

Research on the Application of the Principle of Public Order and Good Customs in China's Civil Code

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ABSTRACT: The principle of public order and good customs, enshrined in Articles 8 and 153 of China's Civil Code, serves as a foundational mechanism to invalidate civil acts that contravene societal morals and public interests. This paper examines its judicial application through analysis of recent court cases from various provinces, highlighting inconsistencies in interpretation and enforcement.

Drawing from specific judgments, it identifies issues such as arbitrary citation of principle-based versus rule-based clauses, leading to divergent outcomes in similar disputes. The study proposes normative measures, including Supreme People's Court (SPC) interpretations and case guidance, to enhance uniformity and predictability in adjudication. By addressing these challenges, the principle can better safeguard social harmony while respecting legal certainty.

Keywords: *Public Order and Good Customs, China's Civil Code, Judicial Application, Inconsistency, Normative Suggestions*

Introduction

China's Civil Code, effective since January 1, 2021, integrates the principle of public order and good customs (gongxu liangsu) as a core safeguard against immoral or

socially harmful civil acts. Article 8 stipulates that civil subjects must not violate laws or public order and good customs in their activities, while Article 153 declares such violations invalid, providing direct legal consequences. This principle, rooted in Roman law's *Boni mores* and adapted from continental legal traditions, balances individual autonomy with collective interests.

However, judicial practice reveals challenges in its application. Courts often grapple with distinguishing principle-based (abstract guidance) from rule-based (specific enforcement) clauses, resulting in inconsistent rulings. This paper analyzes selected cases from 2023-2024, based on available court documents, to illustrate these issues. It draws on a reflective proposal by Cai Zhimeng, a lecturer at Anyang Normal University, emphasizing the need for normalization. The analysis aims to contribute to scholarly discourse on refining this principle's role in China's evolving legal landscape.

Overview of the Principle in the Civil Code

The principle of public order and good customs functions at two levels in the Civil Code: as a general guideline (Article 8) and a specific invalidation rule (Article 153, Paragraph 2). The former offers macroscopic constraints on civil behavior to uphold social order and moral standards characterized by high abstraction. The latter provides operational clarity, declaring acts violating public order invalid and enabling direct judicial remedies.

This dual structure allows flexibility in addressing diverse scenarios, such as contracts involving bribery, environmental harm, or moral impropriety. Unlike mandatory legal prohibitions, it invokes broader societal values, including resource conservation (Article 9) and public interest protection. However, its vagueness can lead to subjective interpretations, necessitating careful judicial reasoning to avoid abuse.

Judicial Practice and Cases

Judicial application of the principle varies across regions, often leading to disparate outcomes in analogous cases. The following analysis draws from representative

judgments, focusing on themes like inheritance debts, talk lending, and contract disputes.

Case Analysis: Inconsistent Citation and Outcomes

In inheritance debt disputes, courts have diverged on whether to invoke principle-based or rule-based clauses. For instance, in (2024) Jin 01 Min Zhong 135 Hao (Shanxi Intermediate People's Court), the appellant sought repayment of funds paid to a deceased intermediary for job placement, deemed a violation of public order due to its "entrustment" nature. The court rejected the suit outright under Article 8, citing no need for substantive hearing, as the act was inherently unlawful and unprotected.

Contrastingly, in (2024) Qiong Min Zai 22 Hao (Hainan High People's Court), involving a contract with "social entertainment expenses" suspected of bribery in a bidding process, the court applied Article 153, Paragraph 2, mandating a substantive review. Despite allegations of invalidity, it emphasized verifying the act's true purpose, rejecting an outright dismissal and allowing re-trial.

Similar inconsistencies appear in folk lending cases. In (2023) E Min Shen 8440 Hao (Hubei High People's Court), the court scrutinized bank transfers to determine if the lender was a "professional lender" violating public order through usury-like practices. The retrial application was denied, upholding invalidity under Article 153, but only after evidentiary review of intent and frequency.

Environmental and moral violations further illustrate application. In (2024) Gan 0481 Min Chu 1550 Hao (Jiangxi Ruichang People's Court), a contract for cryptocurrency mining equipment was invalidated under Articles 153 and 9, as "mining" contravenes energy conservation and public interest. The court ordered repayment of funds, recognizing the buyer's good faith reliance on the seller's assurances.

In (2024) Xiang 07 Min Zhong 1773 Hao (Hunan Chengde Intermediate People's Court), an extramarital affair leading to financial gifts was deemed a "payment for unlawful reasons," invoking public order to reject protection, emphasizing moral customs.

Other cases, such as (2023) Jin Min Shen 5233 Hao (Shanxi High People's Court) and (2024) Yu 12 Min Zhong 774 Hao (Henan Sanmenxia Intermediate People's Court), involve "entrustment" for favors (e.g., school admission or contract adjustments), invalidated as contrary to fair competition and public morals, with outcomes ranging from dismissal to restitution orders.

These cases demonstrate that while the principle effectively nullifies harmful acts, courts inconsistently choose between procedural rejection (under Article 8) and substantive invalidation (under Article 153), confusing litigants and undermining judicial authority.

Problems in Application

Nonuniform application stems from several issues:

1. **Confusion Between Principle and Rule Clauses:** Lower courts often cite Article 8 for direct dismissal, bypassing substantive hearings, contrary to its abstract nature. This ignores Article 153's role as the operative rule for invalidity and consequences.
2. **Lack of Uniform Standards:** Regional variations lead to "similar cases, different judgments." For example, Shanxi courts favor procedural bars, while Hainan and Jiangxi emphasize evidentiary review, potentially influenced by local judicial philosophies or biases.
3. **Risk of Abuse:** Without strict interpretive methods, judges may impose personal views, especially in morally sensitive areas like lending or relationships, risking arbitrary decisions.
4. **Impact on Litigants' Rights:** Premature rejections deprive parties of appeal rights, violating procedural justice. In cases like mining contracts, environmental policies add complexity, but inconsistent enforcement erodes trust.

These problems, exacerbated by varying judicial expertise, highlight the urgent need for normalization to ensure predictability and equity.

Suggestions for Normalization

Drawing from case insights, the following measures are recommended:

1. SPC Judicial Interpretations: The SPC should issue clear guidelines delineating boundaries between Articles 8 and 153, prohibiting lower courts from arbitrarily citing principal clauses for dismissals. This would mandate substantive hearings for rule-based applications.
2. National Judicial Audits and Training: Conduct nationwide reviews of judgments invoking public order, correcting improper uses that strip litigants' rights. Enhance training for grassroots judges on interpretive methods and argumentation.
3. Guiding Cases and References: Release exemplary cases via the SPC's gazette, providing templates fudges once interpretive methods and argumentational violations. This aligns with China's "similar cases, similar judgments" initiative.
4. Procedural Safeguards: Enforce Civil Procedure Law requirements for accepting cases involving public order, ensuring entry into substantive trials unless explicitly barred. Integrate environmental and moral assessments with evidence-based reasoning.

Implementing these would standardize application, bolstering the Civil Code's efficacy in promoting social harmony.

Conclusion

The principle of public order and good customs is pivotal in China's Civil Code for invalidating detrimental acts, yet its judicial application suffers from inconsistencies, as evidenced by analyzed cases. By addressing these through SPC-led reforms, China can achieve greater legal uniformity, protect public interests while uphold individual rights. Future research should monitor post-reform outcomes to refine this evolving doctrine.

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