

Case Analysis of Environmental Pollution Causing Damage to Others

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Abstract

This case is a tort liability case caused by environmental pollution and ecological damage to others, involving the behavior of a third party, instigation, guardian, etc. In the analysis, students use the discriminative analysis method, put forward questions, and clarify the legal relationship between the subjects. Grasp the characteristics of environmental damage infringement cases to understand the case, determine the focus of the dispute, and then analyze the focus of the dispute.

Keywords

Environmental Infringement, Multiple Cause One Effect, Burden of Proof

1. Basic Case Presentation

First of all, show the specific case: in a contracted fish pond to raise fish, one day it was found that a large number of fish fry raised in the fish pond died, later found that Company B's industrial wastewater inflow caused fish pond water pollution, which led to the death of fish fry. Company B has built sewage treatment and discharge equipment in accordance with the regulations, which will not lead to sewage outflow, so further investigate. After monitoring, it was found that C (19 years old) and D (16 years old) were playing near the sewage purification facility of Company B one day, climbing over the wall and entering the sewage purification tower. Under the instruction of C, D the sewage discharge gate was opened which was originally closed, causing the unpurified sewage to flow into the sewage drainage ditch. Under normal circumstances, the water in the sewer would not overflow, but soon after it rained heavily, causing the sewer to overflow and sewage to flow out, thus flowing into the fish pond contracted by A. At the same time, Company B also found that Company E of the adjacent

plant was also discharging unpurified sewage into the sewer.

According to the case, the owner of the fish pond, A, believes that the death of a large number of fry in his fish pond is caused by the discharge of industrial wastewater by Company B, and claims tort damages to Company B. The defense of Company B is that the company's sewage discharge complies with the national regulations. Due to the behavior of a third party, the discharge gate is opened and sewage flows out. It also happens to be raining heavily, and the water in the sewage ditch overflows, causing sewage to flow into the fish pond. In addition, the investigation of Company B found that Company E also discharged sewage into the sewage ditch, and whether the mixed sewage caused the death of fish fry or the specific pollutant composition that caused the death of fish fry needs to be identified. In the investigation of Company B, it was also found that C and D, the third person who opened the gate, had a relationship between instigation and instigation, and D was under the age of 18.

The purpose of this case study is to explore the different ways of burden of proof in special forms of tort and the specific analysis of the legal relationship between multiple causes and one effect. Combined with the case, the understanding and analysis are as follows.

2. Rhetorical Questions Put Forward

First of all, the case can be judged as a special form of infringement. Secondly, there are many points of dispute in this case, which are worth discussing. Finally, some legal relationships are also controversial in jurisprudence. Therefore, in the analysis of ideas, the existence of various situations will be listed in the way of asking questions, and then according to the law and legal interpretation, the specific case into the law and definition, judge whether the initial question is established, and finally synthesize the whole case, draw a conclusion. The questions raised on the basis of the case are:

Question 1: Can there be A legal relationship of infringement between fish pond owner A and Company B? Can A claim for environmental damage from Company B?

Question 2: Can Company B defend against "heavy rain from heaven"?

Question 3: Can Company B claim that third parties (C and D) are liable for infringement?

Question 4: Can Company B claim to be jointly liable with Company E?

Question 5: Does the relationship between third parties C and D constitute an instigation of infringement? Does D's guardian bear tort liability?

3. Ask the Establishment Conditions

3.1. Question 1 (A Claims the Right of Environmental Infringement against B Company) Establishment Conditions

Environment refers to the aggregate of various natural and artificially modified natural factors affecting human survival and development, including the at-

mosphere, water and sea. Environmental pollution refers to the destruction of the atmosphere, water, soil, peace and stability and other natural environment by industrial activities or other man-made activities, thus causing damage to the life, health, property or other civil rights and interests of an unspecified majority of people (Nahiko, 1999).

According to article 1229 and article 1232 of the Civil Code and Article 6 of the Interpretation of Environmental Tort Liability, although the presumption of causality applies to environmental pollution liability, A should also bear the above-mentioned burden of proof when claiming the right to claim from Company B.

3.2. Question 2 (B Company Claims That the Sewage Discharge Conforms to the National Standard, and the Sewage Overflow Is Caused by Heavy Rain)

When judging whether an enterprise is engaged in environmental pollution, an important criterion is whether the enterprise's pollutant discharge exceeds the national or local pollutant discharge standards. Since the emission of pollutants is an inevitable by-product of an enterprise's production, it is unrealistic to prohibit the emission of pollutants completely.

There are only two exceptions for environmental pollution: force majeure and intentional victimization. Because the liability of environmental pollution belongs to no-fault liability, the liability of infringer can be reduced only if the victim has gross negligence for the occurrence of damage result.

It can be seen from the above provisions that pollutant discharge standards are not the limit to determine whether polluters bear civil liability (Xiao, 2021). If the infringer claims exemption or reduction of liability, it must be the case of force majeure and intentional or gross negligence of the victim.

3.3. Question 3 (B Company Claims That the Third Party Shall Bear the Corresponding Tort Liability)

According to article 1233 of civil Code, the premise of liability of the third party is fault. In addition, even if environmental pollution is caused by the fault of a third party, the infringer cannot be exempted from tort liability, but should bear untrue joint and several liability to the victim together with the third party.

3.4. Question 4 (Company B and Company E Jointly Assume Tort Liability) Establishment Conditions

Where the tortious acts of two or more persons respectively cause the same damage, and the tortious acts of each person are sufficient to cause all the damage, the actor shall be jointly and severally liable.

According to article 1171 and 1172 of The Civil Code, if B Company and E Company are jointly liable, then the sewage discharged by both companies has caused damage to the pollution of the fish pond. According to the specific form

of liability, it can be determined as joint liability or liability by share.

3.5. Question 5: The Act between C and D Is Instigation, and D's Liability for Damages Shall Be Borne by the Guardian

It states: "Those who instigated or helped others to commit tortious acts shall bear joint liability with the perpetrator. A person who instigated or aided a person without or with limited capacity for civil conduct to commit an infringing act shall bear tort liability; If the guardian of a person without or with limited capacity for civil conduct fails to fulfill his guardianship duties, he shall bear corresponding responsibilities."

According to article 1169, Article 17 and Article 1188 of Civil Code, if the "instigation" act between C and D meets the requirements for the formation of instigation act, C and D shall bear joint liability. If D (16 years old) has no independent source of income, for the purpose of limiting civil capacity, D's guardian should bear the corresponding responsibility.

4. Culvert Perturbation

According to article 1229 of the Civil Code, "where environmental pollution and ecological damage cause damage to others, the infringer shall bear tort liability." Article 1230 states: "In the case of a dispute arising from environmental pollution or ecological damage, the actor shall bear the burden of proof that there is no causal relationship between the act and the damage and the circumstances in which the actor does not bear or mitigate liability as prescribed by law." Article 1233 states: "Where environmental pollution or ecological damage is caused by the fault of a third party, the infringed party may claim compensation from the infringer or the third party. After making compensation, the infringer shall have the right of recourse against a third party." It can be seen that environmental pollution is a special tort liability, and the following three points should be paid attention to in the analysis:

Take liability without fault as imputation principle. That is, as long as environmental pollution causes damage to others, even if the infringer is not at fault, he should also bear tort liability.

The implementation of causality presumption, as long as environmental pollution disputes occur, it is presumed that there is a causal relationship between pollution behavior and damage results, and the polluter bears the burden of proof to prove that there is no causal relationship.

The tortfeasor and a third party are jointly and severally liable. Even if environmental pollution is caused by the fault of the third party, the infringer cannot be exempted from tort liability, but should bear untrue joint and several liability to the victim together with the third party.

On this premise, the five questions were analyzed one by one, and the specific case was substituted into the conditions for the establishment of the questions, so as to discuss whether the conditions were met and summarize whether the questions could be established. The specific analysis of students is as follows.

4.1. The Case Is Substituted into the Establishment Conditions of Question 1 (A Claims the Right of Environmental Infringement against B Company)

Environmental pollution infringement should meet three constitutive requirements: 1) polluters discharge pollutants; 2) causing damage to the infringed; 3) there is a correlation between pollution behavior and damage. In this case, Company B emissions of industrial wastewater emissions without purification equipment to PaiWuGou inside, after rain, sewage overflow PaiWuGou, flowing into fish ponds, A contract so that B company is pollution of the environment (according to the case, the presumption of A prosecution is also don't know E company in discharge). A large number of fry died in the fish pond, resulting in direct property losses, and it is not clear whether the polluted water needs to pay purification fees and whether fish cannot be raised in A few years. Indirect property losses may exist, but it is certain that the pollution caused damage to others. Since environmental pollution is based on the presumption of causality, contractor A of fish pond does not need to prove the causal relationship between the result of fish damage caused by environmental pollution, and the polluter bears the burden of proof that there is no causal relationship between his behavior proof and the result of damage. Moreover, in reality, environmental pollution is complicated, and the damage process goes through a series of intermediate links. Scientific instruments are required to set up, and some cases may be difficult to explain with modern scientific knowledge. It is too much to ask victims to prove causality. Therefore, in environmental pollution infringement cases, as long as the victim provides prima facie evidence to prove that the perpetrator has carried out environmental pollution and caused his own damage, it is ok. In this case, A can obviously prove the existence of the pollution act and the damage result, so there is a tort relationship between A and B, and A can claim that B shall bear the tort liability.

4.2. The Case Is Substituted into Question 2 (B Company Claims That the Sewage Discharge Complies with the National Standard, and the Sewage Overflow Is Caused by the Heavy Rain)

Industrial development under the existing production technology, will certainly produce a certain amount of pollution, so the enterprise sewage discharge will have a "meet the requirements" standard. In this case, before the sewage purification tower was closed, Company B's sewage discharge must have met the standard. However, according to the conditions for the establishment of question 2, even if the discharged industrial wastewater has been purified and discharged in accordance with the national standards, it cannot be regarded as an excuse for exemption or mitigation of liability. Moreover, in this case, the enterprise's sewage purification equipment was artificially shut down. Therefore, if Company B argues that the sewage equipment meets the standard, it should not be supported.

The legal reasons for exemption are force majeure and the victim's own reasons. In this case, victim A has no fault or gross negligence. "Force Majeure" refers to unforeseeable, unavoidable and insurmountable objective circumstances. "Heavy rain under heaven" is not unforeseeable, and the company should also know the water storage capacity of sewage drainage ditch. So, I don't think "force majeure" is a defense.

4.3. The Case Is Substituted into Question 3 (B Company Claims That the Third Party Shall Bear the Corresponding Tort Liability)

According to article 1233 of the Civil Code, because the third party's fault pollutes the environment, the infringed party can claim compensation from the infringer or the third party. It can be seen that the infringer cannot be exempted from liability on the basis of the fault of the third party, but the infringed can seek compensation from the third party. The situation stipulated in Article 1233 of the Civil Code should be understood as that all pollution is caused by the fault of the third party, because if both the third party and the infringer have a certain degree of pollution behavior, and the combination of behaviors leads to damage, the provisions of Article 1171 or 1172 of the Civil Code should be applied. Therefore, in the analysis of this case, students listed the situations in compliance with Article 1233 as question 3, and the situations in compliance with Article 1171 or 1172 as question 5, that is, C and D as the subject of responsibility are separated from the situations of Company E as the subject of responsibility.

In this case, Company B's sewage purification system is in good operation, which would not discharge sewage originally, and has not caused the death of fish fry in the fish pond for a long time. Company B also managed the sewage treatment tower and built a wall to protect the purification facility. However, while C and D were playing, they climbed over the fence and opened the sewage gate. According to the judgment of normal people, 16 and 19 years old can already know the importance of the gate, even if they do not know the consequences of opening the gate, they should also know that the gate of a factory should not be closed casually, let alone opening the gate by browsing the wall. However, C and D did not consider the possible consequences of their behavior. Under the instigation of C, D closed the valve of the purification system, resulting in the discharge of sewage. At the same time, Company B should strengthen management, set up warning slogans or check purification tower regularly. To a certain extent, Company B does have negligence in management.

In this case, A victim because B the mismanagement of the company and the behavior of the C and D, B company management oversight and notices is not detailed root cause, however, the behavior of the C and D is the direct cause of the sewage discharge, but this behavior can make Company B exempted from liability, company warned B, C and D should also be considered after specific circumstances to determine specific behavior. But at least Company B won't take

full responsibility for A, and both sides should share part of it.

4.4. Question 4 (Company B and Company E Jointly Assume Tort Liability) Establishment Conditions

Article 1171 and 1172 of the Civil Code stipulate the multi-party infringement, that is, the causal relationship is in the form of “multiple causes and one effect”. In this case, if the sewage discharged by Company B and Company E is sufficient to produce damage consequences, the two infringers shall bear joint and several liability to the victim. If the wastewater of two companies mixes with each other to cause damage, the two infringers are only liable for their share of the damages.

In refer to the environmental pollution situation “because of a fruit more,” learned: because the composition is different, there are many possible, blend each other potentially harmful ingredients reaction, no harm, may also be part of the reaction, increase or reduce the harm degree, and might normally harmless, there was damage after combination, etc., so, need professional identification of the composition of sewage. Of course, this belongs to the infringer’s burden of proof. Based on the information they reviewed, students concluded that there were three main theories:

Some scholars have divided the forms of complex causality in polluted environment into seven categories, and there are three forms in accordance with the case of this case: 1) equal-additive effect, that is, the effect produced by the combination of various pollution sources is equal to the sum of the damage effects produced by all pollution sources before the combination; 2) concurrence effect, that is, the substances released by various pollution sources combine with each other to cause damage, but the original effect is enough to cause damage even though they do not combine with each other; 3) progressive effect, that is, the damage effect produced by the combination of substances released by various sources of pollution exceeds the sum of the damage effects caused by all sources of pollution before the combination.

Some scholars believe that multi-party environmental pollution can be divided into two categories: one is joint infringement; the other is multi-party environmental pollution without subjective connection (Zhu, 2011). In this case, Company B and Company E should belong to the second case. The perpetrator had no subjective connection before committing the infringement.

There are also opinions that multi-person environmental pollution behaviors should be divided into four categories (Cheng, 2021): First, common causality, that is, the behavior of one responsible subject is not enough to cause damage consequences, and all the behaviors combined with each other cause all the damage to the victim; The second is coincident causality, that is, any single behavior is enough to cause the same damage; The third is cumulative causality, that is, several people’s behaviors accumulate each other, and several parts cause the final damage. Different from the first case, a certain source of pollution is enough to cause damage consequences. The fourth is optional causality, that is,

one or several people caused damage to others, but cannot be determined.

Therefore, no matter which viewpoint, it is necessary to investigate the sewage composition, discharge amount, chemical reaction after mixing and the specific cause of fry death of Company B and Company E, so as to determine whether Company E should take responsibility and the form of responsibility.

4.5. The Case Is Substituted into the Question 5 (between C and D) Is Abetting Behavior. The Responsibility of D Shall Be Borne by the Guardian

The constitutive elements of instigation include: 1) existence of instigation and perpetrator; 2) The instigator is the act of instigating; 3) There is a causal relationship between the instigation behavior and the harm done by the instigated person; 4) There is a common intention between the instigator and the instigated (Gao, 2021). In this case, both the objective behavior and subjective thought of C and D are in line with the above four constituent elements, so it is an act of instigation. In this case, C has reached the age of 18 and is a person with full capacity for civil conduct. D has reached the age of 16 but not 18, so it is necessary to examine whether D has independent sources of living. If D has independent sources of living, it is a person with full civil capacity; if not, it is a person with limited civil capacity.

First, D is a person with full capacity for civil conduct. According to paragraph 1 of Article 1169 of the Civil Code, "Those who instigated or helped others to commit tortious acts shall bear joint liability with the perpetrator." Therefore, C and D should be jointly and severally liable for the tort liability for environmental damage.

When D has limited capacity for civil conduct, according to paragraph 2 of Article 1169 of the Civil Code, if D's guardian fails to fulfill his guardianship duties, he shall bear corresponding responsibilities. In this case, D jumped over the fence while playing and committed infringement, and D's guardian should bear the responsibility.

5. Conclusion

Based on the above five questions, establishment conditions and specific cases, combined with the provisions of the law and legal interpretation, the students believe that:

In this case, A can claim the right of environmental damage against Company B and Company E to compensate for the property loss caused by the death of fry, and also claim to repair the loss caused by the water quality of fish pond. When providing evidence, A only needs to prove that the infringer discharged sewage and caused losses, and there is a correlation between the two. The infringer should bear a higher burden of proof. If Company B and Company E cannot prove that there is no causal relationship between the pollution discharge behavior and the damage result, they should bear the corresponding liability. Among them, due to the intentional fault of the third party, although Company B cannot

take the fault of the third party as the reason for exemption, it can recover from C and D (the guardian of D).

Environmental problems are closely related to human life. The principle of no-fault liability and inversion of burden of proof are established in environmental pollution infringement cases, which are conducive to regulating enterprises' pollution behavior from the legal level and not to ignoring the pollution because it meets the standards. At the same time, we call on the public to pay close attention to environmental safety and protect the green mountains.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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