

Retraction Notice

Title of retracted article: Judgment of Tort Liability of Multi-Person Bullying in School Bullying

Author(s): Xuanyu Chen

* Corresponding author. Email: 201831040014@mail.bnu.edu.cn

Journal: Creative Education

Year: 2019

Volume: 10

Number: 11

Pages (from - to): 2334-2346

DOI (to PDF): <http://dx.doi.org/10.4236/ce.2019.1011166>

Paper ID at SCIRP: 96251

Article page: <http://www.scirp.org/Journal/PaperInformation.aspx?PaperID=96251>

Retraction date: 2021-12-29

Retraction initiative (multiple responses allowed; mark with X):

- All authors
- Some of the authors:
- Editor with hints from
- Journal owner (publisher)
- Institution:
- Reader:
- Other:

Retraction type (multiple responses allowed):

- Unreliable findings
- Lab error
- Inconsistent data
- Analytical error
- Biased interpretation
- Other:
- Irreproducible results
- Failure to disclose a major competing interest likely to influence interpretations or recommendations
- Unethical research
- Fraud
- Data fabrication
- Fake publication
- Other:
- Plagiarism
- Self plagiarism
- Overlap
- Redundant publication *
- Copyright infringement
- Other legal concern:
- Editorial reasons
- Handling error
- Unreliable review(s)
- Decision error
- Other:
- Other:

Results of publication (only one response allowed):

- are still valid.
- were found to be overall invalid.

Author's conduct (only one response allowed):

- honest error
- academic misconduct
- none (not applicable in this case – e.g. in case of editorial reasons)

* Also called duplicate or repetitive publication. Definition: "Publishing or attempting to publish substantially the same work more than once."

History

Expression of Concern:

yes, date: yyyy-mm-dd

no

Correction:

yes, date: yyyy-mm-dd

no

Comment:

The paper is withdrawn from "Creative Education" due to conflicts of interest regarding the publication of this paper.

This article has been retracted to straighten the academic record. In making this decision the Editorial Board follows COPE's [Retraction Guidelines](#). The aim is to promote the circulation of scientific research by offering an ideal research publication platform with due consideration of internationally accepted standards on publication ethics. The Editorial Board would like to extend its sincere apologies for any inconvenience this retraction may have caused.

Editor guiding this retraction: Prof. Finn Egil Tønnessen (Editor-in-Chief of CE)

Judgment of Tort Liability of Multi-Person Bullying in School Bullying

Xuanyu Chen

Law School, Beijing Normal University, Beijing, China

Email: 201831040014@mail.bnu.edu.cn

How to cite this paper: Chen, X. Y. (2019). Judgment of Tort Liability of Multi-Person Bullying in School Bullying. *Creative Education, 10*, 2334-2346.
<https://doi.org/10.4236/ce.2019.1011166>

Received: October 6, 2019

Accepted: November 4, 2019

Published: November 7, 2019

Copyright © 2019 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

This paper discussed the tort liability of bullying committed by multiple persons in various cases, based on *Tort Law of the People's Republic of China* and *Theory of Respective Tort*. According to whether the multiple bullies have common intent and conscious cooperation or not, multi-person bullying can be divided into joint bullying (with joint intent and conscious cooperation) and respective bullying (without conscious cooperation). There are two main research questions: 1) in the case of joint/group bullying, how to decide the liability of different roles among the group with common intention and conscious cooperation? Should bullying helper and bystander bear the tort liability? 2) on the occasion of respective bullying, how to identify the liability of different subjects (individuals or groups) without conscious cooperation when the interaction of their respective bullying action leads to cumulative same damage? The author believed that in joint bullying, the bullying helper and the bullies have a joint fault in the implementation of bullying, which constitutes joint tort and joint liability; while the tort liability of the bullying bystanders should be discussed based on their roles in the bullying action. In terms of multi-subject respective bullying, when the multiple bullying behaviors of the multiple subjects cause cumulative damage, those who constitute a typical respective tort shall bear sharing liability according to the causative potency; those who constitute a superposition of respective tort shall bear joint liability.

Keywords

School Bullying, The Tort Liability of School Bullying, Theory of Respective Tort

1. Introduction

School bullying is a serious phenomenon that has existed for a long time (Olweus

& Limber, 2010). According to the recent results, 15% - 30% of students reported engaging in bullying or being bullied (Kaltiala-Heino, Rimpela, Rantanen, & Rimpela, 2000; Piskin, 2002; Shetgiri, Lin, & Flores, 2012). Studies indicated that bullying has strong association with depression, anxiety, suicidal ideation or attempt, drug use, antisocial tendency and behavior, attention deficit (Brown & Taylor, 2008; Huang & Zhao, 2018; Smokowski & Kopasz, 2005; Xie, Wei, & Zhu, 2019), and also negative effects on educational outcomes (Brown & Taylor, 2008). Multi-person bullying, which can be divided into joint bullying and multi-subject respective bullying according to whether the multiple bullies have common intent and conscious cooperation or not, is common in the lawsuits of school bullying (Zhang, 2017; Zhou & Feng, 2017; Itslaw, 2019), which is consistent with the findings that the bullied are constantly bullied by different bullies (Olweus & Limber, 2010). It is needed to be alert that multi-person bullying generally led to extremely adverse cumulative consequences. Generally, the damages resulting from multi-person bullying are cumulative and more serious than those from individual bullying. 67% of the victims suffered from severe depression or serious injury; 33% of the victims attempted suicide or completed suicide, and 10% of the victims had serious antisocial tendencies among lawsuits of multi-person bullying in recent years (Itslaw, 2019). Thus, multi-person bullying is necessary to be discussed.

The rationalization of school bullying as tort should be based on the understanding of the legal nature of school bullying and the constituent elements of the infringement. School bullying can be defined as school person(s) deliberately do(es) durative mental or physical damage to the student who has no resistance in campus or its radiation zone (Olweus & Limber, 2010; Ren, 2017; Yang & Tao, 2013). From the perspective of civil law, the nature of school bullying is infringement or tort (Yang & Tao, 2013). Tort refers to one or more subjects committing illegal acts against others, infringing on the civil rights of others, and causing damage to personal and property rights (Yang & Tao, 2013). According to "Article 6 of Tort Law of the People's Republic of China" (Standing Committee of the National People's Congress, 2010), the bully in school bullying is the infringer; the bullying acts on the bullied person cause damage to their civil rights, such as physical rights, health rights, reputation rights, property rights or personal freedom; bullying act has a causal relationship with the damage result; and the bully is subjectively deliberate and faulty. Thus, school bullying belongs to illegal acts and infringement, while multi-person bullying belongs to illegal acts and infringement conducted by multiple person; the infringer shall bear tort liability.

School bullying has become a hot topic in China since 2016. The current attention mainly lays in the causes and consequences of school bullying, the intervention from the perspective of education and psychology, and the policy analysis and legal suggestions from the perspective of educational law (e.g. Chu, 2017; Huang & Zhao, 2018; Xie, Wei, & Zhu, 2019; Zhang, 2017; Zhou & Feng, 2017). However, there are few studies of school bullying from the perspective of tort

law. In the exiting research on tort liability of school bullying, researchers in China held that all the bullies, bullies' guardian, and the school are liable for tort (Ren, 2017; Yang, 2019; Yang & Tao, 2013). Yang and Tao (2013) analyzed the tort liability of bullies in two aspects: individual bullying and joint bullying. The tort liability of individual bullying is determined directly according to the damage caused by the bullying act, but the liability of the joint bullying and the multiple-subject respective bullying are more complicated to be identified because the tort act involves multiple persons. However, rare studies on school bullying in China in details and situationally explored the liability commitment of multi-person tort. Thus, apart from adding the existing literature on tort liability of school bullying, this paper also expected to provide more detailed, specific and contextual analysis.

From the practical perspective, the value of tort law is to make up for the loss of victims and preventing accidents. The discussion of tort liability in multi-person bullying is helpful to clarify the judgement criterion, make up for the deprived rights of the bullied students, achieve the rectification justice, and deter potential bullying. According to whether there is conscious cooperation between several bullying subjects, multi-person bullying includes joint bullying and multi-subject respective bullying. These two types of multi-person bullying have their distinctive characteristics and cannot be treated equally. For the determination of tort liability of joint bullying, different bullying roles and their functions should be discussed. For multi-subject respective bullying, the behavior is characterized by that there is no meaningful contact between multiple bullying subjects. Due to the interaction of various bullying, victim suffers the same damage from repetitive and cumulative bullying. In this case, the differences of contributions from multiple subjects should be considered. The inseparability of the damage, the diversity of multi-person bullying forms, and the differences of functions of different bullying roles and subjects make it complicated to judge different individual or subjects' tort liability. Thus, it makes sense to clarify the determination of tort liability in multi-person bullying.

This paper discussed the tort liability of bullying committed by multiple persons in various cases, based on *Tort Law of the People's Republic of China* and *Theory of Respective Tort*. Two main research questions are as follows:

- 1) In the case of joint/group bullying, how to decide the liability of different roles among the group with common intention and conscious cooperation? Should bullying helper and bystander bear the tort liability?
- 2) On the occasion of multi-subject respective bullying, how to identify the liability of different subjects (individuals or groups) without conscious cooperation when the interaction of their respective bullying action leads to cumulative same damage?

Tort Liability of Joint Bullying

Generally, it is regarded that school bullying consists of individual bullying and group bullying. However, the author held that it is more rationale to divide

school bullying into individual bullying and multi-person bullying on the basis of the numbers of bullies, because the previous classification ignores multi-subject respective bullying (which will be discussed in the following section). Group bullying, which can be used interchangeably with joint bullying in this paper, refers to the bullying committed by a group of people. Tort law also addresses that this group has common intent and conscious cooperation to conduct the bullying. According to *Articles 8 of the Tort Law of the People's Republic of China*, "Where two or more persons jointly commit a tort, causing harm to another person, they shall be liable jointly and severally" (Standing Committee of the National People's Congress, 2010), multiple bullies in one group constitute joint tort and joint liability, and they shall bear joint liability.

However, apart from the tort liability of the main bully, there are also two roles in joint bullying that maybe contribute to the bullying damage, namely the bullying helper and the bystander involved in bullying. There is no consistent view on the determination of tort liability of these two roles. The author argued that the differences in action forms and functions of different roles lead to the differences in their contributions to the victim's damage. Thus, specific analysis is needed to judge the tort liability of different roles. This section discussed how to decide bullying helper and bystander's tort liability in joint bullying.

The tort liability of bullying helper

When committing tort with the bullies, the bullying helpers have joint faults, constitute a joint tort, and should bear joint liability. Bullying helpers are those who are not the initiators of bullying or who do not play a leading role, but the active bullies who help the bullies or facilitate the bullying. The theory of "contributory negligence" believed that the joint tortfeasors are those who have common intention or negligence to cause damage (Wang, 2016). On the one hand, bullying helpers and bullies have subjective common faults, that is, a common intentional subjective attitude, and a tendency to recognize and affirm the bullying behavior (Qiao & Wen, 2018). Yan's research (2010) shown that bullies generally have a high social cognitive ability and believe that bullying is a symbol of their ability. In school bullying, bully helpers and bullies act on their wills, and they are both active bullies, and aware of the commonality and fault of their actions. Therefore, the bully helper and the bully are in conformity with the judging criteria of the joint tort, that is, they have the intention to cause joint damage. In Western tort law, "intention" included the unlawful activities committed by the tortfeasor based on their intention to cause the damage, to a variety of subjective attitudes they hold when they know or should know that their conduct will cause misfortune to the others (Bussani, Infantino, Bo, & Huang, 2014).

On the other hand, bully helpers and bullies behave jointly in causing the damage. According to the contributory negligence theory, the key to determine a causal relationship of the joint tort lies only in the causal relationship between the overall behavior of the joint tortfeasor and the damage to the victim. In school bullying, there is a cooperative relationship and principal-and-subordinate

relationship between the bully helper and the bully, the behaviors between them are intertwined and have a common effect on the damage to the bullied people. Therefore, their actions can be recognized as joint tort and they should bear joint liability, that is: “Where the joint liability shall be assumed by the tortfeasors according to law, the victim of torts shall be entitled to require some or all of the tortfeasors to assume the liability”¹. The principle of joint liability is that between the innocent plaintiff and the defendant who should be punished, it is unfair to ask the plaintiff to consider each tortfeasor and dispute compensation with all of them (Bar, 2009). Allowing the bully and the bully helper to assume joint liability is in line with the requirement of the corrective justice to return the victim’s belongings and compensate the victim’s loss (Bodenheimer, 2004).

The tort liability of bystanders involved in bullying

In school bullying, there is also a situation in which several people are bullied by the presence of bystanders, this is divided into three cases:

In the first case, bystanders are motivated on the spur of the moment to join the bullying subjects in committing the bullying while they are watching it. Sometimes the bystanders maybe just to join in the fun. Compared to the main bullies, the bystanders conduct bullying without any previous plan. They just join in the bullying when it occurs. In this situation, at the moment of bullying, the bystander has formed a deliberate intention of bullying with the former bully, and (s)he has the subjective intention of jointly bullying the others and cooperating with the former bully to commit bullying. It should be regarded as a joint bully on the spur of the moment. Bystanders who work with the bully should bear the joint tort liability. In terms of the internal share of liability, the bystanders usually only provide bullying support, and their subjective malice and social harmfulness is weaker than that of the main bullies, therefore, the bystanders should bear lower share of liability than the main bullies.

In the second case, the bystander has colluded with the bully in advance, but is on the sidelines when bullying happens and is not directly involved. In this case, the collusion of the bystander in advance with the bully can be regarded as the intention of having a joint tort. The bystanders make suggestions during the collusion, which are malicious and can be regarded as either assisting or abetting the bullying action. In this regard, the bystanders are also regarded as joint tortfeasors and should bear joint liability because of the fault beforehand and the fact that the bullying is indeed carried out according to the prior collusion. If the people who abet, assist, and practice the bullying are adults, they should bear the joint liability. Those who abet and assist underage students to commit bullying should bear joint liability, and the guardian should assume corresponding responsibility (i.e. sharing liability), which constitutes one-way joint liability in accordance with *Article 9(2) of Tort Law of the People’s Republic of China*

¹Article 13 of the *Tort Law of the People’s Republic of China*. The provisions of Articles 13 and 14 of the *Tort Law of the People’s Republic of China* on the joint liability rules are completely consistent with the provisions of Section 10 of the *Restatement of the Law, Third, Torts: Apportionment of Liability* of the United States. The traditional Anglo-American law of American tort law has always believed that when two or more tortfeasors cause a single damage, they should bear joint and several liability.

(Standing Committee of the National People's Congress, 2010).

In the third case, the bystanders are whooping it up for the bullies when the bullying happens. For this kind of behavior, the whoop of the bystander is a positive incentive for the bully, facilitating them to commit the bullying behavior, which increases the damage to the people being bullied. Professor Yang believed that in the case of whoop, bystanders can be regarded as having the intention to contact the bully and therefore can be seen as a joint tortfeasor (Yang & Tao, 2013). Professor Wang also argued that the cheering bystanders can be seen as bullying helpers, so they shall bear tort liability (Wang, 2016). However, the author believed that the judgment should be based on the situation at the time of bullying. Firstly, if the instigation escalates the bully's behavior, then the bystander should be regarded as a joint tortfeasor. This kind of situation often occurs in school bullying events. At first, the bully did not intend to implement serious bullying behavior, but because of the crowd and shouting, the bullies who are in a period of youth rebellious period and eager to be recognized by their classmates are easy to arouse the desire to further implement bullying behavior, thus aggravating the damage consequences of bullying behavior. In this case, the bystanders' instigation is a positive incentive to the bully, which belongs to the psychological helping behavior. There is a causal relationship between the cheering behavior and the extended damage result, and it is also an infringement of the legitimate rights and interests of the bullied. Thus, the bystander should bear the tort liability in this case. Secondly, if the instigation doesn't have a substantial impact on the bullying, the bully is still acting on their own will, and the bystanders are subjectively less vicious, then the bystander's subjective malignancy and the damage being caused are not up to the degree of fault that should be bound by law, and they should not assume tort liability.

2. Tort Liability of Multi-Subject Respective Bullying

Different from joint bullying, respective bullying refers to the bullying committed by multiple bullying subjects without joint faults or intention and without conscious cooperation. Different from multiple individual bullying caused by several separate damages (for example, student A beats X and student B asks X for property), multi-subject respective bullying results in the cumulative "same damage" to the bullied due to the objective interaction of the bullies' respective behavior. "Same damage" in tort law does not mean that only one damage or damage of the same nature is caused to the victim, but it means that the victim's damage is indivisible and inseparable, and the behavior of each tortfeasor has a causal relationship with the occurrence of damage (Cheng, 2015).

A real case can be exemplified to understand the respective bullying. In January 2017, there was a student suicide in Ohio, US, caused by multi-subject respective bullying (*American 8-Year-Old Boy Killed Himself after Being Bullied by His Classmates*, 2017). Gabriel Taye, an 8-year-old primary school boy, was knocked down by a classmate in the school bathroom, unconscious for seven

minutes after landing on his head. The other students didn't lift him up, but walked around him, pointing, laughing, even kicking him. Two days later, Gabriel hanged himself at home. There is no conscious cooperation and subjectively joint intention between these students. However, there is combination and interaction between bully A's pushing behavior, bully B's mocking behavior, and bully C's kicking behavior, resulting in Gabriel's "same damage", that is suicide. The bullying like this form can be regarded as multi-subject respective bullying.

The inseparability of the damage, the diversity of bullying forms, and the differences of functions of different bullying subjects make it complicated to judge multiple subjects' tort liability. This section first outlined the difficulties in determining the tort liability of respective bullying, and then discussed the criterion from two main cases.

The difficulties in determining the tort liability of multi-subject respective bullying

The above situations are commonly seen in school bullying. Olweus & Olweus's research (2010) shown that the role of the bully may be dynamically transformed and forms a bullying cycle due to the interaction between the individuals and the environment (Luo, Chen, & Zhao, 2018). However, the role of the bullied is more fixed and vulnerable to persistent bullying from different bullies. The consequences of bullying on campus are cumulative, and the damage caused by long-term bullying is most likely due to the outbreak of long-term depression, oppression and other emotional accumulations. This kind of damage is characterized by serious mental damage including depression, anxiety, tired of learning, social disorders and self-injury. Xie and Huang's empirical research shown that the more frequent and the more types of bullying that the students are exposed to, the higher the level of depression and anxiety they will have (Xie, Wei, & Zhu, 2019); students who are often being bullied are more likely to drop out of school, skip classes, and have higher level of anxiety, and they are more emotionally unstable in non-cognitive areas (Huang & Zhao, 2018). In the school bullying news reported in 2018, there were many cases where students committed suicide due to the accumulation of respective bullying (The Exposure of School Bullying Cases: To Protect Children, What Should We Do?, 2018). Therefore, how to judge the tort liability between the various subjects, make up for the damage of the bully and to warn the bullies has practical significance when the bullied person needed legal help to deal with the severe "same damage" caused by the accumulation of respective bullying from multi-subjects.

Articles 11 and 12 of the *Tort Law of the People's Republic of China* provide ideas for how the liability should be assumed and how the internal liability should be shared among the bullies in the above-mentioned situation (Standing Committee of the National People's Congress, 2010)². They determine how the

²Article 11 of the *Tort Law of the People's Republic of China* stipulates: "Where two or more persons commit torts respectively, causing the same harm, and each tort is sufficient to cause the entire harm, the tortfeasors shall be liable jointly and severally". Article 12 stipulates: "Where two or more persons commit torts respectively, causing the same harm, if the seriousness of liability of each tortfeasor can be determined, the tortfeasors shall assume corresponding liabilities respectively; or if the seriousness of liability of each tortfeasor is hard to be determined, the tortfeasors shall evenly assume the compensatory liability".

liability should be assumed based on whether the subjects' actions are sufficient to cause losses alone: where the bullying action from each subject is sufficient to cause the damage, then the bullies shall be liable jointly and severally; where the bullying action from each subject is not sufficient to cause the damage alone, and the damage can be caused only through the combination of the actions, then each subject shall assume sharing liability.

However, in the case of multi-subject respective bullying, it is not possible to mechanically apply Articles 11 and 12 of the *Tort Law of the People's Republic of China*, the reasons are as follows. First, the situation of multi-subject respective bullying is complicated, as the methods of bullying are diverse and the degrees of seriousness are different. The accumulation and concealment of damage is one of the important characteristics of the damage. Damage in bullying can be manifested as cumulative mental damage and physical damage accumulated when the target is being bullied by different bullies respectively. For example, in the case of "Zhang Xiaogang v. Qingdao Commercial Secondary Professional College for Personal Compensation" (Zhao, 2005), Zhang Xiaogang was bullied and kicked by different subjects on the evening of April 21 and April 22 respectively, resulting in a concussion (Cheng, 2015). In this case, even if it can be determined as a fact that there are multiple bullying behaviors from multiple subjects targeting Zhang Xiaogang, it is difficult to precisely attribute the damage to one bullying subject or to determine how much each bullying behavior has caused the damage to Zhang Xiaogang in the legal evaluation.

Second, Articles 11 and 12 cannot be applied to the situation where the bullying from one subject is serious enough to cause all the damage, and the seriousness of the other subject's bullying behavior cause only partial damage (Standing Committee of the National People's Congress, 2010), yet the combination of the two actions leads to the same cumulative damage. For example, in the case of "dispute over the right to life between Wu and Qingsong technical school and Ma" (Zhou, 2019), even though the evidence proved that the bullying behavior of group A in Wu's case is enough to cause Wu's schizophrenia, and the bullying behavior of other groups only partially or aggravates the result of mental damage, the judge also failed to give a clear and reasonable explanation on how to determine the tort liability of each subject. Based on this, the author believed that the "respective tort theory" proposed by Professor Yang (2017a) can be used to analyze the tort liability of multiple subject respective bullying. The respective tort is that the multiple parties separately commit the tort, and there is no joint intention or joint negligence, yet the objective link between the respective behaviors lead to the multi-person tort and cause the same damage (Yang, 2017a: p. 161).

Analysis of multi-subject respective bullying responsibility based on respective tort theory

According to the respective tort theory (Yang, 2017b: p. 121), multi-subject respective bullying can be divided into "typical respective tort" and "superim-

posed respective tort” according to the seriousness of the damage caused by each subject. In terms of typical respective tort, for the same damage consequence, the sum of the causative potency of each person tort is exactly 100%; in the superimposed respective tort, the sum of the causative potency of each person tort is greater than 100%, and even 200% or more. Objectively speaking, the causative potency can be seen as the contribution, the role or intensity of each tort to the consequences of the damage. The theory can be applied to solve the above-mentioned situation where the bullying behavior of one subject is sufficient to cause all damage (100% causative potency), while the other bullying behavior can only cause partial damage (such as 50% causative potency), and the combination of the two behaviors objectively leads to the same damage.

With regard to judging the liability for damages, the respective tort theory advocated the liability should be shared based on the seriousness of the causative potency, which avoids the flaws of “aver ageism, one-size-fits-all” brought about by the premature use of average liability. However, it is worth noting that the actual behavior of bullying is diverse, and the harm caused by different ways of bullying to the people being bullied is difficult to measure. For example, in the case of Yang, a sixth-grade student in Jiangxi (*The Exposure of School Bullying Cases: To Protect Children, What Should We Do?*, 2018), it is not easy to determine which behavior caused more harm to the student: spitting on him or putting an urine basin over his head. Therefore, the author believed that the liability sharing of each subject should be measured based on the intensity of the causative potency, and be supplemented by the seriousness of the bullying behavior and the degree of the bad behavior at the moral level, so as to determine the share of responsibility of each subject. In summary, the tort liability of multi-subject respective bullying can be classified as the follows:

Sharing liability for the typical respective tort act

When the bullying behavior of different bullies is not enough to cause damage to the bullied person, the share of liability of each person should be determined according to the causative potency of the individual behavior when the joint damage result cannot determine the consequences of his or her own behavior. In accordance with the logic of Article 12 of the *Tort Law of the People's Republic of China*, first, the liability of the bullies should be determined as a whole, and the entire liability is determined by the accumulation and indivisibility of the result of the bullying, then, the share of the liability is determined based on the causative potency of each person's behavior to the damage, and each person will take their own fair share; if the causative potency cannot be determined, then the liability should be shared evenly with reference to *Article 3:105 of the Principles of European Tort Law*: in the case of multiple activities, when it is certain that none of them has caused the entire damage or any determinable part thereof, those that are likely to have minimally contributed to the damage are presumed to have caused equal shares thereof (Busnelli, Comandé, Cousy, & Widmer, 2005). For example, if the causative potency of the same damage of A is 60% and

that of B is 40%, then A and B bear 60% and 40% respectively; if the causative potency cannot be distinguished between A and B, each of them will bear 50%.

The joint liability of the respective tort that constitutes the superposition

According to the provisions of Article 11 of the *Tort Law of the People's Republic of China*, when the bullying behaviors of different bullies are sufficient to cause the damage, or if one subject's actions are sufficient to cause damage, and the other subject's actions are partially responsible, and the behavior combined caused the same damage (Standing Committee of the National People's Congress, 2010), then the bullies should bear joint liability for the bullied person. The reason why the bullies bear joint liability is that the bullying actions are "respectively implemented" and "sufficient to cause" (Wang, 2016). "Sufficient to cause" means that even if there is no other tort, the independent individual tort may cause all damage (Wang, 2010). Each independent tort has the causative potency of the consequences of all damage (The Supreme People's Court Tort Liability Law Research Group, 2010). Corrective justice seeks the balance between justice and social welfare by realizing the compensation to the damage between the parties. Therefore, whether the behavior of each subject is sufficient, or one subject is sufficient and the other subject is not sufficient, it is considered that the behavior of the subjects has caused all the damage, and the subjects should bear joint liability for all the damages, which not only increases the scope of the liable subjects that bear the liability, but also helps the bullied to receive relief and warns the potential bully.

3. Conclusion

School bullying is a worldwide campus phenomenon. Bullying has been a long-standing phenomenon in our country, even though it has only gradually gained attention in recent years. Serious school bullying is a violation of the law, and the nature of it is tort in civil law. Therefore, according to whether it is to relieve the bullied to advocate humanistic spirit, or to prevent or deter the occurrence of potential bullying, the law should have an important role to play; particularly in the context of bullying involving tort, the use of the *Tort Law of the People's Republic of China* in school bullying should be clarified. Based on the definition of school bullying, this paper focused on the bullying committed by multiple persons and proposed corresponding methods in different situations. Tort liability of each subject is then discussed in order to make up for the shortcomings of existing research in this field in the hope of helping solve the tort problems involved in school bullying.

It can be seen from the discussion in this paper that in the joint bullying, both the bullying helpers and the bystanders who engage in the bullying should bear the tort liability for the damage of the bullied. Therefore, when making anti-bullying strategies and carrying out anti-bullying propaganda, schools should take the bullying helpers and bystanders into account, so that students can clearly understand that providing help and instigation in the bullying is not only

not moral, but also illegal and tortious. When they encounter bullying, students should report in time instead of engaging in it. According to *Broken Windows Theory* (Wilson & Kelling, 1982), once a bad phenomenon is allowed to exist; if the destroyer is not punished, the behavior will induce more and even worse behaviors. Therefore, if bullies in multi-person bullying are not be punished in justice way, it will induce more and more bullies to engage in bullying. Therefore, after the occurrence of joint bullying, in order to maintain the school order, the school should timely punish the bullying group, and especially pay attention to the role of bystanders in bullying behavior to deter the bystanders and curb the bullying behavior of potential bullies. In addition to helpers, students and parents can also list the bystanders involved in bullying as defendants in tort litigation to ask them to bear corresponding tort liability.

In terms of multi-subject respective bullying, the damage consequences come from the bullying behavior of different bullying subjects. The bullying consequences are cumulative and hidden, which is not easy to detect. When the damage results appear, the damage of the bullied has been really serious. Thus, schools should provide in-time support students who have been bullied or may be bullied to prevent multiple subjects from causing cumulative damage to the bullied so as to minimize the consequences of damage. When students encounter such bullying, students and parents should dare to protect their rights. In the lawsuit, every bully who has been bullied and has a bad impact on the bullied can be listed as the defendant. This is not only in line with the basic legal logic of the infringer's responsibility, but also can expand the scope of legal relief. With regard to the suggestion to the court, the court should make the judgement according to causative potency of different subjects to the damage result for the purpose to realize the judicial fairness. Furthermore, when ensuring the actual relief of the bullied, it can deter the potential bullies and prevent the occurrence of campus bullying accidents.

Conflicts of Interest

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

References

- (2017). *American 8-Year-Old Boy Killed Himself after Being Bullied by His Classmates*. <http://www.antibul.sdn.edu.cn/info/1004/1024.htm>
- (2018). *The Exposure of School Bullying Cases: To Protect Children, What Should We Do?* <http://baijiahao.baidu.com/s?id=1601334670095348699&wfr=spider&for=pc>
- Bar, C. (2009). *Principles of European Law: Non-Contractual Liability Arising out of Damage Caused to Another*. Sellier, Bruylant, Staempfli: Oxford University Press. <https://doi.org/10.1515/9783866538658>
- Bodenheimer, E. (2004). *Jurisprudence: Legal Philosophy and Legal Methods*. Beijing: China University of Political Science and Law Press. (In Chinese)
- Brown, S., & Taylor, K. (2008). *Bullying, Education and Earnings: Evidence from the Na-*

- tional Child Development Study. *Economics of Education Review*, 27, 387-401.
<https://doi.org/10.1016/j.econedurev.2007.03.003>
- Busnelli, F. D., Comandé, G., Cousy, H., & Widmer, P. (2005). *Principles of European Tort Law: Text and Commentary*. New York: Springer.
<https://doi.org/10.1007/3-211-27751-X>
- Bussani, M., Infantino, M., Bo, L., & Huang, W. (2014). Multiple Tortfeasors in Western Tort Law: A Comparative Outline. *Journal of Soochow University (Philosophy and Social Science Edition)*, 35, 80-93.
- Cheng, X. (2015). *Tort Liability Law* (2nd ed.). Beijing: Law Press.
- Chu, Z. (2017). China's Problem and Resolution of School Bullying. *Journal of The Chinese Society of Education*, 12, 42-48.
- Huang, L., & Zhao, D. (2018). School Bullying in Middle School: Current Status, Impacts and Coping Strategies. *Modern Education Management*, 12, 102-106.
- Itslaw (2019). *Lawsuits of School Bullying*.
- Kaltiala-Heino, R., Rimpela, M., Rantanen, P., & Rimpela, A. (2000). Bullying at School: An Indicator of Adolescents for Mental Disorders. *Journal of Adolescence*, 23, 661-674.
<https://doi.org/10.1006/jado.2000.0351>
- Luo, L., Chen, B., & Zhao, Y. (2018). Theoretical Deconstruction and Prevention Strategy of School Bullying Behavior. *Educational Academic Monthly*, 6, 72-79.
- Olweus, D., & Limber, S. P. (2010). Bullying in School: Evaluation and Dissemination of the Olweus Bullying Prevention Program. *American Journal of Orthopsychiatry*, 80, 124-134. <https://doi.org/10.1111/j.1939-0025.2010.01015.x>
- Piskin, M. (2002). School Bullying: Definition, Types, Related Factors, and Strategies to Prevent Bullying Problems. *Educational Sciences: Theory and Practice*, 2, 555-562.
- Qiao, D., & Wen, N. (2018). A Summary of Research on School Bullying at Home and Abroad: Concepts, Causes and Interventions. *Social Construction*, 5, 5-15+64.
- Ren, H. (2017). The Definition of School Bullying and Its Legal Liability. *Journal of East China Normal University (Educational Sciences)*, 2, 43-50.
- Shetgiri, R., Lin, H., & Flores, G. (2012). Identifying children at risk for being bullies in the United States. *Academic Pediatrics*, 12, 509-522.
<https://doi.org/10.1016/j.acap.2012.06.013>
- Smokowski, P. R., & Kopasz, K. H. (2005). Bullying in School: An Overview of Types, Effects, Family Characteristics, and Intervention Strategies. *Children & Schools*, 27, 101-110. <https://doi.org/10.1093/cs/27.2.101>
- Standing Committee of the National People's Congress (2010). *Tort Law of the People's Republic of China*.
<http://en.pkulaw.cn/display.aspx?cgid=e1578469c93b7751bdfb&lib=law>
- The Supreme People's Court Tort Liability Law Research Group (2010). *The Understanding and Application of the Articles of the Tort Liability Law of the People's Republic of China*. Beijing: People's Court Press.
- Wang, L. (2016). *Research on Tort Liability Law*. Beijing: China Renmin University Press.
- Wang, S. (2010). *Editor-in-Chief: Interpretation of the Tort Liability Law of the People's Republic of China*. Beijing: Law Press.
- Wilson, J. Q., & Kelling, G. L. (1982). Broken Windows. *The Atlantic Monthly*, 127, 29-38.
- Xie, J., Wei, Y., & Zhu, Z. (2019). Patterns of Bullying Victimization among Adolescents in China: Based on Latent Profile Analysis. *Psychological Development and Education*,

1, 95-102.

- Yan, C. (2010). *Research on School Bullying Behavior in Rural Primary and Secondary Schools*. Master Dissertation.
- Yang, L. (2017a). *Tort Liability Law* (2nd ed.). Beijing: Peking University Press.
- Yang, L. (2017b). *Study on Multiple Tortfeasors and Liability*. Beijing: Law Press.
- Yang, L. (2019). *Research on Tort Liability of School Bullying*. Master Dissertation.
- Yang, L., & Tao, Y. (2013). Study on Tort Liability of School Bullying. *Fujian Forum (Humanities and Social Sciences Edition)*, 8, 177-182.
- Zhang, Y. (2017). *Language Bullying Is the Main Form of Bullying Published in China Campus Bullying Survey Report*.
<http://news.cctv.com/2017/05/21/ARTIsQypVqKAztCSF68tkT8u170521.shtml>
- Zhao, J. (2005). *Zhang Xiaogang v. Qingdao Commercial Secondary Professional College for Personal Compensation Case*.
http://pkulaw.cn/case_es/payz_1970324837154140.html?match=Exact
- Zhou, J., & Feng, S. (2017). Study on School Bullying in Beijing. In D. Yang, M. Yang, & S. Huang (Eds.), *Report on China's Educational Development* (pp. 215-229). Beijing: Social Science Literature Publishing House.
- Zhou, X. (2019). *Civil Judgment of the First Instance on the Dispute of Life Right, Health Right and Body Right between Wu Tingting and Qingsong Technical School and Ma Hui in Ningxia*.

RETRACTED