

On Liability for Damage Caused by Objects Thrown from a Height in the Civil Code of China

Hang Yu

*School of Law, Beijing Institute of Technology, Beijing, 100081, China
1258355346@qq.com*

Abstract: *The development of the rules on liability for damage caused by objects thrown from a height has gone through a long process, and on 1 January 2021 the Civil Code came into force, amending the content of liability for objects thrown from a height. "The introduction of the responsibility of property service enterprises and public security organs has played a positive role in identifying the real infringers and distributing the social burden in a fair and reasonable manner. At the same time, we should also be aware that the rules themselves still have imperfections at the legislative and judicial levels, with vague boundaries of responsibility and unclear standards for judicial remedies.*

Keywords: *United Nations Convention on the Law of the Sea; Arctic Ocean; outer continental shelf; delimitation*

1. Introduction

Throwing objects from a height, a typical tort issue in civil law, has received increasing attention from all sectors of society in recent years as the height of buildings has increased. As a norm of natural law, the throwing of objects that pose a risk of accident should be punished, and similar provisions have been in place since the law was created. The development of the infrastructure has led to the evolution of the rule into the present day tort of liability for throwing objects from a height, which was also regulated in China at the beginning of the 21st century. Initially, due to the imperfection of the judicial system, judgments were split down the middle, with some courts supporting the use of common dangerous acts as a framework to hold all owners of the building liable if the true tortfeasor could not be identified, while others dismissed the above claims as not being in accordance with the procedures of the civil procedure law. The promulgation and implementation of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") has taken an important step towards unifying judicial standards and safeguarding the rights and interests of the people, and in the event that the specific aggressor cannot be identified after investigation, the compensation will be shared by the possible aggrieved building occupants, which is not only conducive to balancing the interests of all parties and achieving social justice, but also It is also in line with the requirements of humanitarian legal efficacy and has important social significance.

2. Progress on the rules on throwing objects from a height in the Civil Code

2.1 Clarifying the equitable liability of building occupiers

The Civil Code contains clear provisions on the identification of possible tortfeasors. Compared to Article 87 of the Tort Liability Law, the Civil Code adds the word "investigated" to the identification of the possible tortfeasor. The law clarifies that in the case of objects thrown from a height, the relevant authorities shall exempt the specific person from liability through a clear and strict collection of evidence to determine the possible tortfeasor who is liable for fair compensation, and this evidence of exemption It is necessary to go through a series of complex steps such as the investigation of the height of the throwing by the public security authorities, field visits to understand the situation, the confession of the tortfeasor, the evidence of the exempt person and the investigation by the people's court ex officio to determine this, which is the responsibility of the relevant persons who have a stake in the situation and the responsibility of the legal authority in the face of this complex situation.

At a time when the facilities for preventing damage from throwing objects from height and the experience of dealing with them are still immature, I believe that there is a rational and profound

jurisprudence behind this equitable approach to liability sharing. The tort liability element determines that the liability is a relative relationship between the tortfeasor and the tortfeasor, which requires the tortfeasor to obtain relief on the one hand and the tortfeasor's liberty on the other. The existence of the burden of proof is an effective way to balance the interests of both, and the principle of the burden of proof on the tortfeasor and the reversal of the burden of proof is the exception, which in the final analysis reflects the principle of self-burden on the tortfeasor and the exception of the burden on the tortfeasor in the legal provisions on tort liability.^[1] Normally, when the tortfeasor cannot prove the causal relationship between the damage act and the damage result, the tortfeasor cannot be held liable.

2.2 Expanding the scope of the subject

The first thing that needs to be clarified about the safety and security obligations of property service enterprises and other building managers is that the safety and security obligations originated from the German Civil Code, also known as the social interaction safety obligations, mainly refers to the legal factual relationship in a certain, one party based on certain obligations to the other party's safety, life and other aspects need to do to protect the obligation.^[2] In the liability for damage caused by objects thrown from a height, property service enterprises and other building managers bear the responsibility based on their failure to do their duty to manage and take adequate safety and security measures, the building manager here should be interpreted as follows: the building manager should have the corresponding ability to compensate; even if the real tortfeasor has been identified, for property service enterprises and other managers who have not done their duty of safety and security Even if the real tortfeasor has been identified, the manager of a property service company, for example, will still have to bear its own liability.^[3] At the same time, we should be aware that in cases where objects are thrown from a height, most of the building managers are property service enterprises, and the Civil Code has clarified the responsibility of property service enterprises. The social effect of prevention beforehand and investigation afterwards.

As for the public security authorities, they should conduct timely investigations in all areas and identify those responsible, who should bear the ultimate responsibility for the infringement. The public security organs' obligation to identify is to a certain extent a supplement to the tortfeasor's burden of proof, preventing the tortfeasor from bearing an excessive burden of proof.^[4] Liability for throwing objects from a height is a dangerous and burdensome act, so even if it does not cause damage to the person or property of another person, the public security authorities still need to spare no effort to identify the real infringer and give the corresponding civil and criminal penalties, as a highly authoritative and influential authority, the public security authorities have a great role in promoting the protection of the personal and property rights of the infringer.

3. Deficiencies in the Civil Code's rules on throwing objects from a height

3.1 Subjective liability of doubtful nature

In the final analysis, tort liability must be in line with the elements of tort composition, especially tort liability to make the third party to carry out various forms of compensation and bear, there must be a reason for the imputation of liability, so that the transfer of responsibility to bear the legality of the jurisprudence as well as the reasonableness of the meaning. The existence of equitable liability can, to a certain extent, solve the problem of the allocation of responsibility, but I believe that for the characterisation of equitable liability, it is not easy to use it as a separate imputation basis at present, and in order to become a separate imputation principle, it needs to be supported by a wide range of cases, such as the principle of fault liability, or a large number of code provisions to fill in, such as the principle of no-fault liability^[5], equitable liability at present It does not qualify and can only exist as a form of apportionment of liability, and the nature of the particular type of case makes its existence questionable. In order to be held liable in tort for throwing objects from a building, the act of aggravation is a necessary element. There is no reason why a civil subject who has not committed a tort and who does not have an intentional link with the real tortfeasor should be held liable in lieu of the tortfeasor, on the basis of the theory that no third party is liable in lieu of the tortfeasor, as long as no harm is done. The lack of a legal alternative basis for the assumption of responsibility has the suspicion of generalization of the liability subject's guilt by association, and the imputation system in the law of tort liability, in which the principle of self-burdened by the tortfeasor is the principle and the tortfeasor's burden is the exception, has been elaborated in the previous article, not every kind of tort liability can be legally remedied is the consensus that should be reached when determining the tort, especially under the condition that the real tortfeasor cannot be identified, and cannot force the civil subject who did not The socialisation of liability is a

rebellion against the relativity of liability and, in fact, a manifestation of the inadequacy of the judicial system.

The Civil Code characterises the liability of property service enterprises as tort liability, and distinguishes it from the liability of building occupiers who may cause harm. The main difference between fault liability and presumed fault liability lies in who bears the burden of proof, and the two ways of attributing liability also determine the strength of the protection afforded by the law to each party. Generally speaking, the liability for damage caused by throwing objects from a height as a special tort cause, there is the tortfeasor difficult to collect evidence of the property service enterprise's inaction, improper action, should be applied to promote the interests of the tortfeasor, but only when the law clearly stipulates that the perpetrator should be held responsible for the special tort cause according to the presumption of fault, according to the fault to promote liability, the Civil Code does not The Civil Code does not clearly provide for the principle of attribution of responsibility for property service enterprises under the act of throwing objects from a height, so the application of the presumption of fault to resolve disputes does not have legal legitimacy, and if the application of the principle of fault responsibility to pursue the responsibility of property service enterprises, the property service enterprises holding the advantageous position of information is easy to exploit the loopholes to avoid or mitigate the legal prosecution, making the victims in a vulnerable position cannot get the corresponding compensation.

3.2 Lack of uniformity in the standard of judicial remedies

Impartial justice is the lifeblood of the rule of law, and uniform judicial standards are a prerequisite for judicial impartiality. In the case of difficult to determine the specific tortfeasor, the compensation responsibility of the possible tortfeasor should not be for all the damages caused by the tortfeasor is borne by it^[6], and there is no clear provision for the share of compensation, the judicial organs have great discretion, the result is that the scale of justice varies from region to region, some places have a large proportion of compensation, some places have a small proportion of compensation, which undermines the law Secondly, liability for throwing objects from a height, as a frequent interdisciplinary judicial case, may also be flawed to varying degrees when balancing the boundaries of civil, criminal and administrative standards. As an introduction to the crime of endangering public safety by dangerous means, the standard of offense is also relatively low, which is also a reflection of the law for the protection of citizens' personal health rights and interests, so the act of throwing objects from a height should be considered as a purely civil case or a civil-criminal crossover case, and the standard of relief between these needs to be regulated in more depth.

4. Suggestions for improving the liability for damage caused by throwing objects from a height

4.1 Introduction of government responsibility

As an administrative subject in the state apparatus, the government should play an important role in managing the public affairs of society. Japanese administrative jurist Hiroshi Shiono regards administrative acts as de facto acts, while the form of administrative acts is full when it comes to the legal relationship between the administrative subject and the administrative counterpart. The author believes that the government should play a useful role in assuming social responsibility and guaranteeing social relief to share losses. The introduction of government responsibility will reduce the financial burden of the innocent people and the litigation costs of the people's court, but at the same time, the government deals with a wide range of affairs and the broad scope of insurance determines that the government cannot expand the proportion of insurance to replace the compensation responsibility borne by the innocent people^[7], and can only assume part of the social responsibility, so relatively speaking, the government through the replacement of social insurance for social remedies is to treat the symptoms but not the root cause, its role The social insurance clause, as a form of clause, needs to be regulated by the government to protect the rights and interests of the insured, whether it is for the renewal of the insurance company's business qualifications or for the control of premiums for insurance products, it should be included in the government's regular supervision work. At the same time, the government's role should be more in the education and supervision of property service companies and the people in the community. Property service companies have the obligation to assist government departments in the management of social and public affairs, and the government should introduce relevant policies and carry out educational activities to encourage property service companies to install surveillance in the community and educate and popularise the knowledge of the people who have objections, so as to create peace of mind in the community and reassure the people. At the same time, regular safety education activities should be carried out to make people feel the impact of falling or thrown objects after a vertical

descent, so as to raise their awareness of prevention and restrain their behaviour.

4.2 Introduction of social security mechanisms

Whether it is social insurance or commercial insurance, the nature of the insurance is to avoid additional personal and property damage caused by the insured person who cannot afford to pay for the damage. In other words, building managers and building occupiers who may cause harm but do not have the intention to tort can apply the insurance, and tortfeasors who intentionally cause damage to the person and property of others should not apply the insurance system to reduce their own liability. With regard to liability for damage caused by objects thrown from a height, some insurance companies have emerged with insurance products on compensation for objects thrown from a height^[8], such as Ping An Property Insurance, Life Property Insurance and Anbang Property Insurance all have insurance products for property services management as well as compensation for damage to residents, etc. In the event that the real tortfeasor cannot be identified, the secondary filling of social insurance payments to alleviate the enforcement of compensation for those who are not at fault. This is an effective way to ensure that the investigation and trial of a case can proceed smoothly. At present, the low awareness of prevention among the public, the increased pressure of life and the price of premiums are the key factors that hinder the popularity of relevant social insurance.^[9] The rates of commercial insurance are often determined according to the social nature of the insured matter, the range of compensation costs when the insured matter occurs, the probability of the occurrence of the insured matter and the degree of damage caused under normal circumstances. In the process of setting up insurance related to throwing objects from height, the height of the floor, the environment of the community, the standard of living of the residents and other factors should be taken into account, and different rates should be determined for different social groups so that each resident has the possibility to determine the appropriate level of compensation according to his or her actual situation.

5. Conclusion

The promulgation of the Civil Code is a milestone in the current legislative era, and the interpretation of the law and the filling of relevant laws and regulations is of great significance to the further improvement of the system of throwing objects from a height. With the development of real estate and construction technology, cases of throwing objects from height are bound to show an increasing trend, seriously endangering the safety of other people and property, but also bringing great pressure on the work of judicial and administrative organs, the lack of legal logic of compensation liability is the core point of contention for the responsibility of throwing objects from height. Fill, establish a multi-level, multi-disciplinary responsibility sharing relief system for throwing objects from height, in order to truly achieve judicial justice.

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