

Attribution of Responsibility in The Context of Stray Animal Torts

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Abstract: Accompanied by the increasing number of stray animals, the damage caused by stray animals to people has also become common. Therefore, determining the attribution of liability for harm caused by stray animals is particularly important. But China because there is no special law for stray animals caused harm, therefore, stray animals infringement of liability attribution problem does not have the same nature. This article will summarize the various types that exist in practice by using the existing viewpoints for further discussion.

Keywords: Animal torts; stray animals; attribution of liability.

1. Introduction

In the era of the General Principles of the Civil Law, there were no a legal provision on the tort of stray animals, and it was not until the promulgation of the Tort Liability Law in 2009 that the initial provision on the liability for harm caused by stray animals was first formally stipulated within the scope of tort liability, and this provision has been continued and inherited in a separate provision of Article 1249 of the Civil Code, which reads, “An abandoned or running away of an animal that causes damage to another person during the period of abandonment or running away, the original keeper or manager of the animal shall be liable in tort.” Abandonment and escape can be explained as follows, abandonment refers to the original state of feeding and management of the animal itself lost, and in the state of no one to keep and manage or refers to the original caretaker autonomously give up on the possession or ownership of the animal, and the escape here refers to the original state of feeding the animal for some special reasons of their own to break away from the original control and make their own into the state of no one to take care of and manage. It can be seen that the original keeper of the animal is its general responsibility, but according to the basic theory of China's “property law” can be learned, the keeper of the animal is the owner, and the administrator refers to the owner of the owner outside the direct possession. Therefore, only when the owner and the direct possessor of the animal is not the same person, the concept of the administrator will appear. The circumstances in which a keeper appears can be categorized as follows: first, the owner hires or commissions another person to take care of the animal; second, the animal is rented or lent out by the owner; third, the person who is in unlawful possession of the animal [1].

Nowadays, many families have animals and the number of people who have animals is increasing. However, animals are not the same as people; they are aggressive, uncontrolled and can cause harm to others. The beneficiary bears the risk, and the person in charge of the animal bears the liability for compensation. Regardless of the reason a pet becomes a stray, the original caretaker directly or indirectly initiates the stray animal's aggressive behavior, so the original caretaker remains liable. This is based on the theory of control of danger, the responsible subject of the stray animal possession or

ownership, domination, management, control, and thus assume responsibility for[2].

Article 1249 of the Civil Code can solve most of the problems of stray animals causing damage in practice. However, the provisions of this article on the subject of responsibility is not comprehensive, and does not cover the practice of the existence of a variety of situations, first of all, in some cases to find the original caretaker is very difficult, due to the legal norms itself to cover a wide range, coupled with the actual life of each province and city of the implementation of the pet registration system is not the same degree of some cities of the rapid population mobility, it is difficult to find the original keeper. Secondly, the subject of responsibility is incomplete, in addition to the general responsibility of the subject, or there will be other burden of management obligations of the subject of the situation, these subjects should also bear the corresponding liability for damages. Therefore, in the face of the complexity of the actual situation, how to solve the judicial practice in the trial of the case is not uniform, how to interpret the law to establish a systematic and universal interpretation, can be applied to solve the facts of our daily life of stray animals caused by the fact that is an urgent problem.

2. Determination of the Subject of Responsibility for Stray Animals

Due to the lack of relatively uniform judicial interpretation as a standard for adjudication, adjudication results in practice are often inconsistent, the author from the perspective of practical jurisprudence, the type of liability assumption is divided into the following categories, and analyze and discuss.

2.1. Former breeders, managers

(1) Original breeder

According to the general provisions of the law, the original custodian of the general liability, and the occurrence of animal torts, it is necessary to find the original breeder or manager, the original owner can be found in the case of livestock, poultry, etc. Transportation of trade, transportation and slaughter in the process of such cases. For example, livestock in the cattle escape injury, etc., the common point is that although the animal was traded in the process of escape out of control phenomenon, destroying the parties to the

transaction order and even the transaction security, but often can be traced back to the original breeding, management, in the trial can be very clear and explicit application of the law and make the responsible body to bear the corresponding tort liability. In reality, most of the animal torts, most of the dogs and cats raised in the indoor pets, this type of stray pets injury cases can not be found in the original owner of the case, the facts of the case is more of the original owner of the pet had been in the residential life, due to changes in the lease relationship, move out of the process of the pet abandoned. In other cases, the pet was strayed because it was separated when the owner was out walking his/her dog.

(2) Administrator

By analyzing the case can be found in the court in the determination of the administrator, has a big difference, which also makes the interpretation of the administrator encompasses a lot of obligations into the main body, but from the perspective of the natural person to assume responsibility for the analysis, can be categorized into the following types of situations:

Heirs of the original breeder

In practice, there are courts that take into account the original breeder and manager when determining the responsibility, and their heirs should be responsible for it after the death of the original breeder and manager. For example, Case (2020) E 06 Civil Final No. 213, the court held that after the death of the father, the son who lives with him should become the administrator of his father's pet, to which the author believes that the judgment is sound, the son and the father live in the same room, even if the son does not have the intention to keep the pet, but it happens to be that the son is the closest to the father who passed away, and live together in the same room, is the most conducive to the control and care of the pet is the most conducive to the pet is the most effective management of the person, is also the most direct and effective management of the animal. is the person most directly and effectively able to manage the animal. Based on the purpose of controlling the generation of stray animals, the son as the animal's manager is appropriate, if the son is not willing to keep the father's pets, then you can ensure that the control of the pet does not occur under the premise of injury to the pet, the pet to do further processing, or to send to the foster, or sell, etc. can be realized that the pet's turnover, and will not lead to the stray animals to the surrounding residents of a potential danger. Danger.

Neighborhood Property

In practice, the community is also the most common place of animal abuse cases, some courts in the judgment, the community property is recognized as the administrator of the subject of responsibility, and then ruled that it bears the responsibility for compensation.

2.2. Duty bearers for security in special areas

Article 1198 of the Civil Code provides that the managers of public places such as hotels, shopping malls, banks, stations, etc., have a duty of security to protect the persons and property of unspecified persons entering their premises. Therefore, the obligation of safety and security originates from the provisions of the law, but may also arise from contracts, customs, etc. For example, property companies usually have property contracts with owners, which contain the obligation of safety and security. Obligation of safety and security is mainly engaged in business activities of the operator, non-profit public places of the manager and engaged

in other social activities of the organizer [3]. In practice, many animals cause damage to people in small areas, squares and other places of public entertainment, and even in some remote or closed factories and plants also often occur, so in these different places of infringement of the responsibility of the main body of the determination is also different.

(1) Community property

The first paragraph of Article 942 of the Civil Code requires that a property service company shall, in accordance with the contract and the nature of the use of the property, properly repair, maintain, clean, green and operate the common parts of the owners within its jurisdiction, maintain the basic law and order of the area under its jurisdiction, and take reasonable measures to protect the life and property of the owners [Article 942 of the Civil Code: The property service provider shall, in accordance with the agreement and the nature of the use of the property, properly repair, maintain, clean, green and operate the common parts of the owners within the property service area, maintain the basic order of the property service area, and take reasonable measures to protect the safety of the owners' lives and property. nature of use, properly repair, maintain, clean, green and operate the common parts of the owners within the property service area, maintain the basic law and order within the property service area, and take reasonable measures to protect the life and property of the owners. Therefore, based on the property contract between the property owner and the property owner, the property owner has the obligation to maintain and manage the common parts of the owners in the area in order to protect the personal and property safety of the owners. In addition, the Property Management Regulations set up the obligation to safeguard the environment and safety, so the property management company should belong to the security obligation. Although some residential neighborhoods have established strict entry systems, their closure level is relatively low compared to private properties. As a result, the presence of stray animals is almost commonplace, so more and more of the community property into the community animal abuse cases of the responsibility of the main body. In the above has listed the community property is used as the administrator of the situation, and in the practice of adjudication, more community property as security obligations. For example, (2021) Guangdong 03 Civil Final No. 15189 judgment, the second-instance judgment upheld the first-instance judgment, found that the property company as the administrator, the property should be liable for compensation.

But in practice, it cannot be generally assumed that the stray animals in the district damage cases and property fault liability is completely related. First of all, the management of stray animals is difficult, and secondly, the reason why the stray animals because of its homeless, stray animals, the whereabouts of uncertainty, with a great deal of sudden and accidental, so the property has been asked to pay full attention to the stray animals into the neighborhood whether it is unrealistic, the property's duty to manage and pay attention to is also limited [4]. What the property owner should do is to take effective measures in a timely manner when finding stray animals in the area that may pose a danger, such as dogs banned in the city or animals that are so ferocious that they may harm human beings, such as informing the owners in a timely manner or expelling them and reporting them to the relevant authorities for arrest.

(2) Public places

Shopping malls, food markets, stadiums and other public places due to the people coming and going, there will be a constant supply of food, so that the stray animals long-term infestation, when the public places of stray animals caused harm to the incident, the main operator of the premises, the obligations of the manager is still based on the security obligations of the responsibility of the duty holder.

In the case of public places, there is also a specific category of circumstances. That is, when these public places are used as a venue for specific social activities, by the organization of sports competitions, performances, exhibitions, temple fairs, music festivals and so on. These events are held by legal persons or social organizations, and the number of people at these events is large, and it is often the case that stray animals stay within the area of the event. Since the event organizers hold the event, they should do their part to ensure the safety and security of the participants at the event site, and make comprehensive preparations to deal with all kinds of emergencies, including cases of stray animals injuring people.

(3) Remote factories

For example, in one case, there were stray dogs around the factory, and the owner of the factory did not drive them away, but acquiesced to their presence in the factory. The court found that the factory owner or the manager of the factory was the keeper of the stray dogs and thus liable for the damages. Can see the court found that the reason is to take into account the decision of the stray dog, in this factory set up relatively remote and relatively closed, from the factory owner or manager agreed to the stray dog in the factory to stay this first behavior, on the one hand, exclude the possibility of the stray dog of the management of the other subjects, and on the other hand also they become the most likely effective control of the stray dog subject, therefore the interpretation of the factory owner and other subjects as the stray dog, and thus liable. Therefore, the factory owner and other subjects will be interpreted as a manager, and then bear the tort liability due to stray dogs is appropriate. The factory owner or factory manager in making this first act, should realize that the stray dog may bring the consequences of the damage.

(4) Administrative organs

The rising number of stray animals has gradually aroused a lot of social concerns, because the increasing number of stray dogs leads to more and more social problems, so the administrative organs should avoid the possible social risks as much as possible. Administrative organs for stray animals that may jeopardize the public interest, should be properly managed in a timely manner, which is also the obligation of the administrative organs to all citizens. Failure of the administrative organs to fulfill the public management function in time according to the law, and failure to fulfill their obligations to the citizens by managing and resettling the stray animals, which leads to the attack of the citizens, can be regarded as an administrative omission of the administrative organs which should have fulfilled the management function but failed to do so. On this basis, the government should compensate for the damage to the public interest caused by administrative omissions, which is consistent with the Civil Code's "duty of care owed by the administrator to others". For example, when there is a disaster weather causes trees to fall, urban infrastructure damage caused by the residents of personal property infringement, the corresponding administrative departments should be liable for damages, and this paper stray animals is the same as the trees and infrastructure in the city exists.

3. Feeders

In practice, there are frequent cases in which caretakers who regularly feed stray animals out of compassion are injured by the stray animals, leading to death and injury. Reading through the adjudication cases, we find that many courts, on the basis of the fact that certain feeders have fed stray animals, consider that the feeders are mainly responsible for causing the injuries caused by stray animals and rule that they should be held liable for compensation. In China's law, there is no clear provisions and expressions about the feeder, so in the court's decision on the subject of responsibility can be said to be a variety of determinations, which also reflects the lack of a unified standard in this regard, the court judge's discretion of the huge differences and differences in the interpretation of the law, based on the referee's paperwork collation and analysis of the main results of the determination of the summary summarized in the following categories. The main findings, based on the analysis of judgment documents, are summarized as follows.

3.1. Recognized as an administrator

Regarding the determination of the administrator, many courts in their judgments have mostly explained the interpretation from the perspective of the risk arising from the gathering of stray animals due to the feeding by the feeder at a fixed location. For example, in (2021) Liao 1003 Minchu 70, the court held that although the cat was not kept by the defendant, it had been fed by the defendant's family for a long time, and a tacit relationship between the feeder and the stray cat had already been formed, which was the reason why the cat wandered around the defendant's house, and that the defendant, as a feeder, should manage the cat and bear the responsibility of infringement of rights in the event that the cat caused damage to others. Although the cat was not kept in the Defendant's home, the gathering of the cat was due to the long-term feeding behavior of the Defendant's family, and there was a causal link between the cat's aggressive behavior and the result, so the Defendant should bear the corresponding liability.

3.2. Recognized as a breeder

Taking (2020) Anhui 01 Civil Final No. 507 Judgment as an example, the court recognized the feeder as a feeder, considering that the feeder's long-term feeding of the dog had formed a de facto feeding relationship between the feeder and the stray dog, and then determined that it was the feeder of the stray dog. However, the following two conditions need to be met when determining the feeder of an animal, having the power of decision over the animal and benefiting from the animal. If the feeder has absolute control over the stray animal over a long period of time, and is able to obtain mental comfort when feeding the animal, then the feeder can be recognized as the keeper.

3.3. Recognized as an administrator without cause

In judicial decisions, there are not a few stray animal infringement cases that have found the feeder to be causeless management, for example, in the second instance judgment of (2021) Liao 04 Civil Final No. 3090, the court held that although the stray cat was not kept by the defendant, the defendant fed it for a long period of time, which led to the formation of a fixed place for stray animals to obtain food in

the public environment where they lived, resulting in the gathering of stray cats, and that these animals, without effective control, will definitely bring danger to the public environment. Therefore, the court explained in the reasoning of the decision: "The animal keeper or manager is not limited to the owner of the animal, the possessor of the stray animal based on causeless management is in lawful possession, and the person who is in lawful possession of the stray animal bears the obligation of management due to his direct control of the animal, which belongs to the category of 'animal manager' and shall be liable for the risk of the animal's death. 's category and should be liable for tort compensation." In many other cases, we can also see that the court's judgment has the expression "based on the theory of uncaused management", which shows that the application of the theory of uncaused management in judicial practice has been generally recognized. The court held that the owner should fulfill the same management responsibility as the owner or manager of the animal, with the subject status of stray cat manager, and should bear the tort liability for the damage caused by the animal under his management.

Stray animal infringement to people's daily life has brought great trouble, in order to better protect the legitimate interests of the victims, in the stipulation of stray animal infringement of the responsibility of the subject, in addition to the original breeder or administrator, should also several other types of subjects such as the administrative organs and security obligations to bear the function of public management is also included in the stray animal infringement of the subject of the subject of the infringement of the subject of the subject to go is also we should be Think about the problem, broaden the scope of the responsible subject, so that the victim has the right to get relief.

4. Conclusion

Since the decision to keep animals, should take up the obligation to maintain social morality and support, should but

in accordance with the provisions of the law to keep animals. However, in practice, many times, the occurrence of animal torts is not purely animal initiative to harm humans, which has many reasons, for example, the victim intentionally or negligence, or even if the victim has no malicious premise, due to the habits of the animal is not familiar with the animal caused by the animal stress reaction can lead to animal torts. In practice, the determination of this aspect of the animal is extremely difficult, but it is undeniable that this situation does occur, therefore, the exemption of animal torts is also a focus of refinement and expansion.

The Civil Code also contains provisions prohibiting the keeping of aggressive dogs, but the rules on keeping animals vary from region to region, depending on the habits and customs of each region. For example, in pastoral areas, large dogs such as hunting dog or sheepdogs are permitted to be kept, but in urban areas these types of animals are regarded as dangerous and are forbidden to be kept. Therefore, the administrative organs in the admission of keeping animals should be adapted to local conditions, according to the local situation of keeping animals for classification and registration, such provisions can significantly reduce the risks associated with animal wandering and facilitate the identification of original breeders or managers in tort cases.

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