

An Analysis of the Distinction between the Crime of Illegal Lending and the Crime of Irregular Issuance of Financial Bills in Chinese Judicial Practice

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Abstract: This article discusses the application of formal, substantive, and teleological interpretations in the financial field and their impact on the stability of the financial market. Formalists advocate for interpreting regulations based on the literal meaning of the legal text, excluding behaviors that should be punishable in substance but lack specific legal provisions. Substantialists, on the other hand, emphasize that interpretation should be guided by the interests protected by the legal provision, excluding acts that meet the formal criteria but are not substantially punishable. Teleological interpretation stresses the consideration of the socio-economic effects and outcomes of legal implementation. If the use of acceptance bills as a means of lending effectively supports economic activity without increasing systemic risk, it can be considered to meet the substantive requirements of the law. However, if it violates fundamental financial regulatory regulations and causes serious damage to the credit management system, it should be recognized as the crime of illegal lending. Through the analysis of the formal acceptance of bills, legality, and the financial backing behind them, it is possible to better understand the legal responsibilities and regulatory boundaries in financial operations.

1. Introduction

In recent years, with the implementation of the "Belt and Road" initiative and the continuous development of economic globalization, China's economy has maintained a high growth rate, residents' income levels have continued to increase, and the scale of the financial market has also been expanding. The banking industry, as an important part of the financial system, has increasingly attracted attention. As financial institutions, banks undertake various functions such as deposit financing, credit intermediation, and payment settlement, which are closely related to the national economy and people's livelihoods. However, with the continuous development of the financial market, banks have also begun to face many new challenges, and financial crimes have been on the rise. The crime of irregular issuance of financial bills is one of the most important types of financial crimes and often has a concurrent relationship with other financial crimes, especially in cases where bank loans are issued in the form of acceptance bills. In such cases, there is often a lack of consistency in understanding between judicial practice and academic theory regarding the crime of

irregular issuance of financial bills and the crime of illegal lending, necessitating an analysis and discussion in combination with legal regulations and the current situation of banking operations.

2. Research Background

According to statistics from the Financial Judicial Research Center of the China Judicial Big Data Institute, from 2015 to 2022, courts at all levels across the country concluded a total of 3,594 cases involving crimes committed by financial institution employees, with bank-related criminal cases accounting for the highest proportion at 58.07%. These cases mainly include operational risk, internal corruption risk, and transaction fraud risk, involving dozens of crimes. The prominent crimes committed by leading cadres and senior management personnel involve non-state personnel bribery, illegal lending, and irregular issuance of financial bills.

The crime of illegal lending and the crime of irregular issuance of financial bills overlap in function and handling procedures, but they have significant differences in nature, subject matter, terms, conditions of handling, and other elements. For common crimes in the field of bill offenses, such as the crime of irregular issuance of financial bills, scholars have formed a relatively complete theoretical system through research. However, there is less research on situations where loans are issued in the form of acceptance bills, which are easily confused with the two crimes in judicial practice.

On the theoretical level, bank acceptance bills to some extent overlap with the function and role of loans. As a special type of negotiable instrument, a bill itself includes a credit function, "which has the effect of transforming the credit function of the funds that the issuer will obtain in the future into current payment ability."^[1] Therefore, bills can provide the issuer with a certain period of credit loan. According to Article 24 of the "Commercial Bill Acceptance, Discounting, and Rediscounting Management Measures," the balance of the guarantee fund for bank acceptance bills and financial company acceptance bills must not exceed 10% of the acceptor's deposit scale. Therefore, when the applicant provides a guarantee for the difference, it is equivalent to a short-term loan for the difference. Thus, on the theoretical level, bank acceptance bills and loans overlap to some extent in function and role.

On the practical level, the crime of illegal lending targets loans, while the crime of irregular issuance of financial bills targets five types of financial documents: letters of credit, guarantees, bills, deposit certificates, and credit certificates. Acceptance is a bill action that requires the payer to promise to pay the corresponding amount of the commercial bill on the due date, while a loan is monetary funds provided by the lender to the borrower, with the principal to be repaid at the agreed interest rate and term, along with interest payments. "Acceptance" and "loan" differ significantly in meaning, but the aforementioned "Management Measures" and "Payment Settlement Measures" provide broad provisions for the acceptance operation of bills, with the boundaries between bill acceptance actions and loan actions being rather blurred. Major banks and financial institutions stipulate in their respective norms to follow the loan procedures to handle bill acceptance business, and bill acceptance business is often used as a short-term loan for capital turnover due to its short cycle advantage, leading to situations in judicial practice where there is confusion in distinguishing between the crime of irregular issuance of financial bills and the crime of illegal lending.

In judicial practice, illegal lending and irregular issuance of financial bills are common criminal behaviors in the financial field, which seriously disrupt the order of the financial market and infringe upon the interests of financial institutions and the public. As the state policy encourages the orderly and free development of the economy, the crime of illegal lending and the crime of irregular issuance of financial bills have gradually become incompatible with the current financial development environment in terms of the logic of establishing crimes and the choice of legal

interest protection. The criminal law provisions on the crime of illegal lending and the crime of irregular issuance of financial bills are relatively vague. Given the strong professionalism and complex and diverse issues facing bank credit work, the current legal provisions are somewhat disconnected from the operational practice of bank credit, leading to differences in understanding of certain issues among the public security, procuratorial, and judicial organs during the law enforcement and judicial process.

In-depth research and differentiation of these two types of criminal behaviors help to precisely strike at the weak links in their respective criminal chains and are of great practical significance for improving the efficiency and accuracy of strikes in judicial practice, enhancing the level of financial rule of law, and maintaining the stability of the financial market.

3. Theoretical Overview

3.1 Formal Interpretation

Formal interpretation adheres to the literal meaning of legal provisions as stipulated by law. This method focuses on the expression of the legal text itself, striving to comprehend the law based on its literal sense. Formal interpretation values the language of legal provisions, pursuing accuracy and certainty, and interprets based on the text of the law. It is grounded in formal rationality advocated by the principle of legality, using formal elements to exclude actions that are substantively punishable but lack explicit penal regulation from the scope of criminality.

3.2 Substantive Interpretation

Substantive interpretation involves analyzing the basic principles, spirit, and purpose of legal provisions to interpret the meaning and scope of application of the law. It emphasizes the fundamental principles of law and the application of logical reasoning, systemically analyzing the inner logical relations of the law to achieve rational legal objectives. It also stresses that the interpretation of constitutive elements must be guided by the interests protected by the legal norms, and should not be confined to the literal meaning of the provisions.

3.3 Distinction between Formal and Substantive Interpretation

3.3.1 Different delimitations of the possible semantic range of legal norms

Substantive interpreters tend to stretch the boundaries of terms, judging the semantic limits of penal provisions based on the value of the necessity for punishment; whereas formal interpreters circle around the common meaning of words, unconsciously accepting the constraints of conventional semantic understanding and deliberately postponing substantive judgments.

3.3.2 Differing views on how to fill gaps in criminal law

Substantive interpreters are inclined towards flexible handling of textual interpretation, possibly pushing it to the extreme; Formal interpreters are strict in their interpretation of penal provisions, adhering more rigidly to the principle of legality.

3.3.3 Different levels of esteem for teleological interpretation

Substantive interpreters favor teleological interpretation, tending to assess whether an act necessitates punishment and whether it should be penalized before considering whether it falls

within the ordinary semantic scope of legal norms to perfect legislation; Formal interpreters focus more on semantic interpretation, keeping the interpretation within the predictable ordinary semantic scope of the populace, and are innately cautious of teleological interpretation.

In summary, the main viewpoint of formal interpreters is that "formal interpretation, based on the principle of legality, advocates formal rationality, excluding substantially punishable but legally undefined conduct from the realm of criminality through formal elements." The main viewpoint of substantive interpreters is that "interpretation of constitutive elements must be guided by the interests protected by the legal norms and should not merely dwell on their literal meaning. On one hand, acts that literally meet constitutive requirements but lack punishability in substance should be excluded. On the other hand, when an act does not fall within the core meaning of penal language but is necessary and reasonable to punish, it should be broadly interpreted within the bounds of legality."

The debate between formal and substantive interpretation in criminal law theory does not center on whether to conduct substantive review but on the reasons for expansive interpretation or the limits of semantic interpretation. Both substantive and formal interpretations aim for a reasonable outcome.

3.4 Teleological Interpretation

Teleological interpretation determines the meaning and scope of a law based on its purpose and value pursuit. Professor Du Yu believes that "teleological interpretation clarifies the meaning of legal norms by identifying their intended objectives."^[2] This interpretation emphasizes the social function of law and the realization of legal objectives, promoting a correct understanding of legal provisions and the achievement of justice through the pursuit of the value and objectives of the legal system.

Also known as doctrinal interpretation, it interprets according to the spirit of legislation, logically based on the specific case, guided by the purpose or intended aim of the protected legal interest. It considers the needs of current social development and interprets based on reasonable objectives. Any interpretation inherently includes teleological elements; when different methods yield multiple conclusions or fail to provide a satisfactory outcome, teleological interpretation ultimately determines the choice.

The purpose here refers not only to the legislative intent at the time of law enactment but also to the objective purpose the law should encompass under current conditions. It may relate to the purpose of the entire body of law or to individual provisions or systems. According to this approach, interpretation should first understand the objectives the legislature sought to achieve, then guide by these objectives to elucidate the meaning of the law, endeavoring to realize the related objectives.

3.5 Functionalism Interpretation

Functionalism in interpretative theory primarily considers how to effectively exert the preventive effect of criminal law norms as behavioral regulations, incorporating the social function of law into the process of criminal law interpretation. The purpose of functionalist criminal law interpretation is to integrate social legal policies into the text of criminal law, more comprehensively expressing the legislative intent of the nation and the legislators. Currently, functionalist interpretation overlaps and intersects with teleological and substantive interpretations.

The essential difference between traditional criminal law interpretative theory and functionalist theory lies in their self-perception; the former views itself as a methodology, believing that the function of interpretation is merely to uncover decisions already made by the legislator, while the latter regards criminal law interpretation as the law itself, with interpreters actively participating in

the formation of norms and playing a role in the construction of normative meaning that is no less significant than that of legislators. If traditional criminal law interpretation is legislator-centered, then functionalist criminal law interpretation is judiciary-centered. Compared to traditional theory, functionalist interpretation is more flexible, effectively responding to the diverse regulatory tasks of a risk society.

3.6 Applying the functionalist theory of criminal law to interpret the offenses of issuing financial documents in violation of regulations and the crime of illegal loan disbursement.

3.6.1 The Crime of Issuing Financial Instruments in Violation of Regulations

This provision is placed within the crimes of disrupting financial order. Initially, it examines the purpose and function of the law, which aims to protect the financial order and market stability. Its preventative target is the internal personnel of banks committing financial crimes, specifically the act of staff using their positions to issue financial instruments for others. The prohibition against the issuance of financial instruments in violation of regulations ensures the stability and normal operation of the financial system, curbing the market chaos caused by improperly obtained financial instruments. This protects the legitimate rights and interests of financial institutions and investors, thereby safeguarding the integrity of the credit system and preventing the issuance of financial instruments under irregular conditions, which could affect the accuracy of the entire credit system. Letters of credit or other guarantees, bills, deposit receipts, and credit proofs issued by banks or other financial institutions are credit tools and forms of the financial institutions. Illegally issued financial instruments, being false, actually have no creditworthiness and inevitably inflict significant damage to the reputation of banks and other financial institutions.^[3] The act of issuing financial instruments in violation of regulations endangers the bank's credit. On the one hand, it may cause inflation due to the bank providing a quantity of currency that exceeds what is required for the circulation of goods in the economy, which is credit inflation, thereby weakening the bank's ability to redeem; on the other hand, if the bank's loaned funds are not recovered as scheduled, the safety of the bank's assets is jeopardized. The inability to quickly recoup funds also results in tremendous losses of manpower, financial resources, and materials for the bank, introducing significant risks to the credit market.^[4]

3.6.2 The Crime of Illegal Loan Disbursement

This provision is also placed within the crimes of disrupting financial order, aiming to protect the national financial management system, specifically the loan management system. Its preventative target is the financial crimes conducted by internal personnel of banks or financial institutions. It maintains social stability and the normal operation of the economic order. It protects the legitimate rights and interests of banks, avoiding the situation where illegally granted loans may misjudge the borrower's financial condition, leading to bad debts due to the borrower's lack of repayment ability. It prevents financial crimes and unfair competition. If financial institutions grant loans without restrictions, it could lead to unfair competition in the market, severely disrupting market order. From the perspective of individual microentities, since equal opportunity is a necessary requirement of a just society, and obtaining a loan is a significant opportunity in an individual's socioeconomic life, it is essential to ensure equal opportunity in obtaining loans. From the macroeconomic perspective, to ensure the stable operation of the economy, it is necessary to ensure that borrowers have equal rights to obtain loans under the same conditions. Therefore, the underlying individual legal interest identified behind the crime of illegal loan disbursement is the right of borrowers to obtain loans equally under the same conditions.^[5] From the perspective of the criminal law legislative system, the

type of legal interest violated by this crime is "financial management order," or the "financial management system," the same as the crime of issuing financial instruments in violation of regulations. However, considering it solely from the type of legal interest is too generalized. The legal interests protected by criminal law should be explicit and specific. It is precisely because of the abstract and generalized expression of legal interests that confusion arises between the crime of illegal loan disbursement and the crime of issuing financial instruments in violation of regulations in complex cases, which also violates the principle of definiteness of constituent elements. In conjunction with the laws such as the People's Bank of China Law, the Commercial Banks Law, the Banking Supervision and Management Law, and relevant provisions of the "General Rules for Loans," the purpose of state regulation of the lending system is to protect the legitimate rights and interests of commercial banks, depositors, and other customers, to ensure the safety of credit assets, and to improve the overall efficiency of loan use, which is the legal interest that the crime of illegal loan disbursement seeks to protect.

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4. Case Analysis

4.1 Case from the Hanjiang District People's Court of Wuhan City, Hubei Province

In the case of Bao, a defendant in Jiangnan District, Wuhan City, Hubei Province, charged with the crime of illegally issuing financial bills, the prosecution initially charged him with the crime of illegal loan issuance. The prosecution, considering the purpose of the crime and legal interpretation, both formal and substantial, believed that the suspect's behavior "substantially constituted loan issuance." The defendant's attorney disagreed with the prosecution's perspective, arguing that Bao's actions did not constitute the crime of illegal loan issuance. According to Article 2 of the "General Rules on Loans," a loan refers to funds provided by the lender to the borrower with an agreed interest rate and repayment period. The transaction financing "Purchase and Sale Pass" credit business carried out by the Minsheng Bank's Wuhan branch was not a loan business. The defendant, Bao Hai, violated the internal regulations of Minsheng Bank's Wuhan branch, not laws or regulations. During the judgment phase, the court negated the prosecution's opinion, stating: "Defendant Bao Hai, as a bank client manager, violated regulations stipulated by the 'People's Republic of China Commercial Bank Law,' 'People's Republic of China Bill Law,' guidelines issued by the China Banking Regulatory Commission on 'Due Diligence in Commercial Bank Credit Operations,' the operation manual for Minsheng Bank's transaction financing products, and the operational details for the Huangshi Taixin 'Purchase and Sale Pass' credit business. He failed to fulfill his duty to investigate and verify the authenticity of trade contracts provided by Liu, directly issued a review opinion agreeing to the loan, and did not deliver the bank acceptance bill to the upstream company, Hubei Fuel Oil Branch Company, but gave it directly to Liu. This led Liu to privately cash the bank acceptance bill by forging official seals, illegally obtaining funds from Minsheng Bank's Wuhan branch, causing significant financial losses, and his behavior meets the statutory elements of the crime of illegally issuing financial bills and should be convicted and punished accordingly."The author believes that, considering both the subjective and objective aspects of the crime, the criminal behavior in this case meets the crime of illegal loan issuance, with the issuance of financial bills merely serving as a means and tool to execute the unlawful act, which cannot obscure the true criminal behavior. The acceptance of the bill also affects the determination of the criminal nature. If the bill is not accepted, its circulation and acquisition goals are not achieved, and it does not harm the legal interests of commercial banks, depositors, and other customers, meaning that an unaccepted illegal bill would constitute the crime of illegally issuing financial bills, not the crime of illegal loan issuance. If Bao accepted the bill through regular

banking procedures, would it still be considered illegal loan issuance? The author believes it would. As long as the bill is accepted, the purpose of the loan is achieved, and any issuance of a bill that contravenes national regulations, whether accepted legally or not, constitutes the crime of illegal loan issuance.

4.2 Case Analysis

According to the provisions of the criminal law, the crime of unlawfully granting loans involves the behavior of financial institution staff violating national regulations by issuing loans to borrowers who do not meet the criteria. The law focuses on protecting the financial management order of the state and the stability of the financial market. This case involves the "Purchase and Sale Pass" credit granting business carried out by Minsheng Bank Wuhan Branch. According to the defense attorney's opinion, this business does not belong to loan services; therefore, the defendant's actions do not constitute the crime of unlawfully granting loans. The defense attorney further explained that the transactions in question are based on the enterprise's credit services, not the direct issuance of loans. In legal practice, the definition of unlawfully granting loans often involves the understanding and application of the definition of a loan. The court may need to consider whether all financial credit activities can be regarded as loans, especially when there is a difference between banking services and the traditional concept of loans. In making a judgment, the court will determine whether the behavior constitutes a crime based on the provisions of the criminal law and relevant judicial interpretations. The judgment will focus on whether the credit business is strictly carried out in accordance with the bank's regulations and whether there is sufficient evidence to show that the defendant knowingly and intentionally engaged in non-standard credit activities, leading to significant economic losses. Therefore, the core issue in this case is whether the loans issued in the form of acceptance bills possess the attributes of loans and whether the infringed legal interests relate to the crime of unlawfully granting loans. Financial instruments and loans share similarities, and there is inevitably some confusion between the two. Whether issuing loans or financial instruments, banks are engaged in credit activities, providing funds to individuals or businesses in need. When disbursing loans or issuing financial instruments, banks need to assess the creditworthiness of the borrower or the issuer to manage potential credit risks. Both types of businesses also need to comply with corresponding financial regulatory provisions to ensure transaction security and compliance. Substantively, they are different. Loans are usually used to provide funds for various purposes, such as buying property, investing, or personal consumption. Financial instruments, such as checks or promissory notes, are typically used for cash payment and are a payment tool or short-term credit instrument. Loan contracts usually include detailed terms, such as the loan amount, interest rate, repayment schedule, and default clauses. Financial instruments are standardized debt instruments, and their terms are generally simpler, such as the face amount, maturity date, and payer. In practice, financial instruments often have higher liquidity and can be traded on secondary markets, whereas loans are generally non-transferable unless approved by the bank. However, in practical use, there seems to be no fundamental difference between the two, just minor differences. For enterprises urgently needing funds, the act of unlawfully obtaining a financial bill and immediately accepting it is essentially "loaning," indistinguishable from genuine loan activities.

5. Conclusion

5.1 Comprehensive Analysis Using Interpretive Methods

5.1.1 Teleological Interpretation

It focuses on the intent of the legislation and the purpose of the law's enactment. Generally, legal provisions regarding bank loans aim to ensure the transparency of bank loan operations, the repayment ability of the borrowers, and the safety of the bank's funds. If using acceptance bills as a means of loan can meet these basic legislative purposes, such as effectively controlling credit risks and ensuring the reasonable use of loans, then this practice might be acceptable. However, if this approach is used to circumvent the legal loan review process, not only does it infringe upon the personal legal interests of the crime of unlawfully granting loans, but it also increases financial risks and deviates from the legislative purpose, thus it should be considered illegal. Using teleological interpretation to explain both crimes can elucidate the legislative purpose, making the punishment fit the crime.

5.1.2 Formal Interpretation

This focuses on the literal meaning of the legal text. In many judicial systems, the methods, processes, and regulations that must be complied with when banks issue loans are often explicitly stipulated. If relevant laws or regulatory provisions clearly state that loans must be issued in a specific form, such as direct credit, and not include through acceptance bills, then issuing loans using acceptance bills may not meet the formal legal requirements, thus constituting illegality.

5.1.3 Substantive Interpretation

This emphasizes the socio-economic effects of the law and the actual results of its implementation. Under this interpretation, the actual consequences of using acceptance bills as a means of loan are considered. If this practice can effectively support economic activities, such as providing liquidity support through the commercial paper market, and not increase systemic risks, it can be deemed to meet the substantive requirements of the law. However, if the use of acceptance bills leads to the improper use of credit funds, such as for illegal activities or high-risk speculations, thereby infringing upon the safety and management system of credit assets, it should be considered the crime of unlawfully granting loans.

5.2 Analytical Conclusion.

By combining teleological, substantive, and functionalist interpretive methods for an in-depth analysis of the two crimes, the following conclusion is reached: the act of issuing loans in the form of acceptance bills without legal authorization constitutes the crime of unlawfully granting loans. This practice not only violates basic financial regulatory laws but also has the potential to cause serious damage to the national credit management system. To ensure the accuracy and rationality of this conclusion, the behavior must meet the following three key conditions:

5.2.1 The bill must be formally accepted

This condition requires the bill to be formally accepted by a bank or other financial institution. The act of acceptance indicates that the bank or financial institution confirms that it will pay the respective amount to the bill holder or designated person upon the bill's maturity. The payment promise on the bill should be explicitly willing to be performed by the issuer or other legitimate

entities, ensuring the legality of the bill and its financial backing. Without formal acceptance, the bill itself cannot be transformed into an effective payment method and cannot facilitate the flow of funds.

5.2.2 The actual effect of issuing the bill must be consistent with granting a loan

This means that the funds provided through the bill, both in purpose and effect, must be the same as those provided by traditional loan methods, both of which should be to provide financial support to the borrower, not to cover up illegal financial activities. Specifically, after the bill is issued, the flow and use of the funds should comply with the agreed-upon purposes at the time, rather than as a means to evade legal supervision. This condition emphasizes the essential consistency of the two actions.

5.2.3 The infringed legal interests should primarily be the state's credit management system

The act of issuing loans through acceptance bills in violation of regulations mainly damages the state's management order of financial credit. The destruction of the market's fairness and the safety of credit funds should be greater than the impact on the credit system of banks and other financial institutions. The joint fulfillment of these conditions provides a solid legal basis for determining whether an act constitutes the crime of unlawfully granting loans. Through such analysis, we can better understand the legal responsibilities in financial operations and the legal limits that must be observed in actual operations.

6. Conclusions

Law is not a static system of norms, but one that needs to continually adapt as the times progress and social conditions change. When interpreting and applying the law, purposive interpretation provides us with a crucial perspective. It emphasizes that the application of law must align with the needs of societal development and the original objectives envisioned during the law's formulation, while also taking into account the objective purposes under the current actual circumstances. When conclusions drawn from various methods of interpretation are inconsistent or inadequate, purposive interpretation often plays a decisive role. In summary, the purposive interpretation of law highlights the dynamism and substantiality of legal application. It demands that we pay attention not only to the formal aspects of legal norms but also to the socio-economic effects and practical consequences of the law's implementation. This balanced approach aims to promote harmonious development between law and society and to maximize the realization of legal values.

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