

Research on Contemporary Commercial Law System Based on Business Freedom

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Abstract: Business problem is one of the core issues of commercial law. Business consists of objective business and subjective business. Business in the objective sense refers to business property; In the subjective sense, business refers to business activities or business behaviors conducted under the guidance of the principle of business freedom. Among them, the freedom of business refers to the freedom of individuals to engage in certain behaviors for profit according to their own wishes. Including the freedom to create a business, the freedom to execute or operate a business, and the freedom to end or terminate a business. Business freedom is a very important part of individual economic freedom. Starting from the freedom of business, this paper studies the subjective business, objective business and infringement that hinders business operation, evaluates the management right system, and studies the contemporary commercial law system. The concept of business plays a pillar role in commercial law. The reason why business can become the backbone of the construction of commercial law system lies in the duality of business itself, and the internal duality shows the external expansibility, which makes it qualified to cross the commercial law system.

1. Introduction

What does the commercial law course say? It seems clear, but it is vague. The multifarious content of commercial law is rooted in the lack of a solid theoretical foundation for the construction of commercial law system^[1]. A discipline system should be supported by a skeleton. If we can find the red line running through the subject of commercial law, we can build a clear system of commercial law. In the theory and legislation of commercial law, businessmen and commercial behavior are two basic categories. Both the definition of the concept of businessman and the construction of the theory of commercial behavior are inseparable from “commercial ability” and “business”^[2]. Business is a word that can be defined from many angles. “Business” has different understandings from different angles. In economics, business is usually defined as a productive activity. Business in economics is generally defined as supply behavior, production behavior, etc., which is the commodity production or commercial service activities that market suppliers and producers engage in with the goal of maximizing profits^[3]. The right to freedom of business is a basic right of citizens. What kind of business citizens choose, as well as the time, place and way of business should be protected by law. The freedom to engage in business activities, which can be included in the category of professional freedom, is the freedom to perform a profession, and at the same time, it includes the freedom to exercise property rights and is linked with property rights^[4]. In the emerging market economy countries, it is timely to protect business freedom, especially in China, a socialist country in transition.

Business problem is one of the core issues of commercial law. “Business” in commercial law has subjective and objective meanings. Subjective business refers to business activities, that is, continuous and planned activities of the same kind for profit. Objective business refers to business property, that is, all organized property used for business activities and the totality of various valuable factual relationships formed in business activities^[5]. Business property is a special property in commercial activities; Freedom of business is a basic principle of commercial law. It is the basic goal of commercial law to regulate the infringement that hinders business operation, protect the business rights and interests of businessmen, maintain the normal order of commercial activities and

promote economic development^[6]. The function of “business” standard is to highlight the difference between civil law and commercial law. The relationship between commercial law and civil law is a basic problem in commercial law teaching. The two are different in many ways. The development of market economy needs extensive economic freedom, and the system lacking economic freedom cannot be a sound market economic system^[7]. Business freedom includes not only the freedom to choose what kind of business, but also the freedom to choose how to carry out the business. These two aspects are two stages of business freedom respectively, and when countries conduct judicial review on the legislation of business freedom involving these two stages, the applicable review standards are also different. Based on the freedom of business, this paper studies the contemporary commercial law system.

2. Business Freedom Theory

2.1 The Concept and Characteristics of Business Freedom

Generally speaking, business refers to the market trading activities carried out by business operators with organized business property for the purpose of profit, as well as various resource development and utilization behaviors associated with market trading activities^[8]. From the perspective of an enterprise, business is its life movement; It is not only the performance of business vitality, but also the source of business vitality. The basic meaning of business freedom included in individual economic freedom is: economic individuals have the freedom to set up and operate enterprises or engage in legal free occupations according to their own wishes, and they also have the freedom to refuse to set up and operate enterprises against their own wishes or refuse to engage in individual occupations that they do not want. The concept of business plays an important role in defining the object of adjustment of commercial law. Different legal departments are mainly divided according to the objects to be adjusted, and commercial law is considered as a departmental law to adjust commercial legal relations. Commercial legal relationship is considered to be the general term of legal relationship generated by profit-making entities in business activities. The types of subjective rights in legal norms are shown in Figure 1.

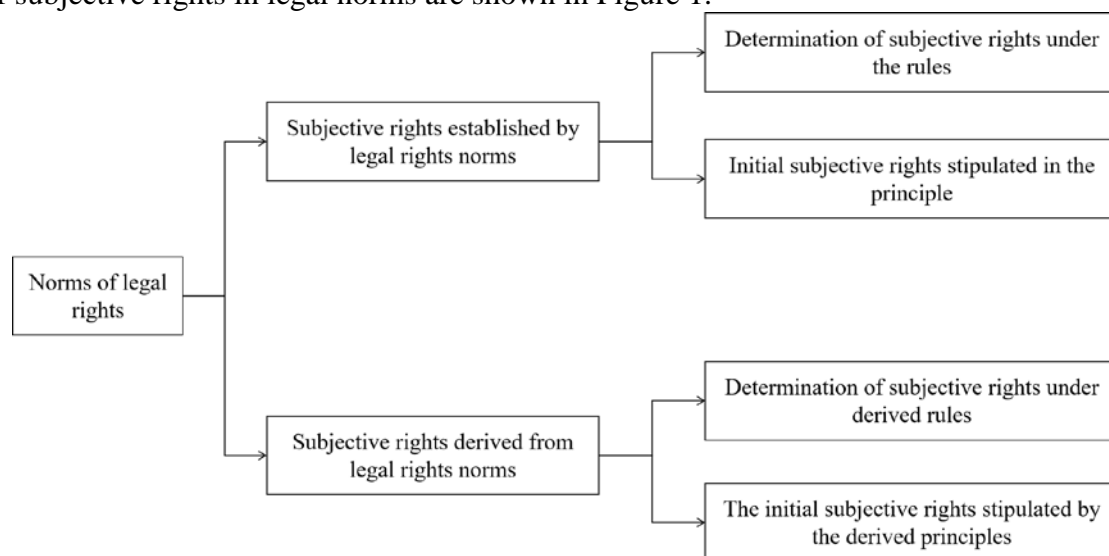


Fig.1 Types of Subjective Rights within Legal Rights Norms

The connotation of business freedom includes two aspects. The first aspect is the freedom of business choice. The freedom of business choice is no different from the freedom of personal career choice and the freedom of business execution in the traditional professional freedom in essence and commercial law sense, but the roles of the subject choice of the two are different. The second aspect is the freedom of business execution. Compared with the freedom of business choice, the freedom of business at this stage is always ignored by people. People usually get a variety of benefits when engaging in profit-making activities and realizing business freedom^[9]. The interests here include

both material interests, such as the acquisition of material rewards; It also includes the subject's spiritual interests of enjoying life or starting a business, such as the acquisition of social honor and the enjoyment of patent achievements. Business freedom is a very important part of individual economic freedom. Economic freedom is the embodiment of individual freedom in economic life, which mainly includes professional freedom, business freedom and related freedom of migration. It is relative to the individual's political freedom, social freedom and cultural freedom, and both belong to the components of individual basic freedom. Commercial law is considered to have the characteristics of profit-making and business. Among them, profit-making is considered as the primary feature of commercial law. Profit-making indicates that the subjective intention of the subject who undertakes the commercial legal relationship is to pursue profit, and the commercial law is also manifested as a profit-making adjustment mechanism. However, after all, profit-making is a subjective aspect. When revealing the characteristics of profit-making, we often have to resort to the concept of business.

2.2 The Nature of Business Freedom

As a basic right in commercial law, the right to freedom of business belongs to the category of economic freedom from the perspective of species relationship. From the perspective of its emergence, it first has the attribute of freedom^[10]. Free profit-making or entrepreneurship not only involves the vital interests of everyone, but also directly affects the stability of social order. If the freedom of business can't be fully and effectively realized, there will be a large number of unemployed people, who will threaten the stability of families as social cells, and then affect the maintenance of social order. This influence is not only economic, but also social and psychological. At the same time, the nature of business property is dynamic, and business property is subject to profit-making purposes, and it is always in a changing state. Business freedom, which comes from the same source as property rights, belongs to the classical freedom right and should be a basic right. The question here is, as a basic right, what kind of internal structure does business freedom have? Only by answering this question can the normative connotation of business freedom be further determined. Business activities are consistent in space, that is, the main body is engaged in some behavior of the same nature. Therefore, business activities are specific, and commercial entities achieve profit-making purposes by engaging in specific industries, which makes business activities have the characteristics of planning. However, the specificity of business activities does not prevent business entities from expanding their business scope, and their business behaviors are diversified. Recognizing the freedom nature of business freedom means that the government should do something or not, and should respect its freedom nature. However, there is no absolute freedom, but we should maximize and develop the freedom of every citizen, minimize the derogation of citizens' basic rights, find a proper balance between them, and construct a fair art.

3. Principle of Freedom of Business in Commercial Law

Generally speaking, commercial ability refers to the qualification and ability of the commercial subject to independently engage in business and undertake commercial rights and obligations according to law, including commercial rights and behaviors. Its elements include civil capacity and certain business property. Among them, the elements of civil capacity are for natural persons, which means that it is a general principle for adults to engage in commercial business; Other organizations engaged in commercial business shall be established according to the standards. At present, China adopts the legislative style of "civil and commercial integration". Although many commercial legal systems are stipulated in the civil law, many separate commercial regulations have also been promulgated. Moreover, business transfer, business lease, business inheritance and other behaviors are common in commercial activities. However, the legal system related to business has never been perfect and lags behind the needs of commercial development and commercial activities.

3.1 Commercial Right Capacity

Management right is a legal commercial right and a new usufructuary right. At the same time,

from the behavioral connotation of management and business, the right to operate is the right to operate, both of which reflect the executive power, action power and control power of the operators to the organizations and businesses they operate. Commercial right capacity usually refers to the qualification to enjoy commercial rights and undertake commercial obligations. There is a certain relationship between commercial capacity and civil capacity. However, the acquisition of commercial capacity is not the same as that of a natural person who can acquire civil capacity as long as he is born. The acquisition of business ability must meet certain conditions. The subject of business rights focuses on choosing to be a person with commercial qualifications, and then involves the freedom of business execution; And the choice of occupation is more common. Both of them are directly related to citizens' basic right to exist and their minimum personality development, and require high respect of public power.

Commercial assets are the whole thing that combines intangible property with tangible property, more specifically, movable property used for commercial activities. It is the starting point and destination of profit-making businessmen's business activities. This leads to the profit-making attribute of business property. Of course, here it means that the business property has the function of making profits subjectively, but whether it can make profits objectively is irrelevant. Modern commercial subject mainly refers to various forms of enterprises. Commercial subject has the characteristics of fiction. A businessman's qualification must have legal conditions, and the requirement of this legal condition is mainly business ability; That is, the core issue of commercial subject qualification is business ability.

3.2 Commercial Capacity

Capacity of conduct refers to the qualification to enjoy rights and undertake obligations with one's own behavior. Generally speaking, the legal person's right capacity and behavior capacity are consistent. The regulations on commercial competence in various countries mostly regulate commercial competence from the perspectives of natural person's capacity, restricting the commercial competence of national civil servants and foreigners.

Commercial behavior is the behavior of realizing some kind of intermediary in wealth circulation with the intention of realizing money profit. The conscious ability of commercial subject is limited by subjective conditions. The business activities of different commercial entities depend on their property, business industry and business purpose. In fact, different commercial entities carry out different business activities. The full realization of business freedom will undoubtedly provide necessary conditions and alternative paths for the all-round development and improvement of human physical strength and intelligence, including technical ability, aesthetic ability, creative ability, imagination, etc., and the comprehensive and rich display of human nature. Commercial ability includes commercial right ability and commercial behavior ability, and the core of commercial ability is business ability. Commercial right capacity mainly refers to business in the objective sense; The commercial capacity mainly refers to business in the subjective sense. Commercial rights and capacities are equal, but there are certain differences in commercial capacity. The restriction of legal commercial ability or the restriction of business freedom, in the abstract sense, is the restriction of which subjects can't become commercial subjects. For example, the requirements for the capacity of a natural person, the requirements for prohibiting commercial activities such as public servants, and the restrictions on foreigners engaging in commercial activities in their own country. Other restrictions are restrictions on specific business activities or business practices.

4. Conclusions

Business consists of objective business and subjective business. Business in the objective sense refers to the material basis of business activities, including business property and business organization. Business activities are based on business property. When business activities and business property are combined, business operation is constituted. With the development of market economy, the freedom of business has enabled Chinese people to obtain more "free capital". Under

the condition of market economy, business freedom is one of the ways for rational people to pursue happiness in modern society, and it is an inalienable right of people. Based on this, this paper starts with the freedom of business, studies the subjective business, objective business and infringements that hinder business operations, evaluates the management right system, and studies the contemporary commercial law system. The concept of business plays a pillar role in commercial law. The reason why business can become the backbone of the construction of commercial law system lies in the duality of business itself, and the internal duality shows the external expansibility, which makes it qualified to cross the commercial law system. Commercial law needs to regulate business property as a whole by applying special rules different from those of general civil law, so as to maximize the value of business property as a whole in commercial activities. Freedom of business is of great significance to citizens, and it is the main basis for ensuring personal dignity and safeguarding people's interests. At the same time, the business problem is one of the core issues of commercial law. This paper holds that the concept of business should be introduced in the field of Chinese commercial law and stipulated in relevant laws. In addition, in various separate commercial laws, various specific business rights should be stipulated based on the different types and contents of commercial organizations and their specific business scope.

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