



The Theoretical and Comparative Research on the Effectiveness of Civil Conduct that Breaches the Law in Content

Xi Yang

Law School, Nanjing University, Nanjing 210093, China

Tel: 25-8359-5298 E-mail: yangxijenny@hotmail.com

Abstract

Beginning from a case, this paper focuses on the discussion of “the invalidity of illegal civil conduct”. From the perspective of comparative law, this paper makes theoretical researches on the effectiveness of civil conduct that breaches the law in content. It chiefly analyzes three issues. What is the law that is breached by the illegal civil conduct? Is the “invalidity” “absolute” or “relative”? Is it possible for an illegal civil conduct being valid? After introducing the civil codes in other countries, this paper concludes the relevant laws, regulations and the legal practice in China.

Keywords: Illegal content, Void civil conduct, Mandatory regulation, Absolute invalidity

1. The appeal of a house sale dispute in which Yubin Li has sued the Zhongyi Shoe Leather Company in Wanxian city and the thesis

The Leather Product Company in Wanxian city (renamed as the Zhongyi Shoe Leather Company in Wanxian city later, in this paper it refers to the Shoe Company for short) signed a “house renting contract” with Changtao Wu, the owner of the house in No.66, Road Two, Wanxian city on 1st, June, 1983. The contract says: the house in rent is in No. 66, Road Two, Wanxian city, and the term is 8 years; when the term is terminated, the Shoe Company can buy this house at the price of 30 Yuan per square meter. Later on 10th, December, 1984, Changtao Wu and Yubin Li, owners of the house, signed a “statement of house owners” with the Shoe Company: the former contract signed on 1st, June, 1983, is still valid; on 1st, June, 1990, the Shoe Company can buy the house at the total price of 600 Yuan and the 600 Yuan should be paid off in ahead. As the property ownership certificate has two houses, respectively in No.64 and No.66, Changtao Wu keeps all relevant certifications. They can transfer the property ownership in the real estate governmental office. Both parties signed agree on the statement. Before the date of 4th, November, 1984, the Shoe Company paid Changtao Wu 15,000 Yuan, including the rent and the house-purchasing expense in five times. However, in 1985 Changtao Wu died. In 1989 Yubin Li declared that the “renting contract” signed in 1983 and the “statement of house owners” signed in 1984 were invalid because both were signed by Changtao Wu himself and she did not know anything. She insisted on taking back the house that was in No.66, Road Two. The two sides disputed on this issue. Therefore, Yubin Li lodged a complaint in the Wanxian People’s Court.

Wanxian People’s Court judged that the “renting contract” and the “statement” were invalid. The Shoe Company did not accept this result and lodged an appeal. Wanxian Intermediate People’s Court held two different opinions toward this case.

According to the first opinion, the agreement signed by the two parties is actually “house-purchasing contract” despite it is namely “renting contract”. This conduct has happened before the issue of “Regulations for the Management of Civil Private House”. The two parties have agreed to sign the contract and the buyer has already paid for the house and has used the house. In the appeal, the government of Wanxian city confirms the purchase of the house. To order the civil house sale market, preventing people from obtaining profits from imperfect law system, it is necessary to confirm the validity of the house purchase activity.

According to the second opinion, the two parties’ act has breached the law and the policy. Therefore, the “renting contract” and the “statement” should be regarded as invalid. Although the act has happened before the issue of “Regulations for the Management of Civil Private House”, the government has already made it clear that no company is permitted to buy private houses. And in 1982, the government of Wanxian City made the “Notice of stopping and eliminating activities of companies buying private houses”. Therefore, no matter what the contract form adopted by the two parties is, their act is illegal. And it is not acceptable for the Shoe Company offering additional materials for approval in the appeal. Yubin Li should turn the exceeding rent and the house expense back to the other and pays for certain interests. Both parties shoulder other losses by themselves.

Sichuan Supreme People’s Court preferred the first opinion, and asked advices from the Supreme People’s Court on 16th,

November, 1991. However, the Supreme People's Court tended to take the second opinion in its advice.

In author's opinion, this case arouses us to think about the proposition of "invalidity of illegal act". Whether are all illegal civil conducts void? This question may lead to three.

One, what is the law that is breached by the illegal civil conduct?

Two, is the "invalidity" "absolute" or "relative"?

Three, is it possible for an illegal civil conduct being valid?

2. Regulations and opinions of other countries and Taiwan region

2.1 The scope of the law that is breached by the illegal civil conduct

As far as the first question is concerned, in author's opinion, there are three levels according to regulations and theories in other countries and regions. On the first level, the illegal civil conduct is generally regarded as void in principle, such as Russia, and Switzerland. The Article 169 in the Civil Code of Russia Federation says that any act that breaches the law and the moral is invalid (Daoxiu Huang, 1999, p84). The Article 20 in the Civil Code of Switzerland says that the contract is invalid if the content is impossible, illegal, or against the morals (Jinjiao Wen, 2006).

On the second level, the illegal civil conduct breaches the mandatory rules instead of voluntary rules. The law includes mandatory rules and voluntary rules. Voluntary rules are only instructional. Parties can escape from voluntary rules by mutual agreements. In other words, the civil conduct that breaches voluntary rules is not necessarily invalid. Quebec and Italy are at this level. The Article 431 of the Civil Code of Quebec says that in the marriage contract any agreements can be included but they should follow the mandatory rules and common order (Guodong Xu. & Jianjiang Sun, 2005, No.55). The Article 634 of the Civil Code of Italy says that if items in testaments are impossible or they breach mandatory rules, common orders or morals, these items are void, except the conditions provided in the Article 626. And the Article 1418 says that any contract that conflicts with mandatory rules is null except for conditions that are allowed in law (Anling Fei, 2004, p161 & p340). These principles all emphasize the "mandatory" rules.

On the third level, the mandatory rules are divided into obligation rules and forbidden rules. And the later includes regulatory rules and effect rules. The civil conduct that breaches the obligation rules and the effect rules is invalid. The Civil Code of Taiwan holds this opinion. The obligation rules of mandatory rules refer to rules that tell what people should do. If people refuse to do as the obligation rules, the act is invalid. For example, the Article 100 of the Land Law of Taiwan sets limits for lessors taking back the renting houses. That is a kind of obligation rule. No lessors can disobey it through any agreements; otherwise, the conduct will be void according to Article 71 of the Civil Code of Taiwan Region (Ziqiang Chen, 2002, p149). Besides, the theory of civil law in Taiwan classifies the forbidden rules. If the forbidden rules focus on the course of the legal act, such as the time limit of business hour, and the aim is to protect employees instead of stopping the transaction, they belong to regulatory rules. Otherwise, if the forbidden rules aim at stopping the legal act, they belong to effect rules, such as the rule of forbidding selling cigarettes and wines to the minors.

According to cases in Taiwan, the Article 71 is not for the behavior that breaches the regulatory rules. In other words, civil conduct is not necessarily invalid. For example, according to the first item in the Article 60 of the Taiwan Security Law, stockjobbers should not take deposit or issue loans. But this rule does not make it clear that if stockjobbers go against this rule, whether relevant deposit contract or loan contract is valid or invalid. According to the case No.879 in 1979 in Taiwan, as this rule is a kind of regulatory rule instead of effect rule, the deposit-saving act and the loan-issuing act are not necessarily invalid. If security companies break this rule and take deposit or issue loans, the department in charge should warn the security firms, stop their business operations, or revoke their business certificates, according to the Article 66 of the Taiwan Security Transaction Law, or let the security firms take criminal liabilities according to the Article 175. In contrast, the Article 16 of the Company Law belongs to effect rules. Companies should not guarantee for anyone except for allowable conditions in law or in the Company Charter. According to the case No.1919 in 1959, if a company that is not specialized in guarantee business provides others with guarantee, it goes against the Article 23 of the Company Law, and thus its act of guarantee is invalid. Here, the civil conduct that breaches the effect rules is invalid (Ziqiang Chen, 2002, p147-148).

Reasons for this classification include: most forbidden rules aim at carrying out the criminal law or the administrative law instead of regulating the private relationship between parties. Without powerful reasons, it is improper to take civil conduct as invalid. For example, if a contract is regarded as void, the contract is not protected by the law. All benefits without legal reason, damages for torts and debts have to be dealt with. Conditions will become extremely complicated. Therefore, if a principle does not make it clear that an act is valid or not under certain condition, it is necessary to probe into the purpose of the principle. Sometimes, to confirm the validity of the contract will make the problem easier, or become in favor of parties' interests, or more in accord with the purpose of law. For example, according to the Article 2126 that refers to the labor contract in the Civil Code of Italy, void contracts or voidable contracts are not effective,

except contracts that breach the law in contents or reasons. Even if the provision of labor violates relevant rules that protect employees, the employees still possess the right of obtaining rewards (Anling Fei, 2004, p499).

2.2 Absolute invalidity and relative invalidity

If certain civil conducts that have breached the law in content become legal along with the changes of laws and conditions, can they be valid because of the parties' acceptance? Or will they remain null all the time? This will lead to another question: is it possible that the parties determine whether their illegal act is valid or not? In other words, is the invalidity absolute or relative?

The Contract Law of France distinguishes the absolute invalidity and the relative invalidity. If the mandatory rule is to punish the anti-social behavior, or protect the weak, the contract is absolute invalid, no matter whether the law makes clear or not the validity of the contract that breaks the law. At the same time, if the contract conflicts with the rules that aim at protecting the interests of parties or the third party, it will be regarded as relative invalid, such as the rule that aims at helping the third party free from the loss caused by contract transfer. For example, the rule L.421-2 of the County Law of France forbids owners to sell their houses without informing their renters in order to protect renters' preemptive right. If owners betray the rule, the purchase contract is invalid (Tian Yin. & Huixing Liang, 1995, p203-204); however, if owners inform the renters afterwards and renters give up their priority, the contract may be valid. The principle 135 of Civil Code of Germany has similar regulations. If a conduct towards subject-matter infringes relevant legal rules and the rules aim at protecting the interests of special people, the act is only null for these special people (Jinglin Du, 1999, No.29).

2.3 Principles and exceptions

Some countries clearly make the exceptions, such as the Article 134 of the Civil Code of Germany. It says that the behaviors that breach the forbidden rules in law are invalid, except conditions permitted in law (Jinglin Du, 1999, p28). Besides the exceptions mentioned above, they include several other conditions as follows:

(1) The act that can be revocable or the act that does not have determined effect

The Article 168 of the Civil Code of Federal Russia says that behaviors that betray laws or regulations are invalid, except acts that can be revocable or those leading to other legal liabilities (Daoxiu Huang, 1999, p84). The Article 71 of the Civil Code of Taiwan says that the conducts that breach the mandatory rules or the forbidden rules are invalid, except ones that is not regarded as invalid in principles (Ziqiang Chen, 2002, p375). It clearly excludes the acts that can be revocable and the acts that do not have determined effect.

(2) The types of contracts that breach the law in content

In author's opinion, the analysis should distinguish the validity of contract that is signed by illegal civil conduct, and the validity of contract that is illegal in content.

According to the Contract Law of Britain, the contracts that are illegal in the signing process include two types (this paper does not take the contracts that are illegal in performance into consideration): ones that are signed illegally, and ones that includes illegal items in content. In the first condition, if parties do not take illegal actions, they can not perform the contract and the contract may infringe the criminal law or other statutes. For example, the statute says that parties should gain the licenses, and the contracts signed by parties who do not gain the licenses are illegal, such as the *Levy v. Yates* case in 1938. In the second condition, it is necessary to consider whether the statute forbids the type of the contracts, such as agreements to commit crimes, melon-cutting agreements, and tax-cheating agreements, or insurance contract with suicide of the insured (Baoyu He, 1999, p402). According the law of England, contracts in these two conditions are not mandatory in performance. The contract in the first condition is invalid because of the illegal signing process and the contract in the second condition is invalid because of the illegal content.

Here we should notice that laws in all countries have common in the first condition; however, in the second condition, although the civil conduct is illegal itself, the contract is not necessarily invalid. Just as points mentioned above, if a civil conduct breaches the regulatory rules, the contract may be valid.

(3) Is the contract wholly invalid or partially invalid because of illegal items in it?

For this question, different countries answer differently. According to the Law of Rome, the valid parts should not be affected by the invalid parts. And the second item of Act 20 of the Civil Code of Switzerland says that the nullity of illegal items that only encompasses part of the contract can not result in the complete invalidity of the whole contract, if the illegal items determine the assignment of the contract. (Jianjiao Wen, 2006). The Article 1354 of the Civil Code of Italy has contrary rules. The contract with preconditions that conflict with mandatory rules and common orders is completely invalid (Anling Fei, 2004, p329).

3. The relevant laws and theories in China

3.1 What is the law that is breached by the illegal civil conduct?

According to the general theories, China is at the second level mentioned above. The civil conduct that is taken as invalid must breach the law instituted by the People's Representative Congress of China or the State Council of China. According to the Supreme People's Court's explanation for the Article 4 of the Contract Law of China, people's court can only declare certain civil conduct as invalid based on the laws and regulations instituted by the People's Representative Congress of China or the State Council of China, rather than any other local regulations. And the general theory affirms that the voluntary rules can be further excluded by parties in contract. In this way, the scope is confined to the mandatory rules in the law and regulations made by State Council.

However, Chinese law does not make further classifications on the mandatory rules. In other words, only if the content of the contract breaches the mandatory rules in laws and regulations, the contract is invalid, no matter whether the parties is intentional or not, no matter whether it is a regulatory rule or effect rule, and no matter it breaches the law in content or in process. Therefore, in the case at beginning of this thesis, the Supreme People's Court regards the contract between Yubin Li and the Shoe Company as null all the time. In author's opinion, this judgment is not perfect. Just as the point mentioned above, once the contract is invalid, parties of the contract have to return the properties and come back to the original situation, which will lead to a series of complicated debt-obligations. This is not necessarily in accord with the purpose of the law or in favor of the interests of parties to the most degree.

3.2 Is it absolute invalid or relative invalid?

Some Chinese scholars agree with the concept of "relative invalidity." For example, the principle 131 of the Green Civil Code composed by Guodong Xu says that the civil conduct that breaches the mandatory rules and the common orders is absolute invalid and the civil conduct that infringes certain people's interests who are protected by the law in special is relative invalid (Chenliang Jia, 2007). However, the invalidity mentioned in present legal system in China means absolute invalidity, and the majority of scholars agree with this opinion. Therefore, suppose Yubin Li has sold the house to others, then the later buyers can propose for the invalidity of the contract between Yubin Li and the Shoe Company, but the court can also judge this without any proposal of parties and declare the invalidity of the contract.

The author agrees with the relative invalidity. Absolute invalidity means anyone, including administrative agencies, can claim for the invalidity of contract. As a result, the public power may interfere too much with the private legal relationship, and this may confuse the civil liability with the administrative liability. The civil conduct that breaches the law in content may lead to the interference of public law into private law. Theoretically, there are different means to limit this phenomenon, including the dualistic theory of public law and private law, the mutual reliance theory, the theory of performance stages (Tiantian Zhang, 2006), the theory of subjective factor, the theory of value balance, and the theory of proportional principle (Shilin Chen, 2007). Take the theory of performance stages for example. Before the fulfillment of certain obligation, the disaffirmation of the validity of the civil conduct will not cause grave result in transaction safety and fairness, but after the carrying-out of certain civil conduct, the denial of the validity of the act may severely damage the transaction safety, trust between parties, and fairness, and this will endanger the parties' interests at the same time. Therefore, since the contract has been carried out, the validity of the contract should be carefully considered. According to this theory, the author agrees more with the opinion of Sichuan Supreme People's Court for the former case.

3.3 Is it a must for illegal act invalid?

Firstly, according to China's laws, no rules refer that the civil conduct of illegal content can be revocable or has undetermined effect. The Article 58 of the Civil Code of China says that the contract that breaches the law or the social common interests is void. The Article 52 of the Contract Law of China says that the contract that breaches the mandatory rules of laws and regulations of State Council is null. The two principles do not include any exception.

Secondly, the law of China does not classify the illegal contracts. All illegal contracts are void. For example, the principle 1 of "Supreme People's Court's legal explanation for dealing with the construction contract disputes" says that once the construction contract is in accord with certain conditions, it will be regarded as void according to the fifth item of Article 52 of Contract Law. These conditions include: (1) the contractor does not has qualification of construction or surpasses its qualification of construction; (2) the non-qualified construction firm signs the contract by borrowing other company's certificate; (3) the construction that should be bid is not bidden or the bid becomes invalid.

Thirdly, the Contract Law of China confirms the partial invalidity of contract. The Article 56 of the Contract Law of China says that the void contract or the voidable contract do not have legal effect from the very beginning. The partial invalidity of the contract does not affect the validity of other parts. The other parts in the contract may be still valid.

4. Conclusion

Chinese law and regulations on the validity of illegal civil conduct are so simple and general that they have many

shortcomings. In China's legal practice, the civil conduct that breaches the law in content may lead to four results: (1) invalidity and punishment. For example, drug dealers, and women or children trade. These transactions are invalid. Because the contract is illegal, the parties in the contract will be punished by the criminal law; (2) invalidity. For example, the Article 80 of the Contract Law of China says that the creditor should inform the debtor if he or she transfers the credit. Otherwise, the transfer of the creditor's right is invalid to the debtor; (3) validity and no punishment. It chiefly focuses on voluntary rules. For example, the Article 36 of the Contract Law of China says that even if the contract is preferred to be written down according to the law or the parties agreed to sign a contract in written form, the contract can be still regarded as valid on the conditions that the contract is not in written, only if one party in contract fulfills its obligation and the other party has accepted it. Therefore, the relevant rules in the laws and regulations are voluntary; (4) validity but having punishment. The purchase without offering invoice should be punished by administrative departments, but this will not necessarily result in the invalidity of the contract. Consumers can still ask for damages for product liability. Based on these instances mentioned above, we conclude that the illegal civil conduct is not necessarily void.

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