

# *The Distinction between the Risk of Self-giving in Civil Law and the Crime of Negligence Causing Death in Criminal Law—Taking the Case of Shenyang West Canyon Rushing Slope Off-road as an Example*

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**Abstract:** In some cases, civil law and criminal law are not easy to distinguish the legal nature of voluntary risk-taking and negligent death. Although they have some common points, there are also obvious differences. Correct characterization is the basis of applicable law. On February 19, 2022, Wang's driving vehicle overturned unfortunately during the off-road rush, resulting in the injury of co-driver passenger Xu. When he was rushed to the hospital for rescue, Xu died unfortunately due to the ineffective rescue. This case occurred after the formal implementation of the "Civil Code of the People's Republic of China" (hereinafter referred to as the "Civil Code"). The "assumption of risk" rule that has always been a great voice in the law has also undergone multiple discussions by experts and scholars. Through this case, the article analyzes and explores the self-involvement risk in the 'Civil Code' and the crime of negligent death in the criminal law, and qualitatively distinguishes the behavior of the two through the constituent elements of the two.

## **1. Introduction**

Since the reform and opening up, sports has flourished in China and has gradually moved towards the ranks of sports powers. Mass sports and social sports have received more and more attention. Generally, the masses participate voluntarily in their spare time for the purpose of leisure, entertainment, social interaction and physical fitness. Most of them do not take high-level competitive events as the purpose of sports, with wide content and various forms<sup>[1]</sup>. Although the development of mass sports is mainly based on entertainment and fitness, due to the risk attributes of sports activities, injury accidents in the process of sports are still inevitable. The extensive development of sports has led to an increase in sports-induced damage, especially violent and confrontational sports activities, and infringement compensation lawsuits have occurred from time to time.

Before the introduction of the "Civil Code," China did not have a clear imputation for such civil cases<sup>[2]</sup>. Cases with different judgments in the same case have occurred in judicial practice: some courts use the principle of fault to determine liability ; some use the principle of fairness to share losses. In this case, some courts also cited the victim consent theory<sup>[3]</sup>. For the serious injury or

death of people in sports, the court will be more characterized as the crime of negligent injury or negligent death. For example, on July 22, 2013, Wan took members Luo, Hou and Zhou to Jiulang Mountain in Shifeng District of Zhuzhou City to carry out cross-country activities. When driving to the dangerous section, he rushed to the slope, which eventually led to the rollover<sup>[4]</sup>. Zhou, a passenger, was killed on the spot. The People's Court of Shifeng District, Zhuzhou City, Hunan Province, sentenced Wan to three years of imprisonment and five years of probation for the crime of causing death by negligence. Due to the lack of clear demarcation criteria between the assumption of risk in civil law and the crime of negligent death in criminal law, and the high similarity of their objective performance, it is difficult for the judicial organs to identify the nature of the case in practice.

The latest incident cited in the article-Shenyang West Canyon rollover accident. Sujiatun Branch of Shenyang Municipal Public Security Bureau received an alarm at 13:45 on February 19, 2022. An SUV overturned on the bank slope of the Hun River on the north side of Yangmengda Village, Shenshui Street, Sujiatun District, Shenyang City. According to a police investigation, at noon on February 19, 2022, Wang, a 26-year-old man from Haicheng City, Liaoning Province, overturned while driving a Liao CM5XXX off-road vehicle on the hillside of Yangmengda Village on the north side of the bank of the Hun River. Xu, a 34-year-old passenger from Shenyang, Liaoning Province, died on the way to the hospital. The nature of this case is similar to that of the cross-country case of Wanmou Zhuzhou City in 2013. The danger of breaking through the cross-country and other similar extreme sports is accompanied by the implementation of the risk-taking clause in the 'Civil Code'. Will its behavior be further recognized as a civil risk-taking behavior, or criminal negligence? This paper will analyze and explore the connotation, constitutive elements, specific identification, difference and legal consequences of the two through the case, so as to determine the nature of such acts.

## 2. Theoretical Analysis

The West Canyon rollover incident in Shenyang is worth exploring. Before the introduction of the "Civil Code," the court's behavior in such cases was mostly identified as the crime of negligent death, and the assumption of risk rules in the "Civil Code" also explained this behavior<sup>[5]</sup>. This case concerns the distinction between the crime of assumption of risk and the crime of negligent death. The following is to analyze the differences between the two from the legal definition of the crime of assumption of risk and negligence causing death.

### 2.1 The Connotation and Constitutive Requirements of Assumption of Risk

There is a legal proverb in Roman law, 'voluntary risk cannot claim damages', which means that if the actor puts himself at risk, he should bear the risk. Later, this idea was incorporated into the civil rules of case law and statute law<sup>[6]</sup>. In theory, explicit risk and implied risk are two types of risk-taking in civil law. The exemption agreement is expressed in written or oral form as an express risk, which is affected by the adjustment of contract law and belongs to the exemption agreement; implied risk requires the defendant to prove that the plaintiff knows and is willing to take this series of risks. If this risk is converted into actual harm, the defendant's reasonable behavior or slight negligence will not be considered. Article 1176 of China's Civil Code refers to the rule of implied assumption of risk in legislation. Article 1176 of the "Civil Code" stipulates that "if a person who voluntarily participates in a cultural and sports activity with a certain risk is harmed by the behavior of other participants, the victim may not request other participants to bear tort liability, except where the other participants have intentional or gross negligence in the occurrence of the damage."

This paper holds that if we want to correctly apply the rule of assumption of risk in daily judicial

adjudication, we should first clarify the constitutive elements of assumption of risk<sup>[7]</sup>. Only by determining the unified constitutive elements can we make the judgment reasonable and clear to the greatest extent. This paper will clarify the constitutive elements of assumption of risk through the provisions of Article 1176 of the Civil Code. First of all, only sports with social equivalence can apply the rule of assumption of risk, that is, potential risks are not prohibited by laws and regulations, nor denied by social public order and good customs, and such risks are usually recognized or unavoidable by the public. Because the premise that sports can apply the rule of assumption of risk is social equivalence<sup>[8]</sup>. Therefore, when the participants are engaged in a highly risky sports activity, which has exceeded the public's understanding of previous sports, they do not have social equivalence. Therefore, the consequences of damage cannot be exempted from liability for damages by applying the rule of assumption of risk; secondly, sports should have risk is the condition for the application of the rule of assumption of risk. Objectively speaking, the risks involved should be predictable, but whether they will eventually occur, when they will occur, and what consequences may be caused cannot be accurately and completely controlled, let alone ruled out. In addition, from the perspective of the public, completely risk-free sports may make sports less interesting<sup>[9]</sup>. For example, in baseball games in the United States, safety rules do not require all seats to be placed in a protective net, but leave some unprotected seats for fans to watch<sup>[10]</sup>. Although there may be a 'falling ball injury', catching a falling ball flying to the stands and storing it is one of the hopes of many fans. Therefore, no matter from what aspects, the assumption of risk rules should be applied to sports with certain risks ; thirdly, the voluntary participation of sports participants in sports activities is an attribute that should be possessed by the application of the rule of assumption of risk. The victim who has made a voluntary intention to bear the danger, out of the real will to participate in sports participants, and can not be forced by others ; finally, the behavior of other participants causing damage is not intentional or gross negligence, and intentional and gross negligence are not within the exemption scope of the assumption of risk rule.

## **2.2 The Connotation and Constitutive Elements of The Crime of Negligently Causing Death**

Article 233 of the Criminal Law stipulates that anyone who negligently causes death shall be sentenced to fixed-term imprisonment of not less than 3 years and not more than 7 years; if the circumstances are lighter, he shall be sentenced to fixed-term imprisonment of less than 3 years. The object infringed by the crime of negligently causing death, the act of negligently causing death is the objective aspect of the crime of negligently causing death, and the objective aspect of the crime of negligently causing death has only three elements that can be constituted, that is, objectively, the actual consequence must be to cause the death of others, and the act of causing the death of others must be carried out<sup>[11]</sup>. There must be a causal relationship between the negligent act of the infringer and the result of the death of the victim, that is, the death of the victim is caused by the act of the infringer ; its subject is a general subject, that is, a natural person with criminal responsibility and reaching the legal age of responsibility ; the subjective aspect is negligence, that is, the mental state of the actor's negligence of the damage results, including negligence of negligence and over-confidence.

## **2.3 The Boundary between the Crime of Causing Death by Negligence and the Crime of Self-initiated Risk**

In the cultural and sports activities with certain risks, if certain casualties are caused by sports competition, there are still some disputes in both the practical and theoretical circles. Therefore, it is necessary to combine the theory of the two rules and the nature of sports to clarify the applicable relationship between the two rules, so that they can play their due value in the settlement of mass

sports injury accident disputes. This paper will divide the two from three aspects: value orientation, applicable conditions and applicable results.

### 2.3.1 Value Orientation

The establishment of the rule of assumption of risk is mainly manifested as autonomy of will, that is, the victim agrees to the damage that may be caused on himself. From a legal point of view, the assumption of risk reflects legal individualism. The emergence of the rule of assumption of risk shows the recognition of citizens' freedom of will, and clarifies that citizens have the right to choose whether they are willing to take risks and the consequences caused by the risk of approaching their chosen behavior. Therefore, the value orientation of risk-taking is the worship of individualism, which is divided into two parts: private autonomy and self-responsibility. Private autonomy is to allow citizens to freely express their will and dispose of their own property. The voluntary participation of the parties in dangerous sports is the embodiment of private autonomy. The inherent requirement of private autonomy is that the parties choose to participate in the risky movement according to their own will, which is generally expressed as the consequences of their voluntary risk-taking<sup>[12]</sup>. The law and others should respect this choice, and others will have a reasonable trust based on his will. This trust should also be fully respected. Self-responsibility is not only a responsibility to others, but also a responsibility to oneself, which requires the actor to be responsible for the consequences of his own behavior. Everyone should be responsible for their own choices and lives. This is an inescapable responsibility, an inevitable extension of autonomy, and an inevitable result of individualism.

The crime of negligent death is a crime established by legislators based on the protection of the right to life of others, in order to prevent others from infringing on the right to life of others due to their own overconfidence or negligence. The fundamental purpose of establishing the crime of negligent death in China is to maintain social order and ensure social harmony and stability. Therefore, the value orientation of the crime of negligently causing death is to maintain social order. Order is located at the bottom of the value level of law, which is always accompanied by law and is inseparable from the realization of other values of law. It focuses more on the stability of society and the country, while the assumption of risk pays more attention to the subjective will of the parties.

### 2.3.2 Applicable Conditions

In terms of subjective conditions, assumption of risk is a kind of voluntary choice of a risky movement by the parties, and they can accept the generally foreseeable danger brought by this movement. The assumption of risk requires that the victim does not have intentional or gross negligence, so the assumption of risk can allow the victim to have general negligence. The crime of negligently causing death is a crime in which the right to life of others is infringed due to the victim's overconfidence or negligence.

In terms of objective conditions, first of all, both need to have actual damage. Secondly, in terms of causality, the causal relationship of self-assuming risk requires that the damage is caused by the inherent risk of the movement<sup>[13]</sup>. If the specific infringement behavior of the actor is the inherent risk of the activity, the causal relationship condition is considered to be met. The tort of the crime of causing death by negligence is caused by the improper behavior of the victim, and the result should also be borne by the victim.

### 2.3.3 Applicable Results

The applicable result of assumption of risk is to exempt the defendant from all liability to the

plaintiff. The application result of the secondary implied risk is to reduce the defendant's liability for damages to the plaintiff, while the application result of the main implied risk with real independence is to completely exempt the defendant from liability. The statutory sentence of the crime of negligent death is 3 years to 7 years of imprisonment; if the circumstances are lighter, he shall be sentenced to fixed-term imprisonment of less than 3 years. What violates the crime is that it endangers the authority of the state, bears the liability for compensation, and can be sued by the parties or the state. The results of the two are very different, the former is more inclined to protect the interests of the victim.

### **3. Analysis of the Application of the Crime of Assumption of Risk and Negligent Death in the Car Rollover Incident in Shenyang West Canyon**

How to achieve a balance between protecting citizens' rights and safeguarding freedom of behavior is one of the topics of legal research. In this case, both the victim and the victim volunteered to participate in the high-risk off-road activities. Breaking through the cross-country is a highly risky and challenging sports activity. Most of the participants have the spirit of tenacity, tenacity, challenge and pioneering, and feel endless happiness in the cross-country. However, the risk of breaking through the cross-country is very high<sup>[14]</sup>. It has high requirements for the driver's control, response and emergency response capabilities. A little carelessness will bring great danger.

In the car rollover incident in the West Canyon of Shenyang City, Wang and Xu were both voluntary participants in the ramp and cross-country. They should have foreseen the possible risks in the cross-country. Due to the high risk of ramp and cross-country, the foreseeable risk should also increase. Xu's vehicle failed to climb to the top in the process of rushing the slope, and overturned inadvertently, resulting in his death after being pushed out of the car. According to a number of witnesses, the driver's seat belt is not a big obstacle, and the suspected co-pilot's failure to wear a seat belt causes him to throw out of the car. The specific situation remains to be investigated by the police. Does this case apply to risk-taking or negligent death? The author believes that cross-country rushing is currently a state-allowed sport, which does not violate public order and good customs and has social equivalence. Xu volunteered to participate in the extreme sports of the slope cross-country, and Wang did not have intentional or gross negligence. His careless operation caused the rollover to be a risk that can be expected by the slope cross-country, and did not have intentional subjective conditions and gross negligence. Therefore, the author believes that the case should be a risk.

### **4. Conclusion**

How to determine the nature of this case is worthy of further study. There is still a long way to go for the determination of the boundary between the crime of self-risk and the crime of negligent death in civil law. Whether in theory or in practice, the in-depth exploration of the two has promoted the construction of China's socialist rule of law and is more conducive to judicial progress. The introduction of the assumption of risk rule provides a clear legal basis for the distribution of liability of civil subjects who suffer damage due to the behavior of others in voluntary participation in sports activities with certain risks. In order to make a real distinction in the application of the rules of civil penalty for sports adventure, it is impossible to understand and apply any legal provisions in the laws of its department as an isolated world. Only from the perspective of legislation and society, can we grasp the real meaning of civil legal relationship and criminal legal relationship, and ensure the correctness of the application of law, so as to construct a good legal system.

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