



# Civil Procedure Review

## AB OMNIBUS PRO OMNIBUS

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## THE ESSENCE AND STRUCTURE OF LITIGATION CLAIM ACKNOWLEDGEMENT

*Zhao Qing*

Assistant Professor at School of Law, Shanghai University (China)

Acknowledgement refers to the defendant's recognition of the litigation claim filed by the plaintiff during a judicial proceeding, aiming at concluding the litigation, and changing the right-duty relation between the plaintiff and the defendant from the substantial dimension. Therefore, acknowledgement has dual attributes, litigation act and substantive disposition act. The requirements of establishing the acknowledgement include: the actor of acknowledgement has the ability of litigation act or the agent has the power of agency; acknowledgement does not violate laws, public order and good customs; the object of acknowledgement belongs to the disposable matters of a party; acknowledgement conforms to the requirements for litigation essentials; the intention expressed by the actor for acknowledgement is genuine. The court makes a judgment on acknowledgement in accordance with the defendant's valid acknowledgement, with the same validity as that of a general judgment; however, there is a difference between their instrument forms. The wrong judgment on acknowledgement may be relieved through appeal or retrial; however, the grounds of relief are only limited to procedural violation or nonconformance of acknowledgement to the requirements for establishment.

### I. Introduction

It is stipulated in article 51 of the Civil Procedure Law of China that the defendant may recognize the plaintiff's litigation claim. Theoretically, one party's recognition is generally called "litigation claim acknowledgement" or "claim acknowledgement". The Civil Procedure Law of China aims at settling the disputes about the civil legal relation

between equal civil subjects. The party is entitled to dispose of the interests of litigation entities. Therefore, the defendant's recognition of a litigation claim filed by the plaintiff during litigation may not only define the status of the legal relation between the parties, but also produce a legal effect of terminating the litigation, which are orientated by the principle of implementing disposition doctrine in the civil procedures. In this sense, litigation claim acknowledgement is also taken as one of the modes for the parties to independently settle the dispute.

But here is a question: there is not much about the design and regulation of this important system of civil procedures in the Civil Procedure Law of China. The Civil Procedure Law of China just skates over the matter with "the defendant may recognize or rebut a litigation claim" in the posterior section of article 51, and limits the authority of a joint litigation agent and representative to recognize a litigation claim only with a few words "must be agreed by the parties" in article 53 and paragraph 3 of article 54. Not only that, although there are also some provisions related to "litigation claim recognition" in article 89 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, paragraph 3 of article 8 in the Several Provisions of the Supreme People's Court on Evidence in Civil Procedures, item 2 of article 32 in the Certain Provisions of the Supreme People's Court on Application of Summary Procedure for Trial of Civil Cases, all of which are the restatements of legislative stipulation. Honestly speaking, the Civil Procedure Law of China has been enforced for more than a quarter century. In spite of two significant modifications, the provisions related to litigation claim acknowledgement almost have never been changed. Therefore, relevant provisions on this system seem to be very principled and rough, with nothing about its application range, establishment requirements, legal effect, relief, and other basic composition and procedure supporting conditions, not to mention systematic construction and development. Naturally, the shortage of litigation claim acknowledgement in institutional construction has caused a negative impact on its judicial practice and application. For example, judicial interpretation even took a party's "recognition of the other party's whole or partial litigation claim" as one of the matters free from proof<sup>1</sup>, and regarded litigation claim acknowledgement as one of the contents of evidence system, confusing the relation between fact finding and the substantive law or between proof and disposition of a party.

On the other hand, Chinese scholars pay less attention to litigation claim acknowledgement system and its jurisprudence, except for a few discussions in some relevant books and papers.<sup>2</sup> After searching by entering two keywords, "claim acknowledge-

1 "The party needs not to present evidences for the following facts: (1) where one party clearly expresses recognition of case facts and litigation claim filed by the other party" provided by article 75 of Opinions of the Supreme People's Court on Certain Issues concerning the Application of the "Civil Procedure Law of the People's Republic of China" [FF (1992) 22] now has stopped and become invalid.

2 There are only two relevant monographs, see ZHANG JIAHUI, *LEGAL RESEARCH ON PARTY'S LITIGATION ACT* (China Democracy and Law Press, 2005); WANG DEXIN, *THEORETICAL RESEARCH ON ACT OF CIVIL LITIGATION* (China University of Politic Science and Law Press, 2011).

ment” and “claim recognition” in “HowNet”, the author only finds one monograph composed by Professor Chen Aiwu, Discussion on Acknowledgement of the Party in Civil Procedure (hereinafter referred to as the declarative monograph).<sup>3</sup> This research status quo is far from the due circumscription for litigation claim system and its jurisprudence. The declarative monograph, as a piece of monograph aiming at systematic research on litigation claim acknowledgement, is composed of four parts in structure, respectively explaining and evaluating the concept, nature, validity of and current legal provisions of litigation claim acknowledgement. These contents provide some inspiration and useful reference for the writing of this paper. But what is different in significance of writing from the declarative monograph is that, this paper, as one of my staged achievements related to theoretical research on litigation act of a party, aims at discussion about relevant problems based on the essentialism of litigation claim acknowledgement. According to the author’s researches, she thinks that all problems of litigation claim acknowledgement, as one concrete embodiment of litigation act of a party, are related to its essentialism. In law and practice, litigation claim acknowledgement is regarded as a private law act or procedure law act. Due to the difference between the private law and the public law, it is very likely to draw tit-for-tat conclusions and effects in explanation or treatment of relevant problems. One-hundred-word introduction to the essentialism of litigation claim acknowledgement in the declarative monograph not only leaves enough space for this paper’s researches on this topic, but also creates an opportunity for this paper’s deeper researches on relevant problems based on the essentialism.

To sum up, litigation claim acknowledgement is one important system in the Civil Procedure Law of China, however, no due attention is paid to it in existing legislation and academic researches so that there are many perplexities in practice due to the lack of strong support for the two aspects. In view of this, this paper intends to conduct systematic researches on litigation claim acknowledgement so as to make some contributions to enriching the jurisprudence and legislation of this system. To realize the writing purpose, the second chapter of this paper summarizes the origin of litigation claim acknowledgement system and the relation among it and other relevant systems; to build a legal basis for litigation claim acknowledgement system, the third chapter of this paper sorts out, explains and evaluates the essence of this system and its relevant theories among which the essentialism is also the focus of this paper; based on this, this paper conducts researches on jurisprudence and system design of establishment requirements in the fourth chapter, validity and manifestation in the fifth chapter, and relief of litigation claim acknowledgement in the sixth chapter by using the inherent “dynamic analysis method” of the Civil Procedure Law of China in accordance with the litigation system and the concept of progressive development unity so as to facilitate the construction of systematic theory of this system.

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3 Chen Aiwu, Discussion on Acknowledgement of the Party in Civil Procedure, 4 Journal of Huaiyin Teachers College (Philosophy and Social Science Edition) 450-457 (2001).

## II. Basic meaning of litigation claim acknowledgement

### A. Concept and Origin of Litigation Claim Acknowledgement

Litigation claim acknowledgement refers to that the defendant thinks there are grounds for the establishment of the plaintiff's litigation claim and recognizes it during the litigation. Current legislation calls it "recognition of the plaintiff's litigation claim", or "litigation claim recognition". Litigation claim acknowledgement is a compound concept developed based on litigation claim, so we may locate its context through the concept of litigation claim.

Investigated from legal system consciousness theory,<sup>4</sup> the generation and development process of the civil procedure law system of China was deeply influenced by the legislations of Germany, Japan and the former Soviet Union. However, for the setting of litigation claim recognition or acknowledgement system, it should be formed by transplanting relevant litigation systems in German and Japanese legislations. This is because "claim (Anspruch)" is a legal concept put forth by German scholar Windscheid for the purpose of establishing the German Civil Code known as "rights law system" as well as a unique concept in German law, but there is no concept of claim and corresponding claim right system in the Soviet laws, not to mention litigation claim acknowledgement. The "claim" is a concept of the German law transplanted from the Japanese law at the time of civil legislation in the later Qing Dynasty of China. Due to the transplantation from the German law, the Japanese civil law and civil procedure law respectively translated Anspruch into "claim" and "claim right". Civil legislation in the later Qing Dynasty directly followed the Japanese concept translated from the German law, it also translated Anspruch in the German law into "claim" or "claim right". It should be pointed out that "claim" and "claim right" are two translations of the same concept Anspruch in the German law. In general, civil law scholars translated Anspruch into "claim right" based on the standpoint of right, while the civil procedure law scholars translated Anspruch into "claim" based on the standpoint of act. This is also the origin of using "claim right" in the civil law and "claim" in the civil procedure law to express the concept "Anspruch" during the period of the later Qing Dynasty and the Republic of China.

The existing Civil Procedure Law of China abandons "claim" and replaces it with "litigation claim", so "litigation claim recognition", as a statutory term, is the same as Anerkenntnis in the German law and Seikyu Ninntaku in the Japanese law. In the Civil Procedure Law of China and its theoretical researches, the replacement of "claim" with "litigation claim" has a significance of advancing with the times. This is because claim, as one concept in the substantive law, only refers to performance claim for the counter-

4 Chen Gang, The Great Significance of Legal System Consciousness in the Research of Civil Procedural Law, 5 Chinese Journal of Law 40 (2012).

party” to perform or not to perform a certain act”and there will be no objection against”claim”as litigation object during the period when there is only one litigation type: action of performance in both theory and judicial practice. However, after litigation types developing into action of confirmation and action of formation, it is obviously biased for”claim”to still generally refer to all types of litigation objects. It is well known that both action of confirmation and action of formation have no performance content. Therefore, claim in the Civil Procedure Law of China is different from the claim in the substantive law, and should include confirmation and formation contents. For that reason, German scholars created the concept “litigation claim” or “claim in the German civil procedure law” to make up the limitation of”claim”only taking performance as content, while Japanese scholars translated prozessualer Anspruch into Sosyuu Seikyu and continued to use it. Litigation claims are a set of confirmation claim, formation claim, performance claim and other claims in the procedure law, and still belong to legal concepts in Germany and Japan, but still follow “claim” without any change due to the consideration of legislative technique. In contrast to this, the Civil Procedure Law of China adopts “litigation claim” rather than “claim”, which is just still accustomed to using “claim” in scientific theory, and the “declarative monograph” above is such an example. Therefore, “litigation claim”used in this paper has the same meaning as that of “claim”in German and Japanese civil procedure laws. “Litigation claim recognition”, as a statutory term in the existing Civil Procedure Law, is also the same as Anerkenntnis in the German law and Seikyu Ninntaku in the Japanese law.

Anerkenntnis in the German law or Seikyu Ninntaku in the Japanese law are also translated into “acknowledgement”. Compared with “recognition”, acknowledgement is a specially- designated concept, which means that the defendant unilaterally expresses whole or partial requisition (Klagebegehren) of the court for the plaintiff’s allegation is reasonable. Recognition is a general concept, including fact recognition and litigation claim recognition which are two subordinate concepts with entirely different meanings, effects and legal regulations. From the perspective of emphasizing on the difference between litigation claim recognition and fact recognition, it is more scientific to directly call the former as acknowledgement.

## **B. Acknowledgement Features and Its Difference from Adjacent Systems**

Main features of litigation claim acknowledgement are as follows: firstly, acknowledgement object is the plaintiff’s litigation claim or the plaintiff’s claim against the defendant and is divided into two types, acknowledgement of whole litigation claim and acknowledgement of partial litigation claim; secondly, litigation claim acknowledgement subject is the defendant, including counterclaim plaintiff with defendant litigation status as well as plaintiff and defendant of the original case in litigation with independent claim right; thirdly, after the establishment of litigation claim acknowledgement, the plaintiff shall not bear the burden of proof for the establishment of litigation claim;

fourthly, litigation claim acknowledgement has the effect of concluding the litigation, and the court should confirm the litigation claim acknowledged by the defendant by judgment and make a judgment that the plaintiff wins in terms of the litigation claim, which has a legal validity of judgment (force of judgment) on the plaintiff. Litigation claim acknowledgement has the particularity of concluding the litigation as per the defendant's act of disposition rather than the court's act of hearing, so it is theoretically regarded as one of the means for the parties to independently settle the dispute.

From the perspective of the defendant's agreeing with or recognizing the plaintiff's litigation views, although there are many similarities among admission, rights admission and litigation claim acknowledgement, it is legally necessary to strictly distinguish the natures and application ranges of the three as mentioned earlier, to avoid regarding the validity of litigation claim acknowledgement only as one of the matters free from proof in judicial practice.

Firstly, the admission in the civil law procedures refers to a party's recognition or confession of the facts unfavorable to itself, and the objects are case facts. Although both admission and litigation claim acknowledgement will impose the responsibility on the parties to provide evidence to prove the facts free from proof, the admission will not certainly produce the effect of the establishment of litigation claim. When the defendant admits that partial facts are essential for the establishment of litigation claim, the plaintiff is only responsible for providing evidence to prove the partial facts free from proof rather than all facts free from proof; even if the defendant admits all facts essential for the establishment of litigation claim, legal basis for the establishment of the plaintiff's litigation claim does not stem from the result of the defendant's acknowledgement or recognition of the above, but stems from the result concluded according to the existence of minor premise (essential facts) in judgment syllogism. Virtually, this is the result of implementing the adversary doctrine in the civil law procedures. In contrast to this, the legal basis for exempting the plaintiff from the responsibility to provide evidence to prove essential facts due to the litigation claim acknowledgement stems from disposition doctrine, the principle of the parties' disposition of rights and interests of litigation entities in the civil law procedures. That is to say, after the defendant's acknowledgement of litigation claim, the plaintiff's rights proposition and litigation claim shall be deemed as established, and it shall produce a binding force on the court to make a judgment that the plaintiff wins according to this, which is orientated by the principle of implementing disposition doctrine in the civil law procedures. If the plaintiff is still required to assume the responsibility to provide evidence to prove the facts essential for the establishment of litigation claim in this circumstance, it may be accounted for that the judge cannot regard the litigation claim as established due to the plaintiff's lack of evidence, thus violating the principle of implementing disposition doctrine. In addition, in civil law procedures, admission object is almost not restricted by law, and a party may recognize or confess any fact unfavorable to itself. However, litigation claim acknowledgement object is restricted by law. For example, as provided

by the Japanese law, when the court makes a judgment in favor of litigation claim for group relation of a joint-stock company, the judgment has external validity. Therefore, the litigation claim acknowledgement system is not applicable to such litigation.

Secondly, rights admission refers to a party's acknowledgement of rights or legal relations unfavorable to itself with respect to the premise for the establishment of litigation target. Although both rights admission object and litigation claim acknowledgement object are rights or legal relations, rights admission does not necessarily produce the effect of establishment of litigation claim. For example, as for the plaintiff's claim for returning the house based on the relations under the house leasing contract (litigation claim), the defendant admits the rights with respect to the relations thereunder, one of establishment requirements for the litigation claim, but denies other facts essential for the establishment of claim for returning the house. In this circumstance, the plaintiff's litigation claim shall not be necessarily established.

It should be noted, admission object is fact while rights admission object is right or legal relation, although both rights admission and admission have the necessity to exempt the party from proving the "admitted" object. Right admission is theoretically listed as one kind of admission because rights admission object belongs to the minor premise (essential facts) in judgment syllogism, and these essential facts may be determined by action of intermediate confirmation or rights admission.<sup>5</sup>

### **III. The essentialism of litigation claim acknowledgement**

Litigation claim acknowledgement is a litigation act implemented by the defendant in litigation field. However, whether such an act belongs to private law acts or procedure law acts in attribute of the legal area is a proposition required to be discussed for the essentialism of litigation claim acknowledgement, and also a premise problem required to be faced for the construction of the legal system of litigation claim acknowledgement. This is because there is a difference between the private law and public law in essence between the substantive law and procedure law on condition of coexistence of substantive law and procedure law in the current legal system. In this background, to regard litigation claim acknowledgement as a procedure law act, it should be regulated and explained in accordance with the Civil Procedure Law of China with the nature of the public law and its jurisprudence; conversely, to regard litigation claim acknowledgement as a private law act, it should be regulated and explained in accordance with the civil substantive law with the nature of private law and its jurisprudence. It goes without saying, they are different in essentialism, and also different in construction and interpretation of litigation claim acknowledgement system, even opposite.

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5 Duan Wenbo, Establishing the Interlocutory Judgment System in Our Civil Litigation, 10 Political Science and Law 144 (2009).

Chinese scholars have not conducted an in-depth research on the essentialism of litigation claim acknowledgement, most of them regard it as a simple litigation act or procedure law act, but pay less attention to its legal basis. In the declarative monograph, although it is pointed out that acknowledgement is a right with substantially significant content,<sup>6</sup> there is neither in-depth discussion on how to determine the nature of such a right in attribute of the legal area nor discussion on systematic institutional theory construction as per the defined nature. Investigated from phenomenology, in the field of the civil law procedures, litigation claim acknowledgement is a litigation act with double effects, procedural effect and substantive effect, so its essentialism has been discussed for a long time. It may be said that there are many different theories being unable to decide which is right. To sum up, the representative theories are procedure law theory, substantive law theory and double nature theory.

## A. Procedure Law Theory

Procedure law theory regards litigation claim acknowledgement as a simple procedure law act, and explains litigation claim acknowledgement system and its jurisprudence from the standpoint of the procedure law monism. At present, the procedure law theory is dominant in German academia. However, there are two representative theories due to the difference in methodology, which are the exclusion theory represented by Lent and the function theory represented by Baumgartel, although both of them are called procedure law theory

1. Exclusion Theory. —Based on the interpretation of article 781 of the German Civil Code, Lent, in his paper,<sup>7</sup> advocates that litigation claim acknowledgement neither belongs to debt recognition deed as provided by this article nor shall be regulated and explained in accordance with the substantive law and its jurisprudence because it does not belong to private law acts. The specific elaborations mainly cover three aspects as follows:

Firstly, debt recognition and litigation claim acknowledgement are different in constitutive requirements and exercise modes, so litigation claim acknowledgement does not belong to debt recognition deed provided by article 781 of the German Civil Code. Specifically speaking, first of all, in accordance with the provisions of article 781,<sup>8</sup> contracts with debt relation existence recognition as content shall be expressed as effective requirements in writing, and litigation claim acknowledgement belongs to uni-

6 Chen Aiwu, Admission in Civil Action, 23 (4) Journal of Huaiyin Teachers College 450 (2001).

7 LENT, ACKNOWLEDGMENT BY PURE MEANING OF PROCEDURE, in FOR L. ROSENGER'S BIRTHDAY MEMORIAL at 123 (Beck Press, 1949).

8 Article 781 Debt Recognition of the German Civil Code: it needs to give an intention of recognition in writing to make contracts (debts) recognize the existence of debt relationship effective, where any other mode is provided for the establishment of debt relationship recognizing its existence, it needs to adopt this mode for recognizing contracts, see DU JINGLIN & LU CHEN, ANNOTATIONS TO GERMAN CIVIL CODE, at 441-442 (Law Press, 2011).



lateral acts conducted in oral form and does not meet effective requirements for debt contract recognition. Next, debt recognition has non-reason and creative properties; litigation claim acknowledgement is the defendant's recognition of litigation claim filed by the plaintiff based on the existing creditor's rights, in other words, it is the defendant's recognition of existing debtor-creditor relationship, rather than the formation of new debtor-creditor relationship through recognition. Last, the party not only can recognize debt outside litigation, but also can recognize debt outside litigation and advocates debt recognition in litigation, however, litigation claim acknowledgement must be made in litigation.

Secondly, "recognition (Anerkennung)" in the substantive law and "recognition" used in litigation claim acknowledgement are not the same concept. Lent explained the difference of "recognition" in the two legal areas with discontinuance of action limitation as an example. Article 212 of the German Civil Code gives provisions on discontinuance of action limitation due to debt recognition, however, due to prosecution, action limitation discontinues in a lawsuit in which the defendant makes acknowledgement, so the defendant's acknowledgement will not produce the same limitation discontinuance effect as that of debt recognition. The same logic can also be verified in article 380, article 1718, article 847, article 1300 and other clauses of the German Civil Code.

Thirdly, to regard litigation claim acknowledgement as a substantive law act, when litigation target belongs to absolute rights without the nature of creditor's right or claim for confirmation or claim for formation, it is difficult to explain as per substantive jurisprudence. For example, when there is no action of negative confirmation similar to the action of confirmation in debt, it is impossible for the defendant to make acknowledgement or recognition with the significance of the substantive law (debt recognition), even acknowledgement of the plaintiff's debt without the claim for confirmation only has a significance in the procedure law rather than as per the provisions of the substantive law. Similarly, the defendant's acknowledgment of claim for formation advocated by the plaintiff is not likely to be debt recognition in the substantive law, and can only be acknowledgement in the procedure law.

To sum up, based on excluding the possibility of litigation claim acknowledgement as a private law act, Lent conclusively thinks that litigation claim acknowledgement is unlikely to have the nature of the substantive law no matter in what sense, so it should be regarded as a simple litigation act, that is a procedure law act.

2. Function Theory. —Baumgartel elaborates the essence of litigation claim acknowledgement from the standpoint of function theory in his paper *The Essence and Concept of Litigation Act of a Party in Civil Procedure*.<sup>9</sup> He thought that it could not

9 BAUMGARTEL, *THE NATURE AND CONCEPTION OF LITIGATION ACTION*, at 143 (Carl Heymanns Verlag, 1957); Japanese jurist Isikawa Akira transported this thesis and serialized on *Hanrei Times* No.353-355, 357, 359, 360-

be directly concluded only based on its procedure law effect that litigation claim acknowledgement was a simple litigation act, which could be concluded only based on non-relation of procedure law effect to substantive law effect. Therefore, Baumgartel investigated the relation between the procedure law function and substantive law function of litigation claim acknowledgement. He thought litigation claim acknowledgement had the function of settling a dispute and concluding the litigation because it belonged to acts aiming to settle disputes and bringing legal order and peace. In addition, he also explained the legitimacy of such an act as follows: the defendant's acknowledgement of litigation claim advocated by the plaintiff usually stemmed from the motivation that it was indisputable to admit that the plaintiff's litigation claim was established on grounds or it was likely to make itself lose other interests thereby even if refutable. In a word, the defendant's acknowledgement of whole litigation claim of the plaintiff without argumentation is a "motivated behavior" for some reasons. Although it usually requires the court to make a judgment in line with the status of substantial legal relations to protect private rights and maintain the private law order based on the consideration of civil procedure system teleology, under the premise of not violating public interests, a party can also independently decide the legal order restoration, which is not directly related to the status of substantial legal relations predetermined by the substantive law. Therefore, based on the superior position theory of legal order restoration, Baumgartel thought that litigation claim acknowledgement did not require close relation of its procedure law function to substantive law in civil law procedures. In short, according to Baumgartel's explanation of function theory, litigation claim acknowledgement has the function of settling disputes and restoring the legal order in behavior; considering the standpoint of emphasizing a party's independent restoration of the legal order, such a function should be superior to the substantive law function. In addition, Baumgartel thought that litigation claim acknowledgement also had the function of forming a basis for judgment and the function was unrelated to the substantive law function. This is because the court should make a judgment that the defendant fails according to the defendant's acknowledgement of litigation claim in accordance with the provisions of article 307 of the German Code of Civil Procedure, without considering the status of legal relations determined by the substantive law.

Although Lent and Baumgartel differed in demonstration methods as mentioned earlier, during the cognition of essentialism. of litigation claim acknowledgement as mentioned earlier, both of them based on procedure law monism that the defendant's acknowledgement of litigation claim belonged to procedure law acts, and strongly denied the real impact of such an act on substantial legal relations. They tried to understand acknowledgement as a core defect of the procedure law theory from institutional dimension of complete segregation with the substantive law.

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364, 366, 368 Uemura Akihiro, Conception of Litigation Act in Civil Litigation, 29 The Journal of the Association of Law and Economics 55 (1959).

## B. Private Law Act Theory

Private law act theory regards litigation claim acknowledgement as a simple private law act in essence, and advocates to construct and interpret it according to private law theory. Early private law act theory equated litigation claim acknowledgement with debt recognition in civil law, but it has become a theory in the law history due to the interrogation by procedure law act theory put forth by Lent et al. In order to overcome the defects of traditional private law act theory and respond to the challenges of procedure law act theory, scholars also put forth new private law act theories, among which is mainly represented by Professor Ishikawa Akira, a Japanese scholar.

Professor Ishikawa's private law act theory is based on refutation against procedure act theory, or maintained through criticizing procedure act theory. There are three main arguments.<sup>10</sup> Firstly, the substantive law is a code of conduct in the first place, and the procedure law can only form an empirical code in the second place, so we cannot institute a code of conduct unrelated to the substantive law through the procedure law, therefore, litigation claim acknowledgement is only a reflection of the status of substantial legal relations.<sup>11</sup> Secondly, the procedure law act theory proves that litigation claim acknowledgement is unrelated to the substantive law based on the pursuit of formal truth and lack of judgment system. However, under the circumstance of defendant's absence and the plaintiff's application for judgment by default, the court may deem substantial legal relations between the parties in the undisputed status, and make a judgment accordingly. Although the design of such a system is punitive in nature, it is still a reflection of the status of substantial legal relations between the parties. Therefore, the judgment by default is the same as litigation claim acknowledgement, and both of them are reflections of the status of substantial legal relations. As a result, it cannot prove that litigation claim acknowledgement is unrelated to the substantive law based on the system of judgment by default. Thirdly, according to the interpretation of procedure act theory, litigation claim acknowledgement is rights admission of litigation target, so this act belongs to procedure law acts in nature. Regarding this, Professor Ishikawa thought that it was required to consider whether interpretation and application of the substantive law were correct or not because the court needs to make a judgment according to the content of acknowledgement under the system of judgment by acknowledgement (the court makes a judgment based on litigation claim acknowledgement). But it is not so for the recognition criterion of rights admission, and only limited by not hindering the objectivity of judgment, so it is obvious that the court cannot make a judgment based on a party's rights admission. Moreover, in a public interest lawsuit where a party lacks the interpretation provided by the substantive law and applicable authority, and under the circumstances not allowing admission

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10 ISIKAWA AKIRA, *RESEARCH OF LITIGATION ACTION*, at 163-168 (Sakai Syoten Press, 1975).

11 Isikawa Akira, *Legal Nature of Acknowledgment*, 13 *Journal of Civil Procedure Law*, 102 (1963).

such as litigation obviously without grounds, if the acknowledgement is equated with rights admission, acknowledgement will not be permitted, just as rights admission, clearly contrary to general theory of litigation claim acknowledgement.<sup>12</sup> Only after regarding acknowledgement as an entity act can the above difficulty be overcome. After criticizing procedure act theory as mentioned above, Professor Ishikawa explained the difficulty of substantive law theory, which was why claim acknowledgement would produce an effect in the procedure law. He thought that claim acknowledgement was an entity act made in litigation and confirmed by the court and its effect in the procedure law stemmed from the court's public power act. Professor Ishikawa avoided criticizing substantive law theory through this explanation.

### C. Compromise Theory

Compromise theory is also called amphoterism theory, which believes claim acknowledgement has not only the features of litigation act, but also the nature of disposition act in the substantive law. Professor Takeshita Morio is the initiator of this view. Especially after Japan abandoned the system of judgment by the acknowledgement and adopted the system of acknowledgement letter,<sup>13</sup> claim acknowledgement may be understood as "the defendant's statement unconditionally recognizing the plaintiff's litigation claim contains the proposition for existence (or no existence, similarly herein-after) of rights constituting the content of litigation claim and the intention of regulating legal relations between the plaintiff and the defendant, it contains the defendant's intention of initiatively making the existence of rights advocated by the plaintiff in the substantive law become legitimate", so "the plaintiff's statement advocating the existence of substantive rights in litigation is also a disposition act in the private law".<sup>14</sup>

### D. Real Benefits from the Research on Essentialism

The research on essentialism is not to pursue pure theory or to be metaphysical, but to gain a legal starting point or foundation for the construction of scientific litigation claim acknowledgement system. The elementary proposition of essentialism is how to define the nature of legal area of litigation claim acknowledgement, which elicits the practical problem about how to correctly regard and treat the relation between substantive law and procedure law when we establish and explain litigation claim acknowledgement system.

12 LENT, *supra* note 7, 138.

13 It is provided by article 267 of the Civil Procedure Law of Japan that "reconciliation, waiver or acknowledgement of litigation claim shall be recorded into a document, and the record shall have equal validity of judgment". Therefore, the document recoding the defendant's acknowledgement content is called "acknowledgment document" in Japan, similar to written statement used in Chinese practice, and translated into "acknowledgement letter" in this paper.

14 KAKEKO HAJIME ET AL. *EXPLANATION OF CIVIL PROCEDURE LAW*, at 1466 (Koubundou Press, 2011).

On the one hand, as mentioned earlier, procedure law theory unilaterally emphasizes the significance of litigation claim acknowledgement in the procedure law and excludes the adjustment of litigation claim acknowledgement in the substantive law from the standpoint of application of excluding debt recognition in the substantive law or from the standpoint of functional theory of legal order peace restoration. However, according to the investigation from the standpoint of “rights existence” or “litigation on law” that the civil procedure system is to protect private rights and maintain private law order, it is necessary to make an integrated explanation of the substantive right-duty relation between the parties which is produced based on debt recognition and litigation claim acknowledgement. It is unlikely to thoroughly explain the status of legal relations about substantive rights and duties produced by litigation claim acknowledgement as well as the legitimacy and basis of the plaintiff’s obtaining of a substantive win by judgment in the substantive law without this. Especially when the defendant acknowledges the plaintiff’s rights proposition and litigation claim based on any reason beyond the facts essential for the establishment of the plaintiff’s litigation claim, if the defendant’s acknowledgement is deemed as different in nature from disposition act in the substantive law only based on the result concluded by consideration of procedure law order superiority, we need a theoretical-origin explanation about why the procedure law is superior to the substantive law in application. But from the standpoint of litigation theory of “rights existence” or “litigation on law”, civil litigation does not have the particularity of instituting substantial legal relations, and it can only determine and implement the prescribed substantial legal relations and should take current Civil Law as the basis for judgment; otherwise, it cannot realize the institutional purpose of protecting private rights and maintaining private law order. Thus, the status of substantial legal relations determined by a judgment made according to litigation claim acknowledgement not only has a significance in the procedure law, but also in the substantive law; the nature of legal area of legal norms related to litigation claim acknowledgement system is not limited to the procedure law; furthermore, we should not regard litigation claim acknowledgement as a simple litigation act.

On the other hand, if litigation claim acknowledgement is only regarded as a substantive law act unrelated to the procedure law, it is difficult to explain the origin of effect of concluding the litigation. Although Professor Ishikawa ever said that it was produced by the court’s public power act and unrelated to a party’s act, the civil litigation phenomenon tells us that the defendant obviously has the subjective intention of settling the dispute and realizing legal order peace during acknowledgement of litigation claim. Therefore, we cannot think that litigation claim acknowledgement is unrelated to the defendant’s intention of trying to conclude the litigation, and should regard it as a litigation act inseparable from the defendant’s subjective intention. In addition, Professor Ishikawa neither clearly and thoroughly explained the behavioral traits of litigation claim acknowledgement from entity act nor specifically defined litigation claim acknowledgement as a certain substantive law act from substantive law,

that is, whether such an act belonged to debt recognition, the recognition of creditor's right notice or substantial evidence deed, or all of the three above?

To sum up, the research on essentialism of claim acknowledgement is conducive to our cognition of dual attributes of litigation claim acknowledgement. Although litigation claim acknowledgement belongs to a system in procedure law and is the defendant's litigation act in the field of litigation, its function and effect are beyond the scope of the procedure law and involve the substantive law. It cannot be denied that litigation claim acknowledgement is one way for a party to dispose of substantive rights during the determination of the status of substantial legal relations, and substantive law function (norm of adjudication). Therefore, the valuation and regulation of such an act cannot be conducted unilaterally from the civil procedure law with the attribute of the public law, but should combine substantial law theory with the value of the private law. The so-called combination refers to litigation claim acknowledgement's compromise of value conflict in the substantive law and procedure law, which is, the compromise of conflict between self-regulation of private law acts and state intervention of procedure law acts. Based on the cognition of essentialism with such a significance, laws and systems related to requirements for establishment, validity and relief of litigation claim acknowledgement will be explained as follows.

#### **IV. Establishment requirements for litigation claim acknowledgement**

What is different from exclusive chapter on civil legal acts and establishment requirements in current civil law is that there are no special provisions on litigation acts and general requirements for establishment in the Civil Procedure Law of China, not to mention special provisions on requirements of establishing the litigation claim. In accordance with jurisprudence, the requirements of establishing the litigation claim acknowledgement should not only include general requirements for litigation acts, but also include special requirements because it is specific and special among litigation acts. In accordance with relevant provisions of the Civil Procedure Law of China, combined with elaborations of litigation act theory and litigation claim acknowledgement essentialism, in this paper, the author thinks that there are five requirements of establishing litigation claim acknowledgement: first, the actor of acknowledgement has the ability of litigation act or the power of litigation agency; second, the object of acknowledgement does not violate laws, public order and good customs; third, the defendant is entitled to dispose of the object of acknowledgement; fourth, the acknowledgement conforms to the requirements for litigation essentials; fifth, the intention expressed by the defendant for acknowledgement is genuine.

Among them, the first item "having the essentials in the procedure law" means that the acknowledgement requires general essentials for the establishment of litigation

act, specifically the party making the acknowledgement has the ability of litigation or the agent has corresponding power of agency, and acknowledgement does not violate laws, public order and good customs. As for the ability of litigation and power of agency, as the acknowledgement is the intention expressed by the defendant to the court with respect to recognition of the plaintiff's litigation claim for the purpose of settling the dispute and concluding the litigation, the defendant, as the expresser, certainly has the corresponding ability of litigation or power of agency. For example, article 53 of the Civil Procedure Law of China stipulates that "representative's alternation or renunciation of litigation claim or recognition of the other party's litigation claim or reconciliation must obtain consent from the represented party" and article 59 of the Civil Procedure Law of China stipulates that "litigation agent must obtain special authorization from bailor to recognize, renounce or alter litigation claim...". The requirement that acknowledgement does not violate laws, public order and good customs can be accounted for that the right advocated by the plaintiff as litigation claim should be recognized by rights system provided by current law and contain no contents violating public order or good customs. For example, it is not allowed to request the court to confirm any real right unrecognized by law or request the other party to conduct a criminal act, etc. due to the violation against mandatory provisions of law, so it is certainly not allowed to acknowledge the so-called "litigation claim" filed by the defendant; even though the content of litigation claim is recognized in form (e. g. claim for payment), if the grounds for the litigation claim violate any law, public order or good customs, the defendant is still not allowed to make acknowledgement. The essentials in the procedure law are general requirements for the establishment of acknowledgement acts and other litigation acts. The other three items need to be discussed in detail.

## **A. The Defendant's Entitlement to Dispose of the Object of Acknowledgement**

The defendant's entitlement to dispose of the object of acknowledgement refers to that litigation claim as the object of acknowledgement is within the control of disposition principle in content. In other words, as for a lawsuit not using the principle of disposition, even if the defendant acknowledges the litigation claim, the court shall not accept it unconditionally.

It is generally accepted that the application of disposition doctrine should be limited in all kinds of civil lawsuits because litigation claims involve the interests of most people in identity relation lawsuits, that is to say, the judgment should be made based on objective facts and neither party may voluntarily restrict the determination of judge. There are no provisions on the application of acknowledgement to identity relation lawsuits in the Chinese law. However, "where a party clearly recognizes case facts stated by the other party, the other party needs not to prove these facts, but except for lawsuits involving identity relation" as provided by paragraph 1 of article 8 in the Several Provisions of the Supreme People's Court on Evidence in Civil Procedures, clearly

denying the application of admission system to identity relation lawsuits. Admission system is different from acknowledgement. But from the perspective of the effect of disposition right, compared with admission, litigation claim acknowledgement disposes of the rights of the parties more directly, and will also exert a serious adverse impact on the interests of the actor. Admission only recognizes a fact unfavorable to itself and limits the court's determination of the fact. Acknowledgement is made directly with respect to litigation claim; once the defendant makes acknowledgement, the court will have no leeway to investigate case facts, and cannot implement the objective reality requirement in an identity relation lawsuit. From this perspective, it can be assumed that it is naturally not allowed to accept litigation claim acknowledgement in identity relation lawsuits not allowing admission.

It is assumed here that it requires absolute elimination of application and necessity of litigation claim acknowledgement in identify relation lawsuits. There are two reasons: firstly, the divorce by agreement and renunciation of adoptive relation by agreement are usually recognized in China. The parties may freely renounce marital or adoptive relation, and the judgment may play a role only when the parties cannot reach a renunciation agreement, even allowing the parties to voluntarily reach a renunciation agreement during the litigation process. Secondly, procedural function of judgment in a divorce or adoptive relation renunciation lawsuit mainly lies in determination of the reality of essentials for renunciation of marital or adoptive relation through court trial; however, due to the relativization and objectivation of reasons for renunciation of marital or adoptive relation in the substantive law, the significance of determination through trial procedures has been greatly reduced. In this background, it would be inappropriate for the court to still insist on investigating functions and powers for a case where the defendant acknowledges the litigation claim.

## **B. Conformance to the Requirements for Litigation Essentials**

Litigation essentials are the requirements for legal establishment of litigation, and are also prerequisites for the court to conduct a substantive hearing for the case.<sup>15</sup> In a case where the defendant makes acknowledgement of litigation claim, as the judgment made by the court according to the defendant's acknowledgement of litigation claim is equal to a common civil judgment in validity, from the perspective of loyalty to judgment system, considering compromise with common judgment system, judgment made for accepting litigation claim acknowledgement should take conformance to litigation essentials as the prerequisite of litigation in principle. That is to say, where it is confirmed that the case lacks litigation essentials before the defendant makes acknowl-

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15 As for the discussion about connotation and function of litigation essentials, see Zhang Weiping, *The Requirements to Commence an Action and Substantive Requirements of Judgment*, 6 *Chinese Journal of Law* (2004); Xue Shaofeng, *Discussion on the Requirements of Civil Litigation*, 12 *Forward Position* (2006).



edgement of litigation claim, the court shall judicially decide to dismiss the prosecution. However, under the circumstance that it is unclear whether litigation essentials for the case are complete when the defendant makes acknowledgement of litigation claim, there is opposition against whether to require the people's court to conduct a single hearing of litigation essentials. There are two reasons: firstly, litigation claim acknowledgement which has dual attributes, litigation act and substantive disposition act, is a party's independent settlement of a dispute, is a system recognized from the perspective of the party's interests, and is in line with the party's litigation purpose. Litigation essentials are requirements put forth to define the boundary of judicial power, distinguish the jurisdiction, ensure the eligibility of the party, and eliminate meaningless litigation from the perspective of public interests; they are regarded as the requirements for claim acknowledgement system implementing disposition doctrine, restricting the party within proceedings, and not conforming to litigation claim acknowledgement's attribute of independent settlement of a dispute;<sup>16</sup> secondly, theoretically speaking, only under the premise of meeting the litigation essentials can the court conduct a substantive hearing for the case. The court shall first investigate the existence of litigation essentials before a substantive hearing. However, in trial practice, the existence of litigation essentials is often gradually clear along with the advancement of court trial, so most hearings conducted by the court for litigation essentials and judgment essentials of the case are carried out simultaneously.<sup>17</sup> Only when the lack of litigation essentials is clear along with the advancement of procedure can the court deny the litigated interests and dismiss the prosecution.<sup>18</sup> If the court suspends the substantive hearing and conducts a single hearing of litigation essentials just because the defendant makes acknowledgement of litigation claim, compared with common lawsuits without the defendant's acknowledgement, there are no enough reasons to explain why differential treatment is necessary for trial order of litigation essentials just as the defendant makes acknowledgement of litigation claim.

### **C. The Intention Expressed for Acknowledgement Is Genuine**

Litigation claim acknowledgement is made by the defendant to the court, and shows an intention of recognizing the plaintiff's litigation content. Whether the authenticity of intention affects the valid establishment of acknowledgement should be one of topics to be discussed for essentials. Litigation act theory generally regards: a judicial proceeding is composed of a series of litigation acts in succession; if a dispute

16 SINDOU KOUJI, WHOM IS THE CIVIL PROCEDURE THEORY FOR, in KONDO UKANJI & ASAMUMA TAKESI, PROBLEMS OF CIVIL LAW, at 259ff (Hanrei Times Press, 1970).

17 Suzuki Masahiro, The Hearing Order of Litigation Essentials and Judgment Essentials, 57(4) Journal of Civil and Commercial Law 3 (1967).

18 SAKAGUCHI YUEI, LITIGATION ESSENTIAL THEORY AND REASONS OF COUNTERARGUMENT, PROBLEMS OF JUDGE LAW (II), at 244 (Yuhikaku Press, 1969)

appears due to intention defect and the act is deemed as invalid thereby, it is likely to cause delay and repetition of the judicial proceeding, prejudicial to the definition of statement to the court and the stability of proceeding, so external expression shall prevail in principle. This conclusion is also known as the principle of no consideration due to intention defect or external expression doctrine of litigation act.<sup>19</sup> Whether the intention defect of litigation act should be relieved essentially involves the priority between substantive justice and procedural efficiency. To correct the defect of traditional external expression doctrine, there are many kinds of theories requiring relief of intention defect of litigation act in theory circle.<sup>20</sup> It is assumed here that the determination about whether the intention as establishment requirement for litigation claim is effective in Chinese civil law procedures should not only take the external expression doctrine as criterion, but also take genuine intention as requirements of establishing the litigation claim acknowledgement. The reasons are as follows.

Firstly, litigation claim acknowledgement is the defendant's self-discipline intention expressed to the court for affirming the plaintiff's litigation claim with the purpose of concluding the litigation. The court shall accept the defendant's litigation claim acknowledgement and make an affirmative judgment to support the plaintiff's litigation claim according to the above self-discipline intention. Therefore, the validity of judgment by acknowledgement depends on the defendant's self-responsibility at its own discretion rather than document records. Litigation claim acknowledgement is an act of litigation conducted by the defendant to the court, but it produces an effect of making the defendant lose substantive rights. In this sense, litigation claim acknowledgement has the same effect as act of disposition, and the same value basis as legal act governed by private right self-control theory. Therefore, there is a reasonable basis for quasi-application of the provision that "a legal act with intention defect is invalid" in civil law.

Secondly, what is different from other acts of litigation likely to appear in judicial proceedings is that the establishment of litigation claim acknowledgement will directly conclude the litigation, figuratively called as "last act of litigation" in judicial proceedings. If the act is effectively established, the proceedings come to an end; conversely, if the grounds affecting the effective establishment of litigation claim acknowledgement are found thereafter, the court only needs to deny the validity of the act, and restarts a hearing of the original case. The validity of proceedings conducted before acknowledgement will not be denied. Moreover, there are no follow-up proceedings because

19 KANEKO HAJIME, *NEW SYSTEM OF CIVIL PROCEDURE* (Revised Edition), at 213 (Sakei Syoten Press 1965); SAISOU HIDEO, *INTRODUCTION OF CIVIL PROCEDURE* (New Edition), at 237 (Yuhikaku Press, 1982); BAUMGARTEL, *supra* note 9, 115.

20 Like the theory of "act of taking effect" and "act with effect" raised by Goldschmidt, see GOLDSCHMIDT, *DYNAMIC LEGAL PROCESS*, at 465 (J. Springer, 1925); about the Constitution of Conception Theory raised by Walsmann, see WALSMANN, *THE MISTAKE IN LEGAL PROCESS*, at I (Nabu Press 1907); as to Werner's Meaning Respect Theory, see Werner, *Lacking the Willing of Litigation*, 41 *Private Journal of Public Law* by Grunhuts 378 (1915).

the litigation is concluded immediately after acknowledgement. In fact, there is no so-called repetitive proceedings. Therefore, it can be said that denying the validity of litigation claim acknowledgement due to intention defect has less effect on the stability of proceedings.

Based on these two considerations as mentioned earlier, as for acknowledgement with intention defect, it is not scientific in value selection to maintain the stability of proceedings unilaterally by sacrificing substantive justice. Therefore, it is considered here that the genuine intention expressed should be taken as one establishment requirement for acknowledgement so that the relief of acknowledgement with intention defect is recognized in legislation and practice.

Based on acknowledgement's deep concern of the party's substantive rights, and in order to ensure genuine intention of actor as far as possible, it is allowed to consider written formal requirement for acknowledgement, which is, the defendant's acknowledgement of the plaintiff's litigation claim must be made in writing. Although it is stipulated in China that the defendant's acknowledgement and its content should be recorded into facts of written judgment, it is just a written record of oral intention of the defendant and cannot play a role of restraining the actor from expressing his genuine intention. To urge the actor to express genuine intention and ensure him to be fully aware of legal effect of litigation claim acknowledgement, it is a good solution to prevent the actor from abusing relief right afterwards and request the actor to provide acknowledgement letter recording the stipulated content.

## **V. Validity and manifestation of litigation claim acknowledgement**

The validity of litigation claim acknowledgement refers to the binding force of acknowledgement on the litigation party right after its establishment. Different validity localizations are corresponding to different validity manifestations. It is only stipulated that "the defendant may recognize or rebut a litigation claim" in the Civil Procedure Law of China. However, there is no provision on validity and carrier of litigation claim acknowledgement. In judicial practice, a Chinese court usually concludes a case where the defendant makes acknowledgement in form of judgment. There are also relevant provisions on writing method of judgment documents in normative documents issued by the Supreme People's Court such as the Specifications for Preparing Civil Judgments by the people's courts (paragraph 5, article 5) and the Styles of Civil Litigation Documents for Simplified Procedures (Interim) (style 13). According to the investigation by comparison method, Germany and Japan adopt different methods in terms of the validity of litigation claim acknowledgement, the former adopts judgment by acknowledgement while the latter adopts acknowledgement notes (acknowledgement document). As mentioned below, although both China and Germany adopt judgment for

affirming the validity of litigation claim acknowledgement, judgment by acknowledgement is regarded as a special judgment different from common judgments in the German law rather than that in the Chinese law. Next, a summary is made with respect to the similarities and differences of three forms of validity, and some suggestions are made for perfecting the system design of validity of litigation claim acknowledgement in China.

## **A. German Judgment System by Acknowledgement**

In accordance with the provisions of article 307 of the German Code of Civil Procedure, “where a party acknowledges whole or partial claim filed by the other party in debate, the court shall make a judgment that the party fails according to the acknowledgement upon application”. In accordance with the provisions of the German law, the judgment made by the court according to the party’s acknowledgement is called as judgment by acknowledgement. Judgment by acknowledgement is just the same as final judgment before determination and has the same adjudged force as common judgment only after determination, so the party may refuse to accept it through appeal.

Judgment is a manifestation of settling a civil dispute by judicial authority. Therefore, strictly speaking, concluding the litigation by judgment does not conform to the localization of litigation claim acknowledgement as autonomic settlement of a dispute. As for adopting judgment by acknowledgement for affirming the validity of litigation claim acknowledgement, the Grounds for German Legislation explains it as follows: the provisions of article 268 (article 307 of the current German Code of Civil Procedure) are based on the consideration that creditor is still entitled to obtain a judgment with complete adjudged force even if the defendant has made claim acknowledgement. . Although there is still a doubt about whether the provisions are really necessary and whether it is not enough to protect the party’s interests by recording acknowledgement content into the notes, the draft conforms to the German law and customs in essence. Therefore, this method can be respected in these fields and thus is adopted.<sup>21</sup> Accordingly, as for provisions on the validity of litigation claim acknowledgement, the German Code of Civil Procedure emphasizes protection of the plaintiff’s interests, and regards prevention of repeated litigation and formation of complete debt name as the purpose of judgment by acknowledgement. At the same time, to ensure litigation claim acknowledgement’s function of autonomic dispute settlement, as provided by the German Code of Civil Procedure, as for litigation claim acknowledged by the defendant, only after the plaintiff makes an application can the court make a judgment by acknowledgement, and the court shall not be entitled to make the above judgment without this application.

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21 CARL HAHN, MATERIAL ABOUT LEGISLATION OF 1881 CIVIL PROCEDURE CODE, at 285 (Neud, 1983).

## **B. Japanese System of Acknowledgement Notes**

The system of judgment by acknowledgement is stipulated in article 229 of the first civil procedure law issued in 1890 through transplanting the German law. The court makes a judgment that the defendant fails in the case according to the plaintiff's application after the defendant makes acknowledgement of the plaintiff's litigation claim. There are many circumstances where the plaintiff does not make an application in practice, which causes difficulty to the court in making a judgment by acknowledgement. Therefore, the system of judgment by acknowledgement was abandoned and the system of acknowledgement notes was adopted when the law was amended in 1926. As provided by article 267 of current civil procedure law of Japan, "when acknowledgement is recorded into the notes, the record has the same validity as the fixed judgment". In Japan, commonly based on this article, acknowledgement notes are taken as substitute of judgment. According to the logic that "acknowledgement notes = judgment substitute = adjudged force", it is considered that acknowledgement notes play a role of concluding the litigation from completion and produce adjudged force, shaping force and executive force, and acknowledgement can be cancelled only when there are grounds for retrial.

In terms of the form, the replacement of judgment with acknowledgement notes is more in line with the localization of claim acknowledgement system as the party's autonomic settlement of a dispute, emphasizing the decisive effect of the party's intention in litigation, and weakening the effect of functions and powers of the court. As for the effect, acknowledgement notes have the same validity as judgment by acknowledgement. In addition to those, acknowledgement notes become effective once completed, and the party may not file an appeal against it, so acknowledgement notes have the function of institutional arrangement for the first instance and last instance. It is reasonable for the function to correspond to self-responsibility produced by the party's self-discipline intention.

## **C. Comparison and Reference: Reform of Common Judgment System of China**

Chinese civil procedure adopts common judgment for affirming the validity of litigation claim acknowledgement. Although it is the same as the German system of judgment by acknowledgement in form, there is a big difference between them in essence. Firstly, Germany conducts a differential treatment of judgment by acknowledgement and common judgment, and simplifies the preparation of judgment document to the utmost. As provided by paragraph 2 of article 313 in the German Code of Civil Procedure, "it does not need to record facts and grounds for judgment to declare judgment by default or judgment by acknowledgement or waive litigation claim. It should be shown that it is judgment by default, judgment by acknowledgement or waiver of litigation claim in judgment". Obviously, as long as the defendant's litigation claim ac-

knowledge is effectively established, judgment by acknowledgement is only a document in the name of creditor issued according to the plaintiff's application, which is a fact undisputed to the parties, so there is no practical significance for recording or not. Moreover, although it needs applicable provisions of relevant laws to determine whether acknowledgement is effectively established, judgment by acknowledgement is not made essentially in accordance with law, so it does not need to record grounds for judgment. Therefore, judgment must declare it has the special attribute of judgment by acknowledgement. In document structure and content, judgment made by the Chinese court according to litigation claim acknowledgement still adopts those of common judgment, and does not express the party's intention for autonomously settling a dispute beyond the function of judicial functions and powers in the acknowledged case, with a strong color of doctrine of functions and powers. Secondly, German judgment by acknowledgement takes the party's application as the applicable premise, and through this application, the German Code of Civil Procedure endows the plaintiff with the right to require obtaining complete creditor name and execution basis, that is to say, the plaintiff can not only request the court to make a judgment by acknowledgement but also select litigation withdrawal, which embodies the party's respect of autonomic settlement of a dispute.

Compared with the Japanese system of acknowledgement notes, first-instance judgment where people's court that recognizes litigation claim acknowledgement does not have the effect of immediately concluding the litigation, and the party may refuse to accept it and file an appeal. In accordance with the provisions of the current civil procedure law of Japan, acknowledgement notes become effective once completed. Acknowledgement notes have the validity of immediately concluding the litigation, and the party may not file an appeal against the notes, and can apply for a retrial only when there are prescribed grounds for retrial. As for this conclusion, scholars holding positive views think that the adjudged force of acknowledgement notes originates from the parties' consensus on litigation target, that is to say, as long as the acknowledgement is genuine intention expressed independently by the defendant, the actor must obey the result of the intention. However, scholars holding the opposite views offer criticisms: firstly, if it is recognized that acknowledgement notes have the adjudged force once completed, it means that no appeal can be filed for any objection against acknowledgement during the establishment process, and a retrial can be applied only when there are prescribed grounds for retrial. According to the investigation of nine categories of grounds for retrial defined by article 338 of the civil procedure law of Japan, it can be found that it is difficult to cover any objection against acknowledgement during the establishment process. Therefore, it can be said that the adjudged force of acknowledgement notes has the effect of interdicting any objection against acknowledgement during the establishment process, and it will be difficult to relieve the objection once the notes are completed. Secondly, from the history of system evolution, article 229 of the first civil procedure law issued in 1890 inherited the provisions of the German

Code of Civil Procedure, and also adopted the system of judgment by acknowledgement. However, many plaintiffs do not make this application in practice, which causes difficulty for the judgment. Therefore, judgment by acknowledgement was abandoned and acknowledgement notes were adopted for concluding the acknowledged case when the law was amended in 1926.<sup>22</sup> Accordingly, Japan's abandoning judgment by acknowledgement and adopting acknowledgement notes aim at eliminating the difficulty of judgment caused by lack of the plaintiff's application in practice. But the negative consequences of complete interdiction of relief route caused by the change show that there is a large deviation between amendment motivation of legislator and practical effect.<sup>23</sup> Therefore, it deserves to reconsider whether to insist on the system.

Based on the above analysis, it is considered in this paper that two changes should be made in the litigation claim acknowledgement validity system of China from the standpoint of emphasizing acknowledgement's attribute of autonomic settlement of a dispute and strengthening the adversary system and the responsibilities of the party in litigation: firstly, the system of judgment by acknowledgement introduced to make judgment by litigation claim acknowledgement is different from common judgment made by the court through substantive hearing in content and nature; secondly, acknowledgement letter system and judgment application system are introduced to ensure that the party's intention is genuine as far as possible and strengthen the party's self-responsibility in litigation.

## **VI. Relief on claim acknowledgement**

Under the framework of the Civil Procedure Law of China, as for a judgment made by the people's court for recognizing litigation claim acknowledgement, the party's objection proposition route is relatively clear. The application can be refused through appeal before determination by judgment, or relief is sought through retrial after determination by judgment. But it is worth noting that the particularity of a case acknowledged by the defendant makes it limited in application of grounds for relief.

### **A. Scope of Appeal**

Usually, the appeal for a case may aim at solving problems about original judgment procedure, fact finding or law application, without any special restriction on grounds for refusing original judgment. But it is considered in this paper that the grounds for appeal of the acknowledged case are only limited to acknowledgement failure in the valid establishment. The grounds are as follows.

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22 KATOU MASAHIRO, *THE REMEDIAL STRUCTURE OF CIVIL PROCEDURE*, at 63 (Yuhikaku Press, 1937).

23 MIKAZUKI AKIRA, *CIVIL PROCEDURAL LAW*, at 509-510 (Koubundou Press, 1992).

Firstly, during the hearing of a case acknowledged by the defendant, it is likely to not to put forth all evidence related to the case and questioned witnesses. It is motivated for the defendant to make acknowledgement. It is likely for the defendant to acknowledge the plaintiff's litigation claim at any time before oral argument closure. When acknowledgement is made, the evidence related to the case might not all be put forth and witnesses might not be questioned, and the defendant acknowledges the plaintiff's litigation claim even under the circumstance that the parties have not put forth evidence and questioned witnesses. The validity of judgment by acknowledgement is derived from the self-discipline intention expressed by defendant for acknowledgement rather than fact finding and law application. Even if the court conducts hearing and determination of some or even all facts during the hearing of whole case, it does not constitute the basis for the validity of judgment by acknowledgement. Therefore, any dispute about case evidence and fact question is difficult to be an effective ground for relief claim.

Secondly, although it is not applicable for the acknowledged case to correspond essential facts to legal norms so as to make a judgment based on syllogism logic of obtaining a legal effect, it is not to say that the acknowledged case does not require applicable law and the application of the acknowledged case to law should be determined in accordance with legal norms with respect to the problem about whether acknowledgement is established. In accordance with the provisions of the Specifications for Preparing Civil Judgments by the People's Courts and Styles of Civil Litigation Documents for Simplified Procedures (Interim), the case acknowledged by the defendant should indicate "the defendant recognizes plaintiff's whole litigation claim", "specific content of the plaintiffs partial litigation claim recognized by the defendant if the defendant recognizes partial litigation claim", and "the defendant's recognition of the plaintiff's litigation claim does not violate any legal provision according to the court's investigation" in facts of written judgment. Obviously, "legal provisions" here are legal provisions on the establishment of acknowledgement; combined with the above analysis of establishment requirements for acknowledgement, legal provisions here should be related to whether the actor of acknowledgement has corresponding ability of litigation or power of agency, whether acknowledgement violates the law, public order or good customs, whether the acknowledged matters belong to the disposable matters of a party, and whether the intention expressed by the actor is genuine.

## **B. Applicable Scope of Grounds for Retrial**

As China adopts judgment for handling the acknowledged case, relief can be realized only through retrial after judgment becomes effective; there are strict conditions for the start of retrial procedure as an exceptive relief procedure, that is, there must be prescribed grounds for retrial. In this sense, the application scope of grounds for retrial determines the possibility for the acknowledged case to realize relief by retrial.



According to the above elaboration about the limitations of relief of judgment by acknowledgement, combined with 13 grounds for retrial provided by article 200 of the Civil Procedure Law of China, its applicable scope in acknowledged cases is elaborated in detail as follows.

Theoretically, the prescribed grounds for retrial are usually divided into two categories: procedural grounds and substantive grounds. Procedural illegality grounds include five kinds of circumstances: jurisdiction error, trial organization illegality or non-avoidance, person incapable of action does not arrange an agent to participate in litigation or the party which should participate in litigation does not participate in litigation not for its own reasons, deprivation of debating right, and absence in judgment without a subpoena. Although the acknowledged case is the basis for the validity of judgment according to self-discipline intention of the defendant, it is still equivalent to common lawsuits in the degree of procedure guarantee. In case of procedural violation, the party's filing a retrial will not be affected by the establishment of acknowledgement. Therefore, in addition to the circumstance of "absence in judgment without a subpoena" (because acknowledgement shall be made by the defendant or any person with power of agency) as provided by item 11 of article 179 in the Civil Procedure Law, and in case of other prescribed grounds for procedural violation, the party of original case may apply for a retrial.

Substantive grounds for retrial include five circumstances related to evidence, erroneous application of laws, omissions beyond litigation claim and revocation or change of legal documents as basis for final decision, which should be discussed respectively: first, the acknowledged case does not take effective legal documents as the basis for judgment, and no omission or excessive judgment will occur when the defendant recognizes the plaintiff's whole litigation claim, so the last two items of substantive grounds for retrial are not possible for application; second, as mentioned by the third particularity of the acknowledged case, even if the court still needs to determine whether acknowledgement is effectively established based on applicable laws in the acknowledged case, the party of original case can apply for retrial based on "erroneous application of laws"; third, the evidence that is able to determine whether to initiate retrial procedure is mainly new evidence that is not appearing in original case and able to affect the result of the case. As mentioned by the second particularity of the acknowledged case, according to the different time of acknowledgement, the stage of case's adducing evidence and questioning witnesses will vary. Before full completion of adducing evidence and questioning witnesses, certification has not been finished, case facts are unclear, and applicable laws and norms are not defined. And only after the defendant makes invalid acknowledgement can judgment be immediately made. Under this circumstance, it will be difficult to determine whether new evidence raised by retrial applicant is the evidence found newly after original trial judgment becomes effective and whether fabricated or questioned evidence belongs to "main evidence able to affect the result of the case". Similarly, it is also difficult to determine "the ba-

sic facts lacking evidence”. On the other hand, fundamental basis for judgment by acknowledgement lies in the defendant’s autonomous intention for its own rights, and it is the recognition of the party’s disposition right; if the defendant is allowed to subvert its motivation for acknowledgement based on the degree of proof, the effect of acknowledgement as autonomic settlement of a dispute will be significantly reduced, and the implementation of good faith principle will also be challenged.

To sum up, among 13 grounds for retrial provided by the Civil Procedure Law of China, only the “erroneous application of laws” and four procedural grounds can be taken as grounds for retrial of judgment by acknowledgement. In this sense, under the framework of current civil procedure law, the relief scope of the acknowledged case will be smaller than that of common lawsuits.

## **VII. Conclusion**

As for the legal nature of acknowledgement, there has been procedure law theory, substantive law theory and double-nature theory, which are mutually contradictory. Further relation of the difference in cognition of legal nature to essentials and effect of acknowledgement affects legal regulation of acknowledgement. Acknowledgement is an act conducted by the defendant to the court through recognizing the plaintiff’s litigation claim to conclude the litigation, and is a typical act of litigation in appearance. However, the act simultaneously leads to change in substantive right-duty relation between the parties. From the integration with intention of litigation as a whole, the evaluation made on acknowledgement can be the same as that made on substantive disposition, that is, the party’s autonomic settlement of a dispute. Therefore, the research on the acknowledgement should avoid excessive emphasis on independent value of the procedure law, and watch out for the tendency of monism.