The Choice of Litigation Forms for Most Torts

Hui Zhi and Hsieh, Ming-Hsun
Krirk University, Thailand
Corresponding Author, E-mail: 13911153132@163.com

****

Abstract

The choice of litigation form for majority infringement has generated a lot of controversy. The choice of litigation form is not only related to the compensation of the interests of the injured party, but also to how the responsibility is distributed among the infringers. Therefore, the types of joint litigation should be analyzed, and the litigation forms of various joint infringements should be defined in accordance with the "litigation subject theory" and the "unified determination of judgment standard theory" in order to achieve good litigation results. This study concludes that introducing a quasi-necessary joint litigation system can effectively balance the tension between the timeliness and adequacy of the parties' rights protection and the unity and fairness of the final judgment results. This approach guarantees the parties' right to choose whom to sue, helps them realize their rights quickly and fully, and ensures that the final allocation and assumption of tort liability align with the facts and the common values of fairness and justice.

Keywords: Infringement by Multiple Persons; Joint Litigation; Subject Matter of Litigation; Unified Judgment

Introduction

Litigation is a traditional and classic way for humans to realize their demands. It is the bottom line for protecting the rights of the parties. For the system of majority tort and liability, the real realization of the substantive rights protection design in individuals depends on the design of procedural law, that is, the judicial protection system. With the development of the modern judicial system, the design of the judicial system not only saves judicial resources, but also guarantees the realization of the rights of the parties and the fairness and rationality of the judgment from the procedural point of view.

Discussions on the form of majority tort litigation mostly stem from the "conflict" in the application of rules between Article 13 of the original Tort Liability Law and Article 5 of the Supreme People's Court's "Interpretation on Several Issues Concerning the Application of Law in Personal Injury Compensation Cases" of the same period (Lupe, 2017). Although the Tort Liability Law has been incorporated into the Civil Code, and the Supreme People's Court also revised the "Interpretation on Several Issues Concerning the Application of Law in Personal Injury Compensation Cases" in 2022, there has been no substantial revision to the relevant provisions that cause "conflicts" in application, and related issues still exist. Specifically, regarding the procedural law issue of joint liability, according to Article 178 of the Civil Code, the right holder has the right to request some or all of the responsible persons to bear liability, that is, in the judicial process, who the defendant tortfeasor is and how many people they are composed of is decided by the creditor. However, according to Article 2 of the "Interpretation on Several Issues Concerning the Application of Law in Personal Injury

* Received: June 11, 2024; Revised: June 19, 2024; Accepted: June 21, 2024

Compensation Cases" (2022 Amendment), if the compensation right holder sues some of the joint tortfeasors, the people's court shall add other joint tortfeasors as joint defendants. Scholars believe that there is a conflict between the above laws and judicial interpretations, that is, according to the judicial interpretation, it is a joint lawsuit and according to Article 55 of the Civil Procedure Law (2023 Amendment), it cannot be identified as an ordinary joint lawsuit (because it does not meet the conditions of the parties' consent), so it should be a necessary joint lawsuit, but at the same time it is difficult to meet its necessary litigation constituent conditions of "the same subject matter of the lawsuit", thus falling into a dilemma. This dilemma is abstracted from the judicial practice, that is, whether the compensation claimant has the right to decide the scope of suing the majority of infringers, and whether the court has the authority to add joint defendants? Related issues include whether the effect of a certain judgment extends to other infringers who are not co-defendants. Scholars believe that the key to solving this problem lies in studying the joint litigation form of majority infringement.

Starting from the domestic and foreign research on the selection of the form of majority infringement litigation, this article analyzes the joint litigation form and the current theoretical judgment criteria of "the subject matter of the lawsuit" and "the necessity of determining the judgment in a unified manner", and combines my country's practice to determine the selection and construction of the form of majority infringement litigation.

Content

1、Research on the forms of infringement litigation by the majority 1.1 Research in China The majority tort system is centered on the allocation of responsibilities, and the responsibility-bearing system itself is closely related to the litigation system. The allocation of responsibilities among the majority means that when rights are realized through litigation, there will be multiple parties, so the relationship between majority tort and joint litigation has also attracted much attention from scholars.

Lan Renxun (2011) studied the Chinese necessary joint litigation system from the perspective of substantive law, taking majority tort litigation as the research object, and believed that in majority tort litigation, whether the majority of defendants bear joint liability or proportionate liability, the litigation subject of the dispute between the plaintiff and the defendant is unique, and each tortfeasor is an inherently necessary joint litigant. It is unscientific to divide necessary joint litigation into "joint rights and obligations" and "joint causes". my country's Civil Procedure Law does not exclude similar necessary joint litigation.

Lupe (2017) studied the types of joint litigation in multi-party tort disputes and believed that Article 52 of the original Civil Procedure Law was based on the relationship between the parties and the subject matter of the litigation, and used "the same or the same type of subject matter of the litigation" as the standard for distinguishing necessary joint litigation from ordinary joint litigation. However, in judicial practice, judges judge the "division" and "integration" of multi-party tort disputes based on "the ascertainment of the basic facts of the case". The content scope of "subject matter of litigation" can be controlled by the floating element of "case facts". Therefore, starting from the definition of the meaning of "case facts" as "the overall life process involved in the request", determining the extension scope of "the same case facts" under different types of majority tort disputes based on "whether the substantive liability relationship is holistic" is undoubtedly a more feasible standard for distinguishing the types of joint litigation.

Shao Luhan (2018) discussed the forms of majority tort litigation, and Ding Mengmeng (2018) separately studied the litigation procedures for supplementary liability. Yuan Lin (2021) studied the litigation structure and procedural rules of majority debts, and believed that the "Civil Code" stipulates the substantive effect of majority debts, which requires a civil joint litigation system to respond.

1.2 Foreign research Tettey (2016) studied the relevant system of multi-party disputes by taking multi-party tort as an example. He believed that several joint tortfeasors would pay more than their fair share of the plaintiff's losses if they were to satisfy the plaintiff's full damages under insolvent liability. The apportionment method attempts to remedy this injustice by apportionment and compensation from other competing tortfeasors. However, the unsatisfactory wording of the apportionment method does not clearly indicate who is entitled to apportionment and who can make such a claim. In practice, this may lead to unfairness to the tortfeasor. This article explores some issues of joint liability of joint tortfeasors and proposes three main aspects of reform to ensure that joint tortfeasors bear fair liability for the same damage.

Falasco (2003) studied the system of multi-party tort litigation in Arkansas, USA, in the form of examples; Fawcwtt (2008) studied the relevant applications and rules of multi-party tort litigation in private international law.

2、Joint litigation forms When the number of plaintiffs or defendants is the majority, the issue of joint litigation may be involved. The birth of the joint litigation system is accompanied by two levels of appeals. One is to pursue the simplification of litigation procedures to save the time and money of the parties, and the other is to avoid the judicial organs/adjudicative institutions from making contradictory judgments on the same incident.

The joint litigation system originated in Germany, a representative country of continental law. Since the middle of the common law era, two basic joint litigation forms have gradually formed: necessary joint litigation and ordinary joint litigation. These two litigation forms are distinguished by the same or the same type of litigation subject (Zhang Weiping, 2023). This classification and standard has been adopted by many continental law countries. According to the provisions of my country's "Civil Procedure Law", joint litigation is classified according to the relationship between the joint litigants and the litigation subject, and is divided into common litigation subject and the same type of litigation subject. That is, if the subjects of the litigation between the participants in the joint litigation are the same, it is theoretically called "necessary joint litigation". If the subjects of the litigation between the participants in the joint litigation are different but of the same type, it is theoretically called "ordinary joint litigation".

In the theory of Japanese civil procedure law, necessary joint litigation is further divided into "inherently necessary joint litigation" and "quasi-necessary joint litigation". The so-called inherently necessary joint litigation means that the relevant parties must sue or respond together, while quasi-necessary joint litigation sets up a buffer zone or a step between necessary joint litigation and ordinary joint litigation, so that the litigation relationship in the intermediate state can have appropriate applicable rules.

3、Judgment criteria for the selection of the form of infringement litigation by the majority The necessary joint litigation, quasi-necessary joint litigation and ordinary joint litigation are to solve the problems of adding parties and expanding the res judicata in the joint litigation system from different aspects. At present, there is still room for improvement in the connection between the joint litigation system and the realization of substantive law rights in

my country. This room for improvement is mainly reflected in two aspects. On the one hand, it is the improvement of the joint litigation system itself, and on the other hand, it is the connection between the liability form in substantive law and the joint litigation form. When Professor Yang Lixin discussed the tortious acts and liabilities of the majority in a monograph in 2016, he used the term "liability assumption rules for tortious acts of the majority" to summarize the traditional and new tort liability forms and rules that have developed with the theory of tortious acts and liabilities of the majority. Professor Yang believes that the rules for tortious acts and liabilities of the majority in contemporary tort law are developing in a diversified and systematic direction. The system of liability assumption rules for tortious acts of the majority includes: joint tortious acts and joint liability, separate tortious acts and proportional liability and joint liability, as well as competing tortious acts and non-genuine joint liability, that is, a specific tort form corresponds to a certain type of specific tort, and its summary of liability forms also retains joint liability, proportional liability and non-genuine joint liability.

3.1 Judgment Standard of "Subject Matter of Litigation" Regarding the definition and classification of joint litigation, China's Civil Procedure Law uses "subject matter of litigation" as the judgment standard. The definition of "subject matter of litigation" is the starting point for understanding related issues. There is no definition of "subject matter of litigation" in the statutory provisions of my country. According to the research of relevant scholars, there are two elements in the connotation of the subject matter of litigation. One is the content of rights, that is, all the subject matter of litigation must include specific content of rights. This content of rights is both the reason for the existence of the subject matter of litigation and the purpose that the subject matter of litigation intends to achieve. In addition, generally speaking, the rights involved in the content of rights are already in a damaged state or face the possibility of damage. Therefore, the subject matter of litigation also contains another element, namely, protection means. The protection means here are statutory, such as restoration of the original state, compensation for losses, etc., which are to protect the relevant content of rights in a legally recognized way. Combining the above two elements, the subject matter of the lawsuit can be summarized as "requiring to protect specific rights in a certain way", and the aforementioned "certain way" has many expansion dimensions, and the main structure is "subject 1-behavior-subject 2". In the discourse system of multiple infringement situations, "behavior" is often compensation for losses, and "subject 1" is often the majority of infringers, one or more specific subjects.

However, other scholars believe that the aforementioned connotation elements are actually concentrated on the legal effects stipulated by substantive law. For the subject matter of the lawsuit, it should be based on procedural law, which is understandable. However, from a logical perspective, if the logical syllogism is used as a benchmark, the summary of the subject matter of the lawsuit "requiring to protect specific rights in a certain way" is actually just a statement of the "how to do" part, and the part that is not summarized involves "what" and "why", which can be returned to the discussion of the legal syllogism, that is, the major premise is the legal provisions of substantive law (specific circumstances + legal consequences), the minor premise is the legal facts, and the conclusion is the legal effect produced by the specific facts. In other words, a more complete summary and expression of the subject matter of the lawsuit should be "the law stipulates certain rights and obligations, and now because of the occurrence of specific facts (explanation of the facts of the case), it is

required to use a particular method to achieve the protection of certain rights." Furthermore, the subject matter of the lawsuit includes the following four matters that need to be resolved: first, the substantive law provisions involved; second, the facts of the case that occurred; third, the statutory rights protection method; fourth, the content of the rights to be protected.

Based on the above four matters, how to judge whether the subject matter of the lawsuit is the same or identical in a lawsuit involving multiple parties? From the perspective of academic research, whether the above four matters are simultaneously used as elements for judging the subject matter of the lawsuit is still in doubt. According to the "one-limb theory", among the above elements, the determination of the case facts is part of the determination of the subject matter of the lawsuit, while according to the "two-limb theory", the determination of the case facts is not part of the determination of the subject matter of the lawsuit, but is parallel to it. The judgment of the case facts themselves does not affect the judgment of the subject matter of the lawsuit. The specific differences and paths between the "one-limb theory" and the "two-limb theory" are closely related to the identification of the "case facts". The connotation and extension of the "case facts" determine how different the two academic views are. If the definition of the case facts tends to be narrowed, then under the theoretical system of the "one-limb theory", the slight difference in the case facts will cause the change of the subject matter of the lawsuit, and the extension of the subject matter of the lawsuit will increase in this case; if the definition of the case facts tends to be expanded, then under the theoretical system of the "one-limb theory", the difference in the case facts is not easy to cause the difference in the subject matter of the lawsuit, and the extension of the subject matter of the lawsuit will decrease in this case. Therefore, whether the subject matter of the lawsuit is the same or common can be controlled by controlling the interpretation of the "case facts" factor.

The above-mentioned intention to control the interpretation of the subject matter of the lawsuit by controlling the interpretation of the "case facts" factor is ultimately to seek a way to bridge the gap between actual operations and theories under the premise of the current supply of statutory rules, and ultimately to achieve the effect of the "necessity of a unified determination of the judgment" in German law by defining the "subject matter of the lawsuit". For example, "A bought a used car from B at a price in 1998. The written contract stated that the car had no accident record. In 1999, A learned that the used car he bought had actually been in an accident before. A sued the court to return the used car and the relevant payment for the purchase. Later, A learned that B had known about the accident before signing the contract, so A filed a lawsuit with the court again to cancel the contract." Should the two lawsuits in this case be merged or separated from the perspective of the subject matter of the lawsuit? First, if we use the "one limb theory" to determine whether the judgment of the facts of the case affects the subject matter of the lawsuit, we should first analyze them one by one according to the four elements. First, the laws involved are obviously different in the two lawsuits, one is about breach of contract and the other is about malicious fraud at the time of signing the contract. Second, the facts of the case need to be defined. Third, the statutory rights protection methods are basically the same in terms of the parties' claims. Fourth, the rights involved are also the protection of relevant rights at the time of signing the contract. Some scholars believe that the facts of the two lawsuits are theoretically the same, as they are both based on the fact that "there was no car accident". No matter when this fact enters the cognitive field of the parties, it does not change the fact that the second-hand car had a car accident in the time and space coordinates determined by the historical scope.

Based on the above analysis, the "case facts" factor, which has the largest variable and interpretation space in the interpretation and consideration of the subject matter of the lawsuit, should be judged from an objective perspective and by natural observation in the historical process. To observe the litigation form selection of the infringement behavior of the majority from this perspective, it is necessary to analyze the facts involved in the four elements of infringement in the same way as "holistic life course", "historical development" and "natural observation". The conclusion is:

① For the first type of infringement situation of the majority (common intention, joint implementation of infringement), the behavior of each individual is the characterization and development of the overall behavior, and is an indispensable part of the overall behavior. For the judge, the understanding of the individual behavior of each infringer is related to the understanding of the overall behavior, and the understanding of the overall behavior is an indispensable link in the judgment of the facts of the case. Therefore, all infringers must enter the litigation. Therefore, the first type of infringement situation of the majority should be subject to necessary joint litigation;

② For the second type (independent infringement can cause damages independently) and the third type (independent infringement can cause damages overlapping), the first type of infringement situation of the majority should be subject to necessary joint litigation. In the second type, since the behavior of each infringing subject can independently cause damage, the determination of the case facts is relatively independent. At the same time, there may be the possibility of different laws being applied, resulting in different major premises in the judicial syllogism. Therefore, from the perspective of the judicial institution, there is no need for joint litigation. The relevant rights can be returned to the parties, and they can choose whether to conduct joint litigation; and in the third type, since the behavior of each infringing subject cannot cause damage alone, the determination of the case facts needs to be summed up for comprehensive judgment. The corresponding relationship between a single tort and the damage cannot become a case fact alone, so a unified judgment is required. From the perspective of the judicial institution, there is a need to constitute necessary joint litigation;

③ For the fourth type of multi-person tort situation (common dangerous behavior), since the causal relationship between the tort and the damage committed by each subject is unclear and cannot constitute the case facts alone, from the perspective of the judicial institution, there is still a need to include the relevant parties as the subjects of necessary litigation in the joint litigation.

From the above discussion, it can be seen that relevant scholars have conducted relevant research on the different types of litigation that should be applied to different types of majority torts in my country. During the research process, it was found that there are contradictions between judicial practice and the provisions of the written law. The reason is that on the one hand, there are contradictions in the provisions of the written law itself, and on the other hand, the definition and extension of the connotation and extension of joint litigation in the written law are relatively brief, leaving a large space for understanding, interpretation and application in practice. In order to bridge the gap between practice and written law, starting from the judicial practice, the trend of judges applying litigation types to different types of majority torts is explored. At the same time, it is compared with the German written law to clarify that judicial practice is actually inclined to analyze and judge from the perspective of the necessity of unified judgment. However, even if there is a reasonable explanation for the

trend of judicial practice, there is still a need to bridge the gap between China's current effective written law and practice. Starting from the expression of the written law, the analysis is based on the analysis of the connotation and extension of the "subject matter of litigation", thereby deriving the judgment method (four elements) using the "subject matter of litigation", and then the above methodological test is carried out on different types of majority torts, and relevant conclusions are drawn.

3.2 Judgment Standard of "Necessity Standard of Unified Determined Judgment"

Regarding the substantive judgment of the litigation result based on the ascertainment of the facts of the case, there is a special term in German law, namely, "Necessity Standard of Unified Determined Judgment". In Germany, according to the relevant provisions of the Civil Procedure Code, necessary joint litigation must meet the "necessity of unified determined judgment". Based on this standard, necessary joint litigation and non-essential joint litigation are distinguished (non-essential joint litigation is not necessarily the corresponding ordinary joint litigation in Chinese law. Since the German Civil Procedure Code divides the types and effectiveness levels of joint litigation more meticulously, this also includes but is not limited to litigation types or forms such as necessary joint litigation in Chinese theory). The so-called "necessity of unified determined judgment" has two judgment methods in substantive law and procedural law:

① At the substantive law level, if the rights or obligations involved in the litigation are shared or borne by all parties (defendants or plaintiffs), the relevant rights must be exercised jointly, and no single party can assume obligations or exercise rights through individual behavior;

② At the procedural law level, the main concern is that even if the relevant parties can exercise the right to sue alone, that is, sue or respond alone, the judgment on the relevant parties' participation in the litigation needs to be expanded to the parties who did not participate in the litigation.

That is to say, for necessary joint litigation, relevant conditions must be met in both substantive law and procedural law. The conditions stipulated in substantive law are based on the operability of the realization and exercise of rights or the performance and assumption of obligations, while the conditions stipulated in procedural law focus on whether the final judgment is related to those who did not participate in the litigation. If so, this litigation is necessary joint litigation.

It should be pointed out that in the German civil procedure law norms, whether from the definition of necessary joint litigation standards or from the elements concerned in the standards, whether the parties participate in the litigation at the same time and the subject matter of the litigation are not the factors with the largest weight ratio. The most important factor is the expansion of the judgment power. Necessary joint litigation only regulates those litigations that are necessary to achieve a unified judgment to prevent disputes over the results of the litigation and contradictory judgments. Under necessary litigation, similar necessary joint litigation systems and ordinary joint litigation systems are set up. Similar necessary joint litigation systems correspond to the fact that although the effectiveness of the judgment needs to extend to the parties who did not participate in the litigation, the relevant parties can choose whether to participate in the joint litigation; while ordinary joint litigation affirms the parties' right to choose, but does not require the judgment to extend to the parties who did not participate in the litigation.

In the judicial practice of Chinese law, although the legislative observation of joint litigation is limited to the subject matter of the litigation, and the classification of joint litigation types is also based on the subject matter of the litigation, in practice, judges actually have many considerations on whether to separate or merge the litigation for trial, and do not rely entirely on the subject matter of the litigation and whether the subject matter of the litigation is the same or of the same type. These many factors of consideration are closely related to the generation of the judgment results and the scope of influence of the judgment results. In other words, faced with the choice of separation or unification of litigation, the judge will first predict the different results of separation or unification. Since the current statutory law rules give relatively large space, on the one hand, legality is a factor considered by judges, but the same or of the same type of subject matter in legality is also a factor that judges consider. There is a lot of room for interpretation. Judicial interpretation, application opinions and other related rules are trying to solve this problem. Therefore, it is a common practice in judicial practice to predict the substantive results. The basis for predicting the substantive results is to find out the facts of the case. This is also one of the characteristics of my country's judicial system. Only when the facts of the case are clear can the parties' right to dispose of the litigation be guaranteed to advance. In judicial practice, if the judge can obtain an objective and clear understanding of the facts of the litigation with the help of the work of relevant government agencies or authoritative agencies with the power and obligation to find out the facts before finding out the facts, the court's obligation to find out the facts is weakened, and the space for the parties' right to dispose of and choose the litigation is expanded. This practice can also explain the differences in current relevant judicial practices.

In summary, the standards of "necessity of unified judgment" and "subject matter of litigation" are not superior or inferior. In essence, they are both external manifestations of the subject matter of litigation. Because for traditional theory, the judgment of joint litigation type is mainly based on two standards, namely, the necessity of unified judgment in substantive law and the necessity of joint litigation in procedural law. Based on the fact that the subject matter of litigation itself has two intrinsic factors, substance and procedure, unified judgment and joint litigation are actually two aspects or dimensions of the subject matter of litigation. In essence, they are descriptions of the subject matter of litigation. The necessity of unified judgment itself is a response to the unity of rights content in the subject matter of litigation. In addition to the need to remove the possibility of litigation rigidity and thus give the corresponding individuals independent litigation disposal rights, joint litigation itself also stems from the unity of the protection method in the subject matter of litigation. For judicial practice, what needs to be solved are the most specific links and demands. Therefore, the civil legal relationship of large and medium concepts is not actually identifiable and operational. At the same time, the theory of civil legal relations in my country is gradually developing in the theoretical direction of civil claims. Observing the subject matter of litigation from the perspective of the basic theoretical system of claims is a good way to keep pace with the times.

4、Construction of the selection of the majority tort litigation form

The construction of the selection of the majority tort litigation form is based on the mapping relationship between the majority tortious behavior and liability. The characteristics of each type of behavior and the value considerations in the way of assuming liability are factors that should be considered in choosing the litigation form.

According to Article 55, paragraph 1 of the Civil Procedure Law (2023 Amendment), joint litigation adopts a two-part model of necessary joint litigation and ordinary joint litigation. The applicable conditions for necessary joint litigation are that the subject matter of the litigation is determined to be unified, while the applicable conditions for ordinary joint litigation are that the subject matter of the litigation is the same type, which is reviewed by the court in the exercise of its powers and approved by the parties. The general view is that necessary joint litigation is an indivisible lawsuit, that is, the court should add parties in the lawsuit according to its authority. This is in fact in conflict with the right of choice granted to creditors in the Civil Code, and there may be situations that increase the difficulty for the parties. According to the research, the conflict can be resolved by adding a similar necessary joint litigation system and interpreting the relevant conditions of necessary joint litigation. From the perspective of the rights structure of substantive law, the litigation form corresponding to non-genuine joint and several liability should have two characteristics: one is the plaintiff's decision-making power on the choice of the defendant, and the other is the unified determination of the litigation result. For the current two-part joint litigation model, there is a tension between the requirement for a unified and certain judgment result and the party's right to choose the defendant. If there is a similar necessary joint litigation system, this tension can be alleviated.

Generally speaking, when the infringers can be identified, the necessary joint litigation model is adopted at the litigation stage, which has no impact on the rights of the victim and is also conducive to the one-time resolution of the dispute. However, in the case of joint infringement where some infringers are unknown, there is an obstacle that all defendants cannot be added. The subject matter of joint infringement is the same, which is different from ordinary joint litigation. It is a legitimate way to solve this problem to expand the necessary joint litigation into two types: inherent and similar necessary joint litigation, and to distinguish and apply litigation procedures according to different types of joint infringement. For joint infringement or joint dangerous acts stipulated in Articles 1167 to 1169 of the Civil Code, the necessary joint litigation procedure is generally applicable; for torts with aggregate causal relationships stipulated in Article 1170 of the Civil Code, the necessary joint litigation procedure is generally applicable, but it is also possible to establish the necessary joint litigation based on the identity of the subject matter and the prevention of judgment conflicts. If some of the joint tortfeasors cannot be found, similar necessary joint litigation shall be applied, and the victim shall sue the known joint tortfeasors, and the court shall allow it.

The subject matter of the litigation of unreal joint and several debts is not the same. For example, in the personal injury litigation caused by product quality defects, the victim can sue the seller for tort or breach of contract, or sue the manufacturer for tort liability, or sue the seller and the manufacturer at the same time. Regarding the choice of litigation procedure, it can be interpreted that unreal joint and several debts are actually the coexistence of different claims, and the creditor can sue several debtors at the same time or choose to sue them as ordinary joint litigation; it can also be interpreted that unreal joint and several is a unique type of civil joint liability. In order to facilitate the relief of the right holder, the right holder is given the right to choose the subject of the lawsuit. Starting from the internal and external relations of unreal joint and several, the litigation procedure of unreal joint and several liabilities should be constructed in a similar necessary joint litigation. This study believes that the joint litigation of unreal joint and several debts does not require the consent of the parties and does not require the application of ordinary joint litigation. In this regard, the same subject matter of necessary

joint litigation should be expanded from the same level of "legal relationship" to the same level of "dispute facts". As for the plaintiff's claim for rights based on whether the defendant has infringed or breached the contract, it is only a difference in legal relationship and does not affect the determination of the same "dispute facts". That is, the necessary joint litigation procedure applies to non-genuine joint debts, because the plaintiff can choose to sue alone or together, which should be similar to necessary joint litigation.

Since the significance of setting up non-genuine joint liability in multi-person torts also lies in the protection of creditors, refer to the joint guarantee relationship, the debtor and the guarantor are essentially non-genuine joint liabilities, with external joint effect relative to the creditor, but only the guarantor can recover from the debtor unilaterally. It is generally believed that the joint prosecution of guarantee contract disputes is similar to necessary joint litigation. In general guarantee lawsuits, the plaintiff can sue the principal debtor alone or sue the guarantor at the same time. When the plaintiff sues the principal debtor alone, the lawsuit formed at this time is similar to necessary joint litigation, and the court shall not compulsorily add the guarantor as a co-defendant; but if the plaintiff sues the guarantor alone, the court should add the principal debtor as a co-defendant by virtue of its authority, which is an inherently necessary joint lawsuit. It can be seen that in general guarantee litigation, whether it is similar to necessary joint litigation or inherently necessary joint litigation depends on the parties' choice of the defendant.

Discussion

The liability system for majority tort revolves around the allocation of liability. It should include both static, one-time liability allocation rules (joint liability, proportional liability) and dynamic, multiple-pass liability allocation rules (non-real joint liability, advance liability). The ultimate goal is to ensure that the legal allocation of substantive rights and responsibilities conforms to objective facts and values such as fairness and goodness.

The implementation of the rules of majority tort behavior and liability must be in the procedure, especially non-real joint liability. The allocation of liability between the responsible parties can only be truly realized through procedures such as litigation. The core of the procedure lies in the choice of litigation form, which is related to the number of parties, the plaintiff's right of choice, and the expansion of res judicata. Majority tort is naturally related to the joint litigation system. The current joint litigation system of Chinese law is a dichotomy, namely necessary joint litigation and ordinary joint litigation. The tension between the timeliness of the protection of the rights of the parties and the adequacy of the realization of their rights and interests and the unity and fairness of the final judgment results cannot be well resolved. It is recommended to introduce similar necessary joint litigation, which not only guarantees the parties' right to choose the right to sue, but also helps them realize their rights as quickly and fully as possible, and can also make the final allocation and assumption of tort liability close to the facts, and realize the common values of fairness and goodness.

Reference

Zhang Weiping**.** (2016). *Civil Procedure Law* (4th edition). Legal Publishing House.

Yang Lixin**.** (2012). New developments in the theory of tortious acts and liability of multiple parties. *Legal Studies***.** 7, 2012, 41-49.

Bart. L. George**.** (2003). *Legislative Regulation and Judicial Practice of Joint Torts.* Oxford: Clarendon Press.

Richard Hart**.** (2015). *Majority tort system and related law application issues*. Oxford: Clarendon Press.

Falasco, R. (2003). Multi-party tort litigation in Arkansas. *University of Arkansas at Little Rock Law Review.* 25 (3), 885-902.

Fawcwtt, J. J. (2008). *Private international law and multi-party tort litigation. In Research Handbook on International Law and Migration*. Edward Elgar Publishing.

Lan, R. (2011). Research on the Chinese system of necessary joint litigation from the perspective of substantive law. Journal of Comparative Law, 3.

Lupe, Z. (2017). Research on the types of joint litigation in multi-party tort disputes. *Journal of Lanzhou University of Arts and Science (Social Sciences Edition)*. 33 (6), 83-89.

Shao, L. (2018). Research on the forms of majority tort litigation. *Journal of Shandong University of Political Science and Law.* 33 (6), 50-58.

Tettey, W. J. (2016). The joint liability of joint tortfeasors: A critical analysis of some proposals for reform. *Manitoba Law Journal*. 25, 539-586.

Yang, L. (2016). *Theory and system of tortious acts and liabilities of the majority*. China Legal Publishing House.

Yuan, L. (2021). Research on the litigation structure and procedural rules of majority debts. *Journal of Comparative Law*. 3, 68-84.