

Review on Conflicts of Different Types of Rights

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Abstract. Conflicts of different types of rights have a lot of forms and are very complex. Firstly I review conflicts between the intellectual property rights with others, conflicts between property rights with others, conflicts between creditor rights and human rights, conflicts between personality rights and rights to identity, conflicts between formation rights and inheritance rights, conflicts between legatee rights and inheritance rights. Lastly I analyze the roots of rights conflicts and propose some solutions to rights conflicts.

Introduction

Rights conflicts cannot be resolved by using the existing strands of legal reasoning in the Court. Instead, moral reasoning should be involved in the rights conflicts. In discussing one of moral philosophy's deepest conundrums-the Trolley Problem-I rely on the distinction between negative and positive obligations and between direct and indirect agency to unravel the dilemma.[1] Combining the moral argument and legal reasoning, one can deal with conflicts between absolute rights, negative obligations principally trump positive obligations. Dealing with rights conflicts are one of the great challenges of any constitutional court and China Court is no exception.¹

Rights are usually regarded as positions, which claim certain arrangements and exclude others. The traditional views explain their significance by applying predefined rules to the facts submitted to them. [2]The modern views insist characteristic of the formalistic conception of law, breaks down most clearly in contexts where one set of facts calls for the application of different rules which are hierarchically ordered. This paper offers such a review, by studying the conflicts of different type's rights.

Conflicts between the intellectual property rights with others

Legitimacy of intellectual property right has flaws, but some basic human rights, such as the right to life, the right to health, the right to development are naturally legitimate. It is different when there is a kind of conflict between the defective legal rights and legalized rights, which is just a new type of rights conflict, and which also are currently neglected. [3]

Trademarks' Property attributes and socio-cultural attributes, endogenously bring the conflicts between trademark rights and the freedom of speech, which also determine that the freedom of speech becomes a kind of limiting factor to trademark rights. Among them there are two classical cases: parody and comparative advertising. China should construct a system to constraint trademark rights. [4]

In business, trademark parody refers to a kind of behavior to criticize or ridicule other owners' trademarks. Parody may involve violations to individual's personality (honorary) and market value (reputation), so criticism and parody, ridicule or teasing certain social phenomena all should not be insult others. Of course, freedom of speech should not be protected but also be constrained by civil rights laws. [5]

Conflicts between property rights with others

The solution to conflict between property and creditor rights is that the property right is superior to creditor right. But based on specific legal arrangements, leasing rights can take precedence over property rights.

Firstly some conflicts must occur when the tax priority and guarantee property rights show concurrence if a taxpayer have due tax and other debit which are more than his remaining property. In China, the current benchmark to judge the effectiveness order the tax priority and guarantee property rights would lead to invalidate the rights of mortgagee and pledge. So the benchmark should be changed into the approved time. Secondly the liens' effectiveness should be superior to the tax debit and is not impacted by the approved time. Thirdly, the tax priority coordination between the tax priority and private priority should be preceded in categories. Finally, the Tax Administration Law can be regarded as a general law relating to taxation, while maritime law, the bankruptcy law, banking law shall be considered a special law. [6]

Conflicts between creditor rights and human rights

The legal norms to realize creditors' rights in civil enforcement procedures includes three-echelon structure: protection provisions for realizing creditors' rights, constraint provisions for realizing creditors' rights and restriction provisions for constraint provisions. Such a pros and cons of the system can protect not only interests of creditors but also the debtor and their dependent family members' basic right to existence, including necessary goods, living expenses and residential house. However, there are some conflicts between the Civil Procedure Law and judicial interpretations and between judicial interpretations, which leads to some understanding deviations on the relationship between creditors' rights and existence rights. So it is necessary to improve the relevant laws and regulations, to rank the relevant legal value, and to balance protecting existence rights and realizing creditors' rights. [7]

Conflicts between personality rights and rights to identity

Under the vision of sex liberalism, marital rape has a legal basis. But because of the lack of both consensual or consent, in the modern society, the spouse's right instead of the husband right, which is mostly considered as a kind of right about "husband to wife and wife to husband". But from the aspect of generative theory, the spouse's right is a kind of exclusive right to occupy some sex resources. Firstly it is a kind of right for the husband to other males and the wife to other females, Secondly it is also a kind of right about "husband to wife and wife to husband". "Marital rape" is a kind of conflict between the personal right of the one of the spouses and the spouse right of the other one. [8]

Reproductive rights belong to the selective rights, reproductive rights also implies that the one may select the right not to reproduce. As a result, the husband and wife own simultaneously the freedom to reproduce or not to reproduce, which must lead to a kind of conflict between the couples reproduction rights. Both husband and wife enjoy equal reproductive rights, in which the reproductive right enjoyed by the husband is the right to identity, so his wife refused to conceive or reproduce belonged to a kind of conflict between the reproduction right from the husband and the right of personal freedom from the wife. [9]

Conflicts between formation rights and inheritance rights

In reality, some conflicts may occur when creditors exercise rescission rights to protect their debits and the inheritors abandon their inheritance rights. Whether or not to constrain inheritors abandon their inheritance rights? Whether or not the creditors can exercise an effective remedy to fight against the inheritors' damage behaviors? China's current "Law of Succession", its emphasis on protecting the inheritors' interests and ignoring the creditors' interests. The heritage entailed principles actually

provide a basis for claims against the creditors' rights on inheritance, and the establishment of heritage management system can complement and improve the past relevant legislation. [10]

Conflicts between legatee rights and inheritance rights

"Hangzhou nanny bequests case" and "Luzhou mistress bequests case" in which the conflicts were due to the legal inheritance rights were excluded. But the two verdicts were completely opposite and were extensively discussed by social and legal circles. [11] Faced with the conflict between requests of legatees to accept inheritance and the legal inheritance rights, it is difficult to distinguish the priority between the rules and principles and easily be swayed by emotion or preview. Benefit balance is a kind of method of interpretation applicable law has broadly been employed in judicial practice. In China, beside the benefit balance used in specific processes and methods to measure the study, some studies focus on the realities, and more aided by the empirical method. What is more, based on norms, there is a kind of study stand which expand the path analysis and argumentation theory. [12]

Summary

Roots of rights conflicts

Conflict of rights is a conflict of interest, the value of conflict, which derives from the law uncertainty and inevitably results from inherent tension between the social resource scarcity and human natural attributes and whose human causes are abstraction and hysteresis of the law system. Hereinto the conflict of the intellectual property rights comes from imperfections of legislation technique and hysteresis of the law. [13]

Solutions to rights conflicts

There are several resolutions of conflicts, such as increasing the interest resource, setting constraint of obligation, establishing the hierarchy of rights, determining the order of rights, introducing the transaction and procedure of rights, even regarding them with cold treatment. [14] Most researchers have proposed the use of the legislative and judicial means to solve the conflict and insisted that the approach to configure the right legislative is a pre-empt the mechanism to avoid conflict, i.e. conflict prevention mechanism. In 2012, the Supreme Court issued "Guidance on the standardizing implementation of discretion in the trial and execution to protect the uniform application of laws", in which the interests balance is referred to in Article VII. Legislation should represent value hierarchy, and judicial action should reflect interests balance. The following generalized resolutions of rights conflict can be constructed by combining above two principles: (1) To maximize toleration for party autonomy as a precondition, (2) To tolerate judges to balance interest under the guidance of the value hierarchy, (3) To return to the legislative level to complete the legalization of value judgments. [15]

One can regards legislative and judicial means as the relief from public power. The private relief is a kind of efficient manner to avoid the violent conflicts of rights. In fact, the manner to negotiate between the parties or party initiative concessions ways to resolve conflict of rights, can reduce the cost of dispute resolution, and can achieve maximum benefit. After that the parties' patience and judicial means as a supplement to solve the conflict of rights would be the inevitable choice. [16] The traditional methods of conflict resolution focus on maintaining the unilateral rights, and unfairly ignore or deny the right of the other. However rights balance and commensuration can break the normal procedure from the unilateral interests' choice to the coordination of multi-interests. By means of rights constraint and configuration, the rights of both sides can be balanced or be commensurate. [17]

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Endnotes

¹ In Ref.[1], Smet said: " I construct a hypothetical case of conflicting absolute rights, which cannot be resolved by the existing strands of legal reasoning in the case law of the Court. Instead, I argue, recourse must be had to moral reasoning. In discussing one of moral philosophy's deepest conundrums—the Trolley Problem—I rely on the distinction between negative and positive obligations and between direct and indirect agency to unravel the dilemma. Translating the moral argument into legal reasoning, I conclude that in cases of conflicts between absolute rights, negative obligations principally trump positive obligations."

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