

# Study of the Tendency of Adjudication of Obvious Unfairness System under the Dynamic System Theory

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**Abstract:** The obvious unfairness system is a key rule in Chinese Civil Law that regulates the impact of civil legal acts. Legislatively, the obvious unfairness system has passed through the provisions of the General Principles of Civil Law, the Interpretation of Civil Law, the Contract Law, the General Rules of Civil Law, and the Civil Code, and its theory of constructive conditions can be broadly separated into two parts: the theory of the unilateral essential and the theory of the bilateral essentials. In terms of justice, obvious unfairness system is divided into three tendencies of adjudication, focusing on objective conditions, subjective conditions, and both subjective and objective conditions. Based on the General Principles of the Civil Law and the Civil Code which legally define the Bilateral Essentials, in the face of new problems in judicial practice such as the difficulty of judging subjective conditions, we should utilize the dynamic system theory to reinterpret the constructive conditions of the obvious unfairness system. And based on the three common types of contracts to which the obvious unfairness system applies, we should explore the adjudication tendency of the obvious unfairness system under the dynamic system theory. The goal is to accomplish substantial fairness and justice by making its inner value orientation and outer legislative form into harmony and unity, carrying the trend of social development.

**Keywords:** Obvious Unfairness, Subjective Conditions, Objective Conditions, Dynamic System Theory

## 1. Introduction

According to the Jiangsu court's the legitimate rights and interests protection for persons with disabilities of the top ten typical cases of four: Chen Moumou v. Chen, Chen Yiquan, Wei Enhui motor vehicle traffic accident liability disputes [(2016) Su 0583 Civil No. 16987] judgment reasons<sup>①</sup> can be seen that this mediation agreement is a compensation agreement reached voluntarily by the litigant parties with full civil capacity after equal consultation<sup>[1]</sup>. The litigant party of the compensation had no intention of "taking advantage", subjectively. However, there was an objectively unreasonable discrepancy of up to 10 times between the amount of compensation agreed upon in the mediation agreement and the real loss of the wounded and incapacitated party. From the standpoint of fairness, justice, and protection of the lawful rights and interests of the disabled, the People's Court deemed the mediation agreement to be unfair and adopted the unilateral essential of the obvious unfairness system. If the General Principles of the Civil Law or the Civil Code were to be applied to this case, i.e., if the theory of the bilateral essentials of the obvious unfairness system were to be adopted, the mediation agreement could not be judged to be obvious unfairness under Bilateral Essentials since the subjective condition was not satisfied; but the outcome of the judgment would not be in accordance with fairness and justice clearly. Based on the dynamic system theory, even if the legislation provides for Bilateral Essentials, can it be modified in judicial practice to have the impact of substantive fairness?

## 2. The Reasonableness of Applying the Dynamic System Theory to the System of Obvious Unfairness

Article 59 of the General Principles of Civil Law, Article 72 of the Opinions on Civil Law, Article 54

<sup>①</sup> [(2016) Su 0583 Civil No. 16987] reason for the decision: the right to life and health of citizens is protected by law, infringing on the physical health of citizens should bear the corresponding compensation responsibility. After investigation, the accident caused the plaintiff Chen Moumou various losses totaling 834402.46 yuan. Although the mediation agreement is the original, the defendant parties voluntarily signed, but the agreement agreed to 84000 yuan one-time solution for the plaintiff before the commissioning of disability assessment, and the plaintiff's actual damage results are far from the obvious unfairness.

of the Contract Law, Article 151 of the General Principles of Civil Law, and Article 151 of the Civil Code can all be used to summarize China's legal provisions on the obvious unfairness clause. The conditions of the obvious unfairness system vary according to the specific contents of the law articles, which results in different judgment criteria of obvious unfairness in our judicial practice.

Article 59 of the General Principles of the Civil Law<sup>②</sup> and Article 52 of the Contract Law<sup>③</sup> do not stipulate the constructive conditions of the obvious unfairness system. Article 72 of the General Principles of Civil Law<sup>④</sup> stipulates the constructive conditions of the system of obvious unfairness, including subjective conditions and objective conditions<sup>[2-4]</sup>. The objective conditions refer to a clear violation of the principle of fairness and recompense for equal value and obligations of both parties, and the subjective conditions pertain to one party taking advantage of the other's advantage or taking advantage of the inexperience of the other party.

There is no unified standard for judges to invoke the legal norms based on the General Principles of Civil Law, the General Opinions of Civil Law, and Contract Law, all of which provide for the system of obvious unfairness. This has resulted in inconsistent standards of judicial decisions on the system of obvious unfairness at that time and the situation of different judgments in the same case. There are three categories of cases: instances involving either subjective or only objective conditions, and cases involving both sorts of conditions at once. The majority of the cases are affirmative cases in which the system of obvious unfairness is applied when only the objective conditions are considered. When merely considering the subjective conditions, the application of obvious unfairness is typically seen as being in the negative<sup>[5]</sup>. The judges in the preceding two instances rely heavily on the General Principles of Civil Law and the Contract Law, and they adopt the theory of the unilateral essential. At the same time, some courts evaluate both the subjective and objective conditions; and in this case, the judge cites the General Principles of Civil Law and Contract Law, and adopts bilateral essentials.

Article 151 of the General Principles of the Civil Law<sup>⑤</sup> stipulates the conditions of the system of obvious unfairness, including subjective and objective conditions<sup>[6]</sup>. The subjective condition is that one party takes advantage of the other party's state of distress, lack of judgment, and other circumstances. The objective condition is that the civil legal act establishes a significant unfairness in the rights and obligations of both parties. Article 151 of the Civil Code<sup>⑥</sup> is identical to Article 151 of the General Principles of the Civil Code<sup>[7]</sup>.

The General Principles of the Civil Law and the Civil Code inherited the provisions of the General Opinions on Civil Matters, and made it clear at the legal level that the system of obvious unfairness is based on both subjective and objective bilateral essentials<sup>[8]</sup>, and the degree of legal force is also stronger than that of the General Opinions on Civil Matters. After that, the courts have increasingly adopted the theory of the bilateral essentials in place of the theory of the unilateral essentials and gradually built a unified standard of adjudication for the system of obvious unfairness, that is, objectively, the serious imbalance of interests between the parties, and subjectively, one party to take advantage of its side or the intentional recklessness and inexperience of the other party<sup>[9]</sup>.

However, it is difficult to order the victim to prove the subjective intent of the perpetrator in practice due to the unequal status of the parties or the unequal information resources in their possession, such as the structural dominance situation, and there are a large number of cases in judicial practice where the victim is unable to prove the subjective intent of the perpetrator making the obvious unfairness untenable

<sup>②</sup> Article 59 of the General Principles of Civil Law: A party has the right to request the people's court or arbitration organ to change or revoke the following civil acts: (a) if the actor has materially misunderstood the content of the act; (b) if it shows fairness. The revoked civil act is invalid from the beginning of the act.

<sup>③</sup> Article 52 of the Contract Law: A party has the right to request the people's court or an arbitration institution to change or revoke the following contracts: (a) those concluded due to a material misunderstanding; (b) those that were obviously unfair at the time of the conclusion of the contract. A contract entered into by a party by misrepresentation or duress or by taking advantage of others, so that the other party violates the true intention, the injured party has the right to request the people's court or an arbitration institution to change or revoke. The people's court or arbitration institution shall not revoke the contract if the parties request for change.

<sup>④</sup> Article 72 of the Civil Opinions: If one party takes advantage of the advantage or takes advantage of the inexperience of the other party, causing the rights and obligations of both parties to be in clear violation of the principle of fairness and equal value and compensation, it is obviously unfair.

<sup>⑤</sup> Article 151 of the General Principles of Civil Law: If one party takes advantage of the other party's state of distress, lack of judgment, or other circumstances that make the civil legal act unfair when it is established, the injured party has the right to request the people's court or an arbitration institution to revoke it.

<sup>⑥</sup> Article 151 of the Civil Code: If a party takes advantage of a situation where the other party is in a critical state or lacks the ability to judge, causing a civil legal action to be established in an unfair manner, the injured party has the right to request the people's court or arbitration body to revoke it.

[10].

From the comparative legal perspective, regarding the new judicial practice, German and American courts have employed the "sand effect principle"<sup>⑦</sup> and the "sliding scale approach"<sup>⑧</sup> to describe the dynamic relationship link between the subjective and objective conditions of obvious unfairness respectively [11]. The implication is that between the subjective and objective conditions of unfairness, a high degree of adequacy of one condition may make up for the other's deficiency, and even the extreme severity of the objective (substantive) condition makes it unnecessary to determine whether the subjective (procedural) condition is satisfied [11].

In recent years, by further exploring and researching the relationship between the subjective and objective conditions of the system of obvious unfairness, using the "dynamic system theory", a few Chinese scholars attempted to redefine the judicial standards of the system of obvious unfairness from the perspective of judicial practice and interpretation theory without altering the law. According to Wang Limin's analysis of the evolution of the concept of obvious unfairness in comparative law, if the subjective condition of the actor is more sufficient, the payment between the parties could not be striking inappropriateness, and the existence of a subjective condition can be inferred if the payment between the parties is striking inappropriateness [12].

### 3. The Tendency of Adjudication of the Apparent Unfairness System Under the Dynamic System Theory

According to Verburg, the framework of dynamic system theory is that there are several conditions in a legal system that exert influence in a certain legal field [13], and there is a "glide correlation" between the number and intensity of each condition, i.e., the relationship between them is floating, and dynamic system theory employs the corresponding synergies of these conditions to illustrate and interpret legal norms or legal effects. The dynamic system theory is the use of these conditions to explain and interpret legal norms or legal effects. The premise of dynamic system theory is that a legal system should have multiple independent values and purposes, which is also known as pluralism of conditions, and there is also a hierarchy or order between different conditions, and the legal effect of the legal system is the result of mutual coordination of these principles or conditions typically, and although these conditions are independent of each other, they are not mutually exclusive, and to a certain extent, they are mutually compromising. Based on this connection, in a legal system, if one condition fails to satisfy, other conditions can be used to compensate [5].

The deployment of the obvious fairness system in judicial practice can be better described theoretically by bringing the obvious fairness system within the framework of dynamic system theory. The obvious unfairness system includes the subjective condition and the objective condition. The subjective condition is supported by the principle of autonomy of the Will, while the objective condition is supported by the principle of balance of payment, they are integrated and inseparable. However, depending on the situation, each principle may have a distinct set of strengths and limitations in different cases. Only by comprehensively examining the performance of these two principles as a whole rather than in isolation, can the conclusion of multiple legislative value orientations, i.e., normal purposes, of the obvious unfairness system under the dynamic system theory be reached in the process of application, allowing the obvious unfairness system can be implemented more fairly and precisely [11].

According to Zhu Qingyu, the interaction between the subjective and objective conditions of the system of obvious unjust can be split into two situations: the first is "address its shortcomings with surplus" and the second is "compensate for deficiencies with surplus" [14]. In this case, "address its shortcomings with the surplus" refer to the fact that the system of obvious injustice have both objective and subjective conditions, but that one of them is more sufficient than the general standard and the other is less so. The "compensate for deficiencies with surplus" refer that only one of the two constituent

<sup>⑦</sup> "Sand effect principle": Because of the difficulty of the victim's burden of proof of the violent person's subjective exploitation of another person's distress, recklessness, and inexperience, not providing a way to moderate this burden of proof will not help the application of the obvious fairness rule. Therefore, to better pursue objective fairness, the subjective condition of wanton exploitation can be presumed in certain circumstances, as long as it can be established that there is "not only a clear but also a particularly significant objective disproportion" between the payment and the treatment of the payment.

<sup>⑧</sup> "Sliding scale approach": There is a sliding scale relationship between substantive obvious unfairness and procedural obvious unfairness, the harsher the terms, the less need to negotiate the unfairness of the procedure; one side can discount the other side between substantive obvious unfairness and procedural obvious unfairness.

conditions of the system of obvious unfairness is required, and this condition is more platiful than the general standard, while the other condition is entirely deficient..

For these two situations, many scholars support "address its shortcomings with surplus" and oppose "compensate for the deficiency with the surplus". Zhu Qingyu argues that one of the constituent conditions of the system of obvious unfairness is completely missing, and it is difficult to apply by analogy <sup>[15]</sup>. Wuteng believes that there is a complementary relationship between the two conditions of the subjective conditional facts and the objective conditional facts based on the overall evaluation of the two conditions of facts, but that this is subject to the system of positive law provisions in the absence of both conditions. If it is considered that when the component of one side of conditional facts is extremely sufficient, another side of conditional facts is no longer required at all, then, on the one hand, it breaks through the restraint of the unilateral essential, which is not inconsistent with the conclusion of the interpretation of the text and the legislative purpose of Article 151 of the General Principles of the Civil Law, and on the other hand, the relevant misconduct has also undergone a qualitative change, transforming into misrepresentation, duress, violation of public order and morality and other acts adjusted by other provisions <sup>[11]</sup>. According to Wang Lei, this collaborative model does not mean that the objective condition can be removed as long as the intensity of the payment imbalance is great enough, or as long as the divergence from the principle of autonomy is high enough, rather, Wang Lei contends that while the principle of payment balance and the principle of autonomy of Will can complement each other, neither they cannot eliminate either one of the conditions, and both the subjective and objective conditions must be satisfied <sup>[10]</sup>. In this regard, I also hold the same view.

The concept of "compensate for the deficiency with the surplus", maybe further can be divided into "compensate for objective deficiencies with subjective surplus" and "compensate for subjective deficiencies with objective surplus". In these two situations, the precise application of the system of obvious unfairness should first identify the extent of the system's application. Zhu Qingyu argues that the unfairness system only is applied to acts of burden, but not disposal. Only the former may involve the exchange relationship between the payment and the payment to be made, or a similar exchange relationship, which may be objectively unfair. By the same token, the system of obvious unfairness does not apply to unilateral legal acts <sup>[8]</sup>. According to He Jian, the system of obvious unfairness applies to contracts and contract terms; it applies to paid contracts, but is not limited to dual contracts; it applies to both civil and commercial contracts; its focus is on whether the "exchange" (quid pro quo relationship) achieved through the contract is unfair <sup>[16]</sup>. From the above, the key to determining the extent of applicability of the unfairness system is whether the contract contains an exchange connection or a relationship that is comparable to an exchange relationship. In this regard, many scholars have summarized three main forms of contracts to which the unfairness system applies, namely, exchange contracts in general, personal injury settlement agreements, and contracts for compensation or indemnity in labor disputes.

In general, exchange contracts usually involve specific situations such as entrustment, sale, and purchase, lease, etc., and also include civil and commercial contracts. Under this type of contract, one of the parties usually exchanges money for certain goods or services, and there is no dispute about any personal or labor rights and interests; moreover, under normal circumstances, there is no flaw in either party's intention, and both parties have roughly equal economic strength, legal knowledge and experience... Therefore, both subjective and objective conditions should be taken into account, when judging whether it constitutes an obvious unfairness, and both subjective and objective conditions should meet the level of "general standard".

A personal injury settlement agreement, which is classified as an "unnamed contract" in China, can be seen as a settlement agreement agreed by the parties to a specific legal dispute <sup>[17]</sup>. This type of contract typically demonstrates that the plaintiff has suffered personal injury and the defendant should be held accountable for personal injury. It is crucial to concentrate on the standards of objective conditions when determining whether it represents unfairness since it concerns the issue of compensating for personal rights and interests, which is more significant than generic rights and interests. If the objective imbalance between the rights and obligations of the two parties is "quite significant" and exceeds the "general standard" of imbalance, then the "lower standard" can be judged that the indemnifying party subjectively. In the case of a party who has suffered a personal injury, the compensation party may be judged as having the intention of taking advantage of the situation. For instance, when a party suffers personal injury and enters into a settlement contract with the indemnifier if the creditor refuses to settle and falls back into the predicament of financial assistance for medical care, and the debtor knows or should have known about this situation, and the gap between the amount he promises to pay and the amount of damages under similar circumstances is too huge, it may constitute an exploitation of the state of distress type of

unfairness<sup>[11]</sup>. Even though the defendant has no intention of taking advantage of the situation, it may nevertheless be unjust if they can only offer compensation that is too far from the normal level due to their financial situation.

A contract for compensation or indemnity in labor disputes is an agreement between the employee and the employer for "the termination or termination of the labor contract for related procedures, payment of wages, overtime pay, economic compensation or indemnity, etc." [18]. The criteria of objective conditions must also take into account when determining whether it constitutes an obvious unfairness since it involves the issue of compensation or indemnification of labor rights and interests, which is more essential than general rights and interests. If, objectively, the imbalance between the rights and obligations of the two parties is "quite significant" and exceeds the "general standard", then the employer can be judged to take advantage of it with Subjective intention, in a "lower standard". Zhu Qingyu believes that this case belongs to the example that the employer who exploit its precarious situation (economic disadvantage) to make the contract objectively unfair. Therefore, based on the factual presumption, it can be presumed that the subjective condition of the employer taking advantage of the existence of the subjective condition, and the agreement is unfair as a result of Bilateral Essentials [19].

It can be shown from the above analysis that different types of contracts or cases have distinct inclinations to be adjudicated under the dynamic theory of the obvious unfairness system. This is because, underneath the system of apparent unfairness, there is a different emphasis on the principle of autonomy and the principle of balance of payment due to the distinct inclination tendency. The specific factors that influence the conclusion of the law are different from case to case, and accordingly, there is a difference in the intensity of the principle of autonomy and the principle of balance of payments. It is also this distinction between the intensity of the different conditions that allows for the mutual collaboration of the conditions to be realized [10]. If the case is more in need of reflecting genuine autonomy, the subjective conditions should be considered under the double effect of the pursuit of substantive justice and judicial efficiency. If the case must reflect the balance of payment, the objective condition should be considered. the objective and subjective conditions should be reviewed simultaneously in cases where both meaningful autonomy and balanced payment are required. Regarding the value, the case must reflect, it must be evaluated in light of the type of case, the financial resources and legal knowledge of the parties, the type of subject matter, and other factors. It is a case-by-case basis.

#### 4. Conclusions

The General Principles of the Civil Law and the Civil Code's provisions on obvious unfairness represent a development in legislative expression since they reinstate the unilateral essential. However, under the new judicial practice, it is necessary to deal with the relationship between the constructive conditions of the obvious unfairness system flexibly, to realize the justice of individual cases and pursue judicial efficiency. This will make its inner value orientation and outer legislative form harmonious and unified, allowing carry the trend of social development and play its proper role.

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