

# On the Bearing of Tort Liability of Breeding Animals

Fang Luo\*

Zhejiang A & F University, Hangzhou 311300, China. E-mail: 2029116511@qq.com

**Abstract:** In recent years, there have been more and more disputes caused by raising animals, and many infringement issues of raising animals have appeared. Although China's laws have made detailed provisions on the tort liability of infringement of raising animals, it is undeniable that there are still many problems in practice. This paper will analyze the problem of the bearing of tort liability of breeding animals in accordance with the existing provisions of Chinese laws, point out some practical problems, and propose some improvements.

**Keywords:** Feeding Animals; Principle of Liability; Subject of Responsibility; Reasons for Reduction and Exemption of Responsibility

## 1. The law application of tort liability for raising animals in China

### 1.1 The premise of assuming responsibility for tort of raising animals

The question of whether it is necessary to bear responsibility for the tort of raising animals is mainly discussed from three aspects. First of all, it is necessary to know which animals are "farming animals", secondly, analyze whether there is infringement according to the constituent elements, and finally discuss whether to bear responsibility according to the principle of liability.

According to the provisions of *China's Tort Liability Law*, "breeding animals" should have four characteristics at the same time: "owned or possessed by a specific person; the breeder or manager has an appropriate degree of control over the animal; according to the characteristics of the animal itself, may cause damage to others' property; change animals to livestock, poultry, pets or domesticated beasts, reptiles and so on."<sup>1</sup> According to this regulation, we can see that "breeding animals" are animals that can control or have been controlled by humans and can cause harm to humans. Therefore, animals such as uncontrolled wild animals and domestic goldfish that will not cause damage to others are not "breeding animals" in the legal sense.

The constituent elements of animal infringement include three points: infringement, the result of the infringement, and a causal relationship between the behavior and the result. "The premise of constituting an infringement for raising animals is that the animal infringes on the person or property of the right holder, that is, the infringement actually takes place."<sup>2</sup> This kind of infringement is an act independently carried out by the animal based on its own risk and is not subject to external forces, it is the behavior of the animal itself. Therefore, if the animal inadvertently infringes the rights and interests of others under the coercion of human beings, it is not applicable to bear the tort liability of raising animals. The result of the infringement means that the infringement of the animal has caused damage and injury to others, which can be personal injury or property damage. Whether it is personal injury or property damage, generally it is necessary to bear property compensation liability, that is, compensation for damage. The causal relationship between behavior and result means that such damage should be caused by "breeding animals", which can be the behavior of

<sup>1</sup>Law Press Regulation Center. *Annotated version of the Law of the People's Republic of China on Tort Liability* [M]. Beijing: Law Press, 2015: 200-201

<sup>2</sup>Xinbao Zhang. *China Tort Law* [M]. Beijing: China Social Sciences Press, 1998: 554

“raising animals” to carry out the aggression directly, such as the dog bites people, or the behavior of “raising animals” to do the aggression independently because of certain stimulation, such as the dog bites people because of stimulation.

Regarding the principle of liability, it is the general name of a series of rules used to determine whether the perpetrator is liable for damage when the fact of damage occurs. The application of the principle of liability in China has been controversial, but according to *China’s General Rules of Civil Law* Article 127 stipulates that “If the breeding of animals causes damage to others, the animal breeders and administrators shall bear civil liability.” In this rule, the infringed person can request the responsible person to assume responsibility without carrying out proofs. From this, we can infer that *The General Principles of Civil Law* adopt the principle of no-fault. *The Tort Liability Law*, on the basis of *The General Principles of Civil Law*, stipulates three special cases for applying the principle of no-fault. They are the dangerous animals prohibited from feeding in Article 79, the violation of management regulations in Article 80 and the failure to take safety measures in keeping animals and the liability for damage caused by stray animals in Article 82.

## 1.2 The result of assuming responsibility for tort of raising animals

Because the tort liability of raising animals is an alternative liability, when the infringement occurs, it is necessary to consider the subject of the responsibility, that is, the obligor of compensation. According to different factors that lead to the occurrence of the infringement, the liability of the obligor of compensation must be different. Of course, the way of responsibility is also indispensable after the occurrence of tort liability.

*The Tort Liability Law of China* stipulates that the subject of animal tort liability is the breeder and manager of the animal, as well as the third party at fault. In general, the subject of responsibility is the breeder and manager of the animal. Breeders generally refer to the owners of the animals, while custodians are the people who actually control the animals. Whether the subject of responsibility is the breeder or the manager should depend on the specific circumstances. In general, the animal’s owner and the animal’s manager are the same person, and when the breeder and the manager are not the same, although the breeder enjoys the ownership of the animal, the manager has the actual control right over the animal, so the subject of responsibility should be the actual manager of the animal. In addition, *The Tort Liability Law of China* Article 83 clearly stipulates that if the third party’s fault contributes to the animal to cause damage to the person, the infringed person may choose to claim compensation from the animal breeder and administrator, or may request the third party to be liable for the fault.

When raising animals constitutes an infringement and confirms the subject, it is necessary to consider how the responsible person bears the responsibility. In this regard, Chinese laws do not make special provisions, at this point, we should consider that this kind of liability is applicable to the provisions of *The Tort Liability Law of China*. Among the eight ways of liability stipulated in the *Tort Liability Law*, animal infringement usually applies compensation for damages, including compensation for personal losses and property losses. Of course, when the animal tort infringement meets certain conditions, it can be alleviated Liability or be exempted. According to Article 78 of the *Tort Liability Law*, “If the animal raised causes damage to others, the animal breeder or manager shall bear the tort liability, but if it can be proved that the damage was caused intentionally by the infringer or by gross negligence, it may not be borne or mitigated.”<sup>3</sup> It can be seen that if the infringer is grossly negligent, the animal breeder and administrator can reduce the liability, and if the infringer intentionally causes animal infringement, the animal breeder and administrator can be exempted. In addition, according to the Article 81 of the *Tort Liability Law* stipulates that if the zoo’s animals cause damage to the person, as long as the zoo can prove that it has fulfilled its management duties, it can also be exempted.

## 2. Problems in China’s animal tort liability system

### 2.1 Undefined range of animals

There are no clear classification standards and types of animals in “breeding animals” in China. What is the specific classification standard of “breeding animals”? Chapter 10 of the *Tort Liability Law* is based solely on the specific circumstances in which the infringement of “breeding animals” occurs, “fostered animals” are divided into animals raised by general subjects and four special “fed animals”, that is, animals raised in violation of management regulations, dangerous animals prohibited from breeding, zoo animals, and abandoned and escaped animals, but what the criteria are

<sup>3</sup>Law Press Regulation Center. *Annotated version of the Law of the People’s Republic of China on Tort Liability* [M]. Beijing: Law Press, 2015: 200

is not specified.

## **2.2 Imputation principle lacks flexibility**

In the *Tort Liability Law of China*, the principle of no-fault is applied except for the principle of presumption of fault for zoo animals causing damage to humans as stipulated in Article 81. There are some unreasonable provisions in both the case of zoo animals with presumption of fault and the case of no fault principle. First of all, it is unfair to apply the principle of fault presumption to zoo animals. The animals in the zoo range from the more dangerous tame wild animals to the less dangerous ones to watch, and regardless of the characteristics of the animal itself, unifies adopts the fault presumptive principle, obviously is disadvantageous to the infringed party. Moreover, the zoo is clearly in a better position than the infringed person. Using the principle of fault presumption, the zoo can be exempted only by proving that it has done its management duties and it makes it easy for the zoo to find excuses and disclaim responsibility, making it difficult for the infringed person to effectively protect its legal rights. Secondly, the application of the no-fault principle does not divide the danger of animals and does not consider other factors, which makes the application of the no-fault principle appear to be very verbose.

## **2.3 Responsible subject regulations are unclear**

The responsible subjects of infringing animal husbandry in China are generally breeders and administrators. However, in certain special situations, the animal breeders and administrators have identification problems. One is the theft of animals. There are two views, one is that animals being stolen should be treated in the same way as abandoned or escaped animals, because no matter whether it is stolen, abandoned, or escaped, the breeder and manager have lost control of the animal, so during this period, the animal's infringement occurs, there is no need for the original breeder and manager to bear responsibility for infringement; another view is that the stolen animal has infringed behavior, and the original breeder and manager need to bear tort liability, because although the original breeder and manager lost control of the animal, the animal's ownership still exists. The second is the issue of the identification of the responsible subject when selling animals. The focus of this dispute is mainly whether the original breeder and the administrator notify the other party of the potential dangers of certain animals when they deliver the animals in the sale of animals.

## **2.4 Imperfect reasons for relief**

*The Tort Liability Law* in China only includes two exemptions, that is, the infringed intentionally or grossly negligent, and the zoo fulfills its management responsibilities. According to the fault of the infringer to provide relief, without considering the risk of the animal itself and the zoo can be exempted from liability as long as it proves that it has fulfilled its management responsibilities, which is unfair and is not conducive to the rights protection of the infringed person. Not only that, such as force majeure and agreed exemption, although applicable in specific judicial practice, there are no specific rules of use, this causes many problems.

# **3. The perfection of the system of infringement responsibility for raising animals in China**

## **3.1 Clear classification of animal standards and types**

In view of the current unclear classification standards of "feeding animals" in China, the author believes that the characteristics of animals should be fully considered by drawing on the legislation of western countries. Animals can be classified as dangerous and non-dangerous. Although China has also taken this into consideration, the system is confusing, such as the *Tort Law* "dangerous animals such as dogs" mentioned in Article 80, although dangerous animals are mentioned, there are no specific rules for the classification of dangerous animals. Based on this, the author believes that "the judgment of animal dangers should refer to the following factors: one is the height and length of the animal; the other is the concept of a general rational person; the third is the strength of the animal's aggressiveness against humans under normal conditions. The risk of animals can be reasonably determined by comprehensively considering the above three factors." When there are clear standards for "breeding animals", when infringement occurs, you can better determine whether you need to bear responsibility and what kind of exemption liability applies.

### 3.2 The principle of liability should comprehensively consider the animal's own danger and the specific damage results

The principle of liability for Chinese laws only considers several different situations applicable to animals, and does not consider the specific damage results or the dangers of animals. The author believes that this is incomplete. Professor Liming Wang pointed out: Imputation refers to what basis should the person be held responsible after the damage has been done, the fault of the actor or the result of the damage. It can be seen that the damage result should also be used as the basis for the application of the liability principle. After the infringement occurs, first consider the danger of the animal, and then decide how to bear the responsibility based on the damage caused by the infringement, so that it is more reasonable to consider both the characteristics of the animal itself and the rights of the infringed, and more conducive to the protection of the rights of the infringed.

### 3.3 Clarify the scope of the responsible subject

Regarding the problem of the confusion of the subject of animal tort liability, the author believes that the subject of liability in various situations should be clarified. For the stolen animal tort problem, the author believes that the original breeder and administrator do not need to bear responsibility. Firstly, there is no fault for the manager to leave the animal control. The second reason is that the thief has become the custodian of the animal, and the animal is under the control of the thief. As for the problems existing in animal trading, the author thinks that this kind of situation is the damage caused by the original breeders' failure to fulfill their obligations. But due to the rights and obligations are the same, after the ownership of the animal is transferred, the obligations for animal management should also be transferred, so the responsibility for animal infringement should be borne by the new breeder. As for the unfulfilled obligations of the original breeder and manager, the new breeder and manager may claim liability for breach of contract.

### 3.4 Appropriate expansion of relevant exemptions

The provisions of *China's Tort Liability Law* on the cause of exemption are too narrow, and the force majeure and agreed exemption are not specifically specified as animal tort exemption. So that, the author believes that how to apply force majeure and agreed exemption becomes extremely important. For force majeure, the author thinks that the danger of the animal and the result of damage should be considered. That is to say, under normal circumstances, because the dangerous animal itself is extremely dangerous, it cannot be exempted completely because of force majeure, and the non-dangerous animal due to the relatively small harm, generally, will not cause serious damage to people, can be on the force majeure and claim exemption. And the agreed exemption should also fully consider the danger of the animal itself.

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