

# Theoretical Evaluation and Application of Case Law Teaching in General Principles of Commercial Law

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**Abstract:** The General Principles of Commercial Law is a general summary and abstraction of the normative system of commercial law, which is of great guiding significance for the rules of adjudication of disputes in commercial practice in reality, and the lack of general commercial law norms makes the research and teaching of the General Theory of Commercial Law particularly important. The study of general commercial law is undoubtedly of more fundamental significance than the study of specific areas of commercial law. With the development of social economy, commercial law embodies more and more technical and practical, and the cultivation of commercial legal talents is more and more oriented to the employment demand, case study teaching has advantages in the teaching of general commercial law and should be emphasized. In the case teaching of general commercial law, the irrevocability of securities trading results can clearly reflect the style of commercial law to protect the security of transactions. The proportion and priority of case teaching in the teaching of general commercial law should be emphasized.

**Keywords:** General principles of commercial law; case law teaching, transaction security protection; transaction result irrevocability.

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## 1. Theoretical Status and Teaching Difficulties of General Principles of Commercial Law

The so-called General Principles of Commercial Law or General Principles of Commercial Law, i.e., the parts of commercial law that do not belong to the separate laws on companies, partnerships, securities, bills, insurance, maritime commerce, trusts, bankruptcy, etc., but regulate the general issues. In the formal sense of the civil and commercial separation of civil law countries, the general provisions of commercial law is generally stipulated in the Commercial Code, the main contents of the identity of commercial subjects, commercial registration, commercial name, commercial bookkeeping, commercial agency and managerial rights, commercial auxiliary (such as agents, dealers, brokers, etc.) commercial behavior of the general provisions of the general and special commercial behavior. [1]

The General Principles of Commercial Law is a general summary and abstraction of the normative system of commercial law, which is of great significance in guiding the rules of adjudication of disputes in commercial practice in reality. China is currently practicing the mode of "civil-commercial integration" under the Civil Code, and the General Principles Part of the Civil Code has made great progress in the implementation of the civil-commercial integration legislation, but it does not provide a successful paradigm with a clear picture. The General Provisions of the Civil Code have made great strides in implementing a unified civil and commercial legislation, but they do not provide a successful model with a clear picture. The general provisions of the Civil Code, which combine civil and commercial law, have been expected to fully supply the normative system of commercial law, but from the perspective of the overall level of normative analysis, the strong abstraction and systematization characteristics of the civil law itself have resulted in the inability of the General Provisions of the Civil

Code to over-abstract commercial law norms, which are of a lower degree of abstraction. From the standpoint of commercial law, there are three key criteria to test the success or failure of the general provisions of the civil code under the Pendleton system: whether it provides sufficient common norms of civil and commercial law? Does it provide general norms of commercial law? Does it provide the basic system of commercial law on a large scale? Based on these criteria, it should be said that the legislative model of civil-commercial unification with Chinese characteristics is limited at the basic level, and can be bluntly described as a "failed attempt" in a number of specific areas: the provisions of the General Principles of the Civil Law that regulate commercial relations are quite limited, and basically do not provide the basic institutional norms of commercial law on the scale that has been hoped for; and the norms of commercial law that have been squeezed into the General Principles of the Civil Law are either too principled or too limited in scope, and the norms of commercial law are either too general, or they are not sufficient. The commercial law norms that have been squeezed into the General Principles of the Civil Law are either overly principled or duplicate the provisions of the subordinate unilateral commercial law, resulting in the dual failures of conflicting norms and excessive norms; with regard to the general norms of commercial law, i.e., the sources of commercial law and the basic principles of commercial law, the former are inappropriate in their content, while the latter are unduly absent; and the General Principles of the Civil Law provide some of the common norms of commercial and civil law that need to be reviewed, especially with regard to the serious inadequacy of the norms of commercial behavior. [2]

The lack of general commercial law norms makes the study and teaching of general commercial law particularly important. The study of general commercial law is undoubtedly more fundamental than the study of specific areas of commercial law. As a result, there is a growing interest in the study of general commercial law on the basis

of more adequate research in specific areas of commercial law. And the perspective of researchers is shifting from mainly drawing on foreign general commercial law doctrines to mainly abstractly summarizing China's own commercial law phenomena. The establishment of a general commercial law system with Chinese characteristics needs to take foreign enactments and traditional commercial law theories as references. In the national unified textbook of commercial law published in 2022, the content of the general commercial law is divided into the general principles of commercial law, commercial subjects and commercial behaviors, and the chapters of the traditional commercial law theories are compressed structurally, which makes the concepts and the general theories of the general commercial law much more difficult to understand.

From the viewpoint of the teaching objectives of the general theory of commercial law, it mainly includes the basic concepts and concepts of commercial law, the basic content of commercial legal relations, and also includes the generalization of the common rules of each sectoral law. From the content point of view, the content of the general theory of commercial law mainly centers on the object of commercial law, commercial relations. The purpose of the study of commercial relations is to establish the independence of the commercial law system and its basic characteristics of the system of rules, and its role is to provide commercial law sector jurisprudence. Due to the abstract nature of the content of the General Theory of Commercial Law and the difficulty of understanding it due to the lack of commercial practice as an audience, the teaching of the General Theory of Commercial Law was once discussed whether it should be abolished or not, and some people believed that the General Theory of Commercial Law should be weakened in the teaching of commercial law in China. Many schools offer 2-3 credits of general commercial law. At present, China is still a country without a commercial code, so what should be taught in the general theory of commercial law is a difficult problem. Commercial behavior and commercial subjects are the basic concepts of the general theory of commercial law, and their functions and significance mainly exist in the commercial code. China does not have a commercial code, there is no commercial code of legal application of the problem of commercial behavior and the concept of commercial subject has no empirical law on the basis of the detailed explanation in the lecture is also difficult. However, some scholars believe that: commercial law can not be no general theory, the general theory of commercial law does not need to western countries commercial code and commercial law theory as the content, our general theory of commercial law should summarize China's commercial law experience. In addition, some scholars have proposed a distinction between "commercial law as a discipline" and "commercial law as a course" in an attempt to explain the problems faced by the general theory of commercial law. "Commercial law as a discipline" should be open, in which a general theory is necessary, while "commercial law as a curriculum" should give more consideration to the efficiency and goals of resource allocation in legal education. [3]

Therefore, based on the importance of the General Theory of Business Law itself, there is a need to deeply explore the methods and strategies of reforming the General Theory of Business Law in teaching practice.

## **2. Comparative Advantages of Case Study in Teaching General Principles Commercial Law**

### **2.1. Inherent advantages of case teaching in commercial law education**

With the development of society and economy, commercial law embodies more and more technical and practical aspects, and the cultivation of commercial law talents is also more and more oriented to the employment demand. The traditional conceptual teaching mode has gradually failed to match the increasingly updated social needs. The traditional teaching mode, in which the teacher transfers the knowledge to the students mainly by theoretical lectures, is highly efficient, but lacks students' participation, cannot strengthen students' application of knowledge, and is even prone to the negative effect of rigidity of the learned knowledge. Through the above analysis, it can be seen that the teaching of business law in modern law schools have identified this problem and started to reform to the case-oriented teaching mode. This method attaches importance to specific teaching objectives, and guides students to understand and analyze real-life cases and carry out independent discussions to analyze and solve problems under the premise of mastering basic theoretical knowledge, so as to cultivate students' learning ability and application ability of combining theory with practice. The source of cases can be divided into teacher-provided or students' independent search, which can achieve different teaching effects at different stages of teaching. China is a country of statutory law, the content of the teacher's lectures is relatively fixed, the law schools have uniform restrictions on the setting of law subjects and the length of time, and the teaching reform in recent years has even put forward a uniform requirement for law textbooks. As such, it is not easy for teachers to complete the limited content of the syllabus, and it is difficult for them to devote a great deal of class time and energy to discussing a particular case in detail with students.

Fortunately, at present, China's legal education has gradually recognized the needs of practice, changed the goal of personnel training, major universities and colleges of law schools all pay attention to carry out case studies and moot court and other related courses, increase the proportion of practical teaching. However, it must be recognized that the pace of such reform is still too slow, and the teaching effect is also unsatisfactory. In the face of this situation, we need to completely transform the teaching concept, change the former theory teaching-oriented teaching mode, adjust the teaching objectives, pay attention to the cultivation of students' comprehensive ability and comprehensive quality, and find a road of case study teaching with Chinese characteristics.

As far as commercial jurisprudence is concerned, the teaching content is complicated, the system is huge, and it is more flexible, more varied and more specialized than civil law. At the same time, because of the commercial activities than civil activities, students are more unfamiliar with the former, in the understanding of the obstacles suffered more than the civil law study. Moreover, with the increase of social economic and trade activities, the change of methods, the development of science and technology and other factors, the content of commercial law is constantly expanding and changing, therefore, the reform of the applied teaching of commercial law is more urgent than that of other legal

disciplines. Teachers of commercial law must find a way as soon as possible that is suitable for students to understand the current theoretical knowledge of commercial law, but also not limited to the theoretical knowledge and apply it flexibly to specific commercial cases. In order to find and practice this path, the reform of commercial law teaching should emphasize at least three points. Firstly, the concept of commercial law teachers needs to be changed, the goal of teaching is no longer confined to the knowledge required by the syllabus of commercial law, but focuses on cultivating students' legal thinking and practical ability, laying a foundation for them to deal with the changing commercial environment; secondly, the relationship between teachers and students needs to be transformed, the whole process of teaching commercial law is no longer teacher-led, and it should focus on giving full play to the independent learning ability of students, with the teacher only acting as a provider and sharer of cases, deducing and applying the knowledge to specific commercial cases. Teachers only act as the provider and sharer of cases, and guide students to analyze and think about the problems independently, so as to deepen their understanding and mastery of the knowledge of commercial law; finally, the class time of commercial law should be divided into compulsory and elective hours, and selective screening and arrangement of cases should be made for different students to satisfy the different needs of different students' interests and practicality, and the teachers can also explain the specific cases in a targeted way to achieve the best case teaching effect in a limited period of time. Teachers can also make specific case lectures, so as to achieve the best case teaching effect within a limited time.

## **2.2. The use of case studies in the teaching of commercial law in various countries under the comparative approach**

In the comparative law perspective, different countries attach great importance to the case teaching component of commercial law teaching.

Case teaching, as an applied teaching method, can be carried out in various ways, such as the small-group case discussion in France, the independent internship of students with lawyers in Canada and the legal clinic in South Korea, all of which are the materialization of the case teaching method. For example, in the French small-group case discussion, teachers select cases focusing on different knowledge points according to the knowledge points taught in the large-class theoretical courses for students to discuss, so as to deepen students' understanding and mastery of theoretical knowledge. In Korea, legal clinics are organized by students to search for cases on their own, analyze the cases in groups, find out the difficulties and key issues, and then try to match the cases with what they have learned to solve the problems. The former case method can be used in conjunction with theoretical teaching to strengthen students' sense of participation in the teaching process; the latter method can test the effectiveness of teaching, guide the formation of students' critical thinking, and provide feedback on the problems in teaching through students' performance.

In Canada, for example, as far as the teaching of commercial law is concerned, the curriculum includes various legal systems related to commercial affairs and emphasizes both vocational training and theoretical education. The teaching method is based on professors, with classroom teaching based on the teaching of laws and regulations, as

well as specialized seminars on case analysis, and even purely theoretical courses such as the theory of corporate law. In addition to full-time teachers, law schools also hire professional lawyers to provide students with practical courses, such as bankruptcy law, which is taught by lawyers specializing in bankruptcy. Because of the emphasis on diversified teaching, the teaching methods are flexible and varied, and students have a high degree of freedom in choosing courses, both students and professors have a high degree of autonomy. [4]

In Korea, for example, business law subjects can be categorized into basic, intensive and applied subjects. Basic subjects are compulsory, intensive subjects are optional, and applied subjects can be offered selectively according to the faculty strength and teaching conditions of each college. For the complicated commercial law, such a classification allows students to build up a solid foundation and at the same time carry out specialized courses in a targeted manner, so as to cultivate refined talents. Considering the effectiveness of legal education, there are both theory-oriented courses taught in large classes and small classes with question-and-answer sessions and case-based teaching. The general path of the current reform of commercial law teaching in Korea is to move away from purely conceptual teaching of the law to a multi-dimensional teaching method that allows students to analyze, organize, and discuss cases by reading them and, on that basis, combining them with theory. Regular evaluations in each semester include mock trials, legal clinics, and case studies. Under the college system, examinations are still mainly written and supplemented by oral examinations. Emphasis is placed on students' ability to handle actual cases and their mastery of legal language and legal logic.

The comparative advantages of the case method in the teaching of commercial law and the fact that most countries worldwide have chosen to give greater weight to the teaching of commercial law cases are evidence that case teaching should become an important tool in the teaching of general commercial law.

## **3. The Use of Case Law Teaching in General Principles Commercial Law**

In order to avoid abstract concepts and theories being too empty, it is necessary to concretize the important concepts of the General Theory of Business Law in case teaching. The following are examples of how case teaching can be applied in the teaching process of general commercial law, taking the value of transaction security and the value of protection of profit as examples.

Compared to civil law, commercial law places more value on transaction security. Article 111 of China's Securities Law stipulates that "when the normal conduct of securities trading is affected by force majeure, accidents, major technical failures, major human errors and other unexpected events, the stock exchange may, in accordance with its business rules, take such measures as technical suspension, temporary suspension of trading and other disposal measures, and shall promptly report to the securities regulatory authority under the State Council. In order to maintain the normal order of securities trading and market fairness, the stock exchange may, in accordance with its business rules, take such measures as technical suspension of trading and temporary suspension of the market, and shall promptly report the same to the securities regulatory authority under the State Council. The

stock exchange shall not be liable for civil compensation for losses caused by measures taken by it in accordance with the provisions of this Article, except where there is gross negligence." Outside of the occurrence of force majeure, accidents and major technical failures and major human error other than extremely rare circumstances, the results of the transaction are irrevocable, and to a certain extent, the specificity of the securities on-market trading excludes the space for the application of the error of meaning in the norms of civil law.

Here is an example of a simple securities trading process, starting with centralized bidding trading, securities trading has experienced multi-process, anonymity and multi-links. Bidding transactions are conducted according to certain competitive rules, the core elements of which are the price priority and time priority principles. Price priority principle is in the purchase of securities, the higher buy price declaration priority over the lower buy price declaration; sell securities, the lower buy price declaration priority over the higher sell price declaration. Then liquidation delivery, liquidation is to reduce the number of securities and price delivery, securities registration and clearing agency for each business day turnover of securities and price respectively with the rolling low, calculate the net amount of securities and funds receivable or payable process. Through the same securities brokerage on the same kind of securities to buy and sell offsetting liquidation, to determine the number of securities should be delivered and the amount of the price, in order to facilitate in accordance with the principle of "net settlement" for the delivery of securities and price. The complex process of securities trading does not allow for the possibility of avoidance due to a mistake in the expression of intent at a technical cost, which is a higher requirement for the maintenance of the security of the transaction under the concept of commercial law.

#### **4. The Conclusion**

The teaching of commercial law is particularly prominent, because commercial law is a highly practical subject with special emphasis on operation. Therefore, in addition to the subtle cultivation of legal literacy, the objectives of commercial law courses at undergraduate level should emphasize the education of students' qualities, especially professional literacy and practical skills, and enable students

to understand the basic laws of commercial activities on the basis of the basic concepts and systems of the civil law, understand the basic connotations and principles of the development of various systems of the commercial law, and cultivate the habit and ability of students to think about the market problems, plan the transaction activities, and solve the market transaction disputes based on the principles and systems of the commercial law. It also cultivates students' habit and ability to think about market problems, plan trading activities and solve market disputes by the principles and regulations of commercial law. [5]

Commercial law cannot be devoid of general principles. A general theory of commercial law cannot always be based on a description of the history and current status of foreign commercial law, and it cannot always be based on foreign legislation as the basis for commercial law principles, without our own basic theory of commercial law. We should summarize, generalize, refine and abstract China's own basic theory of commercial law on the basis of China's existing single-line commercial legislation. The absence of the General Principles of Commercial Law is not the absence of the basic theory of commercial law, and we cannot wait for the legislation of the General Principles of Commercial Law which is far away from our expectation, but we should start to construct the basic framework of the theory of commercial law in general, which is not only the actual demand of commercial law teaching, but also an important way to promote the legislation of the General Principles of Commercial Law.

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