

A Brief Discussion on Legal Issues Concerning Tort Liability for Objects Thrown from High Altitudes

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Abstract: With the advancement and development of the Internet era, people's standard of living has steadily risen, and urban infrastructure has been continuously upgraded, giving rise to numerous high-rise residential buildings. As the number of such high-rise residential complexes in China has grown, incidents involving injuries caused by objects thrown from heights have also increased. Following the promulgation of the Civil Code, the relevant regulations governing the throwing of objects from heights have been amended, sparking intense discussion across international and domestic communities. Compared to the former Tort Liability Law (which has been repealed), the Civil Code establishes clear provisions regarding the determination and allocation of tort liability. This article aims to analyze the current state of tort liability for the throwing of objects from heights in China from a civil law perspective—specifically examining the principles of imputation of liability and the determination of such liability—while also conducting a comparative study of relevant foreign legislation on this issue, and on this basis, proposing practical recommendations.

Keywords: Objects Thrown from Great Heights; Tort; Liability.

1. Preface

The 21st century is a society fraught with crises and characterized by significant disruption; meanwhile, rapid economic growth has led to the rapid proliferation of high-rise buildings. This trend has been accompanied by a steady increase in incidents involving injuries caused by objects thrown from heights, placing various safety risks directly above citizens' heads. In response, the Chinese government has enacted relevant legal provisions addressing such cases. The Civil Code, which came into force on January 1, 2021, provides clear stipulations regarding the determination and allocation of tort liability in cases of objects being thrown from heights. This article aims to analyze the current state of tort liability for such incidents in China, in light of the newly enacted Civil Code, examine the principles of imputation and the determination of liability under Chinese law in this context, conduct a comparative study of relevant foreign legislation on this issue, and, on this basis, propose practical recommendations.

2. The Current Situation Regarding Tort Liability for Objects Thrown from Heights

2.1. Different Judicial Outcomes Regarding Tort Liability for Objects Thrown from Heights

1. For convenience, throwing a curtain rod away for 240,000 yuan – the actor acted with clear intent in compliance with the "personal responsibility" principle. Mr. Zhang had moved into a new home; during the move, as the curtain rod was quite long and would have been a hassle to carry down the hallway, he threw it out the door. Unexpectedly, this act led to a major disaster: electronic devices in hundreds of households across more than a dozen new residential communities surrounding the city were damaged. Upon learning of the incident, the power supply company promptly

and effectively repaired the affected circuits and had already compensated the affected residents for the maintenance costs of their damaged household appliances, amounting to over 240,000 yuan. Subsequently, the power supply company filed a lawsuit against Mr. Zhang, alleging that he was liable for the damage. The People's Court ruled that both the power supply company and the relevant enterprise had the right, after seeking compensation from the affected residents under the power supply service contract, to seek recourse from any other party potentially responsible for the power supply incident. Accordingly, the court ordered the defendant, Mr. Zhang, to pay the power supply company compensation of over 240,000 yuan.

2. Tragedy struck unexpectedly: a 10-year-old schoolchild died under mysterious circumstances – When the person responsible for management is clearly identified, and such person causes harm by failing to fulfill their management obligations, they shall bear corresponding legal liability. Xiao Zhou, a 10-year-old student in the eighth grade, died on his way home from school after his head was suddenly struck by a piece of white glass that had fallen from a high floor of the school building. In response to this incident, the police launched an in-depth investigation spanning more than six weeks; however, they ultimately concluded that no further leads could be found. Xiao Zhou's single-parent parents filed a civil lawsuit against the owners of dozens of rental units located on the second floor and above of the building where the incident occurred, as well as against several builders and a property management company operating from a three-story building; they sought to identify the responsible parties through a joint determination by the numerous residents and the defendants, and to hold them legally liable for providing civil and economic compensation for any personal or property injuries suffered by Xiao Zhou. Based on the court's ruling, the property management company—acting as the specialized person and property manager for the building—is required, in accordance with the relevant provisions of the Building Maintenance and Management Service Agreement, to provide property repair, maintenance, and operational

management services for the building, its owner, its affiliated commercial facilities, and other related commercial land-use facilities, as well as to effectively maintain the environmental balance and normal social order surrounding the building. Since, more than an hour prior to the occurrence of this major accident, several enterprises operating near the managed area had already experienced at least one significant incident involving falling objects from heights, and the defendant failed to establish through legal evidence procedures that it had promptly and fully fulfilled its management obligations, the court held that the defendant should bear a certain degree of liability for compensating the economic losses incurred by the plaintiff. As a result, the People's Court ultimately ordered the property management company to assume additional liability for compensating part of the property damage suffered by the plaintiff and to pay the plaintiff an additional sum of over RMB 200,000.

3. When someone throws an object, liability extends to all parties involved – the party responsible for the act of throwing is unclear; therefore, the property management and supervision company, along with all potential parties responsible for such throwing acts, share joint liability. While Ms. Hu was placing an electric vehicle in her downstairs living room, she was struck on the skull by an unexpected object—an ashtray that had suddenly fallen from a height. After conducting multiple field investigations with her family, the police identified a direct link between her residence and the residents of Units 204–704 in the residential building based on the two distinct trajectory marks left by the ashtray as it fell; however, the specific party responsible for this act could not be definitively identified at this stage. Consequently, the plaintiff filed a lawsuit with the People's Court, seeking compensation from the six households of villagers for all economic losses exceeding RMB 5,000 incurred as a result of the high-altitude throwing incident, as well as full compensation for all non-monetary damages and an additional RMB 10,000 in damages. In a recent mediation session on property management disputes organized by the People's Courts of China, an agreement was reached: the six non-party plaintiffs (represented by Beijing Property Management Supervision and Operation Service Co., Ltd.) and the six defendants involved in the case agreed to jointly bear the liability for compensating the six plaintiffs for their direct economic losses amounting to RMB 5,000 (which had been apportioned among the parties).

3. The Controversy Over the Application of The Liability Determination Principle in Cases of Tort Arising from the Throwing of Objects from High Altitudes in China

3.1. No-Fault Principle

The no-fault liability principle, also known as the no-discrimination liability principle, is a fundamental rule that establishes and determines the obligation to bear civil liability and provide compensation when harm is caused to another person without the actor's own fault, in accordance with the provisions of relevant legal statutes [1]. The primary purpose of applying this basic principle is to assess the causal relationship between the actor's conduct and the economic damage or consequences resulting from that conduct—rather

than solely basing the determination on the actor's fault or conduct itself—but to analyze the causal connection between the two factors given the objective existence of the harm. When applying no-fault liability to determine whether the act of throwing an object from a height constitutes tort liability, the victim's subjective belief regarding whether they were at fault is not a factor to be considered; regardless of whether the victim was at fault or not, they shall bear civil liability, unless the victim has a statutory defense. Under the legislative frameworks of most jurisdictions and countries, such defenses are generally limited to two scenarios: the victim's lack of any legitimate defense, or the existence of significant fault on the part of the victim; they do not encompass situations involving ordinary negligence or accidental incidents. This principle is also applied in Chinese cases involving the throwing of objects from heights. According to Paragraph 1 of Article 1254 of the Civil Code of the People's Republic of China: "It is prohibited to throw any object from a high-rise building."

Where an individual suffers harm, the tortfeasor shall bear tort liability in accordance with the law; where the act of throwing an object from a height causes harm to another person, the person who committed such act shall bear corresponding liability for that act.

3.2. Principle of Fairness

The Principle of Fair Liability applies when neither party is at fault for the occurrence of the damage, yet the relevant laws do not specify that the no-fault liability principle should be applied; in such cases, the People's Court, guided by the principle of fairness and after carefully considering the parties' financial circumstances and other relevant factors, shall order the tortfeasor to bear corresponding compensatory liability for the victim's property losses. This is a liability determination principle that ensures a reasonable and equitable distribution of losses between the parties. Currently, some scholars in China argue that the principle of fairness is also widely applied in cases involving the throwing of objects from heights. This is because the first paragraph of Article 1254 of the Civil Code states: "Where the specific tortfeasor cannot be identified through investigation, except where it can be proven that the person is not the tortfeasor, the user of the building that may have caused the harm shall pay compensation in accordance with the law." The phrase "user of the building that may have caused the harm" leads some to interpret the act of throwing objects from heights as a "jointly dangerous act"; in such cases, the persons involved in the joint dangerous act shall bear liability, and the term "compensation" further suggests that this scenario falls within the scope of protection afforded by the principle of fair liability. However, the vast majority of people in China do not consider the act of throwing objects from a height as a "jointly dangerous act." Although the definition of a jointly dangerous act involves multiple individuals engaging in a hazardous behavior together, it is often impossible to identify the actual tortfeasor; the true tortfeasor may well be merely one or a subset of those individuals. Nevertheless, due to the inability to accurately pinpoint the actual tortfeasor, the individuals who participated in the hazardous act shall bear joint and several liability for the resulting tort. Furthermore, the act of throwing objects from a height can generally be committed by only a single individual; it is impossible for multiple individuals to be responsible for such an act, nor has every property owner engaged in throwing objects from a height;

therefore, it cannot be classified as a "jointly dangerous act." Moreover, the principle of fairness is a rule governing the allocation of losses—established based on the actual circumstances and aimed at minimizing the losses suffered by both parties—when neither party is at fault; it is not a principle of liability attribution.

3.3. Fault-Based Liability Principle

The Negligence-Based Liability Principle, also known as the Negligence-Based Liability Principle, is a general rule that constitutes a necessary and sufficient condition for an actor to bear civil liability when the actor's subjective fault or other factors give rise to such liability; that is, an actor may only be held liable for their civil obligations if other factors involving fault are present. Under this principle, it is required that the actor's fault serve as the evidentiary burden; regarding the allocation of the burden of proof, the principle of "he who asserts must prove" should be applied. Currently, a small number of scholars in China still argue that the victim of an act of throwing an object from a height should bear the burden of proving the true liable party and must also demonstrate that the liable party had subjective fault. "If the victim cannot provide evidence proving that the liable party had subjective fault regarding the tortious act committed by that party, then the liable party may be exempted from bearing the relevant civil liability; however, requiring the person who did not commit the tortious act to bear liability would clearly violate the principle of fairness."

3.4. Presumed Fault Liability Principle

The principle of presumed fault liability stipulates that when a person causes harm to another, if that person is unable to prove that they were not at fault, they shall be presumed to be at fault and shall bear tort liability. This principle embodies the doctrine of reversal of the burden of proof: the person may only be exempted from liability if they can present counterevidence demonstrating that there is no factual causal connection between themselves and the occurrence of the harm. The current Civil Code incorporates this principle of presumed fault liability; Article 1254(1) states: "It is prohibited to throw objects from buildings." Where harm is caused to another person by objects thrown from a building or by objects falling from a building, the tortfeasor shall bear tort liability in accordance with the law; where it is difficult to identify the specific tortfeasor upon investigation, the building occupant who may have contributed to the harm shall provide compensation, unless they can prove that they were not the tortfeasor. After providing such compensation, the building occupant who may have contributed to the harm shall have the right to seek recourse from the tortfeasor. The phrase "unless the occupant can prove that they were not the tortfeasor" indicates that, in cases where harm is caused by objects thrown from a height and the specific tortfeasor cannot be clearly identified, the person within the relevant scope who is presumed to have had a causal relationship shall bear corresponding liability—unless that person can provide sufficient evidence demonstrating that they were not at fault in the occurrence of the tortious consequence.

4. Determination of the Liable Party for Torts Arising from The Throwing of Objects from Great Heights in China

4.1. A Clearly Identified Infringer

Article 1254(1) of the Civil Code explicitly prohibits throwing objects inside buildings or other areas. Where an object thrown from a building causes harm to another person, the tortfeasor shall be liable for compensatory damages.

4.2. No Identifiable Infringer

1. The occupant of the building that may be subject to harm
Article 1254(1) of the Civil Code stipulates that it is prohibited to throw objects inside buildings or other premises. Where an object thrown from a building causes harm to another person, the tortfeasor shall be liable for compensation; where, after multiple on-site investigations, it is difficult to identify the specific building tortfeasor, the building occupant who is likely responsible shall provide compensation, unless the occupant can clearly prove that they themselves could not be the specific tortfeasor. This measure enables the victim to promptly identify the party liable for the harm and thereby minimize their losses; simultaneously, it prevents the tortfeasor from evading legal responsibility and ensures that innocent individuals are not made to bear the blame.

2. The property management company shall bear the responsibility.

Article 1254(2) of the Civil Code explicitly provides that building operators and managers—whether they are building service providers or other entities—shall take necessary safety assurance measures to prevent the occurrence of the circumstances described in Article 1 of this Law; where such necessary safety assurance measures are not taken, the operator or manager shall bear tort liability for failure to fulfill their safety assurance obligations in accordance with the law. Property management enterprises have the responsibility and obligation to ensure the safety of the building and other related areas; upon the occurrence of an incident in which an object thrown from a height causes injury to a person, the property management enterprise shall bear a certain degree of liability. However, the property management enterprise may provide relevant supporting documentation and confirm that it has fulfilled its duties and implemented appropriate measures to ensure the safety of the building and other related areas.

5. A Comparative Study of Tort Liability for Objects Thrown from High Altitudes: Domestic and International Perspectives

5.1. Common Law System

There are two well-known cases concerning incidents of objects being thrown from great heights in common law jurisdictions: one known as the "Flour Bucket Injury Case" and the other as the "Bar Case." In the first case, the plaintiff was injured when a flour bucket fell from a defendant's shelf as they were walking beneath it; the court ultimately held that if the defendant had been free of fault, the flour bucket would not have fallen, yet in reality, the bucket did fall and injure the plaintiff; therefore, the defendant was found to be partially at fault and should bear corresponding compensation liability.

The second, the "Bar Case," involves a woman walking past a bar entrance who was injured by a chair that suddenly fell from a great height; the woman filed a lawsuit with the Supreme Court seeking compensation for her economic losses from the bar. However, after hearing the case, the court determined that it was impossible to definitively identify the person responsible for throwing the chair from the sky; yet, imposing liability on the bar for the resulting damages would impose an unreasonable obligation on the bar to exercise strict management over the furniture within its premises. Consequently, the Supreme Court dismissed the plaintiff's civil claim. Through these two typical cases, it becomes clear that both common law and Anglo-American legal systems generally apply the "rule of self-attestation" when handling such cases [2]. In layman's terms, this is a special legal principle that assesses whether a party committed any wrongful act or failed to fulfill their responsibilities and obligations during the trial based solely on the factual circumstances.

5.2. Civil Law System

1. French Civil Code

Article 1386 of the French Civil Code explicitly provides that the owners of a building or other jointly owned property shall bear corresponding compensatory liability in accordance with the law for any damage to such property resulting from inadequate custody or maintenance of the building or other jointly owned property. This provision focuses on cases of damage arising from defects inherent in the building itself, but it does not address the appropriate liability that should be imposed in cases of damage caused by human negligence. In such instances, the owners shall be liable for compensation. However, in certain relevant judicial precedents, when an injury is caused by the falling of an item from inside a building, the case is typically governed by the strict liability principle applicable to the act of throwing objects from a height. Yet, in most such cases, there is no clearly identifiable tortfeasor; therefore, applying the strict liability principle to these cases makes it difficult to definitively allocate liability for the resulting harm. Consequently, this provision cannot be applied to tort liability cases involving the throwing of objects from a height.

2. German Civil Code

The German Civil Code contains three articles addressing tortious acts involving buildings—Articles 836, 837, and 838. These articles concern economic damages arising from the overall condition of a building or piece of land; they provide a clear interpretation and determination of the legality and liability of the possessor, guardian, or beneficiary of such a building or piece of land, but do not contain any specific provisions or interpretations pertaining to individual items within a building. However, in judicial practice, courts have developed the theory of the "social security obligation" through such precedents; when applied to specific cases, this theory is used to fully resolve cases such as those involving the throwing of objects from heights by expanding the scope of liability for personal injury and compensation [3]. In China, there is an essential distinction between injuries caused by objects and injuries caused by the throwing of objects from heights; therefore, it is impossible to determine the liability for injuries resulting from the throwing of objects from heights by simply expanding the scope of liability for injuries caused by objects—there exists a significant difference between the two in determining liability for personal injury.

5.3. Roman Law System

During the Roman era, the urban centers did not feature the bustling streets or towering skyscrapers seen today; instead, they were characterized by crowding and narrow streets. The buildings were generally low and densely clustered, often putting residents at risk of injury from falling objects and frequently triggering conflicts among citizens. Consequently, Roman law also stipulated provisions regarding quasi-private offenses: "Where any object falling from or falling through a building causes harm to another person in a public place, and the true tortfeasor cannot be clearly identified, the resident may be charged with a 'claim for harm caused by falling or thrown objects,' regardless of whether the resident was at fault [4]." This demonstrates that during the Roman period, the identification and punishment of the act of throwing objects from a height were extremely stringent. In terms of identification, the scope was limited to the residents living within the specific room where the act occurred—rather than extending to all residents in the entire building. As for punishment, regardless of whether the tortfeasor had subjective fault, they were liable for the resulting tortious consequences. However, if multiple individuals were responsible for the harm, they bore joint and several liability. In contrast to the Roman era, China's legal provisions regarding the liability of persons responsible for throwing objects from a height are relatively lenient. When the tortfeasor cannot be precisely identified, the parties involved in the dispute who cannot rule out the possibility of such a tortious act are required to bear joint and several liability in proportion to their respective shares of responsibility, rather than joint and several liability.

5.4. China's Relevant Regulations Concerning the Throwing of Objects from High Altitudes

The recently enacted Civil Code provides a relatively clear delineation of the boundaries regarding liability for torts arising from injuries caused by objects thrown from heights. Article 1254 of the Civil Code explicitly establishes that the act of throwing objects from a height constitutes a prohibited behavior and clearly defines the corresponding liability for damages. The first paragraph of Article 1254 stipulates: "Where any object is thrown directly from a tall building or falls from a building and causes harm to a person, the tortfeasor shall bear tort liability in accordance with the law; where it is difficult to identify the specific tortfeasor after multiple investigations, the owner of the building from which the object was thrown, provided that they can prove that they themselves are not the tortfeasor, shall compensate the person harmed." After providing compensation to the user of the building who may have been harmed, such user has the right to seek reimbursement from the tortfeasor. This provision legally obligates individuals to refrain from throwing objects from heights, thereby significantly reducing the losses suffered by victims and safeguarding the legitimate rights and interests of potential tortfeasors. The second paragraph of Article 1254 further stipulates: "For business enterprises or other managers of building equipment or other structures that provide various building and facility services in accordance with the law, it is their obligation to implement necessary safety prevention and maintenance measures to prevent the recurrence of safety incidents as described in the preceding paragraph; where such enterprises fail to establish necessary

safety prevention and protection measures on their own, they shall bear direct civil tort liability under the law for failing to fulfill their obligation to provide such safety protection measures." Including building operators among the group of accountable parties underscores the stringent supervision imposed on building property management enterprises; this approach also encourages them to be more diligent and responsible, ensuring that appropriate safety measures are promptly implemented to safeguard both safety and property—particularly in preventing incidents such as objects being thrown from heights—before such hazardous events occur. The most striking aspect of this legislative amendment concerning the regulation of throwing objects from heights lies in Article 1254(3) of the Civil Code, which explicitly stipulates that, in the event of any of the circumstances specified in Paragraph 1 of this Article arising during the enforcement process, public security and other judicial authorities shall, in accordance with the law, promptly initiate a formal investigation to identify the primary responsible party. This legal provision clearly grants public security authorities at all levels the obligation to exercise judicial evidence-gathering oversight and judicial investigative authority over such cases, thereby serving as a form of political deterrence and a social deterrent to the public.

6. Improving the Legal Framework for Tort Liability Arising from The Throwing of Objects from Great Heights

6.1. Legislative Recommendations on Tort Liability for the Throwing of Objects from Heights

1. Clarify the identification of the responsible entity

Article 1254 of the Civil Code mentions the term "building occupant who may cause harm," but does not provide a clear definition of the word "may." In the Draft Proposal for Judicial Interpretation, the term "building occupant who may cause harm" is defined as the building's owner, occupant, or manager. However, in real-life scenarios, the building occupant who may be liable for harm resulting from the throwing of objects from a height does not necessarily coincide with the building's owner, occupant, or manager. As a result, this approach could potentially allow the actual tortfeasor to evade liability.

6.2. Implementing Diversified Remedies for Tort Liability Arising from The Throwing of Objects from Great Heights

In addition to enabling the insurance industry—as the party

responsible for the incident – to compensate building users, relief mechanisms can be established, such as implementing high-altitude object-throwing liability insurance for buildings. This approach allows the insurance industry to fully leverage its unique characteristics and strengths during the relief process, thereby achieving more efficient compensation and minimizing the economic losses suffered by the affected parties as much as possible.

6.3. Strengthen and Improve the Necessary Social Security Systems

In a society characterized by rapid economic growth, risks are ubiquitous and frequently occur around us, leading to a continuous stream of harm-related incidents that constantly challenge the social security system and place increasing pressure on our tort law. As society continues to evolve, our legal framework is also being continually refined; however, we cannot rely solely on the law to regulate our behavior. Instead, we must enhance our personal integrity and safety awareness, continuously improve ourselves, and work to reduce the occurrence of harm-related incidents.

7. Epilogue

Cases involving personal injury resulting from objects being thrown from heights can be traced back to Roman law. Both civil law and common law jurisdictions have, to varying degrees, enacted relevant legal provisions. In China, the determination of liability for personal injury caused by throwing objects from heights has undergone a lengthy process of gradual refinement and development; the enactment of the Civil Code has now provided a clear and unified legal framework for such cases. While strengthening the legal system, Chinese citizens should also enhance their legal awareness and relevant safety consciousness to prevent the recurrence of such incidents, thereby fostering civilized societal development under the guidance of both legal and moral constraints.

References

- [1] Liu, H. M. (2006). A study on the system of liability determination principles in China's tort law.
- [2] Liu, F. (n.d.). A study on the constituent elements of the rule of self-proof in common law systems. China Academic Paper Network.
- [3] Feng, B. (Germany). (2001). European tort law (Volume I) (X. B. Zhang, Trans.). Law Press.
- [4] Zhou, N. (1994). Original theory of Roman law. The Commercial Press.