

# Problems and Countermeasures of Joint Liability in Civil and Commercial Law

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**Keywords:** Civil and commercial law, Joint and several liability, Problems, Countermeasures

**Abstract:** With the continuous development of economy, the economic activities among enterprises are also increasing, which means that the economic disputes among enterprises are increasing gradually. The civil and commercial law joint responsibility system can protect the legal rights and interests of creditors to the greatest extent, and can lay a solid foundation for the maintenance of extensive economic activities. Civil and commercial law solves the basic problems that are closely related to people's daily production and life. Civil and commercial law covers a wide range and has rich connotations. Joint and several liability is an important part of civil and commercial law, and it is also a difficult point in the trial of civil and commercial cases. It is of great significance to improve the interpretation of joint and several liability in civil and commercial law. This article will elaborate the problems of joint and several liability in civil and commercial law, and put forward some necessary countermeasures, in order to provide some theoretical reference and reference for the vast number of legal staff.

## 1. Introduction

Joint and several liability system plays an important role in the field of civil and commercial law in our country, but there is no clear and comprehensive theoretical explanation of the specific concept of joint and several liability system in our country, which needs to be fully studied. In civil acts, joint and several liability, as a compensatory relief measure, can effectively protect the legitimate rights and interests of creditors by strengthening the discussion of the problems existing in joint and several liability in civil and commercial law and formulating relevant countermeasures [1]. In order to better implement the joint and several liability system in civil and commercial law and realize its good sustainable development, we must attach great importance to the problems of joint and several liability in civil and commercial law, suit the remedy to the case, and formulate effective solutions and countermeasures [2]. At present, China's civil and commercial joint and several liability system has a certain range, but at present, there are some defects in the development of civil and commercial joint and several liability system. Of course, this is also determined by the historical development of our country, resulting in the lack of systematic guidance of joint and several liability in civil and commercial law [3]. This paper combines legal provisions and judicial practice, studies and analyzes the problems existing in the application of joint and several liability in civil and commercial law, and puts forward several countermeasures.

## 2. The Concept of Joint Liability in Civil and Commercial Law

The joint and several liability of civil and commercial law mainly refers to the civil liability caused by the debt relationship when two or more parties exist. According to the agreement of the parties or the relevant provisions of the law, their common debt requires the parties to bear part or all of it. With the development and progress of the society, our country has embarked on the road of characteristic socialism. The cruel system of sitting together is no longer suitable for today's era, but the perfection of the legal system of joint and several liability is still of great significance and value. We should proceed from our own national conditions and draw lessons from the experience of other countries. If the third party instructs the actor to carry out the civil act even after the agency is insufficient, overstepping and outdated, it shall bear joint and several liability when the rights and interests of others are damaged; In addition, in daily economic activities, if the person responsible

for the infringement is shielded for his own benefit, he must bear the corresponding legal joint liability. When there are multiple responsible persons, then each of them is required to fulfill the responsibility of paying off all debts, that is, there is joint liability or joint relationship between each responsible person.

### **3. Problems in Joint Liability of Civil and Commercial Law**

#### **3.1 Civil and Commercial Law and Procedural Law Are Not Closely Linked**

In the application of civil and commercial law, changes in the rules will cause changes in the practice of joint and several liability. The connection between substantive law and civil and commercial law is not close enough. If civil and commercial law procedures are only started separately, the judgment and implementation of joint and several liability will only exist and appear [5]. In the specific civil and commercial activities, the debtor's behavior has violated the relevant laws and constitutes a fact of damage to creditors. Secondly, the debtor and the creditor are the causal parties in a specific case, and the creditor suffers losses due to the debtor's obvious fault behavior. The relationship between civil and commercial law and procedural law is not close enough. Assuming that only civil and commercial law procedures are used separately, joint and several liability will appear on the surface in terms of determination and implementation. When the application of substantive law conflicts with that of procedural law, the priority of substantive law should be higher than that of procedural law. In the relevant provisions on joint and several liability, it is now the main point to change the rules on joint and several liability for joint torts in substantive law. It is precisely because there is no clear definition that in many cases of true and false joint and several liability, it is impossible to completely determine whether joint and several liability is needed, because there is no specific theoretical guidance that makes many cases of additional joint and several liability have been sentenced to joint and several liability cases and cannot protect the legalization of our country and the legitimate rights and interests of the debtor [6].

#### **3.2 The Determination of Those Responsible is Not Specific Enough**

For joint torts, if there is no court hearing, then there will be no investigation of the burden sharing between the non-indicted tortfeasors and the infringed. If the obligee only litigates against one person, other joint and several liable persons will not be judged as defendants. While the obligee litigates against multiple individuals, other joint and several liable persons will be judged as defendants [7]. All the tortfeasors need to bear part of the legal responsibility, but the negligence of different people in specific cases is different. In civil acts, if the plaintiff brings a lawsuit against some tortfeasors, the plaintiff should determine the tortious facts and all the losses caused by the tortfeasors, and the number of tortfeasors will no longer be asked about the tortfeasors' respective mistakes. There should also be differences in responsibilities. From the perspective of judicial practice, even if the tortfeasors have not been fully prosecuted, the court can still clarify their joint tortious liability and determine the scope of compensation. In actual case handling, the application of joint and several liability is not deep enough, and the application of civil and commercial law is only superficial. After all, the two kinds of laws are complementary to each other, and the relationship between the two also affects the ultimate exertion of legal effect. The weight of the joint and several liability is not supported by legal identification, the judges' trial of cases lacks legal provisions, and the trial is more difficult. Usually, the joint and several liable persons have to bear heavy legal responsibilities, which makes it difficult to guarantee the fairness and justice of the responsibility identification and responsibility sharing between the joint tortfeasors.

#### **3.3 The Application of Option is Not Strict Enough**

In the actual civil and commercial law case trial process, for tort litigation, the court in order to improve the efficiency of litigation and facilitate the trial, usually requires the plaintiff had better all the common tortfeasors to sue together. This right is owned by the plaintiff and the court cannot initiate the procedure on its own. In the process of judicial practice, new litigation cases will appear

when the last case is finished. At this time, the court will make clear the joint and several liability of the parties, but there is no division of liability between the new responsible persons. In the face of specific cases, if the joint and several liability rules in civil and commercial law are difficult to clearly divide rights, responsibilities and obligations, then the complementary coordination of laws and regulations can be realized with reference to the relevant provisions in substantive law [8]. In terms of civil acts, once the plaintiff sues some of the tortfeasors in the joint tortious act, the court can determine all the losses caused by the tortious act based on the tortious facts, and no longer ask about the number of tortfeasors and their respective tortious acts. The other is the civil substantive rights based on the substantive law. When the plaintiff brings a lawsuit against some infringers, the plaintiff can rationally deal with the procedures and entities he enjoys in combination with the joint and several liability provisions. In this link, specific plans need to be drawn up for those professional and technical work, so as to ensure a correct division of joint and several liability in terms of rights and obligations.

#### **4. Countermeasures to Solve Joint Liability of Civil and Commercial Law**

##### **4.1 Perfect the Division of Joint and Several Liability Rights in Litigation**

Based on the principle that procedural law guarantees the rights of entities, the legal rights and interests of defendants and other joint and several liable persons as well as the litigation rights of plaintiffs are determined so as to formulate corresponding protection. Therefore, when dealing with different joint and several liability issues, specific situations and diagrams are needed to ensure the rationality of the judgment. In order to realize the concrete analysis of specific cases, it is necessary to organically combine civil and commercial law with substantive law. Only in this way can the mechanization and process of joint and several liability handling be effectively avoided [9]. And clearly define the specific ways and contents of joint tort litigation, referring to the relevant formulation principles, apply the joint liability system to the actual trial and execution. Assuming that there is a new joint and several liability person or a new creditor's rights relationship, then coordinate the subject relationship between the two to ensure the normal performance of the corresponding rights and obligations. Grasp and pay attention to the independent option of the parties in the first place. In the program design, the corresponding reasonable space and time can be set aside for the parties to the case to make their own choices. For professional and technical work in the case, some specific determination schemes are proposed to ensure the division of rights and obligations of joint and several debts. The party responsible should be determined, the proportion of the joint and several liable should be made expedient, and the problem of liability recovery should be avoided by dividing the specific responsibilities of the responsible subject.

##### **4.2 To Coordinate the Relationship between Civil and Commercial Subjects**

The coordination of civil and commercial subjects is mainly based on the social and economic level and the development degree of science and technology, which makes civil and commercial proceedings better. When making the procedure, we need to proceed from the whole, to ensure that we have a comprehensive grasp of the overall situation, to ensure that we can protect the legitimate rights and interests of the rights holders and those responsible, to ensure the fairness and fairness of the proceedings, and thus to ensure the effectiveness of the proceedings. In addition, in real life, when joint and several liability occurs, the responsible person may violate other laws at the same time, so it is necessary to link civil and commercial law with other laws to make judgment, which can make up for the deficiency of single legal judgment and can also enhance the enforcement guarantee of judgment results. In the face of this situation, it is impossible to coordinate and stipulate all the subjects. Only the court can redefine the subjects of civil and commercial acts according to the actual situation so that the subjects of civil and commercial acts and rights can adapt to each other. According to this situation, it is unrealistic to stipulate all the coordinating subjects, which requires the people's court to determine the civil and commercial subjects according to the actual situation, so that the corresponding civil and commercial subjects can enjoy their due

rights. In addition, it is necessary to ensure coordination and correspondence between legislation and substantive law so that they can promote and influence each other. If the number of persons responsible in the case is large or the case is serious, the creditor must bring a collective lawsuit against all the persons involved in the case before the court can accept it. However, the principle of specific analysis of specific cases should be followed. In some cases, only the main responsible person or a single responsible person can be prosecuted.

#### **4.3 Pay Attention to the Design of Litigation Procedure**

Based on the practice of civil and commercial law, in the process of system design, the two values of litigation efficiency and comprehensive balance of litigation justice should be taken as the basis, and then the system should be designed. The content of the agreement is to urge the guarantor to undertake the debtor's debt behavior if he cannot fulfill the debt. If the guarantor is entitled to recover the debt from the creditor after paying off the debtor's debt. When designing the litigation procedure, the designer should consider the right of the parties to choose the procedure, which requires the designer to design the litigation procedure to provide the necessary system space for the parties. First of all, creditors, debtors and other clear litigation rights, related legal rights and interests. Secondly, it is clear about other laws related to the case and the specific ways of litigation. Finally, enhance the professionalism and pertinence of the litigation process. Therefore, this requires legal workers to continuously improve and supplement the original contents in their actual work, combining their own work experience and the specific circumstances of the case, so as to strive for the legal system to truly safeguard people's legitimate rights and interests and provide necessary space for the parties. In the process of designating substantive law procedural rules or in the process of future procedural legislation, full consideration should also be given to whether the substantive law and the procedural provisions in the substantive law are consistent with the provisions of the substantive law.

#### **5. Conclusion**

To sum up, the joint and several responsibility system plays an important role in our modern civil and commercial law. China has strengthened its emphasis on the joint and several responsibility system, but has not defined the joint and several responsibility system in detail, comprehensively and correctly. Therefore, it is necessary to strengthen the perfection of the joint and several responsibility system. We need to constantly sum up experiences and lessons in the actual process, strengthen the construction and improvement of the civil and commercial joint responsibility system, strengthen the legal education of the whole people, and create a legal environment, so as to lay a solid foundation for promoting the construction of our socialist legal system. Legal system construction is of great significance to our country's economic development, while civil and commercial law is an important part of our country's legal construction and must be attached great importance to ideologically. By improving the division of joint and several liability rights in litigation, perfecting the tort law and paying attention to the design of litigation procedures, the legitimate rights and interests of creditors can be effectively protected, the subject of joint and several liability can be defined, and the sustainable development of civil and commercial law can be promoted. To further improve the relevant provisions in the civil and commercial law, it is also necessary to clarify the relationship between the civil and commercial law, procedural law and substantive law. Only in this way can we improve our legal system and strengthen the power of the rule of law.

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