

Analysis of the Rules for the Determination of the Joint Debt of Spouses in China

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Abstract: *The Civil Code of the People's Republic of China has clarified the rules for the identification of joint debts between spouses in China, and its more detailed norms can effectively balance the interests of all parties in general. However, there are also some problems in the rules of determining joint debt between spouses in our country, which are mainly manifested as the unclear definition of joint debt between spouses, the unclear nature of family agency and the unreasonable distribution of burden of proof. Based on this, combined with the experience of rules for identifying joint debts of spouses outside the region, this paper puts forward a path to clearly define the scope of joint debts of spouses, improve the provisions of daily family affairs agency, and improve the distribution system of burden of proof.*

Keywords: *Joint debts of spouses; Family agent; Co-signing of debt; Burden of proof*

1. Introduction

Nowadays, with the rapid development of social politics, economy and other aspects, there are more and more private loans, and the risks faced by marriage are also rising. However, the debts incurred during the validity of the marriage are often not the result of the joint life or production and operation between the spouses, but one of the spouses has borrowed money alone. Therefore, in order to protect the legitimate property rights of the non-borrower, the rules for identifying the joint debts of the spouses must be improved. In order to solve the problem of how to identify the joint debt of spouses, we must consider what it is directed to, which is fundamentally how to balance the interests of creditors and the non-debtor party of the spouses.

2. The Basic Theory of Joint Debt Identification between Spouses

The Civil Code of the People's Republic of China has made comprehensive and general provisions on issues related to joint property of spouses in marriage and family. Although the implementation of the code and relevant judicial interpretations have improved the provisions on joint debt of spouses to a certain extent, the degree of improvement is far from enough, so the practical problems encountered in many judicial cases cannot be solved. This also reflects that the rules for the identification of joint debt between spouses in China need to be further improved.

2.1. Basic Theory of Joint Debt between Spouses

Because of the differences in the standards of recognition of joint debt between spouses in different countries, there is no uniform interpretation of joint debt between spouses. In the legal academia, many scholars have different understandings of joint debt between spouses.

Some scholars believe that the joint debt of spouses refers to the debt generated during the valid period of the marriage for the needs of both sides to live together or to meet the needs of both spouses to fulfill their legal obligations. The representative figure supporting this view, namely "Skopos theory", is Professor Wu Changzhen. However, this view is still flawed, for example, during the legal marriage, the spouses due to the payment of alimony to the elderly and the debt is not used for their common life, so not all cases of joint debt between spouses can be measured by this standard.

Some scholars believe that all the debts that exist during the marital life of the spouses belong to the joint debts of the spouses. From the point of view of the relevant provisions on marital debt in early China, although the law does not exactly state that the debt occurred during the validity of the marriage

between spouses belongs to the joint debt of the spouses, but from the various interpretations of its content, these provisions are the debt generated during the survival of the marriage relationship as the rule standard for identifying the joint debt between spouses.

From the above two views, it can be seen that whether a certain debt can be regarded as a joint debt of the couple is mainly determined by the purpose and time of the debt. Under normal circumstances, the joint debt of spouses refers to the expenses arising from the joint production and living needs of spouses during the legal marriage. However, it cannot be generalized, for example, the husband or wife's debt before marriage is used in the spouses's life after the conclusion of the marriage relationship, and it should also be recognized that the debt belongs to the joint debt of the spouses.

Although China's Civil Code mentions the content of family agency in the part of marriage and family, it is not directly regarded as the rule of determining the joint debt between spouses in the form of law. The Civil Code is not the first time that China has provided for the relevant issues of family representation, which has been involved in early judicial interpretations, that is, either spouse can dispose of joint assets due to the needs of the daily life of the family, but when making a decision, the spouses should have an equal agreement to discuss and reach an agreement.

There is also a identification rule is the "co-debt co-signature" rule, which is to treat the debt generated by the spouses based on the common will as a joint debt, specifically, there is a joint signature of both parties or one party in the other party's debt after ratification.^[1]The "co-debt co-signing" rule should be understood as follows: during the legal marriage of spouses, the debt generated by the joint signature or mutual intention of the spouses, and although the debt is generated by the agreement of one of the spouses and a third party, but the debt is later recognized by the spouses and not the borrower, should be recognized as the joint debt of the spouses. The function of this rule is not only to pursue the result of the determination of the joint debt between spouses, but also to reduce the possibility of disputes from the source. Because it can urge the third party to pay more attention to debt-related issues, so as to minimize the possibility of debt disputes between the parties, so as to ensure the effectiveness and security of the parties' transactions. Therefore, in practice, if a debt is jointly signed by both spouses, or subsequently acknowledged by the other spouse, the judge should consider it as a joint debt.

According to the above criteria, combined with China's civil Code, the author believes that to judge whether a debt is a joint debt of the spouses, we should not only consider the time when the debt is generated, that is, whether it is generated during the marriage of the spouses, but also consider the legitimate rights and interests of the debtor and the unindebted party of the spouses and the reasons for the debt. After clarifying the conditions of the joint debt of the spouses, the burden of proof should be reasonably distributed, the interests of all parties should be balanced, and the legitimate property rights and interests of the unindebted party should be protected.

2.2. Relevant Provisions of Current Laws in Our Country

In the process of the development of Chinese law, the interpretation and legislation of the relevant issues concerning the identification of joint debt between spouses have been continuously developed and improved with the development of The Times, which is also the development trend of law. China's early "Marriage Law" in the identification of joint debt between spouses, there is a large neglect, resulting in the interests of the relevant parties damaged, therefore, this issue has been attached great importance, the Supreme Court has also made a supplementary explanation to the relevant issues.

However, with the development of economy and society, the previous laws and regulations on the joint debt of spouses have been unable to meet the current social joint debt disputes between spouses. In order to clarify the identification of joint debt between spouses, China's Civil Code includes the conjugal relationship, including the conjugal property relationship, into the marriage and family compilation. On the basis of the original legal provisions, it provides more detailed provisions on the extension of joint debt between spouses and its identification criteria. On the whole, it can effectively balance the interests of all parties and is the basic legal principle in judicial practice.

3. The Realistic Dilemma of Joint Debt Identification between Spouses

3.1. The Definition of Joint Debt between Spouses is Not Clear

When the marriage relationship was just established, and the early stage of the marriage relationship,

the relationship between spouses is often very harmonious, the relationship between spouses is stable, and will not consider whether the future will divorce, let alone consider the problem of debt commitment after divorce. Therefore, at this stage, the couple will not and will not pay attention to collect and preserve the relevant evidence of debts incurred during the marriage relationship. Once one of the spouses files a divorce lawsuit, the other spouse will of course deny the debt based on the principle of self-interest, which will bring great resistance to the trial. Article 1089 of the Civil Code of China stipulates that "in the event of divorce, the joint debts of the spouses shall be paid jointly".

First, the definition of the term "joint repayment" is not legally clear, and it is impossible to arrive at an agreed precise definition. In the context of civil law, the term "joint repayment" indicates that the debtor is jointly liable for the debt, and the spouses "joint repayment" of course belongs to the debt repayment method in civil law, and regardless of whether the two parties have divorced, as long as the spouses are jointly owed, they must repay with their own assets, regardless of whether the assets are personally owned or jointly owned by the spouses. The third party may demand repayment of all or part of the creditor's rights from the debtor couple. When the spouses perform their repayment obligations, there is no amount and time, both parties are fully responsible for the repayment of the debt, and either party is responsible for paying the remaining debt when the spouse is unable to fully pay off the debt. Generally speaking, people have interests, if the divorce is to carry out property distribution, then the spouses will have a strong initiative, and there is often a great dispute for the debt, so that it needs to be solved by litigation. Therefore, subsequent laws and related judicial interpretations are very important to define the scope of joint debt between spouses.

Secondly, the content of the settlement of joint debts is not clear in the time division, and the content of the settlement includes the debts incurred during the valid marriage and the liabilities arising after the termination of the marriage relationship based on the former marital relationship. As for the problem of joint debt between spouses during the validity of marriage, China's current legal system has not given a clear regulation, so there are different opinions on the repayment of joint debt in judicial practice. The joint debt of spouses is based on the joint property of spouses, so the joint property of spouses has been widely advocated as the property category of paying off the joint debt. However, some people in practice believe that if the joint property cannot pay off the joint debt, the private property of one party should be included in the property responsible for paying off the joint debt, regardless of whether this party is the debtor of the debt. Academic circles have different views on this issue. Some scholars hold that the liability assets for paying off the joint debts of the spouses can only be the joint assets of the spouses, because the joint assets are the premise of the joint debts of the spouses. Some scholars also support that the private assets of the debtor spouse should also be included in the scope of settlement, because the third party considers whether the debtor has the ability to repay the debt when agreeing a debt relationship with the debtor, rather than looking at the amount of assets jointly owned by the couple. Generally speaking, if the borrower is not able to repay, even if the spouse is able to repay, the lender will generally not lend money, because the creditor debt relationship is established on the basis of a one-to-one agreement between the lender and the borrower, and in this legal relationship, only the borrower's assets are ascertainable liability property. Because of the different views on the joint debt between spouses in judicial practice and theory, there are often gaps in the recognition and repayment of joint debt between spouses, so it is urgent to perfect the rules for the recognition of joint debt between spouses. The circumstances following the termination of a marriage cover both the divorce between spouses and the declaration of a missing or dead spouse, but in judicial practice there is no difference in the outcome of the two cases. In the field of law, there is also a dispute about the settlement of joint debt after the termination of marital relationship, and there are different results in judicial practice. The focus of the dispute is whether the divorcing couple should be jointly and severally liable for the joint debts, or whether the spouses should be treated differently, that is, the debtor should be satisfied with all of his assets, and the non-debtor should be satisfied only with his share of the joint assets obtained at the time of divorce.^[2]On this issue, there also needs to be a consistent solution in judicial practice, so as to enhance the predictability and operability of relevant cases.

3.2. The Nature of Family Representation is Unclear

The family agency system can be traced back to ancient Rome, and its embryonic form can be seen in Roman law, which is developed from the "family appointment system". Under the family model at that time, the wife and the husband had different family status and enjoyed different rights. After marriage, women's rights are restricted by their husbands, and they have no property rights, so they have no right to establish creditor's rights and debt relations with others, and the power to conclude

contracts with others is in the hands of their husbands. However, with the continuous development of the social economy and the increasing demand for family transactions, if the husband can only have the power of foreign transactions, it will become a great obstacle to the development of the commodity economy. This social background gave birth to the "family appointment system",^[3] which is the prototype of the family agency system.

In today's society, transaction activities are increasing, not only between individuals, enterprises and other commercial subjects, but also the economic exchanges based on family units are becoming more frequent. With the development of The Times, the contents of these family-based transaction activities are becoming more and more complex, which often brings a lot of legal disputes to the subject of transaction activities, and therefore the family agency system has been paid more and more attention. The current Civil Code mentions this system and stipulates it in the form of legal provisions, but it is only a general provision without specific characterization, and the applicability is not strong when encountering specific cases.

At present, China's family agency system mainly has the following major problems.

First, the nature and content of the family agency system are not clear. To explore the nature of the family agency system, we must first consider what the family agency is. Family agency is produced in order to solve the complicated and trivial things in the daily life of couples, so the agent should be "Nissan family affairs", is to establish a legal relationship with a third party, rather than the agent of the spouses property relationship, because the spouses property relationship belongs to the marriage relationship, no agency.^[4] However, the power of agency in family affairs must be based on the premise of the establishment of marriage relations, so it is closely related to the right of identity.

China's Civil Code has made provisions on agency system with special chapters in the general provisions, but there are no corresponding provisions on the nature of family agency throughout the whole Code, which does not distinguish it from general agency, so our country's definition of agency is ambiguous. There are two kinds of agency system in the general rules, that is, entrusted agency and statutory agency. In the legal circle, there are different views on what kind of agency family agency is. There are three different views: the first view is that this type of agency is a fiduciary agency, in which the agency of the spouse exercising family agency is based on a mandate from the other spouse, which is similar to a family appointment in Roman law, except that in a fiduciary agency either the husband or the wife has the right to be the principal, and it is not limited to the husband. The second view is that this kind of agency is a legal agency, and the spouses are a whole after the marriage relationship becomes a mutual legal spouse, and the law certainly gives the spouses the power of daily family affairs. The third view is that this kind of agency is a special agency, which is neither based on the commission, nor statutory, but based on the joint life of spouses, and can be directly exercised in their own name when exercising the right of family agency. Agents of different nature will produce different effects of responsibility, so it is necessary to clarify the nature of family agency.

In addition, the current law is not specific enough to the scope of the exercise of the power of agency in family matters, neither the types of things that can be represented, nor the maximum limit of agency, but a broad description of the needs of both spouses for living together. In practice, due to the unbalanced development of political economy and other aspects of the country, there are also differences in the understanding of spouses's life together. However, if the scope of family agency is not clear, it is easy to cause the abuse of this right, resulting in the loss of stakeholders, contrary to the original intention of lawmakers. It can be seen that it is urgent to clarify the scope of family agency, which is conducive to protecting the property rights and interests of spouses who are not borrowers, and is also conducive to promoting the trial work.

Second, the scope of the subject exercising the power of agency in family affairs is fuzzy. Which subjects can exercise the power of agency of family affairs, the law does not make clear and specific provisions. Because the family agent right is the content of the family agency system and is mentioned in the Marriage and Family section of the Civil Code, it is often considered that the subject of its exercise should be the spouse with legal marriage relationship. However, the actual situation is always intertwined. The property disputes related to family agency involved in judicial practice not only exist during the effective marriage of the couple, but also exist during the pre-marriage or cohabitation period. Whether such situation can be classified into the family agency system has a great impact on the operation of judicial practice. For example, in real life, there are many cases of unmarried cohabitation, that is, non-marital cohabitation. For non-marital cohabitation, both men and women have not registered their marriage with the relevant departments, but their external behavior activities are carried out in the name of the spouses, and there is no violation of the law, and the debt generated

during their cohabitation is often recognized as meeting the daily family agency in practice. In judicial practice, there is also a state of separation between the two parties within the validity period of marriage. In this case, as long as there is evidence to prove that this state exists, it should be considered that it is not a family agent. If the family agent is not restrained during this period, it is easy for the spouse to improperly exercise the family agent power, and the property rights of the non-debt spouse will be damaged. For the complex judicial practice, how to define the subject of the exercise of family power of attorney in order to conform to the legislative intention of the legislator and ensure the certainty and effectiveness of the law is an urgent problem for the law to solve.

Third, the liability property covered by the family power of attorney is not clear enough. China's Civil Code only roughly stipulates the power of family agency, that is, its agency is the need of the daily life of the family, but it does not clearly define the scope of the daily family affairs of the spouses, and the relevant judicial interpretation only stipulates that either party of the spouses has an equal right to dispose of their common property because of the needs of the daily family affairs, but does not stipulate the scope of the liability property of the daily family agency. Although the scope of a couple's daily family affairs is affected by factors such as economic level and differences in life concepts, so it is difficult to define a specific scope, it is very important to define the scope of the family agency liability property, because the spouses's life is private, and it is difficult for the outside world to determine the ownership of their property. Therefore, clarifying the scope of responsibility and property of family agents can effectively avoid disputes between spouses in property.

Although the family agency system is cumbersome and complicated, if the scope of the responsibility property of the family agency is clarified from the legislation, it will not only promote the security and stability of commercial transactions, but also contribute to the harmony and stability of marriage and family.

3.3. The Burden of Proof is Not Reasonably Distributed

A term corresponding to the joint debt of spouses is personal debt. In specific cases, to judge the nature of a debt, whether it belongs to the daily life needs of the family is used as a measuring scale, so as to divide the debt into two ranges. Within the scope of the daily life needs of the family, if a spouse and a third party have a creditor's debt relationship, at this time, if the creditor believes that the debt is a joint debt of the spouses, it is not required to bear the burden of proof, but if the non-debtor spouse disputes this, it is necessary for the debtor spouse to prove that the debt has nothing to do with the common life; If, outside the scope of the daily living needs of the family, the amount of the debt incurred is clearly higher than the daily expenses of the average household in the area, and the creditor cannot prove that it is the cost of living together with the debtor and his spouse, in such cases it cannot be considered a joint marital debt. Although this method of proof has greatly balanced the interests of all parties, it still has the problem of unreasonable distribution of the burden of proof.^[5]

For the non-debtor party of the couple, during the duration of the marriage relationship, due to the trust of the spouse, the expenditure of the spouse is usually not investigated, so that when the debt problem occurs, the non-debtor party of the couple has no knowledge of the fact that the debt is borne by the borrower. In addition, the expenses of the family's daily life are complicated and trivial, and it is difficult to effectively prove that the debt is the personal debt of the borrower. It is even possible that the debtor-creditor relationship conspired maliciously to harm the property interests of the unindebted spouse.

To creditors, there is also the problem of unreasonable distribution of the burden of proof. Although the relevant judicial interpretation has been supplemented and improved, paying more attention to protecting the legitimate property rights and interests of the unindebted party in the couple, it has correspondingly increased the burden of proof of the creditor and changed the identification method that all debts during the valid marriage are identified as joint debts. However, because the definition of "daily family life needs" is unclear, and the spouses's life is not all open to the outside world, with private, so creditors bear the burden of proof is not easy.

To sum up, China's law on the joint debt of spouses to determine the allocation of the burden of proof is not perfect. There are difficulties in proof regardless of which party. Although even if it's perfect, there may still be two malicious collusion to harm the legitimate rights and interests of third parties. As far as possible to allocate the burden of proof to balance the interests of all parties will obviously be more fair and reasonable. Therefore, the relevant provisions of the Civil Code on the distribution of the burden of proof are in urgent need of further judicial interpretation to make more

perfect provisions.

4. Rules and Comparison of Extraterritorial Joint Debts of Spouses

As a global issue, the identification of joint property of spouses is certainly not unique to our laws. Each country will determine the rules for the identification of joint debt of spouses according to the actual situation of its own country. Both France and Germany are typical representatives of civil law countries, but they are not consistent in the provisions of marital property system. The author mainly starts from the relevant provisions of the joint debt of spouses in France and Germany, and summarizes the points which can be used for reference by our legislation and judicature.

4.1. France and Germany on the Joint Debt of the Relevant Provisions

In France, the debt of the spouses is called the joint property debt of the spouses, if the spouses do not establish the marital property system, the default debt is a joint debt, and the identification method is called the legal joint system in theory. In French judicial practice, the joint debts of spouses are divided into different categories. According to the provisions of debt extension of common property in French law, joint debts of spouses can be divided into permanent joint debts of spouses and debts that should be compensated for common property, corresponding to different realities, so as to better guide judicial practice, promote the smooth progress of judicial activities, and protect the legitimate rights and interests of relevant parties.^[6]

The marital property system in Germany basically adopts two modes: statutory and contractual, which is different from France but consistent with China on the whole. The German Civil Code has made more detailed and clear provisions on the scope of debts and the family agency system required by the daily family life of the couple, as well as the repayment of the debts of the couple. The German Civil Code stipulates that during the period of valid marriage, the joint property of a couple can be managed by a property custodian, who is appointed by the couple for the convenience of the daily life of the family. Or according to the internal agreement of the couple, when the legal conditions are met, in the name of the husband or wife to make external debt. If the party without the right to manage the joint property makes a debt to the outside, and its personal property cannot pay off the debt, the creditor may require it to pay off the joint property of the spouses. According to the relevant provisions of German law, the debts that can be paid off with the joint property of the spouses include three situations: the first is the debt generated by the mutual agreement of the two parties; The second is the debt incurred for the benefit of the couple's common property; The third is the debt incurred for the daily needs of the family.

4.2. A comparison of French and German Regulations on joint Debt between Spouses

Through the comparative study of the spouses joint debt system between France and Germany and our country, we can draw the following conclusions: First, France and Germany have made clear provisions on the type of debt, and listed all kinds of situations, but our country is not so clear in this aspect; Second, France and Germany have made more specific and specific provisions on the identification of the liabilities of the husband or wife, while there are still many different voices in this regard in our country, there is no uniform provision; Third, France and Germany have also made clear provisions on the daily family agency system. As mentioned above, there are still many problems in China's family agency system. No matter which country, the joint debt related issues of spouses will continue to develop and improve, the purpose of which is to protect the interest balance of the parties in the creditor's debt relationship. Of course, the balance of interests of all parties is also the goal pursued by our law, so the perfect development of the rules for the identification of joint debts between spouses is an inevitable barrier on the road of legal development.

5. The Perfect Way to Identify the Joint Debt of spouses in China

5.1. Clearly Define the Scope of Joint Debt between Spouses

In order to clearly define the scope of joint debt between spouses, the most important thing is to distinguish it from personal debt. For debts incurred during the validity of the marital relationship between spouses, the biggest retroactive dispute is whether the debt is joint debt or personal debt.

Personal debts are debts that are paid off solely by the debtor party of the couple out of his or her own property, including two cases before and after the marriage relationship. Our law distinguishes between joint debt and personal debt. It is based on the will of both parties, which fully embodies the autonomy of will. If they agree on the scope of the personal debt, it shall be dealt with in accordance with the agreement reached; If the creditor has clearly known that there is a property agreement between the parties, the debt is regarded as a personal debt even if it is generated during the valid existence of the marriage relationship, and the creditor is still in a creditor debt relationship with one of them. In this case, the creditor cannot be regarded as a bona fide third party, otherwise the fairness of the transaction will be impaired. If the debt arose before the marriage relationship and was not used in the subsequent life together, it is also classified as personal debt. Some debts are indeed used for joint living, but there are parts beyond the needs of joint living, and how to deal with them in judicial practice may depend on the situation. Although the parties have a great deal of autonomy in this respect, if the spouses use the rights conferred by law to pursue improper interests and damage the rights and interests of others, they cannot blindly deal with the agreement of the parties. The identification of personal debt plays a very important role in the identification of the joint debt of the spouses, and the two complement each other in practice to promote the settlement of the case. However, we should not consider the two as either/or relationship, and naturally belong to one party's personal debt when it cannot be identified as a joint debt of spouses, but to realize that both have a specific scale of measurement.

In Chinese law, when a spouses divorce, if it can be proved that a certain debt is used for the spouses to live together, it is judged as joint debt. Joint debt of spouses refers to the debt borne by one or both spouses for the common living expenses of spouses. Such as the cost of maintenance or repair of the house where the spouses live in daily life, joint production and operation costs, etc. According to the relevant judicial interpretation, if a third party claims that the spouse is in debt because the debtor owed the spouse before the marriage relationship was concluded, the outcome of the trial is often negative, unless there is evidence that the debt was used for the joint life after the marriage relationship was concluded. China's judicial interpretation also stipulates that pre-marital personal debt can be transformed into joint and several debt. If one of the spouses borrowings a mortgage before marriage to purchase a marriage house, needs external debt for marriage, external debt for decoration of the marriage house, etc., should be jointly borne by the spouses. It can be seen that to judge what type of debt is, it is not only to see whether it is generated during the effective marriage, but also to consider the specific circumstances of the case, from whether the spouses have an agreement, and the use of debt.

5.2. Improve the Provisions of Daily Family Affairs Agency

5.2.1. Define the Scope of the Family's Daily Needs

The unbalance of economic and cultural development in different regions of our country leads to different recognition of daily life needs. To solve this problem, we should take legislation as the starting point to establish a sound standard for judging whether it belongs to daily life needs, so as to establish a measuring standard for the scope of family power of attorney in judicial practice and guide judicial practice. Because the scope of family agency is wide, it is not practical to list one by one, so the scope of family agency can be stipulated in principle.^[7] However, in order to avoid the provision being too broad, exceptions may be made.

5.2.2. Clarify the Qualification of the Subject of the Power of Agency in Family Affairs

For the exercise of the power of daily family affairs, both husband and wife are qualified, and both parties have the right to act for their spouse to deal with daily family affairs activities, and do not need to exercise in the name of their spouse, but directly in their own name or joint name. In order to avoid too many disputes, it should be stipulated that the main body of the daily family affairs agency can only be the legal husband and wife.

For the non-marital cohabitation relationship and the separation relationship during the marriage can not be regarded as a daily family agent of course, otherwise it will cause great uncertainty to the legitimate property interests of creditors. Therefore, it should be clearly stipulated in the legislation that only couples who have a marriage relationship and are in a state of cohabitation have the qualification to enjoy the power of daily family affairs.

5.3. Improve the Distribution System of Burden of Proof

The author believes that the burden of proof should be determined according to the type and specific situation of the joint debt of husband and wife, that is, how to assign the burden of proof in the specific situation of judicial practice can be explained by enumeration. It can be divided into:

For debts that are borrowed in the name of both husband and wife by mutual consent, since there is no dispute between the husband and wife about the debt, the creditor does not need to bear the burden of proof.

If a loan is borrowed in the name of both husband and wife, but the non-borrower of the couple claims that it is a personal debt, the burden of proof shall be placed on him.

The debt formed by borrowing in the name of the husband or wife is specifically divided into the following two situations. First of all, in the conjugal relationship, both parties claim that it is personal debt, only its creditors think that it is a joint debt between husband and wife, it should prove joint debt; Secondly, if the undebted party of the couple considers the personal debt, but the debt counterpart has different views, the undebted party shall prove that the debt is the personal debt of the borrower.

6. Conclusions

Marriage relationship has been the foundation and core of family relationship since ancient times. Only when marriage relationship is stable can family be harmonious and stable. The property relationship between husband and wife is very important to the marriage relationship and is a key part of solving the problem of marriage relationship. Therefore, the perfection of the rules for the identification of joint debts between husband and wife is an urgent need of the law and an unavoidable problem in the process of legal development. It is true that Article 1064 of the Civil Code, on the basis of absorbing the legislative experience of the Marriage and Family Law and previous judicial practice, makes more detailed provisions on the rules for the identification of joint debts between husband and wife, but there are still problems in the abstract and difficult to practice. The provisions of Article 1064 of the Civil Code can be said to be the beginning of balancing the legal property rights of debtors and debtors and those who do not borrow in the couple. In order to truly achieve the purpose of the law, it must be continuously developed and improved in the future legislation and judicial practice.

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