



Comparison of and Distinguishing Ways of Action with Foundation, Manner, Cause, Relief seeking, Reason, Entitlement

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Abstract

The application to issue a judgment regarding the subject of the lawsuit must be based on a specific legal relationship. In plain language, the plaintiff is obliged to clarify which legal relationship entitles him/her to the subject of the lawsuit. For example, if the plaintiff submits a statement of claim to the court for the judgment against the defendant to pay the sum of money, they must specify the legal relationship with the defendant based on which they consider himself /herself entitled to the claim. The court is also obliged to examine the truth or validity of the plaintiff's relief sought within the framework of this legal relationship, which is considered one of the principles of civil procedure. Therefore, in principle, the court cannot, considering all the other circumstances, examine the right or wrong of the plaintiff outside of the legal relationship in which the plaintiff considers whether he/she is entitled to the claim. In the civil procedure code, various interpretations have been used to express this legal relationship. According to (Clause 4), Article 51 of the Civil Procedure Code, one of the obligatory provisions of a claim is the commitments and grounds by virtue of which the plaintiff is entitled to the claim. In some of the mentioned articles of law, such as Articles 15 and 98, the origin, and the cause of the claim are also referred to. Obligation in the legal language is referred to two concepts, in the general sense it includes all religious rights, and in the specific sense, it includes the debts arising from the contracts. The legislator did not define the motive of the claim and did not mention this combination in any of the articles of the civil procedure law. In paragraph 4 of article 72 of the former civil procedure law, the words obligations or other motives were mentioned. Apparently, from the point of view of the legislator, obligation was considered one of the motives of the claim, but the inclusion of the letter "and" and instead of "or" in the current law of procedure created this ambiguity that obligation is something other than motive of the claim or is considered one of its examples. Usually, the plaintiff is the claiming for a right according to the legal relationship. This legal relationship is called the origin of claim and it is mentioned in Article 98 of the Civil Procedure Law. In paragraph 4 of article 51 of the civil procedure law, it is considered



necessary to mention the origin of the claim. For example, in the claim of the sales consideration, the origin of the claim is the sales contract. Lawyers have often not mentioned the difference between the origin and motive of the claim in the books and articles of civil procedure. lawyers has not yet reached a single point of view about the origin, cause and motive of the claim and the relationship of these concepts have not been reached and there is no consensus, and that is why the present topic has been proposed. In civil procedural law, the origin, grounds, the cause and the mode of the claim have not been properly explained, so that by studying legal sources, one can find out that some jurists have considered the origin and mode of the claim as the same, and others have coined the ground of the claim and sometimes equated it with the origin of the claim. Distinguishing the difference, and at the same time, the relationship between them, has important effects on the litigation. For example, it can be determined which one is obligatory to mention in the claim. Since the failure to specify it will cause the suspension of the claim and the issuance of a notice to remedy the defect. Furthermore, changing the origin of the claim after filing the claim is not possible, but changing the mode of the claim is possible when the conditions stipulated in Article 98 of the Civil Procedure Code are observed. The legislator's flaw is to mention some words without stating their meaning, for every word or phrase in the civil procedural law has its own specific legal effects. The meaning of the origin of the claim is exclusively and according to the case of legal actions or legal events with the decree of the legislator according to which the plaintiff considers himself entitled to the claim against defendant for instance, in legal action for the sold item price, the origin of claim is the sales contract. . Also, motive is used in laws to mean cause whereas in Article 319 of the Commercial Law, there has been statements regarding unjustified use, which means use without a legal reason. More clearly, Article 426 of Civil Procedure and Article 98 of the Law on Organizations and Procedures of the Court of Administrative Justice approved in 2011 refer to the motive for retrial, which is according to paragraph 2 of Article 99 of the aforementioned law which indicates the reasons for retrial. Therefore, the phrase "the motives listed in paragraph 4 of article 51 of the civil procedure law is its legal cause, that the plaintiff has the right to demand based on it and makes the claim, and its absence, even if the origin of the right exists, will make the claim pointless. As in the case of the buyer against the seller regarding the confirmation of the termination of the transaction, if the reason for the termination is not mentioned, the claim shall be unjustified, but if the same claim is for the defect option, the origin of the plaintiff's right is the sales contract and his claims motive is the existence and exercise of the defect option. In this research, the obligations and grounds, as well as the origin, the coined word: 'cause', and also the mode of the claim are explained in simple and clear language.

Keywords: obligations, the origin, ground, cause, mode of claim.



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