A Brief Analysis of Legal Interpretation from the Perspective of Linguistics—Taking Article 144 of the Civil Code as the Starting Point

Rui-qi ZHANG¹,a

¹School of Social and Law, Shandong Women's University, Jinan, Shandong, China

a1841576645@qq.com

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Abstract. Linguistics and law are closely related disciplines. The study of linguistics aims at instructing people how to use language and express ideas accurately, while the study of law focuses on the study of legal phenomena, whose purpose is to maintain social stability and realize social justice through the construction and maintenance of order. As an applied subject emerging in China at the end of the 20th century, which arouses more and more scholars to devoted themselves to the study of legal linguistics, and they have made gratifying achievements. For every legal scholar, it is vital to learn to use the method of legal linguistics flexibly in the process of judicial practice to deal with practical problems. Due to legal linguistics is a marginal subject in academic circles, scholars for its research is relatively restricted, especially in the judicial practice, therefore, this article will mainly focus on the nature of legal linguistics, present situation of legal linguistics research, the characteristics of the current Chinese legal linguistics, and the legal linguistics research methods.

In addition, since the Civil Code has just been published this year, we need to use the logic of legal linguistics to understand and interpret the obscure legal provisions in the Civil Code. Taking Article 144 of the Civil Code as the starting point of the study, different scholars have different opinions on it. Some scholars believe that the civil capacity involved in this Article should include pure profit-making behavior, while others hold the opposite attitude. This essay will use the method of legal linguistics to analyze whether the norm of "invalid civil legal act performed by a person without civil capacity" should include the behavior of pure profit, and makes a further interpretation of this article. In order to correctly interpret this legal provision, it requires us to analyze it from the perspective of legal linguistics by adopting the three methods of legal linguistics research mentioned below.

1. Introduction

The value of legal linguistics not only plays a positive role in the field of legal research in western countries, but also plays a self-evident role in the discussion and thinking of the relationship between the linguistic field and the field of law in China. In 2020 with the promulgation of the "civil code" in China, some of the ideographic obscure scholars discussed and interpreted according to the laws, among them, as to do not have person of civil action competence right limitation of article 144, although compared with the contents of the "general civil law" did not change, but in view of the "do not have person of civil action competence to implement the behavior of pure benefit should be attributed to limit the scope of article 144" the problem remains to be disputed in academic circles. The key to solve this dispute is how to correctly interpret this article, which reflects the importance of linguistics in the study of legal theory at this time. On the basis of clarifying the relationship between jurisprudence and linguistics, it will be relatively clear to interpret this article from the perspective of legal linguistics. In recent years, with more and more
scholars turning to the study of legal linguistics, China has made certain achievements in judicial language interpretation, legal education and judicial practice.

2. Research Status of Legal Linguistics

Compared with other western countries, legal linguistics in China starts late, although in the 1980s. China's rapid development, the rule of law construction in the aspect of legal linguistics are still at the fledgling stage, rigid and study way, the research content level is not deep, mainly through the translation of western countries in legal language research to learning and using for reference. By the 1990s, the concept of the rule of law in China had been constantly strengthened, the study of legal linguistics had begun to take shape, relevant theoretical thoughts had been continuously accumulated, the theoretical system had been gradually improved, and the system of Chinese legal linguistics had gradually matured. Since the late nineties, with the rule of law is put forward, and the construction of the rule of law society, national legal linguistics development further distinguished, after against Germany and Japan legal linguistics explore ceaselessly, our country’s law language research content is rich, and also expanding it research category, whose development characteristics is mainly manifested in the following three aspects: related academic works constantly emerging; There are more and more interdisciplinary subjects in language studies.\(^1\) Research methods and means have been improved. Nowadays, our country law linguistics has towards academic extension stage, especially Chinese legal linguistics, content of law in the international realm research occupies the important position, for the domestic legal field development has a role, this is not only the development and progress of theory of law, is also the international legal language research content for China for sure.

3. The Nature of Legal Linguistics

Legal linguistics is the product of the collision between law and linguistics, and is a new and innovative interdisciplinary subject. As a part of applied linguistics, it is composed of an application network of legal language with rich connotation, which includes different branches of legal language, mainly consisting of legislative language and judicial language. The research of legislative language is not as in-depth as that of judicial language, on the one hand, due to its limited research scope, on the other hand, due to the extensive and comprehensive application of judicial language in judicial practice. This branch of judicial language is divided into several small branches, such as judicial spoken language, judicial written language, judicial record language, judicial posture language and so on.\(^2\)

As a balancing tool between legal practice and the application of linguistic norms, the value of legal linguistics is mainly reflected in the following two aspects: First, from the perspective of the relationship between law and language, both of them exist in the actual life of the society in the form of normative expression, and are a kind of social phenomenon of synchronicity. Secondly, from the perspective of jurisprudence, in the practice of legal interpretation, the connotation of law is bound to be expressed through language. Therefore, the standardization of linguistic elaboration is more conducive to the development of the field of law in a more rigorous and precise direction. Generally speaking, the task of legal linguistics is to solve various problems of language in legislation and judicial practice, so as to establish a theoretical system of language application that conforms to the reality of legal language and is applicable to the expression of legislative language and judicial speech communication.

4. The Characteristics of China's Legal Linguistics

4.1. A Wide Range of Research Areas

The research direction of legal linguistics in China involves many disciplines, but the research weight of each discipline is unbalanced. Only the legal basis and legal translation are deeply studied, but the other fields are still in the state of development. Based on this, the state should gradually
extend the scope of inquiry, and on the premise of drawing on advanced foreign theories, condense the essence and appropriately draw on the legal language suitable for China's development. Through the application of advanced theories, the state should develop domestic legal research and promote the sustainable development of the national rule of law.

4.2. The Correlation Between Various Research Fields is Weak
Secondly, at present, the research on various aspects of legal language in China is relatively scattered and not closely related, which has not been well carried out within the framework of legal theory. If only a few fields are studied, or each field cannot be related, the overall understanding will be biased or wrong. Only by conducting comprehensive and in-depth research on multiple dimensions can legal linguistics be grasped from a macro perspective.

4.3. Emphasizing Practical Research over Theory
In view of the general situation of legal linguistics research in China, there are not too many scholars doing research within the framework of juristical research, so the research does not focus on theoretical research methods. As a combination of law and linguistics, the study of legal linguistics must pay attention to both theoretical research and practical research, and promote the implementation of practical research under the guidance of research theory.

5. Research Methods of Legal Linguistics
5.1. Combining Jurisprudence with Pragmatics
Different from the traditional research methods of legal linguistics, the combination of jurisprudence and pragmatics makes it possible to conduct research within the framework of legal theory, especially legal methodology. The combination of theory and practice, to some extent, opens up a new way for the future research direction of legal linguistics. Pragmatics is the study of dynamic language. "It studies specific utterances in specific situations, especially how to understand and use language in different language communication environments"; "Jurisprudence" specifically refers to the field of "methodology of jurisprudence", that is, how to put the current legal system into practice on the basis of not doubting the effectiveness of the current legal system. The research method of "the combination of jurisprudence and pragmatics" not only shows that legal linguistics can be studied within the framework of legal theory, but also reflects the positive significance of exploring legal linguistics in legal theory.

5.2. Psychological Research Method
Psychological activities affect the way of thinking of human beings, and then affect the pattern of human behavior. In the judicial field, no matter in the field of criminal or civil and commercial affairs, psychological research plays an important role. Especially in criminal cases, psychological means are closely related to investigation, trial and trial. In the field of civil and commercial affairs, arbitration, mediation, reconciliation and other dispute resolution methods are related to psychology and linguistics. Therefore, to fully explore psychology and apply it to judicial practice, thus laying a foundation for the in-depth exploration of legal linguistics.

5.3. Logical System Method
In the field of legal linguistics, no matter in what way, legislative work, judicial language application, legal regulation writing and logical relation reasoning are all required to be equipped with rigorous logical thinking ability. Logical thinking characteristics and linguistic philosophy together form the research train of thought in the field of legal linguistics. In the specific process of judicial application, most scholars usually use logical syllogism to develop reasoning and make their arguments more persuasive. Therefore, it is one of the common research methods to construct a strict logical system in the study of legal linguistics.
6. Interpretation of Article 144

Article 144 A civil juristic act performed by a person without capacity for civil conduct is invalid. For the understanding of this article, the author will start from the above three legal linguistics research methods to interpret one by one.

Firstly, from the perspective of the combination of jurisprudence and pragmatics, it should be agreed that the pure benefit of civil juristic ACTS performed by persons without civil capacity is effective in principle, but it should have certain preconditions. Because of pragmatics is to solve the problem of realistic situation, therefore, the person without civil capacity is accompanied by the guardian or legal representative, if he or she did not accept the pure benefit of a third person to give them, it will actually cause a certain loss, that is because, first, pure interests than not, the increase of pure interests will only lead to the increase of its property or rights will not be adverse impact to do not have person of civil action competence; Second, if a person without capacity for civil conduct fails to accept pure benefits under the scenario of pure profits, whether his legal agent agrees beforehand or ratifies afterwards does not constitute an effective agency, which will lead to the loss of the principal's interests.[4]

Secondly, in the application of "law and in combination with pragmatics" to the above theory was set up under the premise of should also be appropriate to introduce the psychology method, namely the establishment of the theory mentioned above shall also have the certain premise condition, in the perspective of law and psychology, the age line do not have person of civil action competence is 8 years old the following, but between 0 and 8 years of age do not have person of civil action competence of the mental and physical activity have significant differences, as education and psychologists Kohlberg's moral development theory, in the first stage for the show for the children's moral rules for the punishment and obedience orientation stage, which is still a lack of ideas, focus on the result of behavior; The second stage is the relative utilitarian orientation stage, that is, the subject of behavior begins to consider the principle of obedience based on his own interests and the rewards to be given by others, and they evaluate the behavior based on the needs to be met. People without capacity of civil conduct to accept, therefore, under the condition of pure interests shall require it to be quite a private law autonomy ability, which permits them to accept the basic meaning of pure interests behavior, with no capacity in the legal behavior, to go through with interest and with age, intelligence level of the double inspection of mean ability, can be effective, if they lack the basic ability, the pure profits they have engaged may not to take effect.

Thirdly, according to the analysis of logical system, the interpretation of this article can be started from four perspectives: literal interpretation, constraining interpretation, analogical interpretation and natural interpretation. In terms of the interpretation of text and meaning, the problem to be solved is "whether the pure benefit behavior is all civil juristic behavior".

According to the provisions of the law and the experience of judicial practice, pure benefit behavior includes: first, gift behavior. As the gift act occurs between the private subjects of both parties, the two parties agree on the intention of the gift act is legal and effective, therefore, the gift should be recognized as a civil legal act. Second, reward behavior. If the reward behavior occurs between private subjects, then its behavior nature is equivalent to the gift behavior, should be understood as a civil legal act; if it happens between the state or the government and the unilateral private subject, it is an act in public law and should not be identified as a civil juristic act. Third, if the act is the acceptance of reward itself; there is consideration, but the bank has already fulfilled the corresponding obligation or fulfilled a burden before making a profit, so it is difficult to call the repayment pure profit.

Therefore, pure profit-making behaviors should be include but should not be not limited to civil juristic ACTS, and it is inappropriate to separate the proposition that "pure profit-making behaviors performed by people without civil capacity are invalid". If we start with the restriction interpretation again, there is a difference between the pure profit-making legal ACTS performed by people without civil capacity and other legal ACTS, it should be restricted by purpose. Thus, this provision is not applicable to the scope of pure profit-making behavior.
From the perspective of analogy, the same is true, because the main purpose of the norms of the system of incapacity and limited capacity is to protect the natural person with insufficient capacity from the risks that can be seen everywhere in the legal act. The behavior of pure gain will not bring legal disbenefit to the person without civil capacity or the person with limited civil capacity, so the same evaluation should be made. As article 16 of China's Civil Code states, "If the fetus is involved in the protection of its interests such as inheritance of inheritance or acceptance of gifts, it shall be deemed to have the capacity for civil rights. "If the fetus can be regarded as a person with the capacity for civil rights in the case of pure benefit, then as a person under the age of eight without the capacity for civil conduct, of course, it has the right to accept the pure benefit. In a conclusion, whether through the interpretation of text and meaning, analogical interpretation, constraining interpretation or the interpretation of course, it should be considered that "the pure profit-making act performed by a person without civil capacity is invalid" is inaccurate.

Combined with the above, it is not difficult to see that through the study of legal linguistics, not only helps legal scholars to carve the content of legal articles, but also endowing legal workers with strict legal logic thinking when solving judicial practical problems. Linguistics gives life to jurisprudence, and jurisprudence gives value to linguistics. In the judicial practice of different scenarios, which requires every legal workers on the basis of adhering to the principle of law should also be flexible application of relevant principle of pragmatics, supplemented by psychology study method and the method of legal logic system building, multidimensional to interpret the law behind the true legislative intent of article, the progress of linguistics in China and the construction of the rule of law society has to be reckoned with significance.

7. Conclusion

Although the study of legal linguistics in China is still in the process of exploration, it has become increasingly mature, with its research content continuously enriched, research scope continuously expanded and research methods more diversified. As an applied new subject, the linguistic connotation of legal linguistics changes dynamically with the development of society and the difference of cases. In addition, when interpreting a legal provision, we should consider whether the interpretation is conducive to or breaks the balance between the rights and obligations of the subjects from the perspective of qualified subjects, which requires the legislator not to give it meaning only according to the only way of understanding.

References


