

The Path and Techniques for Applying the Principle of Good Faith

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Abstract

The process of identifying legal norms that align with the facts of a case is referred to as “application.” When the legal norms in question are specific and can be broken down into clear constitutive elements, they are easier to apply; otherwise, they pose challenges. The principle of “good faith” is inherently a “principle,” and its lack of specificity makes it difficult to apply. The prerequisite for applying the principle of good faith is to include it as a point of contention. Transforming it into one of the points of contention based on the original claims is a practical issue in case handling. Filing a motion is a litigation right and action of the parties, while listing and organizing the points of contention falls under the court’s authority. The essence of dishonest behavior is tortious, thus necessitating the combination of traditional constitutive elements with descriptions of dishonest litigation behavior. In the process of applying legal norms to case facts, a crucial step is to highlight the suspected dishonest litigation behavior of the parties as a focal point of dispute. The points of contention in a case can be introduced through two paths: one is by a party’s motion, becoming part of their request; the other is by the judge’s authority. This article focuses on “application,” aiming to create “rules” based on established “principles,” covering conditions of application, limitations, references, stages, and fields of application. The final two sections, “Judicial Interpretation and Case Guidance,” shift our perspective from the abstract to the practical, accompanied by an analysis of legal rules, which constitutes the “explanation” within the paper.

Keywords

Civil Litigation, Principle of Good Faith, Legal Application, False Litigation, Dishonest Behavior

1. Introduction

The principle of good faith, due to its broad and general nature, might appear to

have a wide range of applicability. However, in practice, this is not the case. Data indicates that judges, when confronted with such general provisions, approach them rationally and with caution, opting for a restrained and prudent application. In our legal system, there are no explicit objective standards for the application of laws. If there are clear legal provisions addressing certain misconduct or illegal actions by parties in ongoing litigation, these specific provisions should not be disregarded in favor of applying any overarching legal principles.

The application of the principle of good faith requires the presence of misconduct or illegal actions by litigation participants as a prerequisite. Although such illegal actions may superficially comply with legal rules, if they result in harm to others or undermine judicial authority, the principle of good faith should be applied.

Judges should adopt a proactive stance and embrace the principle of good faith with the mindset of a “knight,” aiming to achieve dual objectives of fairness in both the process and outcome of individual case judgments. This reflects the legislative intent and motivation behind the principle of good faith. When applied, the principle should lead to specific, tangible, and actionable penalties for dishonest behavior. Without this mental preparation and the resulting consequences, the principle should not be applied. It should not be a mere formal or nominal application, but rather a substantive one.

2. The Logical Relationship of the Principle of Good Faith

Due to space constraints, this paper will focus on explaining the “focus of dispute” (hereinafter referred to as “dispute point”). The multidimensional relationship between the dispute point and the principle of good faith, and how to make the principle of good faith a central theme of the dispute point, will be discussed. Apart from the litigation request, the author believes that identifying the dispute point is a crucial step for the principle of good faith to be incorporated into the judgment. If it becomes part of the judgment, the application of the law is realized.

In litigation theory, *res judicata* is a conclusive proposition, while the dispute point is an indeterminate, purposive proposition. This characteristic aligns with the principle of good faith, both serving the purpose of litigation. Logically, the parties provide facts, and the judge provides norms. The judge reviews these and makes a decision. So, which parts of the legal facts are needed? How to derive them needs to be decided through the trial. The key to an efficient trial is to grasp the dispute point. In civil courts in China, the dispute point can only be determined by the judge and is made retrospectively. During the initial phase of the trial, both the plaintiff and the defendant present their arguments. Whose facts, claims, and views have a greater impact on the judge, whose proposal may become the dispute point, and who has the possibility of winning.

2.1. The Principle of Good Faith and the Focus of Dispute

From the perspective of application, the application of the dispute point and the

principle of good faith is very different. The premise of the former's application is: during the initial phase of the trial, the main contradictions and disputes between the two parties are mutually contested, revolving around the cause of action, litigation request, claims of both parties, and unascertained facts. The court conducts a serious and careful review, organizes, and makes judgments, identifying certain matters as dispute points. At this time, the principle of good faith must at least attract the judge's attention. In the case of Zhou suing Yao for a contract dispute [(2018) Jing 0106 Min Chu No. 28405], the main evidence held by the plaintiff was a mobile phone recording. When transcribing the text, a few words were mistakenly transcribed. When the recording was played in court, the judge requested a replay and said to the plaintiff's side: "You are trying to muddle through, which will be detrimental to you." The essence of the judge's words was that the plaintiff's side violated the principle of good faith. In this case, the defendant twice raised jurisdictional objections without any reason or evidence, and both levels of courts ruled to dismiss them. The plaintiff, on this basis, filed a motion requesting the court to punish the abuse of jurisdiction according to the principle of good faith. The court did not respond. In other words, the motion for abuse of jurisdiction was not noticed by the court and did not become a dispute point, so it was not included in the judgment (the result of this case was that the plaintiff lost).

Therefore, identifying the dispute point is the first step. In Japan, there is a theory called "dispute point effect," which means that the judge determines a certain fact in the initial phase of the litigation as the dispute point effect, which influences subsequent litigation (Huang & Shao, 2020). In the subsequent stage of the trial, the parties cannot make claims or provide evidence that contradicts this judgment, and the court cannot make a judgment contrary to it (Hiroshi, 2004).

2.2. The Principle of Good Faith Should Be Incorporated into the Focus of Disputes

In the civil loan dispute case (2019) Jing 0105 Minchu No. 61799, the plaintiff provided bank transaction records as evidence to prove that they lent 120,000 yuan to the defendant. The only indication that this 120,000 yuan transaction was a private loan was the note "loan to Qin X" in the transaction record. The defendant attempted to prove that the 120,000 yuan was actually funds paid by Beijing XXX Co., Ltd., where the plaintiff serves as the legal representative, using five invoices with different entities, amounts, and dates (the invoice dates were before the plaintiff transferred 120,000 yuan to the defendant). The case was heard by two judges. The first judge asked the plaintiff to prove a "salary relationship," intending to change the case from "private loan" to "salary, bonus, or labor remuneration." The plaintiff's lawyer insisted on the principle that the burden of proof lies with the party making the claim, resulting in four fruitless court sessions. After the judge was replaced, the plaintiff's lawyer had the client

transfer 1 yuan to themselves via mobile banking, with the note “loan to XX,” which was displayed on the plaintiff’s lawyer’s phone screen. The plaintiff argued that 120,000 yuan is not a small amount, and the note “loan” is straightforward. Since the defendant did not raise any objections over two years, it is more likely that the 120,000 yuan was a loan rather than a salary. The court accepted the plaintiff’s argument and ruled in favor of the plaintiff.

During the trial, the plaintiff filed a motion claiming that the defendant’s irrelevant assertions constituted fraudulent, malicious, or false litigation, which was not accepted by either of the presiding judges. However, the defendant’s claim also did not succeed. If it had, the outcome would have been reversed.

Regarding the disputed 120,000 yuan, the plaintiff claimed it was a loan, while the defendant claimed it was a salary. Thus, there were two claims and two points of contention. Whichever point of contention prevailed would give that party an advantage. The plaintiff’s evidence, combined with an experimental piece of evidence introduced by the new judge, although unrelated to the case, had high credibility and was persuasive to the judge. Therefore, by first ensuring their point of contention prevailed over the defendant’s claim, the judge naturally listed the plaintiff’s claim as the point of contention. The next step was to prove the authenticity of the loan and whether the defendant had repaid it or if other transactions had offset the 120,000 yuan.

In fact, if we delve further, not just into the points of contention but into the Japanese theory of issue preclusion, it becomes more convenient and faster for the plaintiff to win. By determining the loan as the issue preclusion based on the claim or cause of action, the defendant would no longer have the opportunity to argue that the case is a wage dispute based on unrelated invoices. Such a matter would have to be addressed in a separate lawsuit.

If the plaintiff wins and the defendant is ordered to repay 120,000, the defendant might use unrelated evidence to claim that the 120,000 is wages and initiate a lawsuit to reclaim it based on unjust enrichment. —This is a hypothetical scenario proposed by the author. —Adding this hypothetical scenario aims to illustrate the lack of application of the principle of good faith. Since whether an action is in good faith or not rarely becomes a “point of contention,” it is unlikely to be considered by the court and thus become the “basis of judgment” or the “judgment result.”

Proposing the principle of good faith in procedural law and resolving it procedurally is a shortcut. The trial is the core of the procedure, and the control of trial capabilities lies with the judge, as does the summarization of the points of contention.

For judges, the first step is to clarify the plaintiff’s claims. Before the trial, the judge must identify the legal basis of the plaintiff’s claims and ensure that the elements corresponding to the plaintiff’s requests are clearly listed in the complaint.

Second, the judge must clarify the defendant’s claims. This involves examin-

ing whether the factual elements supporting the defendant's negative and obstructive defenses are complete and whether they can withstand the plaintiff's challenges.

Third, the judge needs to systematically advance, organize, and determine the key issues in dispute.

The perspectives of lawyers differ from those of judges, and even more so from the parties involved. Differences in litigation skills, knowledge, experience, and ethical considerations mean that it is challenging to accurately determine the key issues based solely on the complaint, defense, and evidence. Even if issues are identified, they may not be precise. For judges, the process involves: first, making a general description of the issues based on the complaint and defense; second, further organizing and refining the issues during the evidence exchange; and third, re-determining the issues after the initial rounds of mutual defenses.

Fourth, to ensure substantive court debate, the issues can be summarized, determined, and finally confirmed once more before the court debate. After this confirmation, no further changes should be made, allowing both parties to engage in focused and thorough debates.

3. The Logical Starting Point and Sequence for Applying the Principle of Integrity

The principle of integrity extends beyond just the integrity clauses; it also encompasses the definition of dishonest behavior, procedural safeguards, and disciplinary measures. To summarize the theoretical forms of dishonest behavior and their manifestations in legal norms, and to determine their conformity with legal applications, this study utilizes the "Judicial Cases" and "Civil" sections of the Peking University Law Library as "columns" and searches for dishonest behavior and forms as "keywords." The resulting data is briefly described. The author posits that achieving the "positive outcome" of addressing various forms of dishonesty necessitates following a path that includes "litigation request," "focus of dispute," "the court's opinion," "basis of judgment," and "judgment result." The term "litigation request" typically lists requests for money, property, or behavior in the complaint. However, the principle of integrity is unlikely to be explicitly mentioned here. Therefore, the "litigation request" should be interpreted more broadly as a new motion summarized during the differing claims and defenses of both parties, and as an issue that needs resolution by the court. In this chapter, the defendant may discover the plaintiff's dishonesty based on the complaint, claims, and evidence, while the plaintiff may discover the defendant's dishonesty based on the defense, counterclaims, and evidence. Such discoveries of dishonesty may occur before the trial. Once the trial begins, these issues can be raised with minimal debate. Through several rounds of mutual defense during the trial, the dishonesty of the other party may be established, allowing for a motion and request to be initiated, asking the court to punish the dishonest be-

havior. This represents the first step in the operational path of the principle of integrity.

When a party raises a claim of dishonesty against the other party in court and requests the court to impose sanctions, the judge must respond. Once a response is given, it initiates the process of determining whether to include this issue as a focal point of the dispute, which is decided by the court or the judge. The ability to sanction dishonest behavior is a crucial step in determining whether the case adheres to the principle of good faith. The focal points of the dispute are announced by the judge in court.

The next step in becoming a focal point of the dispute involves the claims, reasons, and evidence from one party, and the counterarguments, reasons, and evidence from the opposing party. If the issue concerns objective honesty, there will be fixed evidence to support it; if it involves subjective honesty, it requires more discretionary judgment from the judge, which can be somewhat challenging for the judge.

In summary, the inclusion of a focal point adds another point of contention outside the main issues of the case¹, which I refer to as a “good faith-related focal point.” It can be said that few judges consider this an unnecessary addition, as it is secondary compared to the facts of the case and can be seen as a “detour” that might complicate matters unnecessarily.

However, to ensure a just outcome of the case, the court does not tolerate reckless abuse, facile contradictions, or, more importantly, falsehoods, malicious collusion, or perjury. Therefore, the judge must take seriously any motion raised by a party regarding the other party’s dishonest behavior and cannot ignore it.

Once included as a focal point, it will be evaluated and reasoned in the “This Court Believes” section based on the arguments and confrontations from both sides. In the “Basis for Judgment” section, specific legal norms will be cited.

Searching from pkulaw.com, there are 3484 cases based on the application of Article 13(1) of the Civil Procedure Law. The number of cases based on Article 115 of the Civil Procedure Law is 10. Article 116 of the Civil Procedure Law was applied as the basis for 35 cases².

Compared to Article 13, Paragraph 1, Articles 115 and 116 are specific provisions of the principle of good faith, whereas Article 13, Paragraph 1 serves as a general provision, characterized by a high level of abstraction.

The data above indicates a predominance of general provisions. Why is this the case? The author is not engaging in psychological speculation but instead raises two questions: First, is it because the general and abstract nature of Article 13, Paragraph 1 makes it simpler and more convenient to apply? Second, is it because Article 13, Paragraph 1, with its generality and abstraction, inherently

¹In this paper, the author designates the focal points of disputes that emerge prior to the occurrence of dishonest litigation behavior as “the primary issues of the case,” while those focal points of disputes that arise as a result of dishonest litigation behavior are referred to as “integrity-related issues.”

²Date of retrieval: March 9, 2024.

possesses a degree of ambiguity, which judges find useful and easier to cite, thereby strengthening the reasoning in their judgments?

The above can be viewed as the application process, with the “judgment result” section presenting the conclusion on whether the principle of good faith is applied.

Thus, the pathway for judges to apply the principle of good faith is as follows:

Motion → Identification as an issue → Court’s opinion → Basis for judgment → Judgment result.

3.1. Raising a Motion

In judicial trials, emphasizing the parties’ right to participate in the procedural process and opposing judicial arbitrariness embodies the principles of procedural freedom and democracy (Zhang, 2012). Consequently, parties are entitled to raise allegations of the other party’s suspected dishonest litigation conduct. Such allegations can be made at various stages: pre-trial, where a defendant can challenge the plaintiff’s actions, the legitimacy of the right to sue, the veracity of facts, and the authenticity of evidence through a pre-trial defense statement; during the trial, where issues can be raised during court investigations, emphasized in debates, and specific litigation behaviors questioned with supporting evidence; and post-trial, where closing arguments can summarize the other party’s suspected dishonest conduct. However, only allegations made before or during the trial are likely to prompt the judge to consider them as points of contention.

In civil law jurisdictions, characterized by a strong tradition of judicial authority, judges bear a greater responsibility than the parties to promptly identify, actively raise, properly adjudicate, legally determine, and sanction dishonest behavior. As previously mentioned, dishonest conduct infringes upon the dignity of the state and the judiciary, thereby obligating judges to bring the dishonest party to justice.

3.2. Listing as a Point of Contention

In China, the concept of the point of contention first appeared in Article 5 of the 1998 “Several Provisions on the Reform of Civil and Economic Trial Methods”³. Referred to as “contention point” in this paper, some scholars believe that the centralized trial model of civil cases in China has evolved from “pre-determined trial” to “one-step trial” and then to “contention point-centered” (Ding, 2020). This indicates that whether a legal application is made depends on whether the issue is listed as a contention point by the court, marking the initiation of the procedural entry.

³In this paper, the focal points of disputes are referred to as “dispute points.” Theoretically, dispute points can be categorized into three types: factual dispute points, legal dispute points, and broad dispute points. The broad dispute points cover the areas of contention between parties regarding the subject matter of litigation, facts and evidence, and the application of law. Moreover, these dispute points are interconnected.

On the Peking University Law Database, the author searched under the “Judicial Cases” section with “point of contention” as the defining term and “principle of good faith” as the keyword, retrieving 8417 civil cases⁴.

Case 1: Unfaithful behavior involving “false statements,” raised by the judge *ex officio*.

In the case of Lu X1 v. Wang X regarding a house lease contract dispute⁵, the parties did not raise a motion concerning the principle of good faith. Instead, the judge raised it in the “Findings of Fact” section of the judgment, described as follows:

“These false statements, which are significantly related to the points of contention between both parties, violate the principle of good faith in civil litigation. This court holds a high degree of suspicion towards the defendant’s defense. Therefore, the defendant’s request for the plaintiff to provide another defense is both factually incorrect and legally unfounded, and this court does not accept it.”—This appears in the “Findings of Fact” section of the judgment.

In the section “This Court Believes” of this case, particularly in the “Judgment Basis” section, there is no citation of legal norms regarding the principle of good faith. Consequently, the judgment result, i.e., “Judgment as follows,” naturally does not impose any sanctions on the dishonest behavior of “false statements” mentioned in the text.

Secondly, Case 2: Involves dishonest behavior of “contradictory statements,” raised by the judge *ex officio*.

In the appeal case of the sales contract dispute between Xiamen XX Import and Export Trading Co., Ltd. and Xiamen XXX Handicrafts Co., Ltd.⁶, the judge in the “This Court Believes” section of the judgment stated:

“XX Import and Export Company denied the fact of the disputed contract’s conclusion in the relevant arbitration, annulment of arbitration, and original trial, which is clearly contradictory to its statements in the second instance of this case, violating the principle of good faith.”

However, in the subsequent sections “Judgment Basis” and “Judgment as follows,” no sanctions were imposed either.

Among the 8417 cases retrieved according to the above standards, most of the descriptions regarding the principle of good faith in the judgments are: “According to Article 7 of the General Principles of Civil Law, civil subjects should follow the principle of good faith in their activities.”

Therefore, even a small number of 8417 under the “principle of good faith” primarily refers to the principle of good faith in civil law rather than in civil procedure law. Consequently, we re-evaluated using the keyword “principle of good faith and credit.”

On the Peking University Law Database, the author searched under the “judicial cases” section, using “dispute focus” as the defining term and “principle of

⁴Date of retrieval: March 9, 2024.

⁵[Legal Citation Code] CLI.C.9423575, (2015) Wu Min Chu Zi No. 1479.

⁶[Legal Citation Code] CLI.C.3287524, (2014) Xiamen Civil Final Case No. 705.

good faith and credit” as the keyword, retrieving 33,230 civil cases⁷.

This demonstrates that searching for the keywords “principle of good faith” and “principle of good faith and credit” in the “judicial cases” section reveals related principles in civil law, which can “mislead the public” and “masquerade as something they are not.”

Third, case: Concerning the “principle of good faith and the rule of estoppel,” raised by the judge ex officio.

In the second instance of the labor dispute case between Tianjin XX Community Technology Co., Ltd. and Sun Xhua⁸, the “This Court Believes” section of the judgment states:

“Regarding the second focus of dispute, during the first instance trial, the appellant acknowledged that the total actual wages received by the appellee from February 28, 2020, to May 31, 2020, should be 20005.04 yuan. However, in the second instance, the appellant denied this amount. The wage sheet submitted by the appellant, which was self-made, was not signed by the appellee, nor was other evidence provided to support it. Since the appellant did not provide sufficient evidence to overturn the admission, according to the principle of good faith and the rule of estoppel that should be followed in civil procedure law, this court does not support the appellant’s claim that wages should not be paid to the appellee.”

The judgment in this case was to “dismiss the appeal and uphold the original verdict.” There was no sanction for dishonest behavior.

These three cases share a commonality, as mentioned in Question 6 of Chapter 1, which is using the loss of one party as a “substitute” for punishment. However, this is incorrect because dishonest litigation behavior infringes upon two types of interests: first, it harms the opposing party and sometimes other participants; second, it damages judicial authority and court order. From my perspective, the latter is more severe in nature and consequence. Implementing sanctions can potentially reverse the losing fate of the opposing party, prevent the state judiciary from being deceived and disgraced, and impose penalties as stipulated in Article 118 of the Civil Procedure Law, which includes fines ranging from 100,000 yuan for individuals to between 50,000 and 1,000,000 yuan for entities. These substantial fines are paid to the state, not the parties involved.

The publication notes of the “Civil Litigation Document Format” hold the following view: “For cases where facts are clear during the trial, ...the document may not need to summarize the points of contention; ...for cases where the points of contention indeed become the focus of litigation and defense during the trial, they should be included in the judgment document.” Therefore, points of contention are not mandatory content for documents. Generally, summarizing points of contention depends on the needs of the case. Simple cases may not list points of contention, while complex cases should specify them.

⁷Date of retrieval: March 9, 2024.

⁸[Legal Citation Code] CLIC.118199184, (2020) Tianjin First Intermediate People’s Court Civil Judgment No. 3436.

In this article, I believe that dishonest behavior is a matter of factual dispute in the case, a matter of legal application dispute, and a matter that critically affects the case outcome. If such a motion is raised by one party, it is even more relevant to the litigation request.

Whether to include it as a point of contention depends on the judge's comprehensive qualities, including legal knowledge, legal awareness, and courtroom experience.

3.3. Organizing and Fixing Points of Contention

Whether there is a suspicion of dishonest behavior is first determined by the previous text, which lists it as an issue. Subsequently, the parties hold opposing views on its existence and applicability, leading to disputes that cannot be resolved. The judge mediates and determines the disputes: first, whether the dispute is a factual issue or a legal issue; second, whether the dispute has legal significance for the outcome of the case.

If the dispute is irrelevant to the outcome of the case, there is no need to further fix it. As mentioned earlier, for the parties involved, dishonest behavior may lead to a reversal of the case outcome; for the court, it may result in a wrongful judgment due to deception. Such "serious and significant" issues must be fixed.

Therefore, once raised, the issue must be fixed. After fixing, the facts are determined based on evidence during the court investigation, and the results are determined based on law and legal principles during court debates. The former is conducted by both parties with the judge mediating the hearing; the latter is determined by the judge *ex officio*. However, according to the current provisions of China's Civil Procedure Law, there is no mandatory defense system. For example, Article 125 of the Civil Procedure Law does not require mandatory defense in China.

Implementing a mandatory defense system would facilitate the early establishment and fixing of issues. Subsequently, a procedure for fixing issues needs to be stipulated, allowing the judge to confirm and fix issues *ex officio*.

Therefore, the author suggests that in the relevant judicial interpretations in China, such as in the "Opinions on False Litigation," an additional provision could be added: If there is a suspicion of false litigation, once the motion is raised, it becomes a necessary part of the case's fact investigation and court debate.

4. Adapting the Logic Model to the Principle of Good Faith

The Fourth Plenary Session of the 18th Central Committee of the Communist Party established and endorsed the model of "rule of law." Since then, the topic of "building judicial credibility within the context of a major country's rule of law" has gained prominence. From a macro perspective, credibility represents the fundamental value of law and justice. This not only actively promotes the development of integrity awareness among all litigation participants, represented

by the parties involved, but also strengthens the legal thinking and understanding of judges and prosecutors, encompassing legal faith, legal cognition, legal compliance, and the realization of law.

From a micro perspective, the enhancement of the principle of good faith primarily concerns the construction of systems and mechanisms. This is because the development of systems and mechanisms is the most effective and concrete means of mitigating and removing the abstract nature of the principle of good faith.

In adjudicating cases, judges are tasked with ascertaining the facts and applying the law to determine right from wrong. The application of law to facts or the process of finding legal principles for facts is a critical aspect of this process, with the principle of good faith being applied in the latter scenario.

During case handling, if specific legal norms are available, they should be applied directly. However, for fundamental legal principles such as good faith, judges may only apply these principles in the absence of specific legal norms, as outlined in Article 13, Paragraph 1. For example, since there are no specific legal norms for false statements or malicious litigation in our laws, the court must rely on Article 13, Paragraph 1. When applying higher-level (or other) case doctrines, or borrowing concepts from higher-level legal principles, relevant descriptions must be included in the judgment. These descriptions should follow at least one of two pathways to ensure persuasive power:

1) From Law to Law: This approach involves using specific legal norms to find applicable legal principles.

2) From Law to Principle: This method involves interpreting the content implied by legal texts and reasoning to identify applicable legal principles or other relevant legal provisions.

4.1. Example 1: Misrepresentations → Principle of Good Faith

The author conducted the following empirical examination by searching keywords in the order: “Civil Procedure Law → Article 13 → Case and Judgment Documents.” According to the data provided by PKULAW, as of August 31, 2020, a total of 439,165 cases directly applied Article 13. For instance, in the “Third-Party Revocation Litigation Dispute between Zhang Xyun and Zhu Xmin, Tian Xfang” (PKULAW Citation Code: CLI.C.11275988 (*The Gazette of the Supreme People’s Court*, 2018)), the judgment directly applying Article 13 reads as follows:

The respondent made inconsistent statements regarding the repayment of the loan, whether the interest was repaid, and the calculation and period of the interest. According to the provisions of Article 13, Paragraph 1, false statements are prohibited, rather than requiring the parties to make statements based on objective truth.

In this case, the upstream concept of false statements is the principle of good faith. The application of Article 13 is evidently due to the lack of specific provi-

sions on false statements in Chinese law. Judicial interpretation is one of the ways to implement abstract legal principles. Broadly speaking, any legal document is an interpretation of the law, but the interpretation by the Supreme People's Court is authoritative. It not only concretizes abstract legal principles but also provides guidance on the applicability of legal norms. Since no language can exhaust all aspects of human life, and no law can correspond to our lives in every detail, the existence of legal principles serves as a “universal solution,” a “catch-all,” and a “gap-filler.”

In this case, the judgment unfolds from “law to reason.” The first step is to set the tone based on the content of good faith—the parties have a duty of truthfulness. The second step is for the court to ascertain that the parties made false statements to the court. The third step is the application of Article 13.

This application logic revolves around Article 13, fully revealing the constitutive elements of the application of the principle of good faith.

4.2. Example 2: Malicious Litigation → Principle of Good Faith

Judgment of Jiaying Intermediate People's Court of Zhejiang Province on the Dispute over Tort Liability between Li and Wang vs. Shou (2016) Zhe 0482 Min Chu 5197, (2017) Zhe 04 Min Zhong 810, [Law Reference Code] CLI.C.10840925 (Zhou, 2018).

The definition of malicious litigation under China's civil procedure law is: in the absence of factual basis and legitimate reason, deliberately initiating litigation to seek illegal benefits. Such behavior aims to harm others, and more importantly, to mislead the court or judge into making a judgment far from the truth, thereby hindering judicial correction and damaging judicial dignity.

In this case, the original court's decision was based on two “Loan Guarantee Agreements” which were in a renewal relationship, but there was only one loan transaction between the parties, amounting to 150,000 yuan. After the loan dispute was settled through mediation, one party maliciously initiated another lawsuit using the previous agreement, claiming the repayment of 150,000 yuan and interest. The other party claimed this was malicious, forcing them to respond to the lawsuit and incurring attorney fees and other costs. The malicious party was ordered to bear the relevant costs, including attorney fees, incurred by the other party due to the litigation. This request was supported by the court. However, claims for mental compensation and an apology were not supported by the court as they were deemed unrelated to the case.

Thus, the judgment logic regarding malicious litigation is:

First, the court defines what constitutes malicious litigation. It directly cites Article 13, Paragraph 1, explaining that parties are required to exercise their right to sue in good faith, without using false evidence or fabricating facts to obstruct the court's proceedings. Any such behavior is deemed malicious litigation.

Second, malicious litigation is characterized as tort liability. The court refers to the general provisions of the Tort Liability Law, which state that “A person

who infringes on the rights and interests of others due to fault shall bear tort liability.” This approach is taken because there is no specific legal guidance on malicious litigation or its infringement in our legal system. Therefore, the general provision of Article 6, Paragraph 1 of the Tort Liability Law is applied: “A person who infringes on the civil rights and interests of others due to fault shall bear tort liability.” Additionally, the court cites the Provisions on the Cause of Civil Cases for further reasoning: when malicious litigation damage compensation disputes are not listed as an independent cause of action, the dispute can be classified as a tort liability dispute based on the primary cause of action.

Third, to deter malicious behavior, the court references Article 22 of the Opinions on Optimizing the Allocation of Judicial Resources, which can be termed “Parties Should Litigate in Good Faith and Rationally.” This provision is a specific and actionable interpretation of Article 13, Paragraph 1 of the Civil Procedure Law, emphasizing punitive measures. It aims to strengthen the crackdown on false and malicious behaviors by leveraging litigation costs, including attorney fees. When improper actions such as abuse or delay cause direct losses to the other party, and a reasonable request is made, the court can rule that the malicious party should bear the losses.

The judgment in this case explicitly indicates that while there are no specific provisions for malicious litigation within our legal framework, the litigants’ impure motives harm the interests of the opposing party and undermine judicial fairness. Consequently, the court reclassified the cause of action from a “loan dispute” to a “tort liability dispute.” In terms of legal application, the basis for addressing malicious litigation was found in Article 6 of the original Tort Liability Law. For punitive measures, Article 22 of the Opinions on Optimizing the Allocation of Judicial Resources was applied, mandating the responsible party to cover the opposing party’s attorney fees, as these are considered “direct losses.”

The rationale behind this judgment is straightforward and transparent. It not only identifies specific legal provisions within the Civil Procedure Law and the Tort Liability Law for addressing malicious litigation, a manifestation of the principle of good faith, but also incorporates punitive measures within the judgment, making it a model case.

From the application of this case, we can derive insights into malicious litigation: Firstly, malicious litigation remains a theoretical concept, with no explicit provisions in our civil law and civil procedure legal system. The author proposes two corrective measures: First, to include it as an independent cause of action. Second, to avoid establishing it as an independent cause of action due to its diverse forms, which cannot be exhaustively listed and can only be summarized. Article 22 of the Opinions on Optimizing the Allocation of Judicial Resources encompasses at least three behaviors—abuse, falsehood, and delay—along with “etc.,” ultimately summarizing them as “improper” behavior. Whether the lack of a clear legal provision for “malicious litigation” is due to this remains uncertain. Therefore, the second approach appears more scientifically sound.

Secondly, Article 22 of the “Opinions on Optimizing the Allocation of Judicial Resources” addresses the conditions and consequences of punitive measures. It can be formulaically interpreted as follows: subjective malice + objectively engaging in malicious behavior + causing direct loss to the non-malicious party + the non-malicious party making a request = legally determining that the malicious party is responsible for the direct loss.

This demonstrates that, within the current legal framework of our country, judicial interpretations effectively function as law. For instance, the “Interpretation of the Civil Procedure Law” provides specific applications of the “Civil Procedure Law,” and these judicial interpretations can serve as the basis for legal judgments. Therefore, to establish favorable conditions for the judicial application of the principle of good faith, it is essential to refine relevant judicial interpretations to facilitate understanding and application in judicial practice. Clarifying the conditions for the application of the principle of good faith aids judges in comprehending and reasonably applying this principle in practice, thereby upholding the consistency of the legal system and the fairness and authority of the judiciary.

5. Functions of Case Guidance

Although China is not a common law country, it has implemented a case guidance system since December 2011.

The issue of “different judgments for similar cases” has faced criticism. The case guidance system has significantly contributed to standardizing judicial benchmarks, enhancing the quality of trials across various court levels, improving judicial efficiency, and upholding justice.

While legal norms and judicial interpretations serve to concretize legal principles, they have not entirely overcome the constraints of language. In the process of concretizing the principle of good faith, case guidance emerges as a more scientific approach, characterized by strong intuitiveness, flexibility, and operability. The author contends that case guidance should be considered a dynamic method of legal interpretation, inherently possessing the functions of precedent. This approach emphasizes the empiricism of “law in action,” addressing the shortcomings of traditional legal interpretation methods, which often appear rough, inadequate, and disconnected. It exhibits strong specialization and targeted applicability for legal norms that fully embody legal principles, significantly enhancing the applicability of these principles in individual cases.

Case guidance does not equate to judges creating law. The author argues that case guidance is a means for judges to interpret the law, summarizing trial experiences rather than creating new laws. Consequently, the principle of good faith can be elevated to a judicial rule through guiding cases that apply this principle, facilitating the unification of legal application, making principles more rule-based and dynamic, enhancing the flexibility, operability, and applicability of the law, and bolstering judicial credibility.

5.1. Guiding Conditions

Firstly, the principle of good faith, akin to fairness and justice, holds a fundamental position. However, in practical application, it often gets relegated to a supplementary role because, unlike statutory law, it is more of a moral imperative. The author posits that as long as parties do not contravene established legal principles, a certain degree and scale of dishonesty might be permissible. Moreover, throughout litigation, courts face significant challenges in identifying intentional or malicious behaviors such as withholding evidence or delaying proceedings. Even when such behaviors are identified, subsequent punishment is subject to judicial discretion. Many judges tolerate minor and small-scale dishonesty, while others, fearing complaints or preferring to avoid conflicts, refrain from imposing penalties. Consequently, dishonest behaviors are often overlooked or forgotten in practice. For instance, in case (2020) Yu 0116 Min Chu No. 3015, a sales contract dispute between Beijing XX Building Materials Company and Chongqing XX Company, the court ex officio added Beijing XX Company as a third party because the legal representative of both companies was the same individual. The court could only express helplessness towards Beijing XX Company's refusal to answer calls and accept summonses.

The principle of good faith is inherently vague. When a case involves specific statutory norms, those norms should be prioritized. In their absence, a compensatory approach is required, relying on guiding cases and the adjudication standards they establish.

Secondly, guiding cases serve as standards and bases for judicial decisions because they encompass adjudication rules that extend beyond statutory law while remaining within its intent. These rules, though different in form from statutory law, carry the same legal weight. The rules derived from guiding cases are highly specialized, targeted, and applicable, containing essential legal normative elements and meeting basic legal standards.

Thirdly, the principle of “treating similar cases similarly and different cases differently” forms the baseline for adjudication. Upon a case's submission to court, the preliminary task is to determine which guiding cases' adjudication rules apply. Following this selection, the legal facts of the cases must be analyzed and compared. Legal norms are grounded in legal facts, with obligations at their core. Legal facts typically consist of elements, structure, and performance. Variations in these aspects can result in different legal responsibilities. The similarity, comparability, and referentiality of subsequent case facts to previous ones are crucial conditions for applying guiding cases.

5.2. Guiding Techniques

The application of guiding cases requires certain necessary techniques, which include: fact comparison and correction, situation assessment and balancing, case selection and exclusion, and rule application.

First, judges compare the case under trial with the guiding cases issued by the

Supreme People's Court of China. It is often said that no two cases are exactly the same, so the term "different judgments for similar cases" inherently contains some semantic errors. However, the author understands that sometimes cases can be considered similar, but only when a fixed "reference point" is chosen. For instance, in cases where the cause of action is to confirm the invalidity of a contract, the statute of limitations does not apply to such cases. The non-application of the statute of limitations is one of the reference points for determining whether cases are similar or different.

In the case of the dispute over the agricultural contract between the Villagers' Committee of XX Village, Beixiaoying Town, Shunyi District (hereinafter referred to as "Beifu Village Committee") and the defendant Zhou XX (later changed to the cause of action "confirmation of contract invalidity"), the court's opinion is as follows:

First, it should be understood that if more than one year has passed since the contract was signed, the plaintiff loses the right to confirm the validity of the contract, but this does not necessarily mean that the contract is valid. Second, even if it is understood that the contract becomes valid one year after signing, since the "Agricultural Contracting Regulations" have been repealed, the basis for the contract's validity has disappeared, and the contract should be deemed invalid again⁹.

The author understands that the term "right to win" in the second line of the judgment is related to the statute of limitations. What the author wants to say is that cases with the cause of action of confirming invalidity do not apply to the statute of limitations, which is the so-called "similar cases, similar judgments." However, in this case, the court ruled that the plaintiff "lost" the right to win, which clearly applied the statute of limitations, resulting in "different judgments for similar cases." This case was not appealed, and the judgment took effect.

In common law jurisdictions, the initial task for judges after handling a case is to search for precedents. Naturally, common law systems possess sophisticated techniques for case differentiation. Conversely, in civil law jurisdictions, judges primarily seek out legal norms, resorting to guiding cases only when the legal foundation is inadequate.

In this study, empirical research was conducted using the LawInfoChina platform. Users can enter search terms (keywords) in the designated area, with "default" set as the "qualifier." The dropdown menu provides 18 options: "title, full text, case number, cause of action, case type, court, judge, law firm, lawyer, party, core issue, trial process, litigation request, defense viewpoint, dispute focus, this court's opinion, judgment basis, judgment result, etc."

For this study, we have selected "litigation request, dispute focus, this court's opinion, judgment basis, judgment result" as the "qualifiers" for comparison. The reasons for this selection are as follows:

The "litigation request" refers to the motion filed by the plaintiff, or whether

⁹[Legal Citation Code] CLI.C.65135819, (2017) Beijing 0113 Civil First Instance No. 19756.

the reasons involved in the request section include references to the principle of good faith or acts of bad faith;

The “focus of the dispute” is summarized by the judge, determining whether the principle of good faith becomes the focal point of the dispute, which illustrates the judge’s emphasis and concern regarding the principle of good faith;

The “court’s opinion” section, based on the findings, is the judge’s reasoning part, serving as the foundation for the judge’s ruling and summarizing the facts of the case. If the principle of good faith is included in this section, it can determine whether a participant is suspected of violating the principle of good faith.

The “basis for judgment” section explains that the legal norms related to the principle of good faith become the basis for the judgment. If the motion involving the principle of good faith is successful, sanctions will follow, becoming the result of the judgment.

Second, in selecting cases, it is advisable to choose cases adjudicated by the same court or even the same judge. This selection process is quite straightforward and can be easily accomplished on the Law Library website. If it is not feasible to select cases from the same court or judge, cases from the superior court of that jurisdiction can be chosen. Typically, cases from the provincial High Court provide guidance for courts within the entire province, and ultimately, guiding cases from the Supreme People’s Court can be selected.

The preceding sections of this article have already elucidated the search methodology employed. In the keyword section, one can enter various types of information such as the cause of action, like private lending; the names of the parties involved, such as Zhang San; the main issue, such as “false litigation”; or more comprehensive content, such as “the relationship between false litigation and the principle of good faith.”

The selected cases will be analyzed, summarized, and organized based on the content related to the principle of good faith in the judgments, forming the structure and substance of this article.

On the Peking University Law Library website, a search using the path “Judicial Cases (Column) + Principle of Good Faith (Keyword)”¹⁰ yields 150,151 civil cases. The “Reference Level” column provides the following information: Guiding Cases (Empirical Application) (1), Gazette Cases (21), Typical Cases (20), Reference Cases (18), Analysis Cases (165), Classic Cases (445), Application Cases (190), Law Library Recommendations (65,330), and Ordinary Cases (85,224).

The only guiding case is Guiding Case No. 109, issued on February 25, 2019: Anhui XX Construction (Group) Co., Ltd. v. Dongfang XX Real Estate Co., Ltd. on the dispute over letter of guarantee fraud. [Legal Reference Code] CLI.C.68720945. The judgment in this case is based on substantive law, specifically Article 12 of the Insurance Law, which addresses independent guarantee fraud, and Article 68 of the General Principles of Civil Law, which stipulates that fraud mainly involves fabricating facts and concealing the truth. Therefore, the

¹⁰Date of retrieval: September 6, 2022.

principle of good faith in procedural law does not apply to this case.

On the Peking University Law Database¹¹, a search using the path “Judicial Cases + Principle of Good Faith in Civil Litigation” yielded 231 results. In the “Cause of Action” column, the information obtained is: Civil (223), Intellectual Property (5), Enforcement (5). In the “Reference Level” column, the information is as follows: Typical Cases (1), Analysis Cases (1), Classic Cases (1), Recommended by Law (166), Ordinary Cases (63). In the “Court Level” column, the information is: High People’s Court (20), Intermediate People’s Court (149), Basic People’s Court (59), Specialized People’s Court (2).

6. Conclusion

The litigation system designed to establish and fix points of contention provides institutional safeguards for judges to accurately summarize the key issues during trials. Dishonest behavior is inherently concealed, but if a motion alleging dishonest behavior is raised, which is highly pertinent to the case outcome, the trial content must adhere to two principles: compulsory defense and fixation of the point of contention.

China’s new “Civil Procedure Law” has instituted a procedure for organizing points of contention, which significantly influences judicial decisions in the realms of fact-finding, legal acquisition, and legal interpretation. The impact on fact-finding is seen in the agreement to streamline points of contention regarding facts and evidence; the impact on legal acquisition is reflected in the adjustment of trial thinking and the allocation of the burden of proof; the impact on legal interpretation is seen in the judge’s duty to elucidate and the optimal explanation of the parties’ claims and the judge’s decision content.

In practice, the focus of the dispute is jointly confirmed and fixed, and the trial is conducted solely on these focal points. The establishment of this system facilitates efficient trial proceedings.

Therefore, establishing dishonest litigation behavior as a point of contention in the case is a crucial step in applying the principle of honesty. Simply arranging the application of the principle of honesty in terms of the subject, object, and stage of the case is evidently short-sighted.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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