Study on System of Class Case and Retrieval Path

Jin Wang

Qingdao University of Science and Technology, China

Abstract

In modern rule of law, the Supreme People's Court clearly requires judges to conduct case retrieval when hearing cases, in order to achieve the unification of law application, ensure judicial credibility, and achieve judicial justice. This paper discusses from three aspects: the research status of class case system at home and abroad, the necessity and feasibility of class case retrieval, and the specific path of class case retrieval, discusses the domestic and foreign practices in case retrieval, redefines the retrieval path, in order to promote the practical application of class case.

Keywords

Class Case System; Search Path; Guiding Case; Search Item.

1. Introduction

Since the Supreme Court has expressly stipulated that case retrieval must be carried out in the trial of cases, cases play a more important role in the court's trial work. As a new rule, there must be a unified standard for the research and identification of class a case and how to search class cases. The practice circles have their own mature methods, but there is a problem that the retrieval path of class case is not consistent. For those who are just involved in law, if there is no unified retrieval path, it is difficult to form a correct case thinking, easy to "detour". The lawyer, the client and the judge are in different positions. The former can search freely to achieve the purpose of lawsuit, while the judge must make a convincing decision, the source of the case on which the case is adjudicated must be reliable and authoritative. Two points should be made clear before this paper begins to discuss: first, as a country of written law, it has long attached importance to the enactment of law, and precedents have always been in a secondary position. For example, Professor Zhou Shaohua believes that there is no such case in strict sense. On the contrary, Professor Sun Haibo argues that such case does exist. In view of this, the discussion of class cases in this paper is based on the recognition of class judgments, which is consistent with the spirit of the documents issued by the Supreme Court. Second, this paper discusses the case retrieval, the main body from the perspective of the judge. A judge must conduct a case retrieval, and the first application must be guiding cases. There is no clear regulation on how to deal with other non-guiding cases retrieved, but it is generally not allowed. Only by clarifying these two key problems can we put forward the thinking path of class case retrieval. In the guidance issued by the Supreme People's Court in 2020, the classification criteria of such cases were clarified, and the retrieval path of such cases was traceable.

2. Domestic and Foreign Research Status of Class I Case System

In Our country, the enactment of law has always been the basic source of law. Judges make decisions in accordance with the law, and precedents can only be used as reference and have no binding force. Therefore, this concept formed for a long time makes precedents not valued. However, in fact, the case will form binding force on the judgment of cases. In the process of handling cases, lawyers will take the initiative to search cases as support of opinion, and the public will compare the decided cases with the decided cases to determine whether the judicial

judgment is fair and reasonable. In view of this, China attaches more and more importance to the classification of cases, in order to achieve the unification of law application. The research on the retrieval of class case in China started late, so we can learn from common law system and civil law system to study the system of class case in China.

2.1. Foreign Research Status

2.1.1. Common Law System

2.1.1.1 The Doctrine of Stare Decisis

The Common law system takes cases as the source of law, and has always attached great importance to the reference of cases. The principle of case law system is to observe precedent, that is, judges should be bound by the previous cases when deciding cases, including the legal principles and rules based on the case. In practice, stare decanter works when lower courts invoke the house of Lords judgment as a binding reference. If a lower court finds the Upper house's judgment incorrect, it may not be invoked, but it must undergo a fairly rigorous ratification process and can be changed only by legislation from Congress. This suggests that the house of Lords has taken note of the problems posed by rigid use of precedents, giving lower courts a degree of choice and discretion.

Although the United States is a case law country, there are differences and even opposites between the United Kingdom and the United Kingdom in the retrieval of class cases. Because the United States operates a two-track court system, federal and state supreme courts have their own standards and may refuse to use previous decisions in pending cases. At trial, the court even creates new precedents that are neither retroactive nor binding. Scholars of American law will easily find that precedents are a common practice in American courts.

2.1.1.2 The Distinguishing Technology and Reasoning Method of Common Law System

By comparing the precedents of The United Kingdom and the United States, it is found that the following precedents in the United Kingdom can help achieve the unification of the application of law and improve the predictability of law, but it is also easy to be fixed, leading to the judges' lack of independent thinking about new situations. The practice of the United States seems to solve this problem, can adapt to the social development faster, but because of the loose form, it is difficult to form a unified standard of judgment. In this case, the United Kingdom has appropriately addressed this conundrum by adopting the distinction between precedent and pending cases. According to Holdsworth, the foreign scholar, The British doctrine of precedent reaches the golden threshold between being too flexible and too rigid, on the one hand giving the legal system the rigidity it must have if it has a clear set of principles, and the flexibility it must have if it is to adapt to changing social needs. Judges distinguish important facts from unimportant facts by comparing the similarity of facts between precedents and pending cases, so as to decide to keep important facts and abandon unimportant facts, because only important facts will affect the final judgment result. Of course, the object of distinction technology is not limited to this, but also includes the distinction between legal issues and factual issues. The study of distinction technology can go deep into the judicial reasoning process of Common law and infer whether precedent can be applied to pending cases by comparing important facts in judgment reasons and legal norms.

2.1.2. Civil Law

Compared with the Common law system, the civil law system started late in the case system, taking morality and Japan as the research objects. Under the premise of following precedent, if there is a conflict with precedent, Germany applies the precedent departure system, that is, the judge must submit a report to the higher court if there may be incorrect, insufficient or irrelevant precedent, and different views on precedent. This reporting system helps to balance different views of the same case in different courts. Germany also makes a distinction in the

submission process, but all submissions are made on the premise that there is no objection to factual issues.

On the study of case it is necessary to mention Japan, as well as a heritage the characteristics of the Anglo-American law system and continental law system countries, although the case does not have source position in form, but it is in fact a binding, is the most direct embodiment of the court would violate precedents as a legal appeal one reason, another court case of changes to the procedure is very strict. Under the influence of Anglo-American law system in Japan, will decide reason the legal judgment by the background theory and theory of distinction, legally binding is the primary theory, the judge in the case when active, citing cases interpreting the referee message draw legal principles and the core point of view, on the basis of facts of cases pending similarity comparison with the present social situation. Japanese courts are different from other countries in that judges can cite legal theories and doctrines in addition to the gist of judgment. Judges can also incorporate their personal opinions and empirical judgment into the reasons for judgment. This shows that Japanese courts are more flexible in case retrieval.

2.2. Domestic Research Status

Article beginning mentioned need clear two classes of case retrieval system in China, one of which is the law in our country for a long time for do not take the cases as a source of informal method, but with practice in the drive and the masses to classes case sentenced to appeal, the court paid attention to the role of class case, academia began to study of such case, experienced to the class in connection with the name change, The identification standard of class A case is further clarified, and the retrieval system of class A case is gradually improved. Kind of case retrieval mechanism set up can be traced back to the earliest published in July 2017 the Supreme Court, the Supreme People's Court judicial responsibility system implementation opinions (Trial) , made clear to the Supreme Court judge in the case should be based on a working platform, network file system, China the written judgment, etc., of our college has been accepted or are associated with the case of cases to conduct a comprehensive search, Make retrieval reports of class cases and related cases. In December 2018, the SPC issued the Implementation Opinions on Further Comprehensive Implementation of the Judicial Responsibility System, which changed the retrieval mechanism of such cases from an internal stipulation of the SPC to a requirement for courts at all levels. In 2019, the Supreme People's Court made a basic plan for the guidance of such cases in its response to suggestion No. 2455 of the First Session of the 13th National People's Congress. In October 2019, the Implementation Measures of the Supreme People's Court on the Establishment of a Dispute Settlement Mechanism for The Application of Law was introduced in the background of which it was mentioned that the system of "compulsory retrieval of similar and new types of cases" should be strictly implemented and comprehensively promoted. On July 27, 2020, the Guiding Opinions on The Retrieval of Cases of Strengthening the Application of Uniform Law (Trial) were issued. The document clearly mentioned the three aspects of "basic facts", "focus of dispute" and "application of law" to proceed with the classification of cases, and it was also clear that the responsible subject of the retrieval system of cases of category was the "handling judge". The most recent regulation was issued by the Supreme People's Court on December 1, 2021. In response to the problems of inconsistent application of laws and non-standard exercise of discretion in some cases in judicial practice, the SPC issued the Implementation Measures for the Unified Application of Laws of the Supreme People's Court. This paper provides the situation, scope and reference standard of the retrieval of similar cases in handling cases, scope of cases discussed by professional judges' meeting, solving mechanism of specific law application problems, unified law application platform and database construction.

Through literature search, it can be found that domestic scholars' researches on class cases are mainly concentrated in recent years and have experienced the conceptual evolution from class cases to class cases and then to class cases. The focus of scholars is the system itself and the

practical application of class a case. In line with the principle that theory serves practice, how to accurately and effectively retrieve class cases is the key to study class case system. Teacher Zheng Tongbin mentioned the path of case retrieval for the first time in his article, which is summarized as: initiation stage -- comparison stage -- application stage, starting from the cause of case and the focus of dispute, comparison of cases, and finally draw a conclusion. With the change of social objective situation and the improvement of court case retrieval platform technology, this model can not meet the needs of current legal practice, the path research should be more perfect.

3. The Necessity and Feasibility of Class Case Retrieval in China

3.1. The Necessity of Class Case Retrieval

So far, the Supreme People's Court has issued 31 batches of no. 178 guiding cases, and the number of such cases will continue to increase. The Supreme Court clearly stipulates that case retrieval must be carried out in the trial, but there are still problems in practice. First, do not pay attention to guiding cases, the same case is different judgment. The theft case of Xu Ting in Guangzhou is regarded as a classic example of this kind of case. Xu Ting was sentenced to life imprisonment, deprived of political rights for life and confiscated all personal property by the first-instance court because of the failure of the bank ATM and the theft of 173,826 yuan. The verdict caused a public outcry, and it was widely believed that the verdict was too heavy. Some people refuted the unreasonable verdict by taking the example that the officials were sentenced to life for embezzling hundreds of millions of yuan, which triggered the appeal case of the second instance. It can be seen that the supervision of the public on the trial results directly drives the judiciary to attach importance to precedents. Second, the judge deviates from the case. Although the Supreme Court clearly applies class A cases, not all judges conduct class A case search, and even the search may find incorrect or invalid cases due to different opinions. According to the data, at present, the court's reference to such cases is still in the implicit stage, mostly due to the lack of reference and uncertainty of reference to cases, and dare not clearly point out in the judgment reasoning part. The preliminary implementation of the system of similar cases meets the arbitrary exercise of the judge's discretion. If there is no compulsory legal provisions and unified search path, the factors of human operation will be very large. Third, different levels of court search different. From the perspective of retrieval subjects, older judges are more inclined to traditional case retrieval methods, relying on books or court case library around them, while younger judges are more adaptable to new technology platforms and can retrieve more comprehensive similar cases. From the upper and lower levels of courts, the Middle and high Courts generally take the guiding cases of the Supreme Court as the retrieval object, while the basic courts expand the scope to the Middle and even the same level courts, and the cases come from a wide range of sources but the authority is questionable. Based on the above reasons, class case retrieval has its necessity.

3.2. Feasibility of Class a Case Retrieval

There are profound system and practice foundation for the implementation of class A case retrieval in China. First of all, the judicial case retrieval has a hard and fast requirement. The SPC's guidance points out that the following six categories of cases must be compulsed-search :(1) cases where the application of laws and rules is unclear; (2) New types of cases; (3) cases where the collegial panel has major disagreements on the application of law; (4) cases where the proposed judgment may conflict with the similar judgment of the court or a higher court; (5) cases in which the parties to a case and their defenders, agents AD litem or public prosecution organs submit such cases for effective judgment in support of their claims; (6) Cases in which the chief judge of the court, in accordance with the jurisdiction of trial supervision and management, requires the retrieval of such cases. Since 2017, the Supreme

People's Court has successively issued rules to refine the application of such cases and to provide support for the retrieval of such cases from the institutional level. Second, the technical conditions provided by big data and artificial intelligence. In addition to the internal search platform of the court, other bodies have also launched multiple search channels, the commonly used are: China Judicial Documents network, Peking University zuobai, Weike Qianjin, Wulitigation and Faxin, etc. New technology makes case retrieval fast and accurate. Third, experience from outside the region. Foreign researches on the retrieval of similar cases have been quite mature. Both common law and civil law systems agree that precedents should be followed in trials. Due to the late start of China's class of cases, the situation of non-compliance with precedent has not been explained. In the case of bequests of mistresses in Luzhou, Sichuan province in 2008, without precedent to follow, the judge made a bold judgment based on legal principles by referring to relevant foreign cases and combining public order and good customs in China, and denied that the third party was granted the inheritance of others as a legal subject, which was recognized by the society. Although the case has been discussed and disputed in the subsequent years, some scholars have proposed to learn from the practice of foreign courts to award the inheritance to a third party, because the original wife did not fulfill the duty of care, and the law should respect the will of the parties and the autonomy of will. The existence of such a situation will be an inevitable problem in the development of the system of similar cases, and the current cases for reference may be overturned with the change of social concepts. When there is no precedent to invoke, the court can only report it to the Supreme Court as a dispute or difficult case for its ruling.

4. The Specific Path of Class Case Retrieval

The original meaning of the path refers to the road, metaphorically refers to the way to reach a certain goal or the way of doing things, methods, etc., can also refer to human behavior, the world, etc. Path analysis is a multivariable analysis method to analyze the causal and non-causal linear relationship between variables in closed theory. Kind of case retrieval is a social practice activity, is the judge to find similar cases and keep connection with convicted of basic skills, but in practice it is difficult to construct a mathematical model or a set of regression equation to analyze the case retrieval, in this paper, we study the path of the case retrieval, descriptive analysis class roughly process the direction of case retrieval in the judicial practice. The author summarizes the path of case retrieval as three steps. The first step is to summarize the case and sort out the focus of the dispute. The second step: extracting key words and retrieving cases; The third step: compare cases and form retrieval reports. Each path is interactive, two-way relationship, not one-way transmission.

4.1. Summarize the Cause of the Case and Sort out the Focal Points of the Dispute

The cause of a case is the core of a case, which exists in civil cases, criminal cases and administrative cases. The cause of the case is the first thing that every case handler must pay attention to. Anyone who knows the habits of the industry must first browse the case to determine the nature of the case, which requires those who read the case to have the ability to highly summarize the cause of the case. The cause of action is found, and the case is placed under one department of law, directly excluding the application of other departments of law, thus saving a lot of time and reducing the workload.

After grasping the cause of the case, the focus of the dispute can be sorted out. In general, the focus of disputes can be divided into factual disputes, procedural legal disputes and substantive legal disputes. Through the analysis of the case, judge the controversial focus of the case, and list them separately, which can be used as a comparison project in the retrieval. The basic facts

must be determined before the retrieval. If the basic facts have not been determined, it is not necessary to carry out class case retrieval.

4.2. Extracting Retrieval Items for Retrieval

Retrieval items include key words retrieval, law related case retrieval and case related retrieval. Keywords retrieval is divided into two steps, one is to extract general keywords from the cause of action, lawsuit request, in the litigant's pleadings or pleadings intuitively drawn; The second is to extract core keywords from the focus of controversy, which can quickly narrow the scope of retrieval. Keyword searches require courts to build as complete a database as possible, adding "folk" terms as well as legal jargon, such as usury and wedlock. Article association retrieval is directly in the form of the input of relevant articles, according to the recommended case comparison, deductive reasoning and analogical reasoning methods will be used here. 23, such as guiding cases after knowing the basic facts that minor premise, found that the case involves the "food safety law" the 96th item 2 (new "food safety law" the 148th item 2) definition of consumers, the article explained the concept of the consumer, expansion, solved the judiciary has always been controversial problem of "know the fake fake", provides the reference for the later. Case association retrieval mainly refers to the retrieval of guiding cases, which is conducted directly according to the case name. For example, guiding case No. 93 corresponds to Yu Huan's intentional injury case, which can be used as the reference basis for justifiable defense cases.

Case retrieval is slightly different depending on the Settings of the platform itself. Taking the most commonly used Chinese adjudication document network as an example, the platform provides two modes of general retrieval and advanced retrieval. When entering keywords, the thinking path of progressive concept can be adopted, such as insurance contract -- insurable interest -- invalidity of contract, and the results can be searched in sequence for comparison. Beida And WACO have also launched similar search platforms that can use the same approach.

4.3. Compare Cases and Form Retrieval Reports

There are usually multiple results retrieved according to the retrieval items. At this time, it is necessary to compare the case to be retrieved with the retrieval results. Starting from the basic facts of the case, the eyes shuttle back and forth between the facts, sometimes involved in the "judge points". The disputed focus of the case sorted out in the first step of retrieval can be compared with the obtained case, and similar information can be extracted by closely centering on the part of "the court believes" and "confirmed by trial".

Through the above screening and comparison, relatively close cases can be obtained. At this time, the case retrieval part has been completed, and a complete retrieval report can be issued, indicating the retrieval subject, time, platform, method, result, key points of adjudication of such cases and the focus of disputes in pending cases. In the form of presentation, it can be used flexibly in the form of text or chart, and strive to make the retrieval results clear and intuitive.

After the above steps, a complete case retrieval work is finally completed, and the judges can be used in daily practice for many times to achieve proficiency. The legal thinking reflected in case retrieval is particularly important, and it is not difficult to obtain similar judgments by following the above three paths flexibly for case retrieval. The design of the case retrieval platform is only convenient for users, but it does not tell the searcher the retrieval thinking. From touching the case to the correct application, the judge needs to shuttle and compare in these three paths. This task seems to be simple, but in fact it is a test of the searcher's ability to highly summarize cases.

Class case retrieval is a new trend in the society ruled by law, which helps to unify the application of law, improve the quality of law and realize judicial justice. As for whether the similar judgment will cause the opposite effect, we need to take a long time to observe. Until such time as class cases are customary, non-compliance with precedent is left to debate.

References

[1] Francis Galton, "Family likeness in Stature", Proceedings of Royal Society,vol.40.1886.

[2] David A. Strauss, "Must Like Cases Be Treated Alike?",University of Chicago Public Law& Legal Theory Working Paper,No. 24 (2002).

[3] Magdalena Flatscher-Thöni, Andrea M. Leiter&Hannes Winner,"Are Pain and Suffering Awards (Un-) Predicatable? Evidence from Germany,"Law, Economics and Social Issues Review, Vol. 10, No.3 (Oct,2019).

[4] Ronen Avraham,"Should Courts Award Pain and Suffering Damages in Patent Infringement Cases?"Texas Intellectual Property Law Journal. Vol.26, No.2 (Dec,2018).

[5] Ronald Dworkin, Law's Empire, The Belknap Press of Harvard University Press,1986.

[6] Arthur S.Goldberger, Introductory Econometrics, Harvard University Press,1988.

[7] Robert M. Lawless, Jennifer K. Robbennolt and Thomas Ulen, Empirical Methods in Law , Aspen, 2016.

[8] Zheng Tongbin. Status quo and improvement path of class case retrieval [J]. People's justice (application), 2018,31:99-104.

[9] Sun H B. In what sense does class case retrieval contribute to the same case and judgment? [J]. Journal of tsinghua law,2021,1501:79-97.

[10] WANG Liming. On the Establishment of Chinese Precedent System [M]. Beijing: People's Court Press, 2009.