

# *Legal Thinking and Examples of Civil Law: A Study on the Basic Theory of Claim Rights*

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**Abstract:** Legal thinking is the fundamental method for legal professionals to solve legal problems, which requires them to accurately identify legal facts, apply legal rules appropriately, and make reasonable legal judgments. In the field of civil law, the basic theory of the right to claim is an important tool for studying the relationship between civil rights and obligations. This paper aims to explore the application of legal thinking in civil law examples, especially the research and practice of the basic theory of claim rights, in order to provide theoretical support and practical guidance for legal practice. The study aims to summarize the common causes and handling situations of the right to request by analyzing all judgment documents with the words "basis of the right to request" before May 9, 2024. The study has found that grassroots courts have the highest number of judgment documents, reaching 35964, and between 2014 and 2019, the number of judicial documents increased from 1636 to 11528, a nearly 7-fold increase.

## **1. Introduction**

Law is a practical study, and the ultimate goal of studying law is to deal with practical problems. Therefore, many scholars advocate that legal education is not only a general imparting of legal knowledge, but its more important feature is that it is also a vocational education. The goal of vocational education is not only to enable learners to master specialized and relatively abstract knowledge systems, but also to possess specific professional thinking and skills. As a law that adjusts the property and personal relationships between equal subjects, civil law is deeply rooted in social reality. It is the embodiment of the laws of transaction activities that occur and repeat every moment in people's legal system. Therefore, civil law teaching should not only teach the semantics, characteristics, and even the connections between civil law rules, but also cultivate students' thinking patterns that conform to legal logic, interpret applicable laws, and ultimately achieve the goal of using rules to explain phenomena in real life and resolve disputes.

In modern legal practice, the importance of legal thinking as a fundamental tool for legal practitioners to analyze and solve legal problems is self-evident. Especially in the field of civil law, the research and application of the basic theory of the right to request is of crucial significance for maintaining social fairness and justice, and protecting the legitimate rights and interests of parties

involved. The basic theory of the right to request, as a core component of civil law, not only involves the judgment of the legality and effectiveness of claims, but also relates to core issues such as the construction, modification, and termination of legal relationships. The basic thinking of the right to claim is theoretically based on the substantive law doctrine of the right to claim, which is rooted in the normative type of doctrine and the inherent system of civil law, and has the systematic value of theoretical screening, normative identification and avoidance of evaluation contradictions. Whether it is "limited to dispute resolution", "misalignment of substantive procedures", "theories reduced to fodder", "loss of holistic thinking", or even "technical confinement of the imagination", all the criticisms and the so-called "risks" against the basic thinking of the right to claim are not the real risks of the basic thinking of the right to claim. The real risk is the misunderstanding, misinterpretation and even prejudice of the academic practice. After the implementation of China's Civil Code, the basic thinking of the right of claim should play the function of the "engine" of legal doctrine of case study, helping to construct the type of civil law norms, the development of the inner system, the solution of individual cases and the formation of class cases. In today's increasingly complex legal environment, the basic theory of claim is facing many challenges and new development opportunities. With the increasing frequency and diversification of social and economic activities and the emergence of new types of legal relations, the traditional theory of the basis of claim has been difficult to fully adapt to the needs of reality in some cases. Therefore, it is necessary to conduct an in-depth study on the basic theory of right of claim in order to better guide legal practice.

The purpose of this paper is to explore the application and development of the basic theory of claim in modern legal practice through an in-depth analysis of legal thinking and civil law examples. Specifically, this paper will firstly expound the basic concepts and characteristics of legal thinking, as well as its important role in the field of civil law. Subsequently, this paper will analyze the application and embodiment of the basic theory of claim right in these examples in combination with specific examples of civil law, in order to reveal its specific application and effect in practical operation.

## 2. Related Works

In recent years, the legal field has also been exploring how legal thinking can be applied to the practice of law in order to improve the efficiency and accuracy of legal services. Mittiga R argued that there was another aspect of legitimacy that had been neglected in terms of the government's ability to ensure safety and security. While upholding democracy and rights is usually compatible with guaranteeing security under normal circumstances, there can be and often is a conflict between these two aspects of legitimacy in emergency situations [1]. A typical example is the legal domain model proposed by Collenette J et al. based on Article 6 of the European Convention on Human Rights. The combination of methods in the field of computational models and artificial intelligence basic technology not only relies on solid legal reasoning, but also provides a certain degree of interpretability for legal reasoning that end-users can understand. This provides valuable ideas for building trustworthy and real-world artificial intelligence tools in the legal field that emphasize end-user needs during the construction process[2]. At the same time, Mocanu D. M. proposed the "bundle theory", which provided a new perspective in the discussion of legal personality. The theory emphasized the possibility of partial legal capacity in solving the problem of legal personality and reflected on the appropriate legal personality. In addition, he proposed the "gradient theory", which was slightly different from the bundled theoretical framework and provided a new way of thinking about legal personality [3]. Meanwhile, Mappong Z et al. analyzed the dilemma faced by Muslims who believed in Western inheritance law on the issue of inheritance and the

impact of this conflict on legal practice. In the context of globalization, legal conflicts between different cultures and religions were increasing in the implementation of the law, how to balance the interests of all parties to maintain the fairness and effectiveness of the law is an important issue [4]. Moreover, Kurkivaj delved into the relationship between environmental protection and legal personality. He argued that the legal personality of natural entities did not require direct protection in most cases. This point of view for the development of legal thinking provided a new direction of thinking that was how to avoid the excessive expansion of the scope of legal personality to prevent the impact on the legal system, while protecting the environment should also protect the environment [5]. In a comparative study of the rules of private international law jurisdiction, by comparing the differences in the fundamentals of the rules of private international law jurisdiction in the laws of the European Union, the United States and the United Kingdom, Hartley T C explored the similarities and differences in the jurisdictional rules under the different legal systems, especially in the field of product liability [6]. In contrast, the agonistic adjudication theory proposed by Mańko R provided a fresh perspective on judicial decisions. The theory advocates viewing all judicial decisions as both impartial and political in nature. This theory reveals the complexity behind judicial decisions and emphasizes the dilemma that judges face in making decisions that are precisely judicial decisions at the same time he also points out the uncertainty that exists in the law itself as well as the necessity for judges to make decisions in the realm of uncertainty there is a certain amount of contingency as well [7].

Despite the progress made in the theoretical discussion in the above studies, there are still deficiencies in the application of theories to actual legal practice. Case analysis is an important method in legal research, which can help legal research to understand the problems in legal practice in a more concrete way. However, the above studies are relatively few in case analysis, resulting in some conclusions that may lack the support of actual cases. Therefore, this paper closely integrates the specific problems in legal practice, aiming to provide guidance for practice through theoretical discussion. The in-depth integration of jurisprudence with other disciplines, such as civil law and logic, aims to comprehensively analyze the basic theory of claim from multiple perspectives. At the same time, when exploring the basic theory of claim, it will be combined with rich case analysis to reveal the application and problems of the basic theory of claim in practice through specific cases. This case study approach can make the study more concrete and vivid, and help readers better understand the content of the study.

### 3. Methods

#### 3.1 Theory of the Basis of Claim

The basis of claim norms refers to the legal norms that can support a party to claim to other parties, that is, the basis of claim norms, referred to as the basis of claim. That is to say a party in the infringement of rights, if you want to make their own rights to get legal relief need to rely on what kind of legal norms to protect their legitimate rights and interests, make up for the loss. As the right to claim in the civil law of many rights system occupies an important position, the right to claim the correct exercise and realization of the right to claim will be directly related to the civil subject's right to property and personal rights can be effectively protected, and ultimately realize the protection of the law, compensation and other basic functions [8].

The evolution of the doctrine from the right of action to the substantive law claim is centered on the relationship between procedural law and substantive law, which is roughly reflected in the development of the “Roman law right of action - substantive law right of action - substantive law claim - claim for remedies” axis, in which Savigny, Windschild and Mutter contributed a lot and formed four key points of the doctrine. This axis, to which Savigny, Windscheid, and Mutter

contributed significantly, forms four key points of the doctrine.

One of them is the right of action doctrine of Roman private law. The right to claim the basis of thinking and Roman law right of action thinking in the same lineage, naturally carry the historical gene of litigation offense and defense. Roman private law right of action thinking has a double meaning, the right of action is both substantive and procedural procedures, but also refers to the litigation offense and defense thinking, the right of action is only a part of the civil law. Unlike the modern law will be distinguished into procedural law in the sense of litigation behavior (lawsuit) and substantive law in the sense of the right to claim, Roman private law on the right to claim both litigation law factors (filing of lawsuits) and substantive law factors (content of the suit), pointing to the litigation law of the litigation law of the litigation behavior and private law of the right to request (litigation right to claim), the litigation law of the litigation law and the substantive law of the litigation law factors are an inseparable whole, the lawsuit and the defense is also a whole [9].

The second is Savigny's theory of substantive law right of action. Savini separated the right of action from the right of claim in the substantive law, and strictly distinguished the substantive law as a legal order from the procedural law to protect the legal order in the contemporary Roman law System. Based on the separation of substantive law and procedural law, the right of claim is endowed with new meaning in a revolutionary way. As a result, the right of claim loses its original function as the link between substantive law and procedural law, and finally forms the right of action in substantive law.

The third is Windscheid's doctrine of substantive law claims. Windscheid further forged the doctrine of substantive law claims and directly influenced the concept of claim in paper 194 of the German Civil Code. He proposed that the realization of the right of action must be based on the premise of the substantive law right of claim, and through the introduction of the concept of the right of claim derived from the Roman law and the common law meaning of the right of appeal system, he separated the substantive law elements from the Roman law of action and grouped them into the right to construct a new substantive law legal system centered on the rights such as the right of property and the right of claim. The doctrinal contribution of the substantive law right of claim is to advance the point of accrual of the claim from the time of infringement of the right to the time of accrual of the right, and to transform the Roman law claim for court protection of the claim into a substantive law claim against other subjects of private law. Windscheid argues that, in contrast to the common law right of action, the two stages of a claim are distinguished only on the basis of whether or not there is a conflict of wills between the right holder and the aggressor, and that a claim arises not on the basis of the infringement of the right, but rather that the claim is encompassed at the time of the occurrence of the right. This theory is based on a reading of Savigny's concept of the infringement of rights, aimed at the realization of his doctrine of cession claims [10]. In other words, there is a real need to be able to bring claims into circulation in transactions in the same way as other property objects, and claims are not considered as a relationship between the right holder and the obligor, but rather as an integral part of the property, an integral part of the economic value of the right holder, who, like any other property value, has the same right to transfer this integral part of the property to another person.

The fourth is the doctrine of claims for remedies developed in Windscheid's polemic with Muntz. In the debate with Muntz, Windscheid's argument about litigation not only includes the right to substantive law claims, but also includes the theory of the right to seek remedies. Muntz criticized the substantive law claim theory from the perspective of litigation rights, stating that it only emphasized the substantive law aspect of the claim rights and gave too little meaning to the litigation rights and the litigation part. Muntz proposed the opposite path, emphasizing the right to sue as a right of action and endowing it with legal significance, and making the right to seek relief in litigation a decisive factor in litigation. Windscheid further improved the theory of substantive

claim rights, believing that substantive claim rights were not only an existing unity of substantive law and litigation rights, but also linked to Mutt's viewpoint, giving litigation theory a separate position[11]. With the absorption of Mutt's concept of public law litigation rights and the simultaneous reference to the Civil Procedure Law, Wendesaid proposed the concept of litigation rights for the theory of civil procedure law, opening up a new path of development. After this debate, the concepts of procedural law and litigation rights emerged, and the academic community began to distinguish between substantive rights and litigation rights. The latter became a pure right to require the state to conduct trials, laying the foundation for modern procedural law.

### 3.2 The Connection between Legal Thinking and Civil Law Examples

Legal thinking is the process by which legal people use legal knowledge, legal logic and legal methods to solve legal problems. In the field of civil law, legal thinking is embodied in the understanding, analysis and judgment of the relationship between civil rights and obligations. Civil law example is a specific application of legal thinking, through the specific facts of the case, the legal person can use legal thinking to reason, judgment, so as to arrive at a reasonable legal conclusion. Claims basis review rule is an important method of legal thinking in civil litigation, which involves determining the legal basis and constituent elements of the specific claims made by the parties [12].

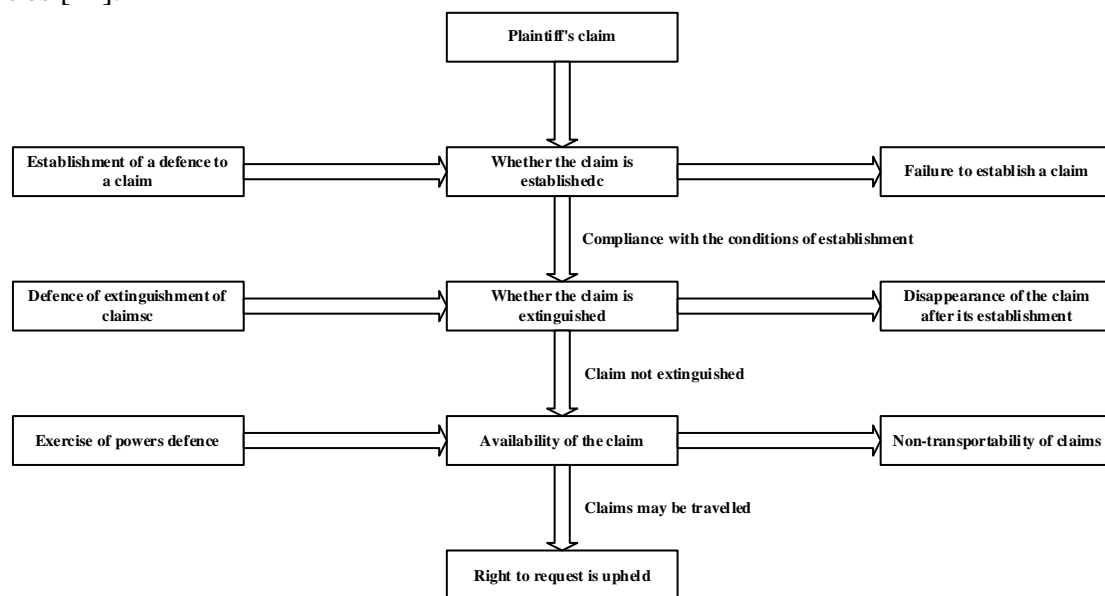


Figure 1: Rules for reviewing the basis of claims

First, it needs to be clarified who is making the request to whom, i.e., the identity of the claimant and the counterparty to the claim. Next, it is necessary to clarify what the claimant is requesting, such as return of the original object, damages, for or against a particular act, etc. The basis of claim refers to the legal norms according to which the party's claim is supported, including legal provisions, judicial interpretations, jurisprudence and so on. When reviewing the basis of claim, these legal norms need to be carefully analyzed to determine whether they are applicable to the case at hand and to clarify their constituent elements and scope of application. When reviewing the basis of claim, it should follow a certain order and systematic law, such as contractual claim, similar contractual claim, causeless management claim, property law claim, unjustified enrichment claim, tort claim, etc. [13]. Prior claims should be prioritized if the constituent elements are clear and less difficult to prove. Under the logic of litigation, if the basis of the prior claim is established, then the

basis of the subsequent claim can be excluded. This contributes to court efficiency and judge satisfaction [14]. After identifying the basis of claim, it needs to be closely linked to the facts of the case to form a clear bridge between the facts and the claim. This helps the facts of the case to have an organized culmination and oriented integration of evidence, and to build on the strengths and avoid the weaknesses. The specific rule flow is shown in Figure 1.

## 4. Results and Discussion

### 4.1 Expansion of Judicial Scope of Application of Right of Request

The Supreme People's Court in the “national court civil and commercial trial work conference minutes” and “in the national court civil and commercial trial work conference speech” clearly recognized the right to request the basic thinking for the adjudication of thinking, and with the topic of publication “civil cases case application points and right to request the normative guidelines” [15]. In order to investigate the scope of judicial use of the right to claim, the study searched for the words “the basis of the right to claim” in the adjudicatory documents network, as of May 9, 2024, there have been 72,610 adjudicatory documents that contain the words “the basis of the right to claim”, and in these documents, most of the cases only take the legal norms on which the plaintiff's claim is based as the basis of the right to claim. In most of these cases, the legal norms on which the plaintiff's claim is based are only taken as the basis of the claim, and the cases are not examined in full accordance with the thinking path of the basis of the claim, so it can be seen that the current way of adjudicating civil cases is still mainly stuck in the simple correspondence between the content of the claim and the legal norms. The survey data are shown in Table 1 and Figure 2.

Table 1: Composition of all “Basis of Claim” decisions prior to May 9, 2024

Grade	Quantities
Supreme court	669
High court	4426
Intermediate court	31492
Basic courts	35964
Aggregate	72610

As can be seen from Table 1, the Basic Court has the largest number of decisions, amounting to 35,964, or nearly half (approximately 49.5%) of the total. This shows that there were more disputes involving the “basis of claim” in the cases heard by the Basic Courts, probably because the Basic Courts dealt with a wider range of cases, involving more civil and commercial disputes. The number of intermediate courts' decisions was 31,492, accounting for about 43.4% of the total. The number of decisions of the High Court is 4,426, accounting for about 6.1% of the total. The cases handled by the High Court tend to be more significant and complex, and although the number is not as large as that of the Basic and Intermediate Courts, the impact of each decision is greater. The Supreme Court had the lowest number of decisions, 669, accounting for only 0.9% of the total. The Supreme Court mainly deals with cases of national significance and legal importance, and thus has a relatively small number of decisions, but each decision carries a high degree of legal authority.

As can be seen in Figure 2, the number of decisions containing the words “basis of claim” shows a significant increase between 2003 and 2024, followed by a decline. From 2008 onwards, the number of decisions began to increase significantly, especially from 2013 onwards, the growth rate is obviously accelerated. This reflects the gradual recognition of the importance of the “basis of claim” in judicial practice and the fact that more and more cases are dealing with this concept. The period from 2014 to 2019 was a particularly notable period of growth, with the number of



adjudicative documents increasing from 1,636 to 11,528, a nearly sevenfold increase. This may be related to the development of legal practice, the popularization of legal education and the deeper understanding of the concept of “basis of claim” by legal practitioners. Because the number of documents was counted only up to May 9, 2024, the figure shows a large difference between the number of decisions in 2024 and the year before.

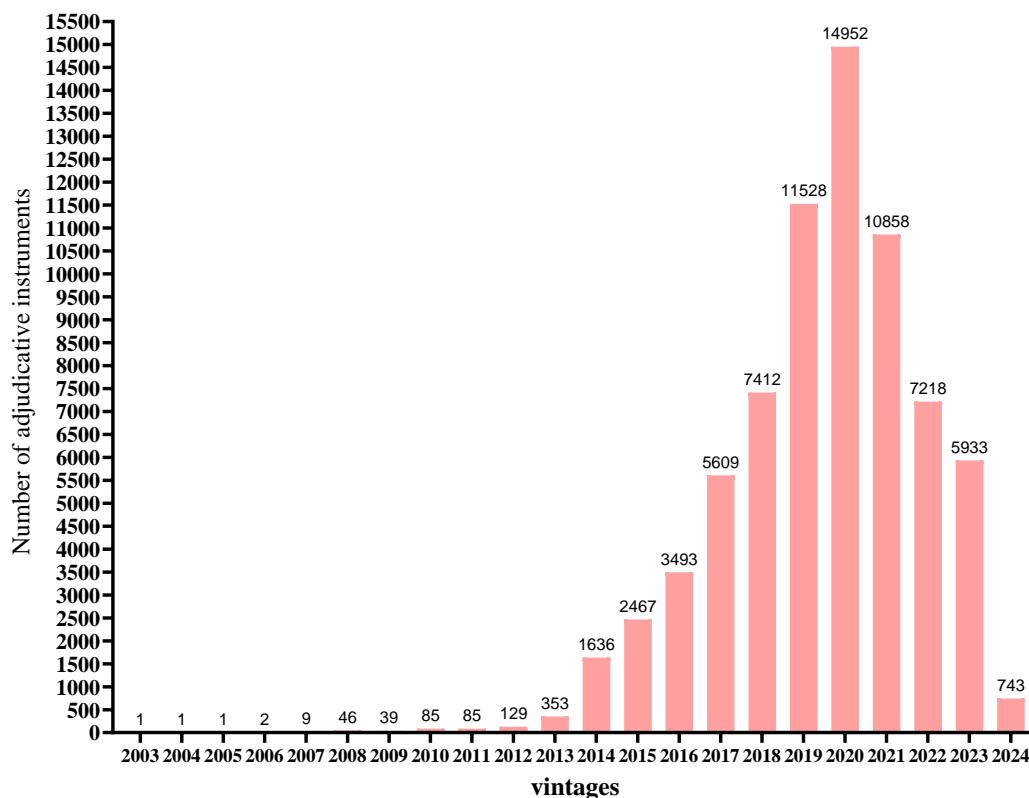


Figure 2: Changes in the number of decisions with the words “basis of claim” between 2003 and 2024

## 4.2 Types of Instruments

The study further counted the adjudication instruments with the words “basis of claim” and analyzed their types of instruments, case types and causes of action. The specific data are shown in Table 2 and Figure 3.

Table 2: Types of decision instruments and types of cases

Type of instrument	Quantities	Type of case	Quantities
Judgements	56420	Jurisdictional cases	1130
Determination letter	16056	Criminal case	18
Mediator	4	Civil case	66448
Decision letter	10	Administrative case	4415
Notification letter	15	State compensation and access to justice cases	337
Order	3	Inter-district mutual legal assistance cases	1
Others	102	Implementation cases	258
\	\	Compulsory liquidation and insolvency cases	1
\	\	Other cases	2

From the data in Table 2, it can be seen that judgments are the most numerous, amounting to 56,420, which indicates that they are the main form of adjudication in judicial practice. Rulings are the next most numerous, at 16,056, and are usually used to resolve procedural issues or to make certain specific rulings. In terms of case types civil cases were the most numerous at 66,448, indicating that civil cases occupy a large proportion of judicial practice. The number of administrative cases is the next highest at 4,415, which shows that administrative proceedings are also an important part of judicial practice.

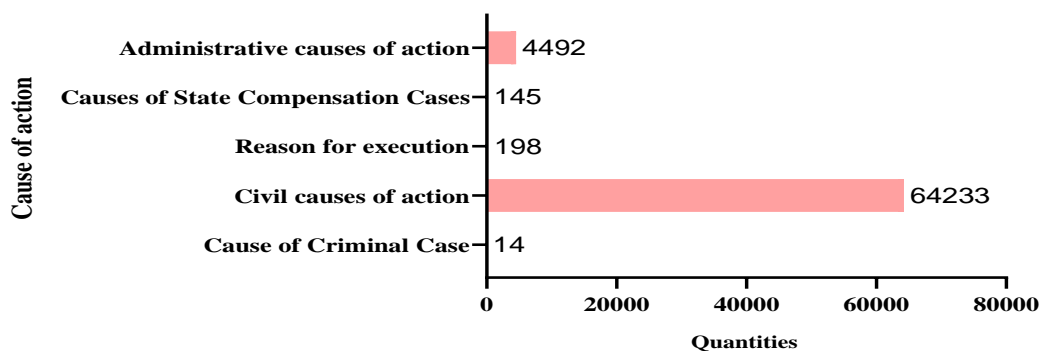


Figure 3: Types of Causes of Judgment Documents

From the data in Figure 3, the number of civil cases is the highest, reaching 64233, indicating that civil cases occupy an absolute dominant position in judicial practice. Civil cases usually involve disputes over rights and interests between individuals or organizations, such as contract disputes, infringement disputes, marriage and family disputes, etc. The number of administrative causes of action is 4492, although relatively small compared to civil causes of action, it is still a significant number. Administrative cases usually involve lawsuits filed by citizens, legal persons, or other organizations against specific administrative actions or inactions of administrative agencies. The number of civil causes of action far exceeds that of other types of causes of action, which once again emphasizes the importance of civil cases in judicial practice. Although the number of administrative and state compensation causes of action is relatively small, they also reflect the willingness of citizens and organizations to protect their own rights and interests through legal means. There are significant differences in the quantity of different types of causes of action, which reflects the characteristics and distribution of various cases in judicial practice.

## 5. Conclusion

The relationship between legal thinking and civil law examples is discussed in depth in the study, with a focus on highlighting the study of the basic claim theory. This paper attempts to explain the important role of the basic theory of claim and its application value in modern legal practice through the analysis of legal thinking and the analysis of civil law examples. Legal understanding of legal rules analysis of legal issues and reasonable judgement of the law are essential tools for legal practitioners. In the field of civil law due to the maintenance of rights and interests of the parties, the adjustment of legal relations directly related to legal thinking is particularly important. As the core component of civil law, the basic theory of law provides the theoretical basis for analysing and solving legal problems. The study investigates the number of judgements containing the words "basis of claim" in order to obtain the annual growth of judicial cases involving claims. By categorising in detail the types of these decisions and the courts in which they were heard, the study found that nowadays the application of the right to claim was mostly in civil cases and in the lower courts. This provides a practical basis for further discussion of the underlying theory of claims and



contributes to subsequent judicial studies.

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