

Theoretical restatement and pedagogical implementation of an online asynchronous practical training model for judicial vocational education

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Keywords: Judicial vocational education; online asynchronous trials; hands-on training; instructional design

Abstract: The introduction of online asynchronous practical training teaching model can enhance the adaptability of judicial vocational education. Following and deepening the existing research, we propose the online asynchronous trial rules in the current actual legal norms, which mainly cover five aspects: scope of application, program initiation, litigation, identification, and transformation of trial mode. The aforementioned rules are only for the trial procedure and do not involve the disposition of substantive rights and obligations, which reaffirms the theoretical legitimacy of teaching online asynchronous practical training alone. When discussing the design of teaching, the scope of application of online asynchronous practical training should not be limited to the existing substantive legal norms, and the setting of teaching objectives should be determined according to the needs of teaching and the type of teaching. Students should be substantively involved in practical training, teachers should refine their positions in court and realize effective process control, and assessment and evaluation conclusions should be made in response to the opinions and reasons expressed by students.

1. Formulation of the problem

It is not difficult to conclude that in the era of digitalization and intelligence, legal education needs to be integrated with the new forms and requirements of 'Internet+Education' and to innovate the methods and means of education and teaching. Opinions on Strengthening Legal Education and Theoretical Research in the New Era", "Adapt to the new requirements of the new form of 'Internet+Education', and innovate education and teaching methods and means", and other relevant expressions, the era of digitization and intellectualization needs to integrate legal education with the development of the industry, and to explore innovative education and teaching methods. Thus we enhance the adaptability of judicial vocational education. Needless to say, judicial practice, especially the trial practice of people's courts at all levels, is the core workflow of judicial vocational education in China, and the legal skills required by it should respond to all aspects of the vocational skills required to be mastered by the educated.

Asynchronous trial is a judicial trial mode in which the judge and the parties rely on advanced information technology to complete specific litigation activities "asynchronously" and

"non-face-to-face" within a specified period of time in civil litigation. Previous studies have suggested that this trial mode is the latest practice in China's Internet judicial trial practice, and the introduction of the asynchronous trial mode into the teaching practice of judicial vocational education is expected to make up for the deficiencies of the existing moot courts and legal clinics, and to significantly improve the legal skills training insufficiencies that lead to errors in the pleadings of the case, confusion in the analysis of the facts and application of the law, errors in the interpretation of the law, insufficient procedural knowledge and barriers to the use of the law, and the lack of legal skills training. In addition, it also significantly improves the phenomenon of insufficient professional core skills such as insufficient knowledge and obstacles in the use of legal procedures, lack of courtroom debating skills, etc. when students face live cases due to insufficient cultivation of legal skills, thus realizing the innovation of teaching methods. ^[1]On this basis, the article intends to utilize the method of legal interpretation to illustrate the specific implementation path of introducing online practical training teaching in judicial vocational education.

2. On the asynchronous trial model

(1) Normative analysis of the asynchronous trial model

First, on the scope of application. Asynchronous hearings are applicable to cases in which the facts are clear, the legal relationship is clear, and online hearings are appropriate, except for the application of ordinary procedures or where the parties do not agree. The asynchronous trial is applicable to prosecution, defense, proof, cross-examination, and pronouncement of judgment. According to the above provisions, the application of the asynchronous trial mode is subject to the premise that the case is clear and definite and the parties agree. The asynchronous mode applies to litigation activities such as mediation, exchange of evidence, investigation and inquiry, and court trial. Asynchronous completion of trial activities under the following conditions: ① the parties to participate in the trial online at the same time, but there are difficulties; ② a party to the application, the parties have agreed; ③ after the online exchange of evidence or investigation and inquiry, the parties to the case of the main facts and evidence are not in dispute. Online asynchronous litigation activities cover mediation, evidence exchange, pre-trial meetings, inquiries, conversations, hearings, court hearings and other links and matters, and the links outside the court hearing can be applied to all types of cases. Regarding the application of the online asynchronous trial mode in trials. It is worth noting that the asynchronous trial mode in the aforementioned provisions can be used in sessions other than court hearings regardless of the type of case. In summary, in the provisions on the scope of application, there is a distinction between the applicable links and the types of cases, the former referring to the links in which the asynchronous trial mode can be applied to a particular case, and the latter referring to the specific types of cases to which the asynchronous trial should be directed. Different normative documents agree on the following: (i) the asynchronous mode can be applied to all aspects of civil cases; (ii) the asynchronous mode is applicable to clear cases and should be premised on the consent of both parties.

Second, on the initiation of proceedings. Asynchronous hearings shall be initiated by application of the parties, or pushed by the court to the parties, who shall express their consent. The court, based on the choice of the parties and the circumstances of the case, may organize asynchronous presentation and examination of evidence by the parties. With the consent of the parties, the court adopts the use of asynchronous methods for conciliation, exchange of evidence and court hearings. The applicable conditions include the application of the parties. In the above provisions, only expressed as the parties to choose or the parties agree without limiting the subject of the initiation of the procedure. It should be interpreted to mean that as long as the parties agree that the requirements for the initiation of the procedure are met, the court may initiate the procedure on its own and with

the consent of the parties. Judges, judges' assistants and conciliators authorized by the court may initiate asynchronous proceedings, so the subject of initiation of asynchronous proceedings should at least include the parties and the court.

Third, regarding the litigation session. The questioning session is a 24-hour period with the permission of the court in the form of a dialog box. In the 24 hours following the conclusion of the questioning, the parties may only reply. Within 48 hours after the end of the inquiry, the parties make arguments in no particular order. The court may decide to combine the questioning and argumentation, in which case the parties may make all arguments directly within 24 hours of the beginning of the questioning. The above provisions mainly set rules for the legal time limit for court investigation and court debate, and the way to express opinions is to ask and answer questions in a dialog box, i.e., mainly by means of words. The parties may apply for an extension of the said time limit. Failure of the parties to express their opinions within the said time limit is considered as a waiver of their procedural rights. The parties shall log on to the litigation platform separately, view the evidence and express their opinions on cross-examination within a reasonable period of time determined by the court. The court may designate the parties to log on to the litigation platform separately within a certain period of time to carry out litigation activities such as mediation and court hearing, and the parties may participate in the court hearing by uploading videos. The above provisions are not only limited to the process of court hearings, but also include different parts of the process such as exchange of evidence and court hearings, with the time limit being a reasonable period of time determined by the court, and the means of expressing opinions being by uploading videos instead of in text form. The parties may, within the period specified by the court, record their participation in the trial and upload the video to the litigation platform in accordance with the procedural segments of the trial respectively. Article 6 of the Provision stipulates that online asynchronous litigation activities shall generally not exceed 10 days from the commencement of the litigation activities, or 20 days after an extended period. Articles 8 and 9 of the Provision enumerate the different sessions of mediation and court hearing that should be conducted in sequence, respectively, in which the period of mediation is a reasonable period set by the judge and others, and in the court hearing, the period of 48 hours for the presentation of evidence, cross-examination, and court debates, and the period of 24 hours for the other sessions, and the period of extension by the court's decision cannot be longer than 48 hours. Article 11 of the same provision stipulates that a party's failure to participate in online asynchronous litigation activities or to make corresponding litigation behavior without justifiable reasons is deemed to be a waiver of litigation rights. The above provision is more detailed, including both the overall duration of the asynchronous hearing and the duration of the different segments, and the manner of determining the duration is categorized into statutory and judge's discretionary determination.

Fourth, on identification. If a party uses an account to express opinions and upload materials, it is considered to be his or her own act, unless the account has been stolen. In this provision, the verification of the identity of the parties at the beginning of the litigation activities is not included, and it should be interpreted that the parties' use of the period account to express opinions is presumed to be their own behavior, and it is up to them to prove that the account has been misappropriated. The subject of litigation shall complete the real-name registration on the litigation platform and obtain a special account for logging into the litigation platform. The identity of the litigation subject shall be verified again when conducting litigation activities. The above provisions include verification of identity before litigation activities, but no specific verification method is set, which should be interpreted to mean that the court decides on the specific method of verification, which, in combination with the rule requiring the use of uploading videos to express opinions, can more effectively ensure that the identity of the subject is true.

Fifthly, on the conversion of hearings. The current normative document proposes that the court

may convert asynchronous hearings into synchronized hearings according to the needs of the case, and that the parties applying for conversion to synchronized hearings should submit an application and state the reasons for the court's decision. It can be seen that in this provision, there are also the court's initiative to decide to convert to synchronous hearing and according to the party's application to decide two ways. If there are circumstances that make it impossible to conduct an online trial, the court may convert the proceedings to an offline trial. The parties may propose, within a reasonable period before the commencement of the proceedings, that the proceedings be converted offline at the discretion of the court. In the course of the litigation, there are circumstances listed in the provision that make it inappropriate to make the online trial applicable, the court shall promptly transfer the trial to offline, and the completed litigation activities shall have legal effect. In addition, if the judge finds in the course of the proceedings that it is inappropriate to use asynchronous hearings, he or she may switch to offline or synchronous proceedings, and the parties may apply for such a switch within a reasonable period of time prior to the commencement of the proceedings, and the reasons for the application shall be set out in a statement of reasons, to be decided by the court.

(2) Condensation of the asynchronous trial model

First, as a whole, the asynchronous trial model can be summarized as follows: ① the place where the litigation activities are conducted is the court litigation platform, i.e., the asynchronous trial is conducted online rather than offline; ② the type of cases to which the litigation activities apply should be clearly defined, but it can be applied to all the litigation segments; ③ the litigation activities are subject to time constraints, including 24 or 48 hours after the beginning of the litigation segments, and the whole process is subject to a time constraint of 10 to 20 days ; ④ The way to express opinions in different sessions is by sending text in the dialog box, uploading documents in the litigation platform or uploading videos. ⑤ The commencement of proceedings is subject to the consent of the parties, and if this mode is selected, it can be converted to online simultaneous hearings or offline simultaneous hearings if certain conditions are met.

Secondly, different normative documents contain five aspects, such as the scope of application, initiation of proceedings, litigation links, identification, and transformation of trial methods, and these rules are set up for the opening and promotion of asynchronous trial procedures, and their function is to effectively carry out asynchronous hearings together with ensuring that the parties' opinions are expressed truthfully.

Thirdly, the different rules are all aimed at the asynchronous litigation activities themselves, for example, the way or duration of mediation, evidence exchange, court hearings and so on in the asynchronous trial activities. Without setting up new rules for the different parts of the content of the asynchronous trial, such as the exchange of evidence, mediation, court investigations, court debates, closing arguments and so on, and the method of convergence in the different parts of the asynchronous trial within the asynchronous trial. There is no essential difference between asynchronous trials and synchronized trials or ordinary court hearings.

Fourth. Theoretically, asynchronous trial for litigation participants in the prescribed time, choose relatively suitable for their own free time, each on the line, to complete their own part of the inquiry, evidence, questioning and other aspects of the model can improve the efficiency of the settlement of disputes, facilitating the parties, simple, quick to conclude the case. As litigation activities break through the limitations of time synchronization, the expression of opinions and litigation sessions are not continuous, resulting in differences from other litigation, thus affecting the rights and obligations of the parties.

3. Considerations for introducing an asynchronous trial model in judicial vocational education

(1) Feasibility

Theoretical challenges to the asynchronous trial model are mainly reflected in the following views: First, the asynchronous trial model raises concerns about procedural due process, that is, due to the submission of evidence, cross-examination and hearings in writing as the basic form, which is contrary to the principle that "the first trial should be held in court".^[2] Secondly, the asynchronous trial mode is characterized by sufficient preparation time for the parties, which enables them to formulate tactical behaviours such as interfering with witnesses' testimonies or preparing skillful answers in their favour in time for the trial stage, which to a certain extent may affect the fairness of the adjudication. Thirdly, the meaning of the direct speech principle is: the direct principle refers to the substantive activities of the parties such as the presentation of evidence, cross-examination and debate; the meaning of the speech principle includes that no judgment shall be rendered without verbal argument, as well as the fact that only what is stated and shown through verbal argument to be the material of the judgment. The non-simultaneous, non-verbal character of an asynchronous trial is in conflict with the principle of direct speech. Fourthly, the ceremonial nature of the trial reflects judicial authority, which is diminished by the alibi character of the asynchronous trial.^[3] Fifthly, asynchronous hearings are essentially indirect hearings, which are related to the strong and widespread pursuit of efficiency and value orientation in contemporary society, a structural trend that may lead to the nullification of procedural justice and impact on the existential value of procedures.^[4]

None of the above arguments can negate the reasonableness of asynchronous hearings per se, as illustrated as follows: First, all of the above arguments questioning asynchronous hearings are based on the fact that the model conflicts with principles or values and cannot be analyzed in terms of the rights and obligations of the parties. In fact, since it is impossible to prove that the model will adversely affect the interests of the parties, it is impossible to justify its irrationality in terms of a value judgment. Secondly, procedural propriety derives mainly from positive law rather than natural law, i.e., proceedings conducted in compliance with the provisions of linear legislation are of course legally valid, and the procedural propriety of the asynchronous trial mode should not be questioned as it is clearly provided for in the current law. Thirdly, the content of the asynchronous trial model, as explained above, consists only of the way in which the proceedings unfold and advance, without changing other key rules such as the determination of evidence. In this mode, all trial activities in the presiding judge under the auspices of the presiding judge, the judge personally access to the evidence and litigation materials, and as a basis for the formation of the decision,^[5] the aforementioned views that there is interference with witnesses and other issues, the same in the traditional trial, cannot be used as a basis to question the rationality of asynchronous trial. Fourth, direct speech is only a way of expressing opinions, and in the absence of Internet technology that allows for the expression of opinions over time and space, opinions can only be expressed in court. The reasonableness of a particular mode is not judged by the use of written, video or oral means, but by whether the opinion can be expressed clearly and unambiguously. In the asynchronous trial mode, such methods as uploading videos can be used, which have similar effects to video conversations or oral expression of opinions, and the parties are able to express their opinions clearly, so they cannot be considered unreasonable due to their inconsistency with the principle of direct speech. Fifthly, the authority of the court derives from impartial adjudication rather than external ceremonies.^[6] In addition, in the asynchronous trial, the parties through the guidance of the court, through the uploading of videos, documents and other ways to complete the litigation activities, the court can be for the parties to answer legal questions, through such a way of smooth

litigation activities and the parties to the protection of the legitimate rights and interests of the parties, but also a considerable degree of ceremonial, will not affect the authority of the court. Sixthly, asynchronous hearings do not negate the litigation process, but rather carry out litigation activities in an orderly manner on a litigation platform, and it is clearly unreasonable to define this mode of impacting the process according to its characteristics.

The rationality of the asynchronous trial mode should not be questioned per se in cases where it is clearly provided for in the legislation. First, the asynchronous trial mode breaks through the limitation of physical space, i.e., the mode is different from the traditional court hearing, does not need a specific place to carry out, in the case of vocational colleges and universities can not provide sufficient venues, can be carried out online asynchronous trial teaching. Secondly, because the asynchronous trial mode breaks through the limitation of time, for the parties in judicial practice, the mode has characteristics. And the important characteristic of this mode is flexible. It will not conflict with other teaching modes, and it can be carried out as a separate teaching activities, or can be combined with theoretical classes, moot courts, legal clinics and other teaching activities. Moreover, the model completely avoids the situation of being unable to participate due to time conflicts.

(2) Necessity

First, the introduction of the asynchronous trial mode reflects the requirements of judicial vocational education combined with the development of digital technology. The development of litigation platform technology provides the possibility of asynchronous trial, which is a combination of dialogue, video, documents and other modes of litigation activities, which is a full use of litigation platform technology, and can also test to a considerable extent the specific requirements that need to be met by the effective operation of the litigation platform, and provide references to the improvement of Internet technology in the field of justice. Secondly, the introduction of this mode can cultivate students' professional skills. As the asynchronous trial mode is a new trial mode adopted by the Internet court in practice. This mode is only a trial mode without changing the court's determination method, not only can the educated learn how to carry out the mode in practice, but also can be the educated master the facts of the case. The method of determining the evidence, and the method of applying the laws in different parts of the litigation activities, and cultivate the educated's professional skills on different levels. Thirdly, the introduction of this model reflects the teaching requirement of combining theory and practice.

4. Instructional design of the asynchronous trial model

(1) Scope of application

First, the types of cases in which asynchronous hearings are conducted. Existing research has shown that at the normative level, asynchronous hearings are applicable to different aspects of civil litigation activities, and should be applied to cases where the facts of the case are clear and unambiguous and the legal relationship is clear. The introduction of asynchronous trial in judicial vocational education need not be limited to the above case types, but should include various types of cases. First of all, the introduction of asynchronous trial in practical teaching, there is no existing law on asynchronous trial applicable case types of limitations, can be based on the characteristics of teaching activities to select the appropriate type of case. Secondly, the current law will be asynchronous trial of the scope of application of the reasons for the limitation, in order to facilitate the parties to the situation, to avoid the traditional court proceedings caused by the obvious impact, but also contains the case of complex facts and legal relations of the case should be used in a more formal way of the court hearing considerations. However, it goes without saying that asynchronous hearing is only a change in the trial procedure and does not involve the disposition of substantive

rights, as long as the opinions can be clearly expressed on the litigation platform, the evidence can be clearly shown on the litigation platform, that is, it should not affect the determination of the case and adjudication, asynchronous hearing will be applied to different types of cases in the teaching activities, it will not affect the understanding of the procedure of the educated people and the professional knowledge and vocational skills of the learning and mastery of professional knowledge. .

Second, the type of practical teaching that introduces asynchronous trials. The asynchronous trial mode can be combined with practical teaching: for one thing, asynchronous trials can be combined with theoretical classes. Introducing the asynchronous trial mode in the theory class of judicial vocational education can enable the educated to analyze the case from different angles and positions, form confrontation and enhance their understanding of legal theory. In this case, the introduction of the asynchronous trial mode should serve the teaching of theoretical classes, and teachers can choose any case to require students to analyze it by using the asynchronous trial mode according to the needs of the lectures, even choosing a fictitious case. Secondly, specialized teaching of asynchronous trial or combination with moot court. Asynchronous trial can be carried out as a separate practical teaching courses, can be selected in practice or fictional cases, by the way the educated person as the litigation activities of the judge, the parties, the agent and other subjects, in accordance with the requirements of the requirements of the asynchronous trial of litigation activities designed to participate. Mock court teaching is mainly designed to guide students to learn theory and practice in the courtroom, and this teaching activity is mainly designed by the students, and the content should be mainly courtroom trial; it is also possible for the educated person to choose to apply the asynchronous trial mode in the exchange of evidence, mediation and other aspects.

(2) Teaching objectives

In the asynchronous trial mode combined with theoretical classes as a practical training module, or the mode alone as a practical training activities or combined with the moot court, the teaching objectives should be reflected in the theory and realization of the combination of: ① master the asynchronous trial mode of its own characteristics and mode of operation; ② due to the type of asynchronous trial mode litigation, in the procedural content of the case determination and the application of the law method and the traditional court hearing does not have the essential difference,. Therefore, the educated should learn and master the method of determining the facts of the case, the method of determining the evidence, the method of analyzing the legal relationship, and the different methods of applying the law in the practical teaching of asynchronous trial.

(3) Means of student participation

First, in the choice of platform, as long as the social platform can meet the requirements of uploading videos and files, sending text and language can be used as a "litigation platform" to introduce asynchronous trial, in order to ensure the application of asynchronous trial mode formally and facilitate the teachers to conduct assessment and evaluation.

Second, teachers and students serve as different roles in the asynchronous trial model, where the judge can be either a teacher or a student. After the roles are defined, opinions should be expressed based on the positions of the different roles.

Third, in order to facilitate the learning and enhancement of asynchronous trials, students should engage in substantive participation: the purpose of participation should not be defined as the joint performance of litigation by the parties, but rather as the successful argumentation of their side of the story, to the extent possible. Students as parties should make specific points and give reasons for them.

Fourthly, the winning party of the case will also adjust to the change of strategy of the other party. Whereas, if a fictional case is used, no reference basis exists and students can express their opinions

and give reasons based on the facts and legal relationships of the case.

Fifth, the time limits for the different sessions should follow the 24 or 48 hours provided for in the current law, the existence of the above practical limitations ensures that the sessions are conducted efficiently and, because they are not immediate, provide enough time to think of a reasonable strategy to respond to the comments made by the other party. In this sense, the introduction of time constraints in the teaching activities of asynchronous hearings promotes effective student participation. The 10- or 20-day time limit for the asynchronous hearing process as a whole should also be followed.

Sixth, in order to ensure the substantive participation of students, at the end of the asynchronous trial teaching process, each participant should prepare a report analyzing the legal issues involved in the teaching process and summarizing the gains and shortcomings of the teaching process.

(4) Process control

At the normative level, two ways are used, namely, stipulating that failure to express an opinion is regarded as a waiver of the right to litigate and providing timely notification before the examinations of different sessions. In order to ensure that the teaching activities introduced into the asynchronous trial mode can be carried out smoothly, the following ways of process control should be adopted: firstly, it is made clear that refusal to participate will result in unfavorable consequences such as lower grades and failure in course examinations, so that students can actively choose to participate in the teaching of asynchronous trial practice. Secondly, the purpose of asynchronous trial teaching activities is to enable students to be trained, not to resolve disputes in practice, and cannot simply adopt the way of not participating in the adverse consequences of process control, but should be improved by the following methods: ① Refine the process, so that the main body involved in the teaching activities to know the tasks in the different sessions, and then effective participation; ② by the main body involved in the asynchronous trial teaching activities other than the beginning and the end of the different sections of the teaching activities in the The advantage of this method is that it promotes the different subjects to know what is going on and make them express their opinions effectively in the teaching activities according to the time limit.

(5) Assessment and evaluation methods

The assessment should be carried out by the teacher and should focus on the following aspects: firstly, as the whole process of the asynchronous trial mode is conducted online and students can choose to express their opinions in text or video, the main content of the assessment should be the students' understanding and use of the method of interpreting and applying the law to the legal relationship. Secondly, the evaluation should give reference answers to the detailed analysis of different legal issues involved in the case, and in the case of the student as a judge, it should give a decision document for the asynchronous trial case. In the case of the teacher as a judge, the decisions made during the teaching activity can be used as an evaluation of the student's opinions and points of view. Once again, the reports prepared by the students, which represent their understanding of the asynchronous trial model and the application of the law in the case, should also be the subject of evaluation, and the teacher should write a commentary based on the content of the report.

Acknowledgement

Fund projects:

University-Industry Collaborative Education Program (230814204507191), 2024 Shenzhen Polytechnic University's Teaching Construction Featured Project (JY2024006103) and Shenzhen Polytechnic University Research Project in 2022 (6022312007S).

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