

An Analysis of the Practice of Case Teaching Reform in Private International Law

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Abstract. With the promotion of “*the belt and road*” initiative, international civil and commercial exchanges between Chinese and relevant countries increase, and the demand for resolution to the conflicts of national civil and commercial laws gradually increases too, which challenges the application and teaching of private international law. The best way to carry out practice teaching of private international law should be explored to cope with the situation. Researching on the deficiencies of the various links in the case teaching of private international law, perfect suggestions on selection of cases, class management and mobilization of students' participation in class are put forward to effectively cultivate more legal talents who can grasp the legal thinking of private international law and apply various systems of private international law flexibly.

1. Introduction

Private international law is a legal course with the core content of solving the conflicts of national civil and commercial laws. It has always been one of the main courses of law major. “the belt and road” initiative has brought increased civil and commercial exchanges between China and nearly 70 related countries, followed by an increase of contradictions and disputes in related countries. It will help promoting the construction of “the belt and road” that solves the contradictions and disputes timely and effectively. Private international law has become the most demanding legal subject to solve the international civil and commercial disputes. It is undoubtedly important for students majoring in law to learn and apply knowledge of private international law, with the increasing international civil and commercial legal conflicts and demand for knowledge of international civil and commercial law. Although the importance of private international law has been recognized by the scholars, it is difficult to master and apply flexibly knowledge of private international law, because of the complexity of private international law course itself, especially for undergraduate students in terms of their little exposure to international civil cases and the influence of long-term domestic laws education. Therefore, it's necessary to apply various teaching methods flexibly, especially case teaching which can fully mobilize the participation of students, in the process of teaching private international law, to promote the teaching and learning and improve the teaching effect of private international law.

2. Significance of Case Teaching to Private International Law

Case teaching method is also one of the important teaching methods of law education in our country, through which students can get involved in practice, enter into situations, to cultivate students' legal thinking to deal with legal issues, so that they can learn to apply professional knowledge to solve practical disputes. Although the common law system countries and civil law system countries take different methods in case teaching for their specific training target, two legal system countries both have adopted a large number of cases without exception in law education. The common law system countries pay more attention to the cultivation of students' legal thinking “like a lawyer” in case teaching with the goal of cultivating a lawyer of the law education ; while the continental law system countries pay more attention to the cultivation of the judge thinking mode,

with a goal of training judges. However, Comparing to moot court teaching method and legal clinic teaching method, case teaching method as a practice teaching method has greater superiority in China. In the process of teaching private international law, case teaching is obviously more important, which is determined by the characteristics of private international law curriculum and the characteristics of students studying private international law.

2.1 Case Teaching Determined By the Characteristics of Private International Law

Private international law is a complex system of international law courses with its own unique training objective. The development of private international law in China is initially formed, and the theory and practice of private international law are equally important. All these characteristics decide that the case teaching should be adopted in the process of private international law teaching.

First of all, the adoption of case teaching method is determined by the system of private international law. The importance of case teaching to the teaching of private international law originates from the characteristics of the private international law course itself. Private international law is a huge system of international law course, it not only relates to the substantive laws, but also relates to the international civil procedure law and international civil and commercial arbitration laws. [1] It's a huge legal system including substantive laws, procedural laws, and conflict laws, with the contents of the civil law status of a foreigner at home, the jurisdiction of countries, conflict laws of countries, international civil procedure laws of countries, international uniform substantive laws, the recognition and enforcement of foreign judgments, which are full of fine and complicated knowledge. To learn private international law well, it is necessary for us to form a systematic understanding of private international law and the solution to international civil and commercial disputes. The most direct way to integrate all the knowledge in private international law into a system is to present them through typical cases. Because of the division of the legal science in China's theory and practice, the substantive law and the procedural law have been artificially separated and the civil laws are also divided into different departments. The current law education is based on separate department of laws, which in turn leads students to obtain the most knowledge of the department laws of the law system in different stages of studying fragmentarily. It is difficult for students to understand and grasp the whole process of analyzing cases and solving disputes, which will impede the cultivation of students' ability to use legal knowledge comprehensively. The course of private international law is a comprehensive course, in which the substantive laws, procedure laws and the conflict laws are integrate, with the goal of teaching students to master the ability to solve disputes occurring in international civil and commercial communication and the ability to choose and apply laws in the process of learning private international law. It is obviously impossible to achieve this teaching goal by teaching and learning only through isolated theoretical teaching method. The conflicts and choices of laws in different countries don't only refer to isolated knowledge of conflict laws, but also closely relate jurisdiction of a court, substantive laws, and the recognition and enforcement of foreign judgments included. Case teaching method, a practice teaching method of law, can enable students to stay in a specific period and in a specific country, and to grasp the ability to solve conflicts in international civil and commercial laws through solving a complete case in the context of approaching real cases.

Secondly, the use of case teaching method depends on the training objectives of private international law. Private international law is a legal department, with conflict laws as the core, resolving civil and commercial conflicts among countries as its objective. The main goal of the course is to enable students to master the ability to solve conflicts in international civil and commercial laws. The formation of legal thinking is essential to solve the conflicts of laws and to choose the applicable laws. Legal thinking training is absolutely not teaching and cramming knowledge of legal theory by rote; it's to know with which to start a case, to know how to practice and apply knowledge. The ability to practise and apply law should be obtained through a lot of contact with practice and cases. According to the characteristics of private international law courses, and the feasibility of teaching process, using the complete classic case to help students to learn to solve the conflict of laws, to form the legal thinking of choice of law, can better achieve the training objectives of private international

law, can be more effective in training legal talents in resolving actual international civil and commercial legal conflicts.

Thirdly, the adoption of case teaching method is determined by the current situation of the development of private international law in China. Chinese legislation on private international law develops late and slowly, and the system of it remains to be improved. Most of Chinese conflict laws are enacted in two legal documents, one was the eighth chapter of “*general principles of civil law*”, and the other is the “*law on the application of laws to foreign-related civil relations*”, with the application of conflict of laws and most systems of conflict laws in the provisions of two laws; international civil procedure rules are enacted in the “*civil procedural law*”; on the rules of recognition and enforcement of foreign judgments are mainly reflected in the judicial assistance treaties with 33 countries ratified by China; ways to find out foreign laws are mainly regulated in the provisions of the judicial interpretation to “*general principles of civil law*”. The legal system of private international law is so complex that a total of less than 60 provisions of conflict rules in the current legislation of our country is not enough for Chinese growing demand for private international law. Along with the “*law on the application of laws to foreign-related civil relations*” and its judicial interpretation issued, the conflict rules and the related system has begun to be consciously applied in the trials of international civil cases in China. But through the investigation of foreign-related civil and commercial judgments, an analysis shows that many Chinese judges haven’t formed the mode of legal thinking dealing with the conflicts of laws relevant to foreign-related civil and commercial cases, some of which were directly applied international practices or foreign laws to. Even though some judges have consciously noticed the application of conflict rules in judgments of the foreign related civil and commercial cases, many of the judgments are not rigorous, even existing vague choice of law and misunderstanding for some basic systems of private international law. On the one hand, it exposes that private international law is not perfect in China; on the other hand, lawyers and judges do not master the knowledge of relevant systems of private international law, which reflects that our legal education reform is imminent. Therefore, the case teaching method should be further improved to raise students’ understanding and application of the conflict laws, so that college graduates can accurately apply them to solve the conflicts of laws in private international law in judicial practice in the future.

Finally, the adoption of case teaching method is determined by the nature of the Curriculum system of private international law. Private international law is a course with high combination of theory and practice, and this characteristic determines that the teaching process of it should fully combine theory and practice. Case teaching in class can help achieve a good combination. The origination and core of private international law is the study of the application of law to international civil and commercial disputes, and many theories and systems are developed along with conflicts solution. [2] Private international law originate from the theory of statutes raised by Bartolus of Italy in 14th century, which was a kind of academic theory in origin but had also been used as laws. There is no strict boundary between the legislation of private international law and theories of conflict laws in practice. It’s a common phenomenon that judges make law through judgments, especially in common law system countries, where the cases are the forms the origins of law. In view of this, it is necessary to make full use of practical cases in class of private international law to explain and illustrate the theories of conflict laws, so as to achieve the organic combination of theory and case practice.

2.2 Case Teaching Suitable for the Characteristics of Students

According to the teaching program of colleges and universities, the course of private international law is usually arranged in grade three or four, when students have studied the basic theory of law, civil law, criminal law, civil procedure law and criminal procedure law. They have understood legal theories and legislation systems to some extent, and they have got the ability to solve some isolated legal issues under certain background. Private international law, also known as international civil law, originates from civil and civil law in various countries. The purpose is to solve the conflict between civil and civil law in various countries. It is proved that case teaching is appropriate to private international law, because the British and American theories of conflict laws was born from classic cases, such as the case of *Forgo and Beikeke v. Jackson*, etc. [3] On the base of property Law, contract

law, and tort law, inheritance law, marriage law, and civil procedure law, which students all have learnt and have got corresponding knowledge, what students need to learn are the legal thinking and the general principles to solve the conflicts of laws in learning private international law. Regardless of the international characteristics of international civil and commercial cases, students should be able to solve the disputes with the knowledge of domestic laws now. What students should notice here are the international characteristics of the cases, the demand for choice of laws and the legal basis on which the choice is made. The legal thing that students should form through studying of private international law will be formed through repeated exercises during the analysis of international civil and commercial cases, and the ability to solve laws conflicts will be acquired in the process of making mistakes and correcting errors.

At present, there are nearly 400 universities in the country, with about 360 thousand students in law majors. [4] The private international law as one of the 16 major courses of law major is a compulsory course for all law students, according to the requirements of the ministry of education. And some law colleges and universities set up the syllabus with separate cases training courses for private international law besides the course of private international law. These syllabuses reflect the demand for case teaching process in the teaching of private international law. The transformation of theoretical research into practical application in legal education in China raises a challenge and demand for the use of case teaching in private international law.

3. Present Situation of Case Teaching in Private International Law Course

It is common to use case teaching method in the teaching of law courses, but it is not so common or easy to use case teaching method in the course of law specialty successfully. The traditional theory teaching method of class teaching has been adopted as the main means of teaching in our country's law education ever since. The advantage of this method is to attach importance to the imparting of legal knowledge and cultivating the legal values of students, while the shortcoming of this method is that it ignores the education of legal thinking in the process of transforming from theory to practice and from law to judgment. With the development of science and technology, it is not necessary to learn laws or regulations by rote any longer, for the reason that there are various retrieval tools which could help find laws more easily and quickly, and students need more training of legal thinking. With the traditional teaching method in class, as the passive receivers while not active participants, students get their professional knowledge passively, and that is not contributive to the formation of students' legal thinking mode. Although more and more scholars have studied case teaching in recent years and many teachers are using case teaching method to teach private international law, there are still many problems in the process of applying case teaching.

3.1 The Selection of Cases

Based on the writer's experience of teaching private international law for more than 10 years, as well as the investigation of other teachers' teaching experience in the course of private international law, the cases used in case teaching of private international law are listed as follows: foreign classic cases, judgments of Chinese courts, and cases reorganized by teachers. Case selection is an important part of the private international law case teaching. The presentation of a case is not only used to illustrate an isolated issue in the private international law in the process of teaching. A complete case often contains the jurisdiction of a court, the characterization of a court, application of the conflict rules, ascertain of a foreign substantive law, evasion of law, reservation of public policy doctrine, and the recognition and enforcement of foreign judgments, etc. Whether to select and adopt a case or not depends on if it could reflect some key point of knowledge and if the syllabus and the teaching calendar of the private international law has arranged the point of knowledge. At present, there are sufficient cases explanations in various versions of the "private international law", while most of the classic cases in the textbook took place abroad a long time ago. [5] By author's years of private international law teaching experience, generally speaking, foreign classic cases used in class teaching are focusing on one or several of private international law systems, whereas the legal thinking mode of private international law is not specially emphasized. Judgments decided by Chinese court usually stay a complete system, including jurisdiction of the court, the application of conflict rules, the

substantive applicable law, whereas the application of the systems of conflict rules generally misses because of the lack of study and legislation of the systems in China. Cases reorganized by teachers are often very flexible. There are both cases that specifically explain an issue, also cases that are aimed at training the mode of legal thinking in private international law. But originating from the teachers' personal experiences, they may be divorced from practice. All of these types of cases mentioned above have been existed in the practice of case teaching in private international law.

Most of the cases used in class are provided by teachers before or on class, and students find their own cases and offer them in class in addition. There are many disadvantages in the cases collected by students used in case teaching, such as low efficiency in illustrate an issue, low quality and accuracy in presentation, and weak logic .

3.2 The Present Situation of Class Management

The process management of case teaching in class is a major difficulty in case teaching of private international law. In practice, teachers usually take part in the presentation of cases initiatively and positively. Most cases are provided by teachers, while only a few cases collected by students are mainly presented by students. In the stage of case discussion, there are great differences among the practices of teachers in practice. Teachers still play the role of directing, guiding and grasping the rhythm in the process of case discussion, but the relationships between teachers and students in the case discussion and analysis take on a variety of trends. Most scholars believe that teachers should play the role of a guide while students are the subjects of the discussion in the stage of analysis and discussion. [6] When a case is used as an example to explain an independent issue, there is no doubt that the teacher is in the leading position in the presentation and analysis of the case. While a case is used as a tool to train the legal thinking mode of students, sometimes teachers play roles of inductors of students and sometimes teachers play roles of collaborators of students.

3.3 The Present Situation of Students' Participation

Mobilizing the enthusiasm and participation of students in the case discussion and analysis is the other major difficulty in case teaching. The enthusiasm and participation of students in case teaching are closely related to students' personality characteristics, teaching methods of the teacher, the ratio of teachers to students in class teaching, the interest of content and the external pressure of students to participate in case discussions. It is noticed in practice that many reasons lead to low participation of students in the case teaching of private international law, some students lack motivation to take part in case teaching and they wouldn't like to ask questions, answer questions or think about questions on their own.

4. Suggestions on Case Teaching of Private International Law

The cases themselves are the supports of the case teaching in private international law. The effectiveness of the class management and the active participation of the students are the important guarantees of the case teaching. Therefore, in the implementation of case teaching, cases should be selected and modified rationally, the management of the class should be effective and students' participation and enthusiasm should be fully mobilized.

4.1 To Enrich and Modify Cases

The selection of cases in private international law should be based on the teaching objectives, the syllabus and the teaching calendar of private international law. The choice of cases should be based on a standard, that is, whether the case can effectively explain a private international law issue, or whether the solution of the case can reflect the way of solving a private international law issue. According to the teaching objectives and contents of each part of private international law, specific cases that reflect specific problems and demonstrate ways of solving law conflicts should be collected. A complete private international law case, in addition to clarifying an issue of certain content, should also cover most of the knowledge system of private international law, should include the jurisdiction of the court, characterization of a court, application of the conflict rules, ascertain of a foreign substantive law, the recognition and enforcement of foreign judgments, etc. The two basic types of cases used in case teaching, including foreign classic cases and the judgments made by the Chinese courts should be given the same attention. Despite that there are many shortcomings in foreign classic

cases such as lack of the background information, students' and teachers' ignorance of foreign laws, etc. The reasons why they have become classic cases is that these cases are the origins of transformation from theory to practice, which coincide with the teaching idea of our theory to practice and satisfy the need of application oriented teaching theory. Despite that there are many shortcomings in the foreign civil and commercial judgments made by the Chinese courts such as lack of standardization in the process of law application, inaccurate reasoning in the application of conflict rules, etc. their greatest advantage is that the conflict rules are established by China and all of us could grasp and apply various systems of conflict rules easily. These two kinds of cases shall be adjusted accordingly to the class using purpose, completing relevant information for the foreign classic cases with appropriate legal or background information, while cutting some background and evidence information of the complicated cases in the judgments made Chinese courts accordingly.

4.2 To Strengthen Class Management

The presentation, discussion and analysis of the case should also serve the teaching objective and the arrangement of the syllabus. Time allocated to each subject, all stages of which included such as theoretical teaching, case discussion, student discussion, teacher summarization, should be paid special attention to and should be arranged reasonably. The course of private international law generally takes 48-64 teaching hours, whereas the content of the course is so huge that an appropriate choice between the depth and the breadth of the course should be made. Therefore, some complicated cases with complex background should not take too much time for class presentation. The study of case in class should take less no more than 20 minutes, which should be done before class if time exceeds. The rhythm of the case discussion in class should be controlled avoiding the display of the performance of the students. In the process of class stage, we should guarantee both the students' participation and the control of class time, direction and depth of students' various participating activities. The teachers is a helmsman, and the students are a sailor.

4.3 To Mobilize Students' Participation

Giving students sufficient class discussion is an important means to mobilize the enthusiasm and initiative of the students and to cultivate the students' creative ability. Let students think in their own way and properly guide them in the direction of their thinking. Students' participation in case presentation and discussion should be improved in many ways. First of all, asking students to find cases by themselves can improve their participation in case discussion. Teachers put forward some topics which are typical and attractive in the teaching process, such as "Linghui Kong gambling in Singapore" case, and require students to search relevant information including the facts and laws. While most students will search information that they are interested in their in, teachers should guide students to think from the perspective of private international law and to look for relevant laws, put forward questions such as "Why did casinos in Singapore prosecuted to the court of Hong Kong?" "Whether the court of Hong Kong has the jurisdiction?" "Whether the court of mainland should recognize and enforce the judgment decided by the court of Hong Kong?" "Should public policy doctrine be applied here?" Secondly, it is necessary to take students' behaviors such as collecting cases, presenting cases a, analyzing cases and discussion with others into consideration of a parameter to their assessment, which will greatly improve students' participation in case teaching. At present, most students still attach great importance to their achievements, so it is still an effective way to supervise students to participate in case teaching.

5. Conclusion

The improvement to teaching quality of any course is a continuous process of perfection, which involves integrating the contents of the course, establishing a scientific and reasonable course system, and most importantly motivating students' enthusiasm and interest in learning. Case teaching is the most classic, suitable and effective teaching method in the course of private international law, with the perfection of the selection of cases, the class management and mobilization of students' participation in class, to effectively cultivate more legal talents who can grasp the legal thinking of private international law and apply various systems of private international law flexibly.

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