

# Research on the Determination of Joint Debt in the Civil Code

## -- Is based on Empirical Analysis

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### Abstract

**Article 1064 of the Civil Code makes conceptual provisions on the joint debt of husband and wife, which is of great significance to the construction of the marriage and family system in China. However, the identification of joint debt between husband and wife also faces the dual dilemma of theory and judicial practice, and conducts practical analysis with 100 judicial cases. Analysis of the current judicial practice exists "family daily life" different standards, joint production and operation, life standard chaos, the burden of proof of distribution rules is not unified, it should be clear the scope of keywords, clear burden of proof, strengthen the effective joint debt between legislation and justice.**

### Keywords

**Civil Code; Joint Debt of Husband and Wife; Burden of Proof; Common Meaning Expression.**

### 1. Legal Evolution of the Identification of "Joint Debt between Husband and Wife"

Marriage relationship is protected by the state, and China attaches great importance to the protection of marriage relationship. On the one hand, it is reflected in the internal relationship between husband and wife, and on the other hand, the relationship between creditor and husband and wife in the external relationship. The legislative purpose is different, leading to the different provisions of the law on the relevant rights and obligations.

The Marriage Law of the People's Republic of China, promulgated in 1950, is the first Basic Law enacted after the founding of the People's Republic of China, focusing on protecting women's legitimate rights and interests. Article 24 makes it clear that the property acquired during the existence of the original husband and wife relationship as the joint debt of the husband and wife, the property acquired during the existence of the relationship shall be paid off first, and the property obtained shall be paid off. It stipulates that "one man and a woman shall bear the responsibility by themselves respectively", and the specific burden of proof is not clear. Article 23 made significant progress in terms of the Marriage Law of the People's Republic of China in 1980, and men and women had equal obligations when paying off the joint debts of husband and wife and allowed both parties to negotiate by themselves. If the consultation fails, the court shall make it. However, the burden of proof is not stipulated for the identification of the personal debt of one husband and wife, and only the internal relationship between the husband and wife is stipulated. Article 41 of the Marriage Law of the People's Republic of China in 2001 changed the joint debt of husband and wife from the original debt "during the existence of the original marital relationship" to "joint debt of husband and wife". To further prevent a couple from debt in marriage, but the identification of the joint debt is relatively general, does to distinguish the essence of the debt, and this issue is not involved in its relevant judicial interpretation.

In 2017, the Supreme People's Court's Interpretation on Several Issues Concerning the Application of the <Marriage Law of the People's Republic of China (2) and its supplementary provisions joined the legal protection of creditors while maintaining the internal relationship of couples. In 2017, on the basis of the previous joint and several creditor's rights, the judicial interpretation gives priority to protecting the legitimate rights and interests of third parties and creditors. Eliminate debt and false debt collusion arising from illegal and criminal activities. In 2018, the Interpretation of the Supreme People's Court on the Application of the Law in Hearing Cases involving Husband and wife Debt Disputes for the first time took the expression of the mutual willingness of both couples as the standard for the joint debt. The relevant judicial interpretation of the people's courts not only pays attention to ensuring the stability of marriage and family relations, but also protects the legitimate rights and interests of creditors. In 2021, the Civil Code of the People's Republic of China will not only protect the internal relations between marriage and family, but also comprehensively adjust the basis of civil relations. Continuing the judicial interpretation of the Supreme People's Court issued in 2018. Article 1064 stipulates that the meaning of the joint debt of husband and wife is beyond the needs of daily life, and the creditor claims the burden of proof. "Joint debt between husband and wife" is clearly stipulated in our law, which not only protects the legitimate rights and interests of non-debtors in the marriage relationship, but also protects the interests of creditors.

## 2. Theory Evidence

### 2.1. The Concept of "Meaning" and "Common"

Civil law is different from other departments, and civil law respects the meaning autonomy of the parties to the greatest extent. The concept of marriage and family compilation is also fully reflected. The identification standard of the joint debt of couples in the civil Code adopts the "joint signature of both husband and wife" or "one husband and wife after the recognition". On the basis of the original daily life needs and time dimension, we considered the meaning autonomy of the parties, allowing the husband and wife to clearly agree on the distribution of property during the marriage. At the same time, the property obtained during the existence of the relationship between husband and wife is regarded as joint property, and the common property is artificially divided into positive property and negative property. Positive property refers to the rights and interests acquired by the husband and wife, and the negative property refers to the debt borne by the husband and wife. The identification of "joint debt of husband and wife" can be based on the negative property obtained during the joint ownership period, and the non-debt party of the husband and wife shall bear the liability for repayment.

### 2.2. The Proposition of "See Agent"

When identifying the "public debt of husband and wife", some scholars propose that the debt behavior of one husband and wife constitutes an "apparent agent". Further analysis of the agent, first of all, the agent is no right to act, including the agent has never obtained or exceeded the agent, has obtained the agent but has been eliminated. The Civil Code stipulates that one party between husband and wife has the agency right to decide on their own daily family affairs. In their family life, the trading acts carried out for their daily life are effective for both husband and wife. If the amount of debt of the couple is relatively large, beyond the daily life needs of the family, then it belongs to the husband and wife beyond the original right of agency. Secondly, the transaction counterpart must have reason to believe that the actor has the right of agency. In the traditional concept, both sides of the husband and wife are external as a community, and the transaction counterpart should have reason to believe that both the husband and wife have reached an agreement with the behavior of borrowing the debt. Thirdly, the relative conducts the transaction based on the belief in the relationship between the husband and wife. Finally, the transaction between the husband and wife and the relative conforms to the general effective

requirements of civil legal behavior. Therefore, it is not impossible to use the behavior mode of apparent agent when determining the "couple joint debt".

### **3. Empirical Analysis of the Identification and Repayment of the "Joint Debt of Husband and Wife"**

#### **3.1. Sample Selection**

The method of empirical research was used, and the database of fusion cases were used to search the focus of the case as "joint debt", find the judgment and order from 2021-2014, and search the number of realistic related cases up to 1300,651.

#### **3.2. Sample Profile**

Through intelligent data analysis, the 1.3 million cases of the search results were data summary analyzed, and the overall development trend was studied. 1. Type of case: The most important type of case is civil, accounting for 99.79%. 2. Cause of action: disputes over private lending ranked first, with 710,076 cases, followed by disputes over financial loan contracts and sales contracts. 3. Entity law citation: The statistics of all cited entity laws, including specific legal names and terms, and the most cited judgment documents are article 206,656,367,45207, the People's Republic of China Contract Law (1999), 451,852. In contrast, the cases citing section 19 of the Marriage Act 2001 are only 79,614,24,59,658,32, and 51,359,41, which constitute only 17.86% of the total references in Articles 206 and 207 of the Contract Law. 4. Procedure law reference: statistics of all cited entity law, including specific legal names and terms, the results of the judgment documents cited the most is the Civil Procedure Law of the People's Republic of China (2017) article 144,3936005. Trial procedure: procedure classification statistics can see the current distribution of procedures. In the first instance, 85.23% of cases, 10.77% of the second instance cases, 1.40% of retrial cases, 1.37% of execution cases, and 1.15% of retrial review and trial supervision cases. 6. Judgment results: The results of the first trial showed that the referee fulfilled 66.57%, 30.58% of the claims were rejected, and 2.14% of the divorce was granted. The second trial dismissed the appeal to 45.56% of the original judgment, 18.72% of the money, 16.29% of the case, and 13.34% of the claim. The retrial trial affirmed 15.59% of the original judgment, 19.08% of the money, 21.36% of the petition for retrial, and 24.55% of the dismissal.

#### **3.3. The Trend Reflected by the Sample**

Based on the above data analysis, the basic development trend of cases related to "marital joint debt" in judicial practice can be summarized. It mainly includes: 1. A large number of cases exists. In the nine years from 2012 to 2021, the total number of judicial cases related to marital joint debt has reached more than 1.3 million. In 2021 alone, there were marriage and family disputes totaling 313,800, including 33,700 based on the couple's joint debt. Among them, the number of cases in the grass-roots courts has reached nearly 26,400. It can be imagined that the judicial workload of judges on such cases in judicial practice is very heavy. 2. Based on the large proportion of the Contract Law, and relatively few cases cite the Marriage Law in 2001. In the legal relationship of common debt is more complex, contains a variety of legal relationship is no longer a few, given the marriage relationship of common debt is complex and diverse, law cannot list, can only abstract generalization, also leads to the judicial practice that couples common debt most often cited the Supreme Court of joint debt, and the relevant legal provisions directly quoted less. 3. The cause of the case is mainly private lending disputes, involving multiple legal relations such as marriage relations and debt relations. The joint debt of husband and wife is based on the external debt relationship between the two parties and the internal joint relationship. In practice, in addition to private lending, there are also other debt relations such as legal debt and tort debt. This requires the judges to have a general

grasp of the civil legal relations when judging, otherwise it will cause the unreasonable phenomenon of judging.

### 3.4. Case-specific Classification Study

In judicial practice, the determination of joint debt is based on "daily life needs", "common intention of both husband and wife", "joint production and operation of both husband and wife", etc. However, the above cases identified in the specific cases are diverse. Given the large number of cases, this paper only selects 100 related cases to classify and research, and summarizes the following several types of cases.

In judicial practice, the identification of the daily scope of the family, according to different. One is to "husband and wife relationship" as the main basis, for example, hou and China \* \* bank co., LTD., Jiangmen victory branch, huang credit card dispute case civil trial (2020) judgment reasoning part, huang and hou is a relationship between husband and wife, credit card loan principal and some interest, fees occurred during the relationship between husband and wife. The second instance of civil case of credit card dispute between Gu Qing and ICBC Zhenjiang Branch and Shen Mingjiang (2019); second, apply the presumption. For example, Gu, Chen Hao and other retrial of credit card dispute with China Merchants Bank Co., Ltd. Credit Card Center (2019) Su 04 Min Re XXX, with the marital property, assuming that the debt borne by one of the couple after marriage as the negative property, should also belong to the joint debt of the husband and wife. "Third, there is not direct and sufficient evidence to prove, will not be identified as husband and wife debt. Li Yanan, for example, the bank of China co., LTD., Guangzhou haizhu branch credit card dispute civil second instance civil case (2021), the bank of China haizhu branch claims Lin Yunxing credit card arrears is such as gas payment, phone family daily life, but only by the transaction flow is not enough to confirm that credit card arrears has been used for Lin Yunxing and Li Yanan couple live together. Finally, it is determined that the credit card arrears involved in the case does not belong to the joint debt of the husband and wife. Lin Long and the second instance of credit card dispute between China Construction Bank Co., Ltd. (2018) did not identify the debt involved in the case as the joint debt of husband and wife.

In judicial practice, there are opposing views of the identification system of joint debt between husband and wife, the confusion of identification standards, and the distribution of proof responsibility of evidence. It is shown in the following points.[6] First, the identification standard of "family daily life needs" is not unified, some take the amount as the standard, some are determined by the type of transaction, and some take whether the non-borrower can prove that the debt borrowed has not been used for the daily needs of the family as the judgment standard. Second, the standards for the joint production, operation and life between husband and wife are vague. Including the practice of separation, one of the proof is not used for daily life, some courts to the income issued by the parties, but some courts from the perspective of couples is community, think the borrower's personal living expenditure is occurring during the existence of the relationship between husband and wife, should belong to the family life needs. In addition, the rule of distribution of the burden of proof in judicial practice is not uniform. Some courts require creditors to prove that one of the couple is actually used for the daily life of the family, and some courts require non-borrowers to not bear the debts of the borrower for the daily life or joint production and operation.

## **4. The Sample Reflects the Solution to the Determination and Settlement of "Husband and Wife"**

### **4.1. Strictly Position the Scope of "Family Needs in Daily Life" with Keywords**

Civil law is different from the strict criminal law, civil law for the parties behavior constraints is different from the criminal law on the behavior of the strict, civil law maximum respect the autonomy of the parties, the concept in the civil code, as couples debt, one party based on "family daily needs" within the scope of debt, according to the couple common debt processing. However, the scope of "family daily life needs" itself is relatively wide, which not only refers to the basic life needs of the family, but also includes the production and operation activities to support the basic life of the family. If there is no reasonable restriction on its scope, it is easy to expand the needs of "family daily life" and abuse of rights in practice. Therefore, it is necessary to reasonably define the scope of "family daily life needs". First, the understanding of the word "needed for daily life" should not be divorced from reality; secondly, with the actual needs of "family" as the core, the behavior must be carried out for the purpose of the family income of the family. In the new era, digital economy makes personal consumption hidden to a certain extent, such as Huabei, Borrowing and other online small borrowing, which cannot be completed separately without signing or ratification by one husband and wife. One of the couple uses the loan for personal consumption, which is obviously different from the concept of "family" needs. Therefore, it is necessary to strictly grasp the core factors, and flexibly analyze the specific application situation of practical cases around the key points such as "family" and "daily life".

### **4.2. Clarify the Burden of Proof of All Parties**

Since the determination that the joint debt of husband and wife not only involves the internal relationship between husband and wife, but also needs to protect the legitimate rights and interests of external creditors, the burden of proof of all parties should be stipulated in the law to enhance the operability. In practice, as to whether the debt belongs to the daily life of the family, the court held that the amount of the debt is small and the creditor need not provide additional evidence of the purpose of the debt; the other part claimed that the creditor bears the burden of proving that "it is really necessary for the daily life of the family." In some cases, the court flexibly determines whether the creditor of "daily family life" bears the burden of proof; some courts require the non-borrower to bear the burden of proof that the borrower is not used for "daily family life" and increase the cost of litigation participants. The uncertainty of the law causes the cost of compliance between the non-debtor and debtor. At present, the too rough distribution of debt liability in the civil Code is the main reason for the different judgment standards of the court in practice, Whether the Civil Code is based on whether it exceeds the "needs of daily life", However, the economic development situation varies in different regions, The standard of "family daily needs" produce different understanding, Therefore, the burden of proof is not simply divided based on whether it exceeds the "daily life needs", In accordance with the principle of "who claims, who provides" in the Civil Procedure Law, Reasonable determination of the burden of proof for both creditors and nonborrowers, At the same time, it shall bear the adverse consequences that cannot provide evidence according to law, Both to protect the interests of the creditors, It also protects the legitimate rights and interests of non-borrowers.

### **4.3. We Will Strengthen the Effective Connection between the Legislation on Marital Joint Debt and the Judiciary**

Although the Civil Code stipulates on the joint debt of husband and wife, from the application of relevant judicial interpretation, the legal provisions of the identification standard of joint

debt cases are not fully applied in judicial practice. If the debtor shows the purpose of the transaction and the debt during the marriage, the creditor cannot prove that the loan is a joint debt. Clearly, from creditors, the interests of the defaulting party is properly protected. However, this violates the civil Code's protection of non-African borrowers in marital relations. We should strengthen the combination of joint and several debt legislation and couples' joint debt in judicial practice as soon as possible, and balance the rights and interests of creditors and non-borrowers in the marriage relationship.

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