

The Equal-rank Conflicts of Legal Norms and Their Resolutions: The Interrelation of Legal Rules and Legal Principles as a Basic Point

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Abstract

The traditional theory concerning conflicts of legal norms concentrates on the conflicts between legal norms which are located in different ranks of space, time and logic. It resolves the conflicts by presupposed formal law, which can not resolve those conflicts between legal norms of the same rank, for its neglect of legal principles which are also a necessary subtype of legal norms. The theories of Dworkin, Alexy and Hage reveal that, rules and principles are justification reasons with different characters, and the basic paradigm of conflict resolution is the principle-based balancing in individual case. It is, therefore, proper to introduce Alexy's Weight Formula on basis of Hage's theory on "rules/principles—reasons", through which we make the methods connected with it more specific and considerations in it clearer. Based on this model, the problems of conflicts between principles, between principle and rule, as well as between rules are uniformly dealt with. However, this new model introduced here still could not overcome many difficulties that arise in the domain of normative conflict, among which the most serious one is how to objectify the value-judgment. The possible resolution lies in the construction of rational legal argumentation procedure.

Keywords: conflicts of the same class, legal rules, legal principles, balance, Weight Formula, rational argumentation procedure

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