-oriented value. The concept of profit-oriented embodies the unique value orientation of commercial law, which is the core mark of commercial law distinguishing it from the concept of civil law and other sectoral laws.

(2) Autonomy of businessmen. Commercial law belongs to private law, whether it is from the historical development of private law, or from the specific system of commercial law, rules for reflection and refinement, autonomy constitutes the source of the concept of commercial law. In specific commercial activities, as long as it is not contrary to the mandatory legal provisions, the businessman can set up his legal relationship with the agreed terms based on his own strength and needs. In individual commercial acts, even in the absence of express provisions or prior agreement on specific matters, general commercial transaction practices should be recognized as long as they exist.

(3) Priority of efficiency. Different from traditional civil law, the field of commercial law and the characteristics of economic relations determine that efficiency is prioritized in the pursuit of multi-dimensional values and objectives. Specifically, in the establishment of commercial entities, commercial law adopts specific procedural designs, such as simplifying registration procedures and lowering the threshold of entry, in order to guarantee the simplicity and swiftness of the establishment of commercial entities; in the process of commercial transactions, commercial law adopts institutional measures, such as contractual stereotypes, securitization of rights, procedural simplicity, electronic transactions, and short-term statutes of limitation, in order to promote the maximization of social wealth and to ensure that efficiency is given priority to achieve the goal. The realization of the goal of prioritizing efficiency is guaranteed.

(4) Security. Driven by profit-seeking, businessmen's greed is fueled, and commercial risks lurk at any time in the process of commercial transaction activities, so the protection of transaction security has become another important goal pursued by commercial law in addition to profit-making and efficiency. For this reason, the commercial law has created a series of measures such as mandatory, publicity, appearance of trust, aggravated liability, etc., to spread the transaction risk and guarantee the transaction security. Secondly, the principle of appearance of reliance is the key to the operation of commercial law. [2] The basic principle of commercial law is the fundamental guideline for commercial subjects to engage in commercial activities, which is the materialization of the value guidance of commercial law when the significance of commercial legal norms is clarified, and it is an important basis for commercial judicial decision-making. The basic principles of commercial law are everywhere in commercial law thinking.

2. PRACTICAL APPLICATION OF COMMERCIAL LAW CONCEPTS: COMPARATIVE ADVANTAGES OVER CIVIL LAW CONCEPTS

As far as the establishment of a company is concerned, the theory of civil law is that "every legal person should establish its own form of organization. The organs of a legal person should generally realize three functions, namely, the function of meaning formation, the function of leadership and the function of supervision"; the German Civil Law stipulates that "in the absence of a special federal law, associations aiming at the economic operation of a business acquire the capacity of right by virtue of a grant from the State". Therefore, "the establishment of the company" is not any right capacity, it can not be any legal action, also can not own property in its own name. Visible civil law system of each country for the establishment of the company have denied its civil law in the civil law "legal person" as a kind of virtual person, its rights and behavioral capacity from the date of its establishment. In Europe, "legal person" personality status. However, in practice, from the company preparation to the completion of the establishment of the company is not a natural seamless process, most companies need to go through a certain period of time in order to finalize the establishment of the legal significance of the formation of the reality of the "establishment of the company". Although the "company in the establishment" has not been registered or registered, does not have legal personality, and does not have the rights and behavioral capacity conferred by law, but it may actually for the completion of the establishment of the company's business and the corresponding business activities. For "the establishment of the company" in the company before the completion of the behavioral attributes and effects, civil law system can not be "person" theory for generalization and induction, because the civil law system doctrine that "the establishment of the company has not been registered Acquisition of personality, and therefore shall not enjoy the rights and behavioral capacity" [3]. In order to make up for the fact that the definition of "person" is unable to explain the effect of the acts of a "company in the process of being established", the civil law theory proposes that "a legal person in the process of being established may apply the provisions of a partnership in the stages of the establishment of a legal person where the person establishing the company acquires the rights and burdens the obligations; in the establishment of a legal person, the provisions of a partnership may be applied. When the establishment of a legal person is successful, the rights and obligations formed by the legal person in the process of establishment are directly transferred to the legal person after its establishment because of the identity between the legal person in the process of establishment and the legal person that acquires legal capacity afterwards.

Taking the right to personality as an example, the right to personality system is a legal system that recognizes and protects personality interests such as life and health, reputation, likeness, privacy, etc., and it is the proper meaning of the civil law that centers around the rights of "human beings" on the basis of the concept of "human beings". Against this background, the protection of persons under civil law lies mainly in the protection of the personality rights of persons. Although the form of personality rights cover name, reputation, honor, privacy, etc., but from the mode of rights protection, the protection of personality rights is still limited by the principle of attribution of tort liability law, the intentionality or negligence of the damage, the existence of tort, the causal relationship between the results of the damage and the damage is still the attribution of responsibility for the infringement of the right of personality. Based on the fact that the object of protection of "personality rights" is personality rather than the moral damage arising from the impairment of personality, although there is compensation for moral damage to the right to personality in modern tort liability law, considering the intangible and incidental nature of the moral damage, the amount of monetary compensation for moral damage is not very high, and it only serves as an auxiliary legal remedy. (c) Legal remedies.

Against this background, although businessmen, as commercial organizations, may also enjoy the civil law protection of the "personality rights of legal persons" under the system of legal persons, a problem arises: there is no practical significance in the protection of the businessmen's right to reputation, honor or name alone, since the essence of the protection of these rights in the business

world lies in the protection of the interests that businessmen may derive from these reputations, honors and names, i.e. the interests of business reputation ("goodwill"). The essence of the protection of these rights in a commercial society is to protect the interests that businessmen may obtain through these reputation, honor and name, that is, the interests of business reputation ("goodwill"). Therefore, theoretically, goodwill is not only a pure personality right, but also has the double meaning of personality right and property right. For the subject of the personality of the businessman is actually embodied in the "goodwill" based on the impairment of the interests brought about by the impairment (including direct and indirect interests), for the businessman's personality rights infringement can not just require the tortfeasor to restore the businessman's "reputation" so simple. But the traditional civil law because the legal person is only a legal person, so it does not have for the violation of its legal personality rights of the act of requesting to be "moral damages" basis, it is obvious, in the personality rights of the right subject for the "personality" under the logic of the businessman Under the logic of "personality" as the subject of personality rights, the compensation measures for the damage to the "legal personality rights" of businessmen are only a kind of symbolic compensation rather than a direct means of redress, which results in the serious lack of protection of the value of businessmen's goodwill under the protection of the "legal personality rights" of the existing civil law.

3. SHORTAGE OF COMMERCIAL LAW CONCEPTS IN COMMERCIAL LAW EDUCATION

3.1. Inherent Shortcomings In The Education Of Commercial Law Concepts: Lack Of Codified Law

Since China has not yet promulgated its own Commercial Code as Germany and France have done, the lack of a general normative basis for commercial law has led to an imbalance in the curricular arrangement of commercial law at all levels in China, as well as a rigid and outdated teaching model. In recent years, although many colleges and universities have tried to carry out teaching reforms such as practical teaching and flipped classroom, they have achieved little effect on the discipline of commercial law because they have not grasped the key element of commercial thinking [4].

Firstly, in terms of curriculum design, there is insufficient tension in content and insufficient hierarchical differences to highlight the vivid interaction between commercial norms and real business practices. Our country adopts the legislative model of "civil and commercial integration", and there is no independent commercial code, resulting in the teaching of commercial law in the commercial law part of the General Theory of the law is faced with an embarrassing situation. Teachers can only explain the commercial law from the doctrine or cite civil law norms to explain the lack of normative basis for teaching commercial law is easy to make beginners fall into the civil thinking of the misunderstanding. Secondly, the existing commercial law courses in the content arrangement, pay attention to the general theory of commercial law, pay little attention to the practice of commercial law, such as partnership law, trust law, insurance law and so on. The reason is that the amount of commercial law class time is limited, and teachers often choose to explain the general part first, which makes it difficult to take into account the content in the subsequent sub-topics. Finally, business law courses require students to master basic knowledge of economics and management as theoretical support. Law students usually do not take the initiative to take this kind of course due to the pressure of the curriculum and the difficulty of interdisciplinary learning, so it is necessary for teachers to appropriately involve the necessary interdisciplinary knowledge of economics and management in the content of the business law course.

3.2. Lack of Supporting Facilities for the Teaching of Commercial Law

Take commercial law case teaching as an example. In general, the teaching of commercial law cases in China is faced with the problems of insufficient quantity, poor quality and incomplete types of

cases. First of all, the number of commercial cases in the guiding cases and gazette cases issued by the Supreme People's Court of China is limited. The points of decision summarized in the cases lack representativeness, and the commercial law issues involved are fragmented. Academic research on commercial cases mostly focuses on the analysis of individual cases and class cases, and there are fewer empirical studies that systematically summarize and summarize commercial cases. Secondly, the teaching of commercial cases mostly summarizes the facts of the cases in a concise manner. Although it helps beginners to quickly understand the facts of the case and focus on the core decision points of the case, it does not help students to cultivate their ability to read, understand and summarize the facts of the case. The background and process of commercial transactions are also implied in the facts of the case, and presenting the facts of the case in full can still be beneficial to students' understanding of commercial practice. Finally, case teaching ignores non-litigation cases. Because many cases in commercial activities do not enter into litigation, there are a large number of cases of mergers and acquisitions, financing and other commercial transactions outside of the judicial precedents publicized by the court. These non-litigation cases can reflect the whole picture of commercial transaction activities and the application of commercial thinking, and are excellent materials for teaching commercial law, but they are easily neglected by commercial law teaching due to the lack of public access.

At the same time, the teaching force is insufficient. Insufficient commercial practice literacy Commercial law courses are closely related to commercial practice, which requires the lecturers to have a certain amount of experience in commercial practice, and the commercial law teachers should go from commercial practice to commercial law teaching. However, under the existing evaluation system of colleges and universities, colleges and universities generally emphasize on scientific research but not on teaching, and teachers of commercial law are confined to the pressure of scientific research and teaching tasks, unable to find time to teach, which makes it impossible to disseminate the concepts of commercial law.

4. THE IMPORTANCE OF EMPHASIZING THE CONCEPT OF COMMERCIAL LAW: SUBSTITUTE CONCLUSIONS

Optimizing the business environment is an inevitable requirement for protecting the legitimate rights and interests of business subjects and comprehensively promoting the rule of law, as well as an important political task in the process of China's current economic development.

Scientific legislation is an important prerequisite for building a business environment based on the rule of law. Good laws and good governance are the institutional arrangements and authoritative expression of the government's exercise of economic functions, which are stable and predictable, and are the main reference and decision-making basis for enterprises to invest and prosper. Law enforcement is the basic function of the administrative organs, but also the most direct and close contact with investors. Without strict law enforcement, there is no rule of law government, not to mention the first-class business environment. Justice is the last line of defense to maintain social fairness and justice, but also in accordance with the law and equal protection of the property rights and legitimate rights and interests of all types of business subjects of the last line of defense. Justice is fair and just, the market entrepreneurial innovation and creative power to be more powerful. Create an atmosphere of the rule of law for enterprises to operate in accordance with the law, in order to make entrepreneurs feel at ease, feel free to invest and concentrate on entrepreneurship. Optimize the business environment, is to promote the establishment of a sound system of laws and regulations in line with the rules of the market economy and the modernization of governance capacity, enhance policy transparency, better protect the legitimate rights and interests of business entities and the people, and effectively safeguard the fair competition of the market order, through scientific legislation, strict law enforcement, fair justice, and law-abiding by the people, to the "paper law Through scientific legislation, strict law enforcement, impartial justice, and law-abiding by all people,

the "law on paper" will be turned into "law in action", market expectations will be stabilized, and the development momentum of the business entities will be better transformed into new kinetic energy for economic development [5].

The concept of business law is an important theoretical guide to creating a favorable business environment. The rule of law is an important means of promoting high-quality development and optimizing the business environment, as well as the most fundamental and stable guarantee. Putting the optimization of the business environment into the rule of law comprehensively is of great significance for the continuous optimization of the business environment. As an important part of Xi Jinping's thought on the rule of law in the new era of socialism with Chinese characteristics, the rule of law view of the business environment responds to the intrinsic institutional needs of sustainable economic development in the new era, and reveals the grand purpose of deepening reform.

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