

# Research on the Existing Problems and Measures of Joint Liability in Civil and Commercial Law

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**Abstract:** Under the background of the increasing improvement of China's social and economic level, the legal environment is also gradually improved, and the public's legal awareness is constantly strengthened. Civil and commercial law is the sum of civil law and commercial law, which is closely related to People's Daily life. In recent years, joint and several liability in civil and commercial law has attracted the attention of all parties, and relevant experts and scholars have launched heated discussions on the existing problems in joint and several liability in civil and commercial law. Based on the connotation and existing problems of joint liability in civil and commercial law, this paper puts forward a series of measures and Suggestions to solve the problem of joint liability in civil and commercial law, so as to provide reference basis for the continuous improvement of civil and commercial law and Chinese law.

**Keywords:** Civil and Commercial Law; Joint and Several Liability; Problem; Measures

## 1. Introduction

As an important law concerning citizens' daily production and life, the civil and commercial law has a wide range of content distribution characteristics, and has been constantly improved in the process of social development, which has formed a relatively stable system pattern. In recent years, some researchers have found that there are many problems in the division of joint and several liability in civil and commercial law. Therefore, it is of great significance to explore the problem of joint liability in civil and commercial law and constantly clarify and improve the legal system based on the current situation, so as to safeguard the immediate rights and interests of the vast number of businesses and consumers and maintain social stability.

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

Civil and commercial law is the general term of civil law and commercial law. It mainly regulates and restricts the related affairs in civil and commercial fields. As the basic law of our country, the civil and commercial law itself is the basic guarantee for the definite joint and several liability in specific affairs, and it has a detailed division effect on the specific responsibility of the related subjects of various affairs in the society. At present, joint and several liability in civil and commercial law mainly has the following characteristics :(1) in the joint and several liability relationship of two or more subjects, any one subject bears all external obligations; (2) once the joint and

several relationship is defined, the debtor shall not be able to assume the specific debt in time, and shall not refuse the creditor's debt-related requirements; (3) if there is a guarantor in the joint and several relationship, the guarantor shall be responsible for the legitimate rights and interests of the creditor, and assume the corresponding debt if the debtor cannot bear the relevant debt.

## 3. Problems Existing in Joint Liability in Civil and Commercial Law

Existing regulations on civil and commercial law cannot establish a strong correlation with substantive law. Generally speaking, the use of civil and commercial law in actual cases should be able to directly deal with the relevant joint relationship. However, China's current civil and commercial law cannot be applied to practical cases without changing the content or rules, especially in the handling of joint and several liability relationship cannot play an effective role of restraint. As a result, the civil and commercial law cannot solve the joint liability problem in time construction effectively and timely.

The option in civil and commercial law lacks certain rationality within the scope of application. Options in civil and commercial law is to protect the plaintiff of the legitimate rights and interests of creditors rights, in general, the plaintiff should be in all stages of creditor's rights and responsibility related to choice of power, but in practice, the court usually given only to the plaintiff's lawsuit procedure in the late stage of choice, in essence it is suspected of putting the cart before the horse, make reasonable legal rights and interests of the plaintiff is seriously af-

affected by the trial procedure, will eventually make the case handling process more multifarious.

In the civil and commercial law, the determination of the person responsible for the case is relatively vague. Generally speaking, in the civil cases of common tort, the legal liability of creditors is usually not investigated without the approval of the relevant court procedure. Therefore, in the common infringement case, the court's trial related people usually reality basis to pursue the responsibility of the person directly, but has yet to have any legal tuning for other details clearly Shared the responsibility share of the infringer, this leads to other common the infringer can use legal loopholes to avoid responsibility, for the direct infringer also belong to direct the interests of the damage.

#### 4. Measures to Solve the Problem of Joint Liability in Civil and Commercial Law

##### 4.1. Incorporate substantive law into the scope of relevant issues

Aiming at the problem that the existing relevant regulations of civil and commercial law cannot establish a strong correlation with the substantive law, this paper puts forward some measures to take the substantive law into consideration. To be specific, in the joint and several liability determination of civil and commercial law, the specific content of substantive law should be added, and specific legal rules should be coordinated in combination with other legal documents based on the summary basis of a number of cases. At the same time, the correlation between civil and commercial law and substantive law should be strengthened to avoid the problem of strong independence of different legal documents after the incorporation of substantive law, so that the two are fully connected and the handling of actual cases has practical and effective basis effect, so as to protect the legitimate rights and interests of creditors.

##### 4.2. Establish and improve joint liability litigation procedures in civil and commercial law

The choice in civil and commercial law lacks certain rationality in the scope of application. This paper first proposes to establish and improve the civil and commercial law joint liability litigation procedures. The applicability of plaintiff's option is unreasonable, which lies in the defects of joint and several liability litigation procedure, making procedural law unable to effectively cooperate with substantive law. Therefore, in the detailed design of the civil and commercial law, we should further

improve the procedure, and design the procedure according to the specific characteristics of different civil subjects and requirements, so as to apply to more civil cases. Simply put, the procedure of civil and commercial law should achieve diversified design effect, improve its applicability and maintain the justice, fairness and fairness of the law itself.

##### 4.3. Balance the principal relationship between creditors and debtors

Aiming at the problem that the determination of the person responsible for the case is relatively vague in the civil and commercial law, this paper puts forward some Suggestions to balance the subject relationship between the creditor and the debtor. The unclear relationship between creditor and debtor is an important reason for the vague definition of the responsible person. Therefore, in the actual situation, the balance and adjustment of subject relations should be carried out according to the existing basis. For example, in the process of handling cases of multiple joint and several liable persons, the debt-creditor relationship between creditors and multiple creditors should be re-coordinated to ensure that the liability relationship between each creditor and debtor is fair and effective.

#### 5. Conclusion

To sum up, joint and several liability in civil and commercial law is a prominent problem in relevant cases at present, which mainly includes vague division of liability, unbalanced rights and obligations of creditors and debtors, loopholes in litigation procedures, etc. In view of these problems, in addition to further revising the specific content of the civil and commercial law, diversified design of relevant laws and regulations should be carried out according to the situation of specific cases to adapt to more types of civil disputes.

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