

On the Problems and Measures of Joint Liability in Civil and Commercial Law

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Abstract: As a basic law related to people's livelihood and daily life, civil and commercial law is closely related to our life. Joint liability is an indispensable important system in civil and commercial law. Its existence is of great significance, and is more in line with the needs of sustainable development of the society in the current period. It strictly regulates the legal responsible person and plays a great role in regulating the legitimate rights and interests of the parties. However, in the current period, there are still some practical problems in the joint liability in civil and commercial law, which need to be solved in time. This paper carries out in-depth analysis, and try to analyze several effective solutions.

1. Introduction

In the legal field of our country, the joint liability in civil and commercial law covers a wide range, which is closely related to our life as well as all aspects of life, including individuals, enterprise legal persons and government agencies. However, after observing the joint liability of current civil and commercial law in China, we find that there are still some substantive problems and defects. These problems require effective solutions, so as to gradually perfect the joint liability of civil and commercial and effectively guarantee the interests of creditors and the rights they should enjoy.

2. Overview of Joint Liability in Civil and Commercial Law

In different countries, the responsibility scope and coverage of joint law differ. For example, in democratic countries such as the United Kingdom and the United States, joint liability has two basic principles, namely, the basic principle and the practical principle. In joint law of democratic countries, creditors are allowed to carry out legal proceedings against debtors. At the same time, they can also conduct litigation activities against all debtors, so that all debtors bear corresponding legal liabilities. In this process, forms of debt bearing are diverse. Debtor can bear the debt together, or divide the debt equally. Its flexibility is obviously stronger. In democratic countries, more attention has been paid to the settlement of legal proceedings. There are many regulation items in the joint liability in our country, but they fail to be strictly implemented in the legal procedure. Meanwhile, it is difficult to fully implement the joint law into the practical activities and form a unified consensus. Up to now, the understanding of joint liability in our country is mainly reflected in the following aspects. Firstly, joint liability refers to the liability of two or more debtors to creditors and to repay debts. Secondly, on the premise of several debtors, any one of these debtors can bear all the debts independently. The relationship among different debts is joint. Thirdly, as long as some of the debtors have paid all debts, the creditors have no right to ask for further compensation. Fourthly, in civil liability, there is a strict definition for joint liability, so that the bondholders are able to reasonably make use of the law to protect their own interests.

In China, the emergence of joint liability can be traced back to the "Guilt by Association" in the Shang Yang reform. In the history of our country, the application of "Guilt by Association" was extensive. During the continuous development and progress of the times, it has been widely applied to political activities. With the continuous development of society, the law of our country is also constantly improved. In the current civil and commercial law, the emergence of joint liability is of great significance, which offers unique help for people in economic disputes. In dealing with some

criminal disputes and people's livelihood disputes, it effectively regulates the economic disputes between debtors and creditors, so as to promote debtors to bear legal liability, and carry out compensation activities for creditors, while other debtors should also bear their own corresponding legal liability in this process.

3. Types of Joint Liability in Civil and Commercial Law

3.1 Joint Liability in Mutual Liability

When the joint liability in mutual liability is implemented in some actual situations, there are some phenomena. For example, joint liability occurs in some large-scale construction sites. If the personal safety of others is infringed during the construction activities on the construction site, liability for mutual compensation is formed. For such a large-scale construction site, China has also made corresponding regulations. Due to the lack of rationality of building structure or the failure to carry out safety management in accordance with regulations and engineering management in the process of construction, casualties may be caused. It will be the responsibility of the construction personnel and the designer of the building, who shall bear joint liabilities.

3.2 Joint Liability Arising from Undertaking

In joint liability, if the scope of liability is not very clear, or if the corresponding signing guarantee measures are not set up to divide the liability, liability will easily arise on the premise that the debtor fails to perform the relevant legal liability in accordance with the contract. For example, in the process of signing a contract, there are several guarantors, who should take corresponding responsibilities and be responsible for the specified tasks. If the scope of liability is not clearly shown in the liability, and there is no guarantor, then the debtor is fully responsible for these responsibilities.

3.3 Joint Liability in Principal-Agent

Joint liability does not exist in all agents. According to the current period of law, in the process of entrusted activities, joint liability is the responsibility of the parties. In the process of agency, if there are some illegal phenomena, the agent bears the agency responsibility, which can not be shirked. In civil and commercial law, the principal-agent liability is of great significance. It is precisely because the joint liability of principal-agent behavior can effectively regulate the agency behavior, and maximize the protection to avoid some illegal agency phenomena.

4. Problems of Joint Liability in Civil and Commercial Law

4.1 Responsibility Division of Creditors

In the actual legal disputes, there are certain joint liabilities among each debtor. However, there are certain differences in the negligence of each debtor in the process of legal disputes, so the legal liabilities that the debtor should bear need to be dealt accordingly. Here's an example. Wang lent his car to his friend Sun, who drove Wang's car after drinking and caused a traffic accident. Driving illegally after drinking made Sun hurt Jia, a passer-by. Jia sued Sun, the perpetrator of the accident. According to the explicit provisions of joint liability, Wang and Sun were listed as defendants together by law. When Sun couldn't afford Jia's medical expenses, Wang had the responsibility to bear all medical expenses. In this case, Wang just lent his car to Sun, but had to bear the responsibility after the accident. There is a certain difference in the degree of debtor's fault in such a legal event. Therefore, there should be a certain difference in the responsibilities Wang and Sun should bear. In the law, joint liability has not been able to fairly divide the economic proportion of each debtor in this accident, and there is a certain ambiguity in the distribution of liability between joint debtors, so it is difficult to achieve fairness.

4.2 Loose Relationship between Civil and Commercial Law and Substantive Law

As a branch of Chinese law, civil and commercial law is expected to cooperate with other laws reasonably, and further guarantee the fairness and universality of law under the premise of joint implementation, so as to give full play to the effective role of purifying the social environment and standardizing the social system. However, in the actual operation of civil and commercial law at this stage, while there are some changes in the relevant laws, the civil and commercial law will also change accordingly, which makes the fundamental nature of joint liability of civil and commercial law different from that of substantive law, so that it is difficult for the joint liability of civil and commercial law to operate effectively in the substantive law. In the above cases, joint liability is required to be operated according to the standard behavior of substantive law, which also conflicts with the provisions of civil and commercial law.

4.3 Limitation of Action of Joint Liability System in Civil and Commercial Law

In China's laws and regulations, the limitation of action for legal cases is two years, which starts from the main debt to the performance period. However, in the guarantee law of our country, the limitation period of debt litigation is six months, while the litigation time of joint liability is not clearly defined in the law.

5. Solutions to the Problems in Joint Liability in Civil and Commercial Law

5.1 Fully Protect the Legitimate Rights and Interests of the Parties

In the actual legal cases, the application of joint liability law should be based on the actual situation of the case, ensure the fairness and rationality, as well as effectively protect the legitimate interests of the parties and the interests of the debtors. For example, in an economic case, there are multiple shareholders. The amount that each shareholder should compensate is based on the proportion of the shareholders' shares in the board of directors. Therefore, in determining the system of joint liability, it is not only essential to carry out judgment activities according to the law, but also judge events according to the fair and just judgment policy, so as to further protect the actual interests of debtors and creditors. In the actual process of legal norms, not only the interests, but also the legitimate rights of the debtor in the joint liability system should be protected.

5.2 Considerate Substantive Law in the Determination of Joint Liability in Civil and Commercial Law

In joint liability system, it is necessary to reasonably integrate substantive law and civil and commercial law, and make adjustment and operation effectively according to the actual principles. Only by ensuring the joint liability in civil and commercial law and substantive law can we guarantee the correct implementation of joint liability to the greatest extent. In legal cases, we should reasonably link civil and commercial law with substantive law and break the previous independence, so as to realize the smooth and correct implementation of joint liability.

5.3 Establish a Perfect Joint Liability System

In the current period, although the joint liability system has been fully implemented, it has not been widely applied at this stage. In essence, it has not achieved self-improvement and self-regulation. Therefore, only when the relevant provisions of joint liability are further improved and standardized, can the joint liability system be actively and stably operated, so as to avoid vague definition and difficult implement. In this process, in order to further achieve the above goals, the state should also issue relevant laws to regulate the joint liability system to ensure fair and correct judgments in cases.

6. Conclusion

To sum up, there are still some substantive problems in the joint liability of civil and commercial

law in the current period of our country. It is precisely because the joint liability is of great significance in the social development of our country, practical problems need to be solved in time in order to facilitate joint liability law to adjust the relationship between creditors and debtors, change the existing practical problems as many as possible, and give full play to the effectiveness of joint liability law in reasonably dealing with criminal disputes and civil disputes.

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