

Brief Talk on the Tort Liability Caused by Breeding Animals

Shirui Peng*

Sichuan University, Sichuan, 610065, China

Abstract: With the increasing material living standards of the people, keeping pets has become a way for people to enjoy amateur life, and the tort problem of breeding animals has also been accompanied. This article will discuss the tort liability of breeding animals from the aspects of the characteristics, the principle of imputation, and the constitutive elements.

Keywords: Breeding animals, Principle of imputation, Constitutive elements

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***Corresponding author:** Shirui Peng, 78955370@qq.com

1 Question raised

Keeping pets has become a trend in modern society. Young people keep pets for their interest, and older people keep pets because of loneliness. Whatever the reason for breeding animals, the inevitable question is what we should do if other people are damaged by the breeding animals. Compared with China, it is much earlier to study the damage caused by animals abroad. The ancient Roman “Twelve Bronze Table Law” of 451 BC, in the 6th article of the 8th table named “Private Crimes”, stipulates that the owner of the livestock shall be liable for the tort liability of all of his livestock. In some ancient Chinese folk customs and local regulations, regulations on animal infringement can also be found. These are enough to prove that the issue of tort liability of breeding animals is not a modern phenomenon, and this problem has always existed. However, most of the animals were used for farming in ancient times. Unlike ancient times, modern people regard keeping pets as their own hobbies. Many people let

their pets indulge in expressing their love for pets. This behavior is very easy to cause pets to injure people. Or young people who have lost interest in breeding animals after a period of time would abandon their pets, which changing their pets into abandoned pets and injuring people. All of these above are relatively frequent phenomena. This is why I will choose this question for discussion. China’s current Tort Liability Law elaborates on the imputation issue of the tort liability caused by breeding animals. This forms a dual liability system based on the principle of no fault liability and supplemented by the principle of fault presumption. Below, I will also discuss this tort liability from the aspects of the characteristics of the tort liability on breeding animals, the principle of imputation, and the constituent elements.

2 Characteristics of the tort liability on breeding animals

According to the provisions of 78th article of China’s Tort Liability Law, the tort liability on breeding animals’ means that when the animals people raised cause damage to others the breeder or keeper of the animals shall bear the tort liability. But if they can prove that the damage was intentional or making gross negligence by the infringer, it may not assume or reduce liability. It is different from the general tort liability for the tort liability on breeding animals caused people to be harmed. In 10th chapter of the China’s Tort Liability Law, the tort liability of breeding animals is specified in detail. After induction, it was found to have the following characteristics:

First, the animals which cause damage must be human-raised animals, not wild animals. The original meaning of “breeding” here should be “feeding

(animals)". That is to say, only when the owner or the keeper provides food under strict conditions, it is "raised". In fact, it should be targeted expansion, and "stocking" (that is, animals feeding on their own under relatively free conditions) is included^[1]. In the 78th article of the Tort Liability Law and other provisions, the animals raised are divided into five categories: general animals, animals which are abandoned or escaping, animals that violate regulations, animals that are prohibited from breeding, and animals in zoos. Other "wild" animals are not included in this range.

Second, its form of responsibility should be an alternative responsibility for things. The subject of liability as stipulated in the 78th article of the Tort Liability Law is the animal's breeder or keeper. That is to say, in an incident, a certain animal that has been bred has caused damage to others, and its responsibility should be borne by its owner or keeper. This is a typical alternative responsibility for damage caused by the possession of the pipe.

Third, the final damage must result from the independent behavior of the animal. The consequences of the damage must be caused by the independent movement of the animal, which constitutes the infringement of the animal. If the damage is not caused by the independent movement of the animal, then the animal is not established to infringe^[2].

3 Imputation principle for the tort liability on breeding animals

China's current Tort Liability Law is based on the dual liability system, which are the principle of no-fault liability and the principle of fault presumption.

3.1 Applicable scope of the no-fault liability principle

The adjustment for the tort liability caused by breeding animals raised by the principle of no-fault liability is firstly the applicable scope of application specified in the 78th article of the Tort Liability Law. That is, the general damage caused by the breeding animal is not required to be the requirement of fault to the breeder or the keeper. However, if the breeder or the manager has evidence that the damage was caused by the infringer's intentional or gross negligence, the liability may not be borne or may be reduced. However, in this article, there is no mention of the issue about the infringed person's fault. Therefore, if the infringed is intentional and has been infringed, it is not within the

scope of this article.

In addition to the stipulated conditions in the 78th article of the Tort Liability Law, there are three special circumstances applicable to the principle of no-fault liability:

First, no safety measures have been taken against animals in violation of regulations. Such as large dog stocking, pets are not injected with anti-virus vaccine.

Second, the breeding laws expressly prohibit dangerous animals such as strong dogs from being raised to cause damage to others.

Third, abandoned animals or escaped animals cause damage to others.

3.2 Applicable scope of the presumed-default liability principle

The 81st article of the Tort Liability Law stipulates the responsibility of animals in zoos to cause damage to others, and applies the presumed-default liability principle, except if it can be proved that management duties are exhausted.

4 Constitutive requirements for the tort liability caused by breeding animals

4.1 The animals should be possessed or controlled by human beings

The animals here are not all animals. The problem I studied here is limited to animals that people can breed. And we should also expand the "people" involved here. The main body responsible for animal's injurious behavior as stipulated in Tort Liability Law is the breeder or keeper. The breeder or keeper here can be a natural person or a legal person. For example, in the zoo, the person responsible for the animals' injurious behavior is the zoo.

4.2 Injurious behavior by animals

What is the injurious behavior of animals? The injurious behavior of animals is the act of damage that the animal imposes on others. The injurious behavior of animals has the following two departments: one is "human behavior", that is, human ownership, possession, breeding, and management of animals, which is "indirect behavior". The second is "animal behavior", which is "direct harms"^[3]. However, animals are not human beings, and the harms they impose are not behaviors, they can only be called events. The behavior we are studying here should actually be the indirect behavior of people whose damage is caused

by improper management of animals within their jurisdiction or within the scope of management. In this case, although this “behavior” is carried out by animals, the behavior of animals is indirectly involved in human’s behavior, so here the injurious behavior of animals is still a behavior.

4.3 The fact that the damage was caused

The fact of damage is the damage to the rights of civil subjects, including personal injury and property damage. Damage includes not only the actual damage suffered by the injured, but also the dangers that may be caused to the injured, the adverse consequences for various rights, the nuisances to various rights and interests^[4]. Animal nuisance exists objectively. For example, schoolchildren are often afraid to go to school because of the dogs on the path to school^[5].

4.4 Mutual causality

The causality here is the relationship between the injuring behavior of the animal and the damage suffered by the infringed person. This behavior can only be constituted if the damage of the infringed person is caused by the animal bred by the breeder or the keeper.

5 Conclusion

The tort liability caused by breeding animals is a hot issue in today’s society. It often happens. I have only discussed this issue at a shallow level. I believe that the law is to regulate people’s behavior and to protect people’s interests. The reason why the Tort Liability Law has come up with a chapter to specifically stipulate the responsibility for the damage of animals is precisely to protect the interests of the infringed. It may be seen by many scholars that there are still many shortcomings in this aspect, but I also believe that because of these regulations, more people’s interests are safeguarded.

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