

# *The Establishment Conditions of the Separation of Accomplice*

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**Abstract:** In the process of joint crime, some accomplices voluntarily give up their behavior and strive to prevent the occurrence of crime, but still fail to prevent the occurrence of results. The issue of accountability has always been a difficult issue in criminal theory and practice. In China's criminal law, there is no concept of separation of accomplice relationships. For the difficulties caused by such accomplice cases in judicial practice, in practice, it is usually regarded as a completed crime, and separation is only a case of discretionary sentencing. The acceptance of accomplices' disengagement from relationships is low. This approach clearly violates the principle of adapting crime, responsibility, and punishment in China, and there are also drawbacks to varying degrees. Therefore, this article introduces the theory of separation of accomplice relations. Based on the investigation of the separation of accomplices at home and abroad, it is believed that different accomplices have different requirements for separation from accomplices due to their different division of labor and stages in accomplices.

## 1. The theoretical situation of the separation of accomplice relationship

### 1.1 Overview of the Separation of Extraterritorial Accomplice

Separation of accomplices is a criminal law theory first proposed by Japanese scholar Professor Otsuka. He believes that although some of the accomplices committed the suspension in good faith, other accomplices completed the crime, and it would be too harsh to treat the accomplices as principal offenders. Therefore, it should be considered as breaking away from the joint principal offender relationship until the act is suspended before the joint execution, and bearing joint and several liability with other joint offenders. "Although none of them can become suspended offenders as joint principal offenders, their serious efforts to suspend can be evaluated as disengagement." <sup>[1]</sup> The original intention is to make up for the shortcomings of the accomplice suspension system, and to solve the criminal liability problem when some actors have committed disengagement but have failed to prevent the occurrence of the accomplished result.

There are four representative theories of Japanese scholars on this issue: the lack of intention communication theory, the quasi obstacle attempt theory, the accomplice relationship separation theory, and the causal relationship interdiction theory. The first three theories have been gradually

abandoned by scholars due to their many shortcomings. The fourth theory, advocated by Japanese scholar Ryuno Hirano, is a general theory in Japan. <sup>[2]</sup> With the promotion of the theory of causal shielding, examining the physical and mental causal relationship between the cessation of accomplice and other accomplice outcomes has become the standard for judging whether the separation is tenable, and the causal shielding theory has emerged. According to this theory, only by interrupting the physical and psychological causal relationship between the original meritorious act and the result can an accomplice be identified as a disengagement act, and the person who discontinues the accomplice should not be held responsible for subsequent acts. <sup>[3]</sup>

German criminal law regards the state in which an accessory automatically disconnects himself from the whole, suspends his criminal behavior, and excludes his influence on other accomplices as suspension of crime. German criminal law distinguishes according to the different constituent elements before and after proceeding. "Before starting to commit a crime, if one of the accomplices voluntarily abandons the crime, eliminates the impact, and actively prevents the crime from being committed, it may be deemed to have been suspended and exempted from criminal responsibility"; "After proceeding, even if the act cannot be completed without the efforts of the offender to discontinue the act, or if the act is not discontinued, the act before the cessation will be performed, but if the perpetrator attempts to prevent the completion of the act, it may also establish a suspension of attempted complicity and be exempt from criminal responsibility." <sup>[4]</sup>

The expression of separation of accomplices in British and American criminal law is "with withdrawal", also known as withdrawal of accomplices. It refers to an accomplice who automatically leaves the whole, abandons the crime, and uses his own efforts to withdraw his contribution to the whole crime as much as possible. Withdrawal of an accomplice constitutes a positive defense to pursue the responsibility of its accomplice. In practice, the defendant may use its "withdrawal" as a substantive defense to commit a crime with other accomplices. <sup>[5]</sup> If they play a small role in a crime and act as an accessory, they may be exempted from liability due to their "withdrawal".

## 1.2 The Theory of Separation of Accomplice Relationship in China

According to Article 25 of the current Criminal Law of China, a joint crime refers to a joint intentional crime committed by two or more persons. "A negligent crime committed by two or more persons jointly shall not be regarded as a joint crime and punished;" Those who should bear criminal responsibility shall be punished separately according to the crimes they have committed.

In China, although the concept of the separation of accomplices is not clearly defined in the legislation, the academic community has discussed this theory to varying degrees. Many scholars have classified the separation of accomplices as an accomplice suspension category for research, while scholars who believe that it has independent research value and conducts separate research have different definitions of it. Some scholars in Taiwan have defined the separation of accomplices as the withdrawal of some accomplices from the accomplice relationship based on inner repentance after the execution of the joint crime but before the accomplishment. <sup>[6]</sup> Professor Gan Tiangui limits the stage of disengagement from the accomplice relationship from the beginning of the crime to the occurrence of the accomplished result. It can be seen that once the accomplice who intends to withdraw from the accomplice relationship and makes positive efforts has produced the accomplished result, it is difficult to identify its disengagement behavior. Breaking away from the accomplice relationship refers to the fact that in a joint crime, some perpetrators must voluntarily give up their criminal intent, sever their relationship with previous accomplices, and be recognized by other accomplices on specific occasions. In addition, some accomplices must make sincere efforts to prevent other accomplices from continuing to commit crimes or avoid damaging consequences. <sup>[7]</sup> Professor Zhang Mingkai did not explicitly limit the separation of accomplices to a certain stage, but

for its establishment requirements, it is also required to cut the connection with previous accomplices from the perspective of causality, and ultimately achieve the effect of preventing harmful consequences.

Another scholar in the criminal law field of our country has pointed out that the separation of the accomplice relationship should be that some of the accomplices voluntarily give up their intention to continue to commit the crime before the person directly committing the crime proceeds, and objectively implement the separation behavior, thereby eliminating responsibility for the subsequent criminal acts committed by other accomplices.<sup>[8]</sup> The scholar has stricter restrictions on the separation of accomplices, believing that the stage of separation of accomplices can only be before the person directly committing the criminal act starts, otherwise, after starting, the already formed accomplice relationship between the various actors in the accomplice can no longer be lifted. There are also scholars in China who believe that the separation of the accomplice relationship is closely related to the concept of cessation of accomplice, which can be understood as a situation in which some actors automatically stop committing a crime and cut off the causal relationship between their own actions and the results produced by other accomplices in a joint crime.<sup>[9]</sup>

Scholars have different viewpoints, but China has not yet formed a unified consensus on this, which needs to be further explored.

### **1.3 Thoughts on the Theory of Separation of Accomplice Relationship in China**

Through the research of domestic and foreign scholars on the separation of accomplice relationships, the author agrees with the argument that the separation occurs after the establishment of the accomplice relationship and before the accomplishment of the criminal result, but there are still differences for special situations. First, when the perpetrator no longer has the possibility of terminating the act and the possibility of the occurrence of the result after the crime is committed, even if the perpetrator of the joint crime makes efforts to prevent the occurrence of the result, it should not be directly recognized as the separation of the accomplice relationship. Secondly, the separation of accomplices may not be established after the completion of the crime. In some cases, there is still a distance between the completion of the criminal act and the accomplishment of the result. The determination that the perpetrator's prevention of the accomplishment of the result at this stage constitutes a separation cannot be ignored. Secondly, the author believes that the subjective will of the perpetrator to constitute an accomplice relationship is not a necessary and sufficient condition for identification, nor is it necessary to examine whether the perpetrator has suddenly repented. In some cases, if the perpetrator fails to "attend the appointment" due to objective reasons, causing other accomplices to believe that they have disengaged, eliminating their own contribution to the outcome, it can also be considered disengagement.

At this point, this article interprets the separation of accomplices as follows: After the establishment of the accomplice relationship, before the completion of the crime, some of the perpetrators give up the joint crime, and other accomplices receive their separation intention. By trying to eliminate the effect of their own behavior on the outcome, the perpetrators impede other principal offenders from continuing to commit the crime or avoid harmful consequences, which is considered a deviation from the joint crime relationship, It should not bear the same criminal responsibility as other accomplices who deviate from it and lead to the occurrence of criminal consequences. In order to facilitate research and reasoning, the term "principal offender" in this article should be understood in a broad sense, including all perpetrators of the crime, unless otherwise specified.

## 2. Current judicial situation in China

The case selected by the author is from the "China Judicial Documents Network". Based on the search for joint crimes, keywords such as "disengagement", "attempted", "suspension", "accomplished", and "withdrawal" have been added. So far, a total of 179 judicial documents have been obtained. Including 27 cases of determination of separation, of which 1 is not an accomplice relationship separation issue, and 4 are the original first instance decisions of the second instance judges. 5 suspended cases; 33 attempted cases; 104 cases of withdrawal; 10 completed cases. After sorting out, among the 22 cases of "disengagement+joint crime", 9 cases of assisted offender disengagement, accounting for 40.9%, and 13 cases of principal offender disengagement, accounting for 59.1%. There have been no cases of instigator disengagement from joint crime. Although judges rarely make the determination of joint crime separation, based on their facts and handling standards, the above cases can be divided into this category.

### 2.1 Suspension of treatment as a joint principal offender

Such cases recognize the discontinuation of the perpetrator constituting a joint principal offender, but have not been analyzed from the perspective of joint crime separation, which is suspected of confusing the discontinuation of joint crime and the separation of joint crime.<sup>[10]</sup> In judicial practice, the criteria for determining the suspension of an accomplice are as follows: "The suspension of a crime committed by a certain accomplice in a joint crime requires him to withdraw from the joint crime, stop the criminal act he has committed, and at the same time prevent other accomplices from continuing to commit the crime or effectively prevent the occurrence of criminal consequences." This is too harsh, and very few people actually make this determination in practice.

For example, in the "Li Qiushi Huang Jin Fraud" case in 2019, it can typically reflect the attitude towards the suspension of accomplices in China's judicial practice. The nine people, led by Li Qiushi, planned to collaborate to implement the fraud of selling tea girls. They have a clear division of labor. They use the purchased WeChat to impersonate a lovelorn beauty, use script techniques, send WeChat voice chat, and interact with the victim to gain the trust of the victim. Afterwards, they gradually fabricate the story to defraud unspecified victims. According to audit, from the end of October 2018 to January 10, 2019, the illegal income of the criminal gang was 288524.86 yuan. On November 20, 2018, Pang Lijing left the fraud gang. On January 10, 2019, the defendants Huang Renzhi, Huang Jin, and Li Changjie left the fraud studio. The remaining five people: Li Qiushi, Qin Jingmei, Mo Qingyuan, Xie Jingyi, and Yang Changjin continue to commit fraud in the name of a tea seller.

The final judgment results of the second instance are shown in Table 1:

Table 1: Li Qiushi and Huang Jin's Criminal Ruling Results of the Second Instance of Fraud.

Criminal Ruling Results of the Second Instance of Fraud by Li and Huang			
Defendant	Crime	Term of imprisonment	Additional penalty
Mo QingYuan	Fraud	7 years	Penalty of RMB 100000
Li Qiushi	Fraud	6 years and 6 months	Penalty of RMB 90000
Huang Renzhi	Fraud	5 years	Penalty of RMB 70000
Yang Changjin	Fraud	4 years and 6 months	Penalty of RMB 40000
Xie Jingyi	Fraud	4 years	Penalty of RMB 35000
Li Changjie	Fraud	4 years	Penalty of RMB 25000
Huang Jin	Fraud	4 years	Penalty of RMB 20000
Tan Jingmei	Fraud	2 years	Penalty of RMB 15000
Pang Lijing	Fraud	1 year and 6 months	Penalty of RMB 10000

As for the defense reasons proposed by the appellants Li Changjie and Huang Jin, "They were first and incidental offenders and left the criminal gang in advance", the Intermediate People's Court of Zhengzhou City, Henan Province, held that whether leaving the criminal gang in advance was a suspension of crime. In a joint crime, the suspension of a crime committed by a joint offender requires him/herself to withdraw from the joint crime and stop the criminal act committed by him/herself,

while preventing other joint offenders from continuing to commit the crime or effectively preventing the occurrence of criminal consequences.<sup>[11]</sup> Although Li Changjie and Huang Jin left the fraud gang, they did not use their own behavior to prevent other joint offenders from continuing to commit crimes, nor did they effectively prevent the occurrence of overall joint crimes. This behavior cannot be considered a suspension of crime.

From the court's determination, it can be concluded that due to the low degree of theoretical and judicial acceptance of the separation of accomplices in China, in practice, the criteria that constitute the suspension of accomplices are often used to determine. The strict standard of criminal law itself for the suspension of an accomplice further affects the possibility of such accomplices' "exculpation and mitigation of responsibility." For perpetrators like Li Changjie and Huang Jin who have the intention to suspend a crime but are unable to meet the objective requirements of the suspension of a crime, it is necessary to introduce the theory of separation of accomplice relations.

## **2.2 Disposition as Accomplished Joint Principal Offender**

In such cases, the perpetrator neither constitutes a disengagement from the accomplice relationship nor constitutes a suspension of the accomplice. In the case of Liu Lanxin and Song Shikai counterfeiting registered trademarks, Liu Lanxin raised the following defenses: (1) She played a small role in the joint crime and was an accessory; (2) "During his return to his hometown, he did not participate in a joint crime, and there were circumstances of suspension;"; (3) Active confession and punishment involves voluntary surrender, and the punishment should be mitigated. After a trial, the court found that Liu Lanxin had returned to her hometown halfway, but she subjectively did not give up the execution of the crime. She requested Song Shikai to take over the water station on her behalf, neither preventing the accomplice from continuing to commit the crime nor preventing the occurrence of the criminal consequences. Therefore, she should bear full criminal responsibility for the joint crime. This treatment is more rigorous.<sup>[12]</sup>

## **2.3 Treat as an accessory**

The perpetrators of joint crimes are divided into principal offenders, accomplices, and coerced accomplices according to their role. The identification of accessory status is an affirmation that it is divorced from the overall criminal behavior, and the perpetrator will also receive appropriate lenient punishment, which is widely used in judicial practice. For example, in the case of "Deng and Ji falsely issuing VAT invoices", the court of first instance held that Deng introduced a mining company from Yunnan to falsely issue VAT invoices to a trading company from Yunnan, and sought benefits from the defendant Ji and his defenders' claim of "separation from accomplices", The amount of tax falsely invoiced is huge, and their actions have violated the national criminal law, constituting the crime of falsely invoicing special value-added tax invoices, and should be punished according to law. This case is a joint intentional crime. The defendants, Ji and Deng, were introduced as auxiliary accomplices in the joint crime, and should be given a lighter, mitigated, or exempted punishment according to law. The defendant Ji Moumou truthfully confesses the facts of the crime after arriving at the case, and may be given a lighter punishment according to law.<sup>[13]</sup> This approach considers the separation of accomplices into the circumstances of the accomplice, and the separation of accomplices does not have substantive recognition.

## **2.4 Dealing with separation from the relationship as an accomplice**

Such cases meet the general requirements of the theory of separation of complicity when identified. The time when the perpetrator stops committing a criminal act is between the establishment of the

complicity relationship and the completion of the crime, and the intention to abandon the crime is conveyed to other principal offenders; through its own efforts, it cuts off the impact on the accomplished outcome. For example, in the "Xiao Dongliang, Lin Huocai, and other fraud cases", after the defendant Liao Yicong was arrested, there was no possibility of continuing to commit a joint crime. It was impossible to know whether other principal criminals continued to commit fraud, when and where, and how much the fraud was committed. Objectively, it was a passive disengagement from the joint crime. Accordingly, the defendant Liao Yicong does not have to bear criminal responsibility for the two fraud acts that Xiao Dongliang and others continued to commit after April 10, 2014. The determination of the defendant's separation from accomplice in this case does not really consider the time state of his separation, whether he has a separation act, whether his intention is known to other principal offenders, whether he is trying to prevent other principal offenders from continuing to commit a crime or avoiding the occurrence of criminal consequences, and other issues. Therefore, it is difficult to have universal applicability. [14]

Table 2 is an overview of China's judicial cases after positioning the 22 key words "separation of accomplice relationships". In summary, it can be seen that China's judicial practice still has a low level of acceptance of separation of accomplice relationships.

Table 2: Integration of the accomplice relationship away from the case in China Judgments Online

Number	Case	Focus of controversy	Division of status	Judgment results
1	Criminal Judgment of First Instance on Crime of Fraud by Xiao and Lin	Can Liao Yicong Departure from Joint Crime	assistant	break off relations
2	Criminal Judgment on the Crime of Illegal Acquisition of Computer Information System Data by Ran and Others	Can Zhu Jie Departure from Joint Crime	principal offender	break off relations
3	Criminal Judgment of the First Instance on the Crime of Fraud by Yang Xue, Luo Runyu, and Chen Jiaxin	Can Yang Xue Departure from Joint Crime	assistant	Not out of relationship
4	Criminal judgment of Ouyang Kai and Yu Chunyang for organizing prostitution of the first instance	Can Ou Yangkai Departure from Joint Crime	principal offender	Not out of relationship
5	Criminal judgment of the second trial of Huang Zhaoping and Huang Weiqiang for transporting drugs	Can Huang Zhaoping and Huang Wei qiang Departure from Joint Crime	principal offender	Not out of relationship
6	Criminal Judgment of First Instance on the Crime of Opening a Casino by Chi You'an	Can Chi Youan Departure from Joint Crime	principal offender	Not out of relationship
7	Criminal Judgment of First Instance on the Crime of Falsifying VAT Invoices by Deng and Ji	Can Ji Departure from Joint Crime	assistant	Not out of relationship
8	Criminal Ruling of the Second Instance on the Crime of Fraud by Yang, He, Jiang, etc	Can Jiang Yonghong Departure from Joint Crime	assistant	Not out of relationship
9	Criminal Ruling of Second Instance on the Crime of Fraud by Mao Dong and Li Nan	Can Mao Dong Departure from Joint Crime	assistant	Not out of relationship
10	Criminal Ruling of Second Instance on the Crime of Illegal Absorption of Public Deposits by Wu Jianhong	Can Wu Jianhong Departure from Joint Crime	principal offender	Not out of relationship
11	Criminal Judgment of First Instance for the Defendant Ding and Others for Crimes of Fraud and Theft	Can Shao Departure from Joint Crime	assistant	Not out of relationship
12	Criminal Judgment of First Instance on Crime of Fraud by Luo Shenglei and Shi Bo	Can Quan Zhongzheng Departure from Joint Crime	assistant	Not out of relationship
13	Criminal Judgment of First Instance on the Crime of Excessive Cutting of Trees by Huang, Zeng, and Zou	Can Huang Fujin Departure from Joint Crime	assistant	Not out of relationship
14	Criminal Judgment for Fraud in the First Instance by Zhou Xiang and Yang Kaijin	Can Zhou Xiang Departure from Joint Crime	principal offender	Not out of relationship
15	Criminal Judgment of First Instance on the Crime of Illegal Absorption of Public Deposits by Gan, Deng, Chen, etc	Can Zhao Ran Departure from Joint Crime	principal offender	Not out of relationship
16	Criminal Judgment for Fraud in the First Instance by Li and Pan	Can Sheng Shanwen Departure from Joint Crime	assistant	Not out of relationship
17	Criminal judgments of the first instance by Qiu Ling, Lu Anqi, and others	Can Qiu, Zhao and Chen Departure from Joint Crime	principal offender	break off relations
18	Criminal Judgment of the Second Instance of Wang Rongli, Zhou Ju, and Others for Crimes of Fraud	Can Wang, Zhou Departure from Joint Crime	principal offender	Not out of relationship
19	Criminal Ruling of Second Instance on Credit Card Fraud by Yu and Shao	Can Yu Xuefei Departure from Joint Crime	principal offender	Not out of relationship
20	Criminal Judgment of Second Instance on Crime of Fraud by Chen Yihao and Wu Dienchao	Can Chen, Wu and Wang Departure from Joint Crime	principal offender	Not out of relationship
21	Criminal Ruling of the Second Instance on the Crime of Fraud by Zeng Yinsheng and Yang Linchang	Can Yang Lichang Departure from Joint Crime	principal offender	Not out of relationship
22	Criminal ruling of second instance on Crime of making, reproducing, publishing, selling and disseminating obscene materials for profit by Fu and Shen	Can Fu Yebao Departure from Joint Crime	principal offender	Not out of relationship

### 3. On the Applicable Defects of the Separation of Accomplice in China

The author believes that in judicial practice, there are the following problems in the specific implementation of the standard for determining the separation of accomplice relations:

First, the principle of distinction is difficult to fully embody. "A person with a firm criminal intent and a person who suddenly repents and gives up committing a crime and strives to prevent the consequences from occurring are quite different in terms of social harmfulness. However, the current low acceptance of the separation of accomplices in China's judicial practice has led to a convergence of convictions between the two."

Secondly, it is difficult to achieve the principle of adapting crime to punishment. In practice, the attitude towards the perpetrators who break away from the accomplice relationship in joint crime cases is that they can be given a lighter punishment at their discretion, which to a certain extent increases the uncertainty of sentencing, and it is inevitable that the punishment does not match the crime.

Thirdly, it is difficult to achieve subjective and objective consistency. When determining a crime, it is necessary to consider both the subjective and objective aspects of the perpetrator. The existing general theory focuses on the objective aspects of joint crime, but fails to make an objective and fair evaluation of the subjective efforts of the perpetrator to disengage from his intention.

Fourth, in judicial practice, the distinction between joint crimes remains mostly from the

perspective of principal and accessory offenders, which is worth improving. Because the subjective evaluation from the perspective of function is too strong, the judge's free evaluation of evidence plays a significant role. The author believes that it should be distinguished according to the division of labor of joint crime, namely, instigator, helper, and principal offender.

Fifth, in judicial practice, the criteria and boundaries for determining the separation and suspension of accomplices are vague, and there are no clear provisions in the law. Judges often consider and evaluate them from a legal perspective. And there is a tendency to subjectively equate the separation of the accomplice relationship with the determination of the cessation of accomplice.

To sum up, the study of the separation of accomplices has multiple meanings, and the introduction of this theory into practice is also conducive to encouraging the perpetrator to stray and return to a new path.

#### **4. Typological Application of the Separation of Accomplice in China**

According to our country's discussion on the nature of accomplice, we generally accept the theory of joint conduct as a better choice to understand the joint principal offender. The separation of the accomplice relationship can be understood as the separation behavior leading to the "dissolution of the joint behavior relationship". The general theory adopts the criteria of combining subjective and objective judgment with objective judgment.

In practice, it is easier to identify objective standards through the causal cutting theory. Scholars hold different views on how to judge whether causal links are severed. Professor Yasuhiro Maeda, a Japanese scholar, believes that the establishment of the accomplice relationship stems from two causal links. On the one hand, it is the mutual utilization relationship in the physical aspect, and on the other hand, it is the reinforcement connection from the psychological aspect. Therefore, only when these two causal connections are cut off can they be separated from the accomplice relationship. British scholars Alan Reed and Michael Bohlander stated in "Partitioning in Crime Domestic and Comparative Perspectives": "Exit must be clear and timely."<sup>[15]</sup>

In *Otwe*, the Court of Appeal affirmed this and added that an effective withdrawal must be "genuine" and "promptly notified to the other party." It is not enough for the D side to simply change its mind or simply repent.<sup>[16]</sup> "To benefit from the withdrawal request, D must indicate that he has clearly communicated his withdrawal, either to the principal offender, or, if there are several principal offenders, to all of them, or possibly to law enforcement agencies."<sup>[17]</sup> It can also be seen that there is a duality in the criteria for determining "withdrawal" (separation of accomplice relations).

Below, we will conduct an in-depth analysis of the elements of separation from the establishment of an accomplice relationship through the division of different stages and forms of crime.

#### **4.1 Crime preparation stage**

##### **4.1.1 Determination of the separation of the joint principal offender from the accomplice relationship**

The implementation of each criminal act needs to begin with criminal preparation. At this stage, the common perpetrators of the crime are all doing certain preparatory actions, the main purpose of which is to ensure the smooth implementation of subsequent criminal acts. Therefore, each accomplice plays a relatively small role in the entire crime. The author believes that at this stage, as long as the accomplice indicates, explicitly or implicitly, that he or she is separated from the accomplice as a whole, and objectively stops the preparatory activities for the crime, it can be determined that the accomplice has severed the causal relationship, and that the subsequent perpetration and the serious harmful consequences caused by it should not be subject to subsequent

criminal responsibility.

Unlike the above situation, the impact of preventing and regulating crimes against the leading person who plays an organizational planning role in group crime cannot be completely eliminated due to his own withdrawal, so the definition of the disengagement behavior of the leading person will be stricter. That is, not only to stop their own behavior, but also to effectively persuade other criminal behaviors to prevent the occurrence of harmful consequences.

#### 4.1.2 Determination of the instigator's separation from the accomplice relationship

The instigator in criminal law refers to intentionally instigating and causing others to commit an illegal act that meets the constitutive requirements, and its establishment requirements have two layers. Causing the principal offender to commit an illegal act is a prerequisite for the establishment of an instigator; causing the principal offender to produce illegal results is the accomplished condition for the instigator<sup>[18]</sup>. The methods of instigation are diverse, including not only verbal instigation, but also verbal and behavioral instigation. The core judgment basis is that the instigator causes a person without criminal intent to produce a criminal intent and implement it.

There are also two types of solicitation, successful solicitation and unsuccessful solicitation.<sup>[19]</sup> "Unsuccessful instigation" is also mainly divided into four situations as shown in Figure 1:

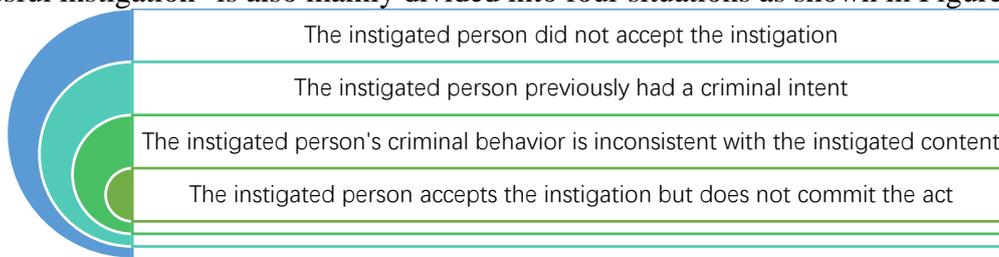


Figure 1: Unsuccessful instigation classification situations

The third situation is that the criminal act of the instigated person is inconsistent with the content of the instigation and can be subdivided into: (1) another person has an intention to commit a misdemeanor and instigates another person to commit a felony; (2) Others have the intention of committing a basic crime and instigate others to commit an aggravated crime The other person has the intention of committing a basic crime and instigates the other person to commit an aggravated crime; (3) Others have the intention to commit a felony and instigate others to commit a misdemeanor of the same nature; (4)"Others have the intention to commit a felony, and there are five situations where instigating others to commit misdemeanors with different natures. The specific identification and handling results of instigators in each situation are different."

"When the instigated person has not accepted the instigation at all or has accepted but has not committed any criminal act, his or her failure to commit a punishable act will not be regulated by the penalty. However, when the instigated person has previously committed a crime, the criminal act he or she committed does not have a causal relationship with the instigator's intentional instigation, nor will it be defined as a joint crime, nor will it establish an accomplice relationship."<sup>[20]</sup>

In the third case, in combination with judicial practice, the author believes that the principle of "giving more weight to others, giving less weight to others, having the same sex leads to none, and having different sex leads to differences" should be adopted in the determination. The specific explanation is as follows: 1) If another person has the intention to commit a misdemeanor and instigates another person to commit a felony, the instigator constitutes an instigator of the felony; 2) "If another person has the intention of committing a basic crime and instigates another person to commit an aggravated crime, the instigator constitutes an instigator of the aggravated crime;" "If another person has the intention of committing a basic offence and instigates another person to

commit an aggravated crime, the instigator constitutes an instigator of the aggravated crime;" This is "heavy lifting". 3) "If another person has the intention to commit a felony and instigates another person to commit a misdemeanor of the same nature, the instigator does not constitute an instigator;" "If another person has the intention to commit a felony and instigates another person to commit a misdemeanor of a different nature, the instigator constitutes an instigator to change the misdemeanor." This is "light to light, same in nature leads to nothing, and different in nature leads to difference". Therefore, the unsuccessful instigation in the above four situations does not deeply explore the necessity of the separation of the accomplice relationship. The object of our study should be the successful situation of instigation, that is, the instigated person has committed the criminal act instigated by the instigator.

In the case of successful instigation, further subdivisions should be made based on the criminal stage of the perpetrator. When the instigated person has not started to commit a criminal act, the instigator needs to withdraw his/her instigation and clearly convey the withdrawal intention to the instigated person, while also persuading the instigated person to give up his/her criminal intent. "If the instigator has committed all of the above-mentioned acts and still committed a crime, the instigator shall not bear criminal responsibility for subsequent criminal acts and the consequences thereof." The subsequent analysis of the crime committed after the initiation will be conducted.

#### **4.1.3 Determination of the Helper's Separation from the Relationship of Accomplice**

It can be made clear that the aiding offender has always been an accessory. In the current criminal law, the sentencing of aiding offenders is reduced or mitigated, taking into account that their role in the overall crime is not very large and their social harm is relatively small.

There are also two conditions for the establishment of an accomplice: one is to promote the principal offender to create illegal facts, which is a condition for the establishment of an accomplice. Specifically, it can be subdivided into two elements. One element is that the act of assistance itself has a certain usefulness, that is, it has a certain promoting effect on the principal offender's criminal act; another important element is that the helping act provided by the aiding offender can effectively act on the illegal act of the principal offender. The second is to promote the principal offender to produce illegal results, which is the accomplished condition for assisting the offender. From the perspective of the way of helping behavior, helping behavior can be divided into physical assistance and psychological assistance. Physical helpers are also tangible, mainly providing some external material conditions needed to commit a crime. In addition to providing tools for processing, it also includes providing technical assistance. The so-called intangible psychological assistance refers to the psychological support provided to the principal offender for the criminal helper, which strengthens his criminal intent and increases the degree of the principal offender's infringement of legal interests, such as cheering on the principal offender and keeping an eye on him.

Because the current discussion is about the separation of aiding criminals in the preparatory stage of a crime, the author's view is that providing tangible and physical assistance can be considered withdrawal if the aiding offender can withdraw the assistance provided by himself and clearly indicate to the principal offender of the joint crime his intention to withdraw from helping to commit the crime. As for providing intangible psychological assistance, the author believes that as long as the helper clearly expresses his intention to depart from the accomplice relationship, the separation of the accomplice relationship is established.

#### **4.2 After the crime has been committed, before the crime has been committed**

In joint crime, after the perpetrator of the joint crime starts to commit the crime, that is, the crime has entered the implementation stage. Considering that the criminal behavior has shown a trend of

forward development and is difficult to reverse, the author believes that there should be differences in the identification criteria for the separation of the three types of subjects from the accomplice.

#### **4.2.1 Determination of the instigator's separation from the accomplice relationship**

If the instigated person has already started to commit a crime, in this case, it is still far from enough for the instigator to simply revoke his or her instigation, and it is also necessary to realistically sever the causal relationship between his or her instigated behavior and the instigated person's criminal behavior. "Because the instigator is the most direct" culprit "who causes the instigated person to move from no criminal intent to intentional intent, and plays a significant guiding role in the instigated person's criminal behavior, there are higher requirements for the conditions for the instigator's disengagement at this time." In cutting off the causal link between the instigator's instigation behavior and the instigated person's criminal behavior, more attention is still paid to cutting off the psychological causal link, but at the same time, there must be practical resistance and rescue actions.

Therefore, the specific requirements should be: After the instigated person embarks on committing a crime, the instigator's explicit withdrawal of his or her instigation is only the first step, which is still far from enough for the separation of the accomplice relationship. It is also necessary to make his or her own efforts to make the instigated person abandon the criminal intent that has already arisen. When persuasion is ineffective in practice, the instigator needs to take further effective measures to prevent the instigated person from committing a criminal act or the occurrence of a criminal result, such as promptly notifying the victim, reporting the police, etc. This is the true causal separation.

#### **4.2.2 Determination of the principal offender's separation from the accomplice relationship**

After starting to commit a crime, the behavior of each co perpetrator has begun to form a whole, and in the course of committing a crime, it can be considered as a cessation of crime if it voluntarily abandons the crime or automatically and effectively prevents the consequences of the crime. Therefore, the situation where the principal offender separates from the accomplice relationship we are discussing here is where there is more than one principal offender. In addition to clearly indicating that they have renounced their criminal intent, this part of the principal offender must also strive to sever the physical and psychological links between their previous criminal acts and the subsequent criminal acts and consequences of other joint offenders. If some of the principal offenders have had some criminal consequences before taking the above measures, and there are other criminal consequences after taking the measures, then the principal offender only needs to be responsible for his or her behavior before leaving, and should also be recognized as leaving the accomplice relationship.

#### **4.2.3 Determination of the Helper's Separation from the Relationship of Accomplice**

Because the current discussion is about the separation of the aiding offender after the implementation of the crime, the author believes that the determination condition is no longer just for the aiding offender to withdraw the assistance provided by himself and indicate his intention to withdraw from the joint crime to other accomplices, but also to make reasonable remedies and elimination measures for the assistance that has previously been applied to other accomplices. For example, if Party A provides Party B with the location map for stealing the keys and safes of Party C's house, and now that Party B has entered the implementation stage of the crime through Party A's keys, if Party A wants to break away from the accomplice relationship, it should, on the basis of indicating to Party B that it intends to withdraw from the joint crime and refusing to continue watching for it, damage or steal the location map of the safes, or promptly notify Party C or call the police. At this point, it should be determined that Party A is separated from the accomplice relationship, but if

Party B is still accomplished after that, the conviction and sentencing of Party A will be a different matter. The author believes that it is possible to weigh and consider the degree of difficulty that other accomplices can still achieve without the help of an accomplice after their separation from the accomplice. If it is difficult for other accomplices to achieve without the help of the accomplice, it can be considered that the separation effect of the accomplice is strong, and the court should give a lighter or mitigated punishment, or even exempt from punishment, when convicted and sentenced; "If, without the help of this helper, other accomplices are easily accomplished, and their disengagement has not played a substantive role, it can be considered that the helper's disengagement is weak, and the court may decide on a lighter punishment for the conviction and sentencing at this time."

In general, the determination of an accomplice's separation from the accomplice relationship is more lenient than that of an instigator or perpetrator. It mainly depends on whether they have made sincere efforts to withdraw their tangible or intangible assistance, and make reasonable remedies and elimination measures for their previous helpful effects. This is in line with the provisions of China's criminal law on lighter, mitigated, or exempted punishment for aiding offenders.

### 4.3 After the completion of the crime, before the completion of the crime

After a criminal act is committed, it does not immediately constitute a crime. One is that after the implementation of the act, the harmful results immediately appear, that is, the act is accomplished after the implementation. The other is that after the completion of the criminal act, the harmful result does not appear and does not meet the standard of accomplishment. For example, when A and B poison C soup with the intention of poisoning C, and after starting to poison C, C drinks the soup, which is the end of the crime. However, there is no situation where C poisoning and death can occur, and there is no immediate accomplishment. Such a criminal act is subjective and harmful to society. The accomplice not only completes the criminal act, but also produces a great driving force that leads to the occurrence of criminal results. It is extremely difficult to reverse the trend of the occurrence of criminal results. Therefore, the author believes that recognizing the establishment of the separation of accomplices at this stage is the most difficult and requires the sincere efforts of the perpetrator.

At this stage, it is no longer necessary to explore and study the differences between joint offenders with different division of labor. Some joint offenders who intend to break away from the accomplice relationship not only need to have a subjective sense of regret, but also need to take a series of measures objectively to prevent the occurrence of results, and must also sever the causal relationship. For example, in the case listed above, if Party A wants to break away from the accomplice relationship, it not only requires a subjective expression of repentance, but also requires timely assistance to Party C and ultimately reversing the occurrence of the death of Party C. The reason why the determination requirements for the separation of accomplices at this stage are so strict is to prevent those who have committed accomplices from falsely committing rescue actions even though they know that the trend of accomplishment after their execution is difficult to reverse, and use the determination of "separation of accomplices" to exchange for a lighter sentence for themselves, thereby impeding the full respect and protection of the lives and health of the victims, It is also difficult to implement the principle of "separating accomplice relationships requires sincere efforts", thereby affecting social stability and development.

## 5. Residual language

From the moment the perpetrator joins an accomplice group, retreating is itself an extremely difficult task. Therefore, when the perpetrator in an accomplice relationship gives up continuing to commit a crime and makes sincere efforts to prevent others or the occurrence of consequences, the

criminal law should substantially encourage and affirm his actions from the perspective of unblocking his way out of the crime and mitigating punishment. However, the acceptance of the theory of separation of accomplices does not mean ignoring the residual impact that the offender has had on the infringement of legal interests, and criminal law cannot compromise theoretically and logically in pursuit of no punishment or mitigated punishment. [21]

Regarding the separation of accomplices, the author has studied the judicial cases of joint crimes in China over the years and concluded that the acceptance of separation of accomplices in practice is still very low. On this basis, through comparative law research at home and abroad, a preliminary exploration has been made to identify the separation of accomplices suitable for the development of localization in China. In summary, the author advocates adopting a loose standard to construct the theory of accomplice separation, gradually improving China's acceptance and recognition of accomplice separation, and ultimately achieving the purpose of embodying humanistic care through accomplice separation, achieving social stability and forward development.

## References

- [1] Zhong Ren. *Introduction to Criminal Law (General)*. Beijing: China Renmin University Press, 2009:341
- [2] Chen Hongbing. *Reflection on the theory of accomplice*: People's Court Press, 2009:196
- [3] Liu Yanhong. *The Criterion for Determining the Separation of Accomplices: A Normative Causal Interception Theory* [J]. *Chinese and Foreign Law*, 2013,4:755-761
- [4] Lu Ling. *The Nature and Effects of Breaking away from the Accomplice Relationship: Based on the Development of Relevant Approaches in Germany, Japan, the United States, and Britain* [J]. *Contemporary Law*, 2016,30 (05): 98-108
- [5] Wayne R. Lafave, Austin W. Scott, *Criminal Law*, West Publishing Co., 1986, p.559
- [6] See Gan Tianguai: "Important Concepts of Criminal Law", Ruixing Books Co., Ltd., 1996 edition, p. 162
- [7] See Zhang Mingkai: "Outline of Foreign Criminal Law" (2nd Edition), Tsinghua University Press, 2007 edition, page 333
- [8] See Liu Lingmei: "On the Disengagement of the Accomplice Relationship", published in *Journal of Henan Provincial Institute of Political Science and Law Management Cadres*, Issue 2, 2003
- [9] See Shen Qi, "On the Disengagement of the Accomplice Relationship", published in *Journal of Heilongjiang Provincial Institute of Political Management Cadres*, Issue 5, 2004, p. 116
- [10] Li Guanyu. *The Chinese Experience of Separation of Joint Principal Offenders and Its Doctrinal Reflection* [J]. *Politics and Law*, 2021 (11): 116-134
- [11] See the Criminal Ruling of the Intermediate People's Court of Zhengzhou City, Henan Province (2020) Yu 01 Xing Zhong, No. 855
- [12] See Shanghai Third Intermediate People's Court (2017) Hu 03 Xing Zhong 36 Criminal Ruling.
- [13] See the Criminal Judgment of the People's Court of Anning City, Yunnan Province (2017) Yun 0181 Xing Chu No. 333
- [14] See the Criminal Judgment of Haicang District People's Court of Xiamen City, Fujian Province (2014) HYZ No. 528
- [15] O'flaherty et al. [2004] EWCA Crim 526
- [16] See for example, Croft [1944] 1KB 295 and *Becerra and Cooper* (1976) 62 Cr App R 212.
- [17] Reed A, Bohlander M. *Participation in crime: Domestic and comparative perspectives* [M]. Ashgate, 2013.
- [18] Fu Haoyun. *On the Determination of the Separation of Accomplice Relationship* [D]. China University of Political Science and Law, 2010
- [19] Wang Qingguo. *On the Determination of Separation of Accomplices* [D]. China Youth Institute of Political Science, 2009
- [20] See [Germany] Liszt: "German Criminal Law Textbook", translated by Xu Jiusheng, Law Press, 2006 edition, pp. 377-378
- [21] Yu Runzhi. *Criteria for the Separation of Joint Principal Offenders: A Functional Re analysis based on "Psychological Causality"* [J]. *Journal of Northeast University (Social Science Edition)*, 2021,23 (05): 88-97