

# **Pondering over Compensation for Vehicle Damage in Parking Lot Based on the Theory of Interest Measurement in Civil Law**

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**Abstract.** This paper focuses on the new form of civil disputes in the development of society and economy, and analyzes the problem of compensation for vehicle damage in parking lots, mainly focusing on the application of the law and the assumption of liability. The problem of compensation for vehicle damage in parking lots leads to a discussion on the rational settlement of disputes. The author, combining with the theory of interest measurement in civil law, expounds its concept and origin, basic principles and basic concepts, respectively, which provides a new way of thinking for the perfection of the rule of law in China.

## **1. Introduction**

With the vigorous development of the market economy and the diversification of the society, the contradictions between individuals are becoming more and more complex, and the settlement of civil disputes is becoming more and more complicated. In the General Principles of Civil Law promulgated and implemented in 2017, a series of principles, such as equality and fairness, have been clearly stipulated. But what we need to consider is, whether we should make certain choices when the interests of various civil subjects are difficult to achieve absolute balance. Is the choice and decision made here contrary to the principle of fairness? Starting from the more complicated problem of compensation for vehicle damage in parking lot in the contract law, through the analysis and research of this kind of problem, this paper advances the theory of balance of interests in the civil law and makes a further explanation.

## **2. Compensation for Vehicle Damage in Car Park**

In recent years, the artificial damage caused by stolen vehicles in the parking lot is increasing day by day, and the legal basis and the amount of compensation of the damage compensation have been paid more and more attention. As for the legal basis, the emphasis is on the distinction between the relevant articles of custody contract and lease contract in the contract law, which is the key to the application of the law to such damages. At this level, the main investigation is the understanding of the legal provisions themselves, but the application of the provisions should also take into account the legal effects. As for the amount of compensation, because the law itself does not provide for it, in reality, it is even more necessary to pay the compensation capacity and the judgment of the double subjects of the contract. Effective execution should be considered, and whether the principle of fairness can be compromised and whether substantive justice can be achieved. Under the situation that the legal problems are becoming more and more diversified and complicated, the application of the law mechanically in judicial practice often can not make the dispute be solved effectively, and the judgment which can be effectively implemented is often able to consider the interests of all parties, and meet the reasonable expectations of the parties as far as possible.

### **2.1 The application of law to compensation for vehicle damage in car park**

Because different contracts produce different liability for breach of contract, first of all, it is necessary to make clear the nature of the legal relationship arising from the storage of the vehicle, with emphasis on the distinction between the custody contract and the lease contract. First of all, from the concept: the safekeeping contract is a kind of contract that the depositor delivers the

safekeeping to the custodian, and the custodian helps to keep it; the lease contract is a kind of contract in which the lessee rents the lease item to the lessee and the lessee pays the price. In the problem of vehicle damage in parking lot, the significance of distinguishing custody contract from lease contract lies in determining whether the custodian and lessor have the obligation to ensure the safety of the vehicle. According to the concept of custody contract, the trustee shall be liable for damages in a paid contract if he fails to perform his duty to damage or destroy the subject matter. According to the concept of the lease contract, the lessor has only the main obligation to guarantee the lessee's possession of the leased property-parking space, but does not assume full liability for the collateral obligation of not taking care of the vehicle.

In practice, there are differences in understanding of the nature of the legal act of car parking. It is argued that the parking lot manager only provides the vehicle owner with a place to store the vehicle. The amount of 5 yuan or 10 yuan paid by the parking lot manager is only for the vehicle owner to use the space. In terms of liability for contract damage, it would obviously be against the principle of fairness and proportionality to a certain extent if it had to bear a larger loss because of the small amount of money it received. This view is in line with the common people's cognition of compensation for damages, the spirit of fairness advocated by the civil law, and is also the mainstream view in judicial practice.

The owner, who claims to be the custodian of the contract, considers that, the parking administrator has an obligation to ensure the integrity of the vehicle after the parking fee is charged to the owner of the car, and that he will be allowed to park the vehicle in a parking space, and car parks should also be liable for vehicle losses. This view is often controversial because of the unequal nature of its rights and obligations. First of all, the custody contract has the nature of double service contract, and the owner has the obligation to pay the price for the legal act of depositing the vehicle in the parking lot. But the parking lot manager has the duty to protect the vehicle from damage, and the two have a negative effect on each other. Secondly, the custody contract has the nature of non transfer of custody, the owner of the vehicle stored in the parking lot of the vehicle without the permission of the owner is obviously not allowed to change at will, and the vehicle can not be transferred at will. Thirdly, the custody contract has the nature of labor, which is embodied in the problem of car storage in parking lot, and the labor service of vehicle in parking lot embodies in ensuring that the stored vehicle is complete and not damaged. Finally, the custody contract has the practical nature, and the owner's parking in the parking lot is obviously a practical behavior.

On the basis of the above views, the author thinks that the law of car park storage has the nature of leasing contract and the form of custody contract, and the parking lot manager should also bear the damage of safekeeping property.

## **2.2 Liability for compensation for vehicle damage in parking lot**

The compensation for vehicle damage in the parking lot is mainly around the equivalent of the parking lot manager's compensation for the car owners and the small amount of their charge. In the case of unequal rights and obligations, it is extremely likely to bring substantial inequality in the form of equality. It has the nature of both the lease contract and the contract of custody. For the nature of the lease contract for the parking lot, the manager of the parking lot does not have the obligation to guarantee the "goods on the lease", and it should not bear the damage and loss of the vehicle. According to the relevant provisions of the contract law, the custody contract can be divided into two types: paid custody and free custody. As for free custody, the custodian naturally does not need to bear the relevant compensation liability. What is discussed here is the related question of paid custody.

It can be seen that in the contract law and its related judicial interpretation, only the legal consequences of the lessor's compensation are recognized, and the size of the amount is not explained in detail. The fuzziness of legal language also brings uncertainty to the application of law. We generally believe that damages to things should be compensated in accordance with their value, and the relevant basis can also be found here in the Tort Liability Act, that is, Article 19 "infringing

upon the property of others, property losses shall be calculated according to the market price or other means at the time of loss". Well, in the legal liability for compensation for vehicle damage in the parking lot, parking lot managers should pay the market price when the vehicle is damaged according to the law. The question is, is it reasonable for managers who charge only a small fee to bear huge vehicle losses? According to the basic principles of civil law, the equal subject should follow the principle of fair transaction, consistent rights and obligations, and if only strictly rely on the law to compensate for damages, it is contrary to the basic principles of civil law. It also contradicts the general public perception of such behavior. In reality, laws and related judgments that can be effectively enforced tend to be consistent with people's habits and inner morality. We also need to examine this issue. Consider whether the adjudication of the case can be carried out effectively. To bear the responsibility of vehicle manager in parking lot, the liability of vehicle administrator is contrary to the basic principle and reason of civil law, but the owner loses the guarantee of the right to conclude the contract at his own expense. The author believes that the interests of both parties should be fully considered on this issue, requiring the vehicle manager to assume responsibility based on the contract signed by both parties, and to limit it to a certain extent, and at the same time, the interests of the injured owners should not be ignored.

### **3. The Concept and Origin of Interest Measurement Theory**

The problem of compensation for vehicle damage in the parking lot causes people to think about the balance of interests between the subjects of the dispute. That is, when the application of the legal provisions does not make the judicial referee reasonable on the basis of legitimacy, how should the judge consider the balance of the interests of the two parties in a comprehensive way? There is a relative "balance of interests" in the civil law theory circle. In the theory of "quantity", it thinks that in the process of interpreting the law, the subject of judicial discretion should be added to the individual value judgment on the basis of the application of the provisions of the provisions, and through the consideration of the interests of both parties in the legal order. However, the theory of "interest measurement" should not only exist in the judicial referee. In the process, it should run through the legislative process, law enforcement and other links, and needs to be comprehensively considered in the judicial work. When considering the interests of both sides, the general principle is that the public interest is superior to the personal interest, and the personality interest is superior to the property interest. In order to achieve a reasonable and acceptable balance, when the benefit of equal rank is distributed, it should be considered according to the situation of both parties.

The theory of interest measurement originated in Japan, and has been widely used and developed since the 1960s, when Kato Ichiro, a civil law scholar, proposed it [2]. This theory was formed on the basis of learning the advanced legal thought of western developed countries and absorbed the achievement of American realism school of law. In Kato Ichiro's theory, the law is not only the normative law with the form of articles, but also the social law, which needs to be combined with the pluralistic social form. In the judicial practice, the law should also be judged from the angle of interests, so that the application of law can be more reasonable and feasible. In the nineties of last century, Professor Liang Huixing, a civil law scholar in China, introduced this point of view [3]. The theory of profit measurement is fully applicable to various judicial links, such as legislation and judicature, which makes up for the legal rigidity and formalization brought by strict accordance with the provisions of the law, and has an important impact on the legal practice of our country.

#### **3.1 The basic principles of the theory of interest measurement**

As one of the connotations of the school of interest law, the theory of interest measurement emphasizes the application of law by the judgment of the interests of all parties, which is contrary to the rules of adjudication applied by the school of concept law generally applied in our country at present. From the perspective of conceptual jurisprudence, the application of the law should follow the principle of "syllogism", that is, the legal provisions themselves are the major premise and the facts of the case are the minor premises. Accordingly, the conclusion of the judicial decision is drawn [1]. For example, in the dispute over vehicle damage in the parking lot, the applicable rules

should be determined first, then the specific provisions should be applied according to the nature of the case, and finally the judgment result of the case should be obtained. Such a corollary strictly follows the law, and the provisions of the law provide a uniform standard for the application of the law to make the judgment of the case more scientific and objective. In terms of interest measurement theory, under the condition that the same legal norms can be interpreted in a variety of rational ways, the interests of both parties are considered first to form the value judgment of the judge on the facts of the case, and then to reverse the applicable provisions. Choose a legal interpretation that is consistent with it. In the vehicle damage dispute of parking lot mentioned above, if we talk about it from the angle of interest law, we should make a reasonable judgment by synthesizing the general cognitive and rational factors of the society, and then confirm the applicable rules. On the one hand, this method of law may lead to the wanton interpretation of the law and the abuse of the judge's discretion, but on the other hand, it also makes up for the problems caused by the rigid discretion model and provides a new way of thinking for the civil adjudication model.

In the application of the theory of interest measurement, the following principles should be followed: firstly, the principle of legality and reasonableness should be followed. However, its application is still not beyond the limits of law, as far as the premise of its use is concerned, it can still be interpreted in a variety of ways for a legal norm, and its application is not divorced from the noumenon of law. The reasonable requirement is that the judgment of the value of the case should accord with the reason and the reasonable expectation of the majority of the public. In practice, the judge who is scientific and feasible must also be the judge who combines legitimacy and rationality. Secondly, the principle of procedural control should be followed. In 2003, the judgment made according to the theory of interest measurement must have its legitimacy in procedure. On the one hand, regardless of its reasoning process, it must be in accordance with due process of law, strict application of the law. On the other hand, the result of value judgment should be considered by the collegiate panel, or the public opinion should be widely heard through democratic appraisal procedure. In short, the result of value judgment should be the result of re-examination judgment rather than individual arbitrariness. In general, the application of the theory of interest measurement should be limited to a certain extent and can be effectively applied on the basis of abiding by its principles.

### **3.2 Discussion on liability for vehicle damage compensation in parking lots from the perspective of interest measurement**

In car park vehicle damage compensation, strict accordance with the application of the provisions of the law may result in unfair judgment and then cannot be implemented, and such formal equity brings about substantive injustice. As a supplement of the law, the principle of interest measurement enhances the fairness, rationality and implement-ability of the case handling, which is of great benefit to the handling of car damage compensation cases such as parking lot. The principle of interest measurement is the result of the continuous development of the spirit of Anglo-American law. In Anglo-American law system, there is equity opposite to common law, and the reason is that "the more strict the law, the greater the harm to the innocent". In contrast to the common law, which makes judgments strictly in accordance with formal provisions, equity is more flexible to deal with disputes and reflects the sociality of law. When the principle of law and the principle of equity are in conflict, the balance of equity tends to the principle of equity, which to some extent complements the lack of "human feeling" in common law.

## **4. Conclusion**

The theory of interest measurement not only plays a guiding role in vehicle damage compensation in parking lots, the discretion mode brought about by "interest measurement" also leads us to think about the civil legislation of our country: when the rigid legal system can only bring about formal fairness rather than fairness and justice, should we adjust the legal system? Naturally, the birth of equity is closely related to the cultural background and social moral system of

Anglo-American law countries. For example, the relationship of “Heaven, National Law, and Human” in Chinese legal culture should also be combined with emotion, reason and law, and draw lessons from the relevant concept of the common law system countries' interests measurement. The introduction and implementation of the “General Principles of Civil Law” in 2017 has made China's law a historic step. The further development and improvement of the law was not accomplished overnight, but continued to evolve under the combined role of society, economy and culture. The construction of the rule of law still has a long way to go.

In the continuous development of modern society, we can not ignore the protection of “human” demands. Civil law is the law that mediates the relationship between “human” and “human” in the final analysis. In the spirit of legislation, if we can have more “human nature” on the basis of “legal nature”, the law on paper may become the law in people's hearts.

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