

Research on Joint Dangerous Acts in Civil Tort Liability

Wang Miao*

Ikh Zasag International University, Ulaanbaatar, Mongolia
**Corresponding author: 262537763@qq.com*

Abstract: Nowadays, civil acts are the main acts carried out by people. It is a common behavior in life that multiple people jointly commit acts that endanger the personal safety of others and cause harmful results, but it is not possible to identify who is the real perpetrator. For such cases, there is an important tort law rule in China: joint dangerous act. What is a joint dangerous act, what is its functional nature, what are the provisions of this rule in the field of civil law in China, and the differences in joint tort liability for joint dangerous acts are all issues worthy of attention in academic and practical circles. This article analyzes the core factors related to the rule, such as the concept, composition, and nature of joint dangerous behavior, and has a deep understanding of the rule. On this basis, it explores the institutional value of joint dangerous behavior and how to further improve the rule in the context of China's legal system construction.

Keywords: common, behavior, agree, joint responsibility

1. Introduction

Connotation of joint dangerous behavior: The study of joint dangerous behavior must be based on a deep understanding of the rule. The following author starts with China's laws and regulations related to this rule, analyzes relevant provisions, summarizes the connotation of joint dangerous behavior, and provides an understanding basis for further research on this rule. As the most important legal document in the civil field, the Civil Code of China does not provide for joint dangerous acts, but it is only stated in the Civil Code of China and relevant judicial interpretations[1].

The Civil Code stipulates that if two or more persons commit acts endangering the personal and property safety of others, and one or more of them cause damage to others, and the specific perpetrator can be determined, the perpetrator shall bear the tort liability; "If the specific perpetrator cannot be determined, the perpetrator shall bear joint and several liability." This clause is a direct legal provision on joint dangerous acts. China's "Interpretation of the Supreme People's Court on Personal Injury Compensation" stipulates that if two or more people jointly commit an act endangering the personal safety of others and cause damage consequences, and it is impossible to determine the actual perpetrator of the infringement, they shall bear joint and several liability in accordance with the provisions of the "Civil Code"; "If the joint dangerous actor can prove that the consequences of the damage were not caused by him, he shall not be liable." Based on the analysis of this article and the theoretical research on joint dangerous behavior in Chinese theoretical circles, it can be concluded that the connotation of joint dangerous behavior mainly includes the following three points:

First, there are two or more perpetrators. This is a requirement for the subject of joint dangerous conduct. The reason why a joint dangerous act is called "joint" is because there is a requirement for the number of perpetrators. "It must be two or more people, and a single person's behavior must be able to determine the attribution of responsibility, so it is absolutely not possible to establish a" joint "dangerous act." The fact that there are more than two actors indicates the integrity of such acts and provides the possibility for joint and several liability in terms of liability division[2].

Second, causing damage consequences. Joint dangerous behavior is punishable, which essentially requires that the behavior of the perpetrator causes harm to the victim, and that there is a causal relationship between the behavior and the result. It should be clarified that the damage consequences referred to herein mainly refer to the physical damage caused to the victim. Joint dangerous act is a kind of tort, which follows the general law of general tort, but it also has its own particularity. The object of infringement is mainly personal interests.

Thirdly, the attribution of responsibility cannot be determined. This is the most essential characteristic of joint dangerous behavior. According to relevant Chinese laws and regulations, a joint dangerous act refers to the actual damage caused by multiple actors to the victim. If it can be determined that the specific consequences of the damage were caused by the behavior of one of the actors, then the attribution of responsibility is determined, and the joint dangerous act is not established in fact. Just because the specific perpetrator cannot be determined, the attribution of responsibility cannot be determined, and the rule of joint dangerous acts exists.

2. Shortcomings in the practice of joint dangerous behavior

2.1. Disputes over how to identify joint dangerous behaviors

There are two main viewpoints on how to identify joint dangerous behavior in academic circles. One is the "theory of common behavior", and the other is the "theory of uncertainty of the perpetrator". The former believes that the essence of identifying a joint dangerous act is that the act has a common integrity, while the latter believes that the essence of a joint dangerous act does not require the commonality of the act, but only requires that the specific perpetrator cannot be determined. The dispute over recognition standards is not only an academic issue, but also of practical significance. Due to the existence of this dispute, it brings certain difficulties to the specific operation in judicial practice, so it is necessary to study this issue.

2.2. Unclear distinction between infringement by several persons without intentional contact

Due to the imperfect provisions on joint dangerous acts in China's legislation, there are different views on the understanding of joint dangerous acts. In practice, there may be a poor understanding of other types of infringement similar to joint dangerous acts

For example, in practice, it is already clear about those infringers, but their respective share of damage caused to the victim is not clear. Such situations also belong to joint dangerous acts. Whether such acts can be classified as joint dangerous acts is a question that we should face[3].

2.3. The differences between joint tort and joint dangerous act are as follows:

■ *In terms of the constituent elements of these two acts, the main differences are:*

1) For the occurrence of damage, the joint dangerous actor subjectively does not have joint fault; Joint infringers have joint faults or negligence.

2) In a joint dangerous act, the perpetrator is an individual and cannot be determined; In a joint tort, the perpetrator is determined, and the consequences of the damage are jointly caused. The perpetrator is the perpetrator, although the role of the perpetrator in the consequences of the damage varies.

■ There is a difference in the causal relationship between the damage result and the behavior: in common dangerous behaviors, only individuals have a causal relationship with the damage result; In joint tort, there is a direct causal relationship between the perpetrator and the damage result.

■ In terms of the burden of proof, there are also differences between the two: in joint dangerous act litigation, the burden of proof is inverted.

■ There are differences in the principles of liability attribution between the two: the principle of presumption of fault is adopted in cases of joint dangerous acts; The principle of fault is adopted in joint tort cases.

3. The characteristics of joint liability for joint dangerous acts are the same as those of joint injurious acts

The law presumes that several persons are at fault for the occurrence of the damage, and that several persons are jointly and severally liable for the consequences of the damage caused by the dangerous act. It should be noted that the share of internal responsibility of the joint dangerous acts should be evenly distributed in principle. In a joint dangerous act, the reason why each participant is responsible for all the damage lies in the fact that there is a certain temporal and spatial correlation between the acts of the same kind of harm. It is different from the composition of joint injurious acts,

and does not require the "common relevance" between the various acts, nor does it require proof of the causal relationship between the individual acts of the perpetrator and the occurrence of the damage. However, when the behaviors of the majority of people involved are observed as a whole, there must still be a causal relationship between them and the occurrence of the damage result. The joint and several liability of the joint dangerous actors is also subject to exemption: (1) to prove that they have not caused any damage, and that there are no conditions or reasons for causing any damage; "As a participant, it has been proven that he/she should be responsible, and all other possible causes will be exempted from liability".

Article 64 of the Civil Procedure Law states that the parties have the responsibility to provide evidence for their claims. "The people's court shall investigate and collect evidence that the parties and their agents ad litem are unable to collect on their own due to objective reasons, or that the people's court deems necessary for the trial of the case." The people's court shall comprehensively and objectively examine and verify evidence in accordance with legal procedures. Article 63 Evidence includes: a Statement of the parties; B documentary evidence; C Material evidence; D Audiovisual materials; E Electronic data; F Witness testimony; G Appraisal opinions; H Record of inspection. Evidence must be verified before it can be used as a basis for determining facts[4].

4. Rules of proof for joint harmful acts

1) Allocation of burden of proof for victims:

- Several persons have jointly committed a dangerous act, that is, to prove who committed the joint dangerous act;

- The victim has suffered damage, that is, the damage he or she has suffered as a result of a joint dangerous act;

- The perpetrator has a subjective fault, that is, all the joint dangerous actors have neglected their duty of care.

2) The joint dangerous actor bears the burden of proof for the exemption conditions (no causal relationship):

The "Several Provisions on Evidence" adopts the affirmative theory (causal exclusion theory): the burden of proof for the absence of causal relationship between their behavior and the damage result can be exempted;

The Civil Code adopts the negative theory (causal proof theory):

A. A person can only be exempted from liability if he can provide evidence to prove who is the specific infringer;

B. If it is not possible to prove who is the specific infringer, it shall bear joint and several liability.

The victim may bring a lawsuit in a people's court and demand that the infringers of joint dangerous acts bear joint and several liability. The parties may also negotiate for a solution. In a tort lawsuit where a joint dangerous act causes harm to a person, the person who committed the dangerous act bears the burden of proof that there is no causal relationship between his act and the result of the damage.

5. Relevant regulations are still incomplete

Joint dangerous acts are stated in the Civil Code of China, and there are also relevant judicial interpretations in practice. However, it should be noted that due to the fact that joint dangerous acts have not been introduced in China for a long time, the construction of relevant systems is not sound. For example, there are still a series of problems in the understanding of joint dangerous acts and their specific application in judicial practice.

6. Suggestions for improving the rules of joint dangerous behavior

First of all, it is clear that the "joint behavior theory" is the standard for identifying joint dangerous behaviors. According to Article 4 of China's "Interpretation of the Supreme People's Court on Personal Injury Compensation". A joint dangerous act is an act committed by two or more persons jointly

endangering the personal safety of others. This emphasizes the important factor of "joint implementation", indicating that the original intention of legislators in legislation is also to take the common theory of behavior as the standard. "The theory of uncertainty of the perpetrator" only emphasizes a component factor of joint dangerous behavior unilaterally, taking uncertainty of the perpetrator as the core factor, ignoring the unity of the behavior of the joint perpetrator, and not highlighting the characteristics of this rule that are different from other systems.

Secondly, the infringement of several persons is not a joint dangerous act. "The infringers have been identified, but their respective share of the damage caused to the victim is unclear. This type of situation should not be classified as a joint dangerous act, but should be the infringement of several persons without intentional contact".

The tort of unintentional communication and joint tort have several similarities, but are fundamentally different. This type of behavior can be divided into two situations. The first is that the perpetrator has no intention of contacting, but they are all actual infringers, and should bear joint and several liability for the victim; In the second case, the combination of the brief descriptions of the acts performed by the actors constitutes a unified damage consequence, but the causal forces between the subjective fault and the damage result of each person are different. At this time, the responsibility should be borne "according to the magnitude of the fault or the proportion of the causal forces." This can be seen as the difference between the two acts. Therefore, in specific judicial practice, the determination of a joint dangerous act must be distinguished from the joint infringement by several persons[5].

7. Exemption from common danger

The general exemption or defense of civil liability is also applicable to joint dangerous acts. What we are discussing here is the specific exemption from liability in the system of joint dangerous acts, and there are two different views in the academic community on the connotation and requirements of this specific exemption.

One view is that the perpetrator can be exempted from liability as long as he proves that he is not the real perpetrator. The reason is that if one or some of the defendants has proven that they have not committed a dangerous act or that their actions are unlikely to cause harmful consequences, it indicates that they (or they) no longer belong to the "cannot know which of them is the perpetrator" part, and of course, they should not be responsible for the harmful consequences.

Another view is that the defendant should not only prove that he has not committed the act of victimization, but also prove who is the real perpetrator in order to be exempted from liability. The reason for this is that it is only possible to prove that one is not the perpetrator and cannot determine the attribution of responsibility. If one is exempted from responsibility, it is not conducive to the protection of the victim.

8. Conclusions

First, the act is performed by several people; Secondly, the nature of the act is dangerous; Third, this dangerous joint act is the cause of harm to others; Fourth, the damage result is not caused by all the common dangerous actors, but it cannot be determined who is the perpetrator. In some cases, two or more persons who injured or persuaded a third person to fight during a scuffle meet the characteristics of the above-mentioned joint dangerous act, so both of their actions have the possibility of causing damage. According to Article 168 of the Civil Code, if two or more persons jointly commit an infringement act and cause damage to others, they shall bear joint and several liability. Therefore, both perpetrators should be jointly and severally liable to the victim. The reasons for the provision of joint dangerous acts in the Civil Code are: when several people jointly participate in the implementation of acts that are dangerous to harm others and have caused actual damage, but the specific perpetrator is unknown; "Or when several individuals commit infringement acts separately and cause the same damage to the victim, but the participation of each perpetrator is unclear, as the number of individuals do not have intention communication, it is not possible to integrate their actions." In the former case, the victim must provide evidence to prove who the specific perpetrator is; In the latter case, it is necessary to prove the causal relationship between the actions of each perpetrator and the damage they have suffered. Obviously, this is very difficult, so the victim may lose the lawsuit due to lack of proof. In order to protect the legitimate rights and interests of victims, the law applies the provisions on joint

victimization to this situation, with each participant or infringer bearing joint and several liability for compensation. At the beginning, the purpose of the German Civil Code's provision of the first sentence of Article 830, paragraph 1, was to "exclude for the victim the difficulties of proof that arise when there are several damages that do not constitute a joint act and the respective participation of the instigator is unknown, or when the instigator of the several persons is unknown." This is more clearly stated in the latter paragraph of Article 714 of the first draft of the German Civil Code, This paragraph states: "When several persons are responsible for the damage caused, if it is not possible to detect their respective share of the damage, even if the act is not committed jointly by several persons, the same applies to the preceding paragraph references.

Joint dangerous act is a kind of joint tort in a broad sense, which is not only a difficult point in the theoretical research of civil law, but also occurs occasionally in judicial practice. However, due to China's civil legislation, joint dangerous act has not been stipulated in previous laws. The judicial interpretation of personal injury compensation clearly stipulates joint dangerous acts for the first time, which not only has great significance for guiding judicial practice, but also enriches and develops the theory of joint tort.

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