

# Martial Arts Chaos - a Jurisprudence Analysis of “Challenging to Fight”

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**Abstract:** Martial arts chaos - “challenging to fight” behavior under the boost from the media influences the image of the Chinese martial arts and there are many hidden dangers. The author finds deficiencies from the martial arts regulations, draw lessons from the death of British “duels” and defines the concept of “challenging to fight”, and makes the illegal possibility analysis of “challenging to fight” behavior in the aspect of civil, administrative and criminal illegal possibility. Furthermore, the author clears illegal basis of “challenging to fight” behavior, warns participants to practice martial arts in a civilized way and promotes the standardized development of Wushu activities.

## 1. Introduction

The Chapter 4 Article 26 of “The Management Measures of Cleaning UP Wushu Chaos and Regulating the Activities of the Games” says Violators of the law will be investigated for legal responsibility by judicial organs. Considering the restriction of martial arts chaos in legal level is relatively broad, and “challenging to fight” behavior is the most prominent problem, so we study it for reference and to promote the standardized development of public sports service in our country<sup>[1]</sup>.

## 2. The Current Situation of Martial Arts Chaos

The ten kinds of chaos listed in the second chapter of “The Management Measures of Cleaning UP Wushu Chaos and Regulating the Activities of the Games” have been punished in the industry, among which there are five articles apparently suspected of illegal: (2)... Making a private “Challenging to Fight”; (3) giving oneself titles such as “master”, to cheat, to deceive and to mislead the masses; (5) Deviating from the spirit of martial arts, making improper remarks, spreading rumors or obtaining money by means of false advertising, false publicity or malicious speculation; (7) Engaging in illegal acts such as fraud through martial arts competitions and activities; (9) Conducting martial arts and fighting competitions without protective gear, regardless of the event, gender, age or weight level, and the safety. The seventh article says if the activities engage in illegal acts apparently, it can be regulated according to the constituent elements of the crime of fraud in the Criminal Law. In recent years, among the martial arts chaos, “Xu, Lei, Ding and Ma incidents” are typical private “Challenging to Fight” cases, which has seriously affected the image of martial arts in the world. These cases involve (III), (V) and (IX) situations, so they will be analyzed as typical cases<sup>[2]</sup>.

## 3. The Definition of “Challenging to Fight”

In the mid-19th century, participants were afraid of the increased death rate in duels. Other factors finally made the British noble duels extinct, which involve the popularity of the consciousness of social morality in modern society, the opposition of the monarch and the restraint of the legislature, the increasing tolerance of the social political and religious environment, the strengthening of the gentlemanly manners of the upper society and the condemnation of violent acts by the public opinion<sup>[3]</sup>.

Challenging to fight is a fight between two people who have different views and agree to fight to solve the problem when communication fails to solve the problem. In ancient times, “challenging to fight” was the law of the jungle and violent thinking. “challenging to fight” is not fun, which not only makes the bottom line of civilization lower and stays away from civilization. The Chinese Wushu Association issued a statement on May 3, 2017, saying that Xu Xiaodong and Wei Lei's “fight” behavior violated martial ethics and was suspected of being illegal, which should be firmly opposed <sup>[4]</sup>. There are three aspects about this problem of the competitive sports, which is neither allowed by the rules of competitive sports, nor allowed by the tort law, sports law, namely “foul injury”, and criminal law. On the basis of meeting the first two illegal levels, the athlete injures the body of others and causes serious injury or more to other athletes. The three aspects are progressive in the severity of punishment. According to this logical relationship and in view of the adverse consequences and causes of the extinction of “duel” in England, we can conclude that the combat activities not conforming to the Guide of Wushu Combat Competition in our Country are not considered as Wushu combat competition, but as “challenging to fight” and “private fights”<sup>[5]</sup>.

#### **4. The Illegal Possibility Analysis of Martial Arts Chaos-Challenging to Fight Behavior**

##### **4.1 Analysis of Civil Violations**

##### **4.1.1 Whether the Participants of “Challenging to Fight” Apply the Principle of Assumption of Risk**

Scholars have slightly different opinions on what different factors should be considered to determine whether the event apply the principle of assumption of risk. According to the academic circle, knowing the risk, voluntary participation, inherent risk, no intention and gross negligence are the key elements of assumption of risk, and those with the above elements constitute assumption of risk <sup>[6]</sup>.

First of all, there are inherent risks in martial arts, where actual combat attack and defense fighting were used to beat opponents to win. So martial arts can get a strong social tolerance, in the scope “due to other participants' behavior damage”. The risks inherent in martial arts are obvious and predictable. The victim is engaging in dangerous activities in order to gain some kind of benefit, such as honor, happiness, physical health, etc.

Secondly, the risk of injury due to intentional or gross negligence may not be exempt. Participants in sports accept the obvious and foreseeable risks involved in sporting activities, but do not assume the risk of injury resulting from intentional or gross negligence. The injurer who causes the injury has neither the intention nor the gross negligence, and the victim accepts the risk. If the injurer doesn't consider safety for others in an unexpected or unsportsmanlike manner, he or she may not be exempt from liability. As for the event of “Xu, Lei, Ding, Ma” private challenging to fight, Wei Lei and Ding Hao were illegal participants. Knowing that the other two participants did not know the rules of MMA, let alone any participation experience, Xu Xiaodong rashly invited them to participate in the so-called MMA competition. The analysis of straight fist after boxing showed that the excellent group and the general group had significant differences in the speed of contact and speed decay rate. There are huge differences in the effects of different fighting practitioners, wide age gaps, unlimited grades, and no protective measures. Xu and the organizer cannot be exempted from liability because they caused the risk of injury by “gross negligence and lack of consideration for others” <sup>[7]</sup>.

##### **4.1.2 Diversified Dispute Resolution Approaches**

First, the relief of sports injury insurance. With the development of modern civil law damage transfer system and damage dispersion system, professional athletes have to buy sports injury insurance, and the insurance has the priority to pay for the damage. Article 16 of the Guide to Running Wushu Fighting Events stipulates that all athletes must be insured against personal accident injury in sports competitions, and the exemption clause of the insurance does not include participating in Wushu fighting competition. However, the personal injury in the act of “challenging

to fight” belongs to intentional injury, non-accidental injury, naturally does not apply to “personal accidental injury Insurance”.

Secondly, civil liability of “challenging to fight” applies to mixed fault liability, that is, both of them bear the liability of compensation. Mixed fault, also known as “negligent co-optation”, refers to the occurrence or expansion of the damage result caused by tort, not only the injurer is at fault, but also the victim is at fault too. Article 131 of the General Principles of the Civil Law states:” If the victim is also at fault for the occurrence of the damage, the civil liability of the offender may be mitigated.” When determining the liability scope of mixed fault, the liability of both parties should be determined by the degree of their respective fault.

“Lei, Ding and Ma” in the “fight event” should have a certain understanding of the risks in the fight between them. If they are injured in the “fight event”, they will have certain faults. Then the liability of both parties and the organizer should be determined by their respective fault degree.

#### **4.2 Analysis of Violation of Administrative Law**

“The Management Measures of Cleaning UP Wushu Chaos and Regulating the Activities of the Games” has weak binding force on non-members of martial arts associations, martial arts athletes, non-martial arts organizations and other individuals and organizations without formal registration; Article 26, those who violate the law will be investigated for legal responsibility by the judicial organ according to law, which is lack of pertinence and binding force. In terms of supervision, the supervision of the events is mainly conducted by the staff related wushu, but the strength and energy of such staff are limited, which is not enough to supervise the whole corner of society. The majority of wushu fans and the public should be mobilized.

There is a lack of relevant provisions on fighting competition of cross-border in the Guide for Wushu Fighting Events. However, nowadays, with the great integration of world cultures, there are various types of Wushu fighting, and people's pursuit of novelty will inevitably lead to cross-border fighting competitions. For example, the crossover fight between Inoki of Japan and Ali of the United States on June 26, 1976 was world-famous, but it took nearly a year to negotiate the rules in advance, and the final text of the rules was extremely detailed<sup>[8]</sup>.

Article 13 (1) of Guide of Wushu Fighting Events Competition and Article 6 (2) of Entry guidance of Wushu Fighting Competition stipulate a lower limit of age, no upper limit and no age gap limit for amateur competition. In this case, the age gap between Xu Xiaodong and Ma Baoguo will be more than 30 years.

If the result of “challenging to fight” is only intentional injury, without personal or property loss, or if the personal injury is not more than minor injury, it is a crime of “infringement of personal rights”. For “fighting” in public security cases, there is no criminal responsibility, and the main punishment is administrative punishment.

#### **4.3 Analysis of Criminal Violations**

##### **4.3.1 Whether the “Challenging to Fight Events” Constitute the Crime of Swindling and Bluffing**

In the “Xu, Lei, Ding, Ma incidents”, some words like “master of Tai Chi” were used to mislead the public. However, “master of Tai Chi” is not a “state organ worker” in the crime of fraud, and the subject does not meet the requirements of the crime of fraud, so it can only be expressed as “suspicion of Swindling and Bluffing” to express its malignancy. If the subject in this group of events claims to be a person engaged in public business in a state organ, it meets the constitutive requirements of the crime of “Swindling and Bluffing”.

##### **4.3.2 Whether It Constitutes the Crime of False Advertising**

What the organizer released were videos in this group of cases instead of promotions of goods or services, which attracted the audience to click and view. The audience did not have to pay, so they were not consumers, which did not meet the constitutive requirements of the crime of false advertising. Therefore, it did not constitute the crime of false advertising. However, the crime of

false advertising may also be committed if Wushu is used as the content of an advertisement to make false propaganda of a commodity or service, and the consequences are serious.

#### **4.3.3 Whether It Constitutes the Crime of Fraud**

The “challenging to fight event” does not involve cheating public or private property, so it does not constitute a crime of fraud. In martial arts activities or competitions, the perpetrator will obtain the property after the victim is disposed of the property by fraud, so that the victim's property is damaged, and the amount of public and private property is large, then the crime of fraud is constituted.

#### **4.3.4 Whether It Constitutes an Injury Offence**

First, anyone beating others causes more than minor injury is suspected of “Misdemeanor Crime of Intentional Injury”;

Second, beating others randomly causes the crime of “disrupt public order”. If it causes slight injury or more, or randomly beating others with a weapon, it is suspected of the crime of “provocation”;

Third, if the two parties gather people to fight, they cause the crime of “disturbing public order”. Generally, the two parties who are more than five people are suspected of “affray crime”.

#### **4.3.5 Whether There is Any Cause of Elimination of Illegality**

For personal injury, victim consent is generally considered invalid. In reality, the court often negates the validity of the consent of the victim on the grounds of protecting the interests of the victim or the third party. Therefore, consent cannot be an incriminating cause of a private challenging to fight.

The interests of victims need to be protected. First, irrationality. The victim agrees with others to hurt himself, indicating that consent is an irrational choice, so it is invalid. Second, involuntary speaking. In this view, consent to engage in behavior that poses a risk of physical harm does not mean that the victim actually wishes to be harmed. Third, paternalism. According to this view, people may sometimes make ill-considered choices that are in conflict with their real interests. At this time, the state, like parents do to their naive children, intervenes in the unwise choices of citizens, which not only does not infringe on their freedom, but more effectively protects their interests <sup>[9]</sup>.

## **5. Conclusion**

Wushu is an excellent traditional national culture, bearing the national memory. Its fitness and skill characteristics still attract the majority of Chinese people, enrich the leisure life of modern people, and still become a label of Chinese culture. While enjoying the cultural heritage of wushu, we also need to be vigilant and protect its benign development, so that it can integrate with contemporary culture and continue to maintain its due vitality. A series of rules and measures have been introduced in the WUSHU industry to regulate Wushu activities, which is a strong guarantee for the development of wushu. In view of the safety risk itself, It is necessary to define the illegality of WUSHU chaos --”challenging to fight”, so as to avoid Wushu repeating the demise of “duels” in Britain. From the perspective of civil law, the illegality of “challenging to fight” makes it impossible for participants to avoid liability by the principle of assumption of risk when causing injury. Therefore, “Personal accident injury Insurance” is not applicable when seeking relief, but belongs to mixed fault. The liability of both parties should be determined by their respective fault degree. From the perspective of administrative law, there is no relevant provisions on cross-border fighting, no upper limit of age for amateur competition, and no restriction on age gap in Wushu fighting competition. If the “Challenging to Fight” behavior causes minor injury or more, it is suspected of “intentional injury” according to criminal law. If it is a crime of “disturbing public order” with more than five people in both sides, it is suspected of “affray crime”. In the event of “challenging to fight”, if someone injures other people and violates the criminal law, the consent of

the victim is usually considered invalid and cannot be the incriminating cause of the crime. Martial arts are the embodiment of violence aesthetics, but this beauty should be displayed under the rules and it will be long brilliant. The legal analysis of “challenging to fight” is from the perspective of martial arts to explain the law, let martial arts lovers better understand martial arts. In the context of modern civilization, We carry out martial arts activities, carry forward the national spirit.

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