

The Judicial Differentiation Between Contract Fraud and Civil Deception

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Abstract: *Distinguishing between the crime of contract fraud and civil deception correctly is a significant challenge in judicial practice. The author analyzes from the perspective of the unity of subjectivity and objectivity, proposing that the distinction between the two should be based on a substantial evaluation. Objectively, it is necessary to determine whether the content of the deception constitutes a core element of the transaction and whether the degree of deception prevents the victim from achieving their transactional objectives. Subjectively, the purpose of illegal possession should be judged by considering the comprehensive ability to perform, performance behavior, disposal of property, and post-event attitudes, with particular attention to cases involving good faith acquisition and apparent agency, respecting the arrangements of civil law institutions. By establishing a scientific review process and unified criteria for identification, economic disputes can be effectively prevented from being criminalized, and judicial fairness can be maintained.*

Keywords: Contract Fraud, Civil Deception, Differentiation Criteria.

1. Introduction

Contracts are one of the most important forms of transaction in the market economy, and the occurrence of contract fraud in economic interactions based on contracts is becoming increasingly common. Some instances of contract fraud may be civil disputes, while others may constitute criminal offenses; the differentiation between the two is very complex. The author has found instances of inconsistent judgments in the same case within retrieved judgment documents, with chaotic adjudication standards severely damaging judicial credibility. The reason for this lies in the lack of consensus on the theoretical and practical levels regarding the degree of deception that warrants the use of penal measures. Especially with the complexity of transaction methods, new types of cases involving rights appearances such as proxy home purchases and apparent agency have emerged, presenting explanatory challenges for traditional fraud theories. This article aims to analyze theoretically, supported by examples to prove the points, and attempts to find a path for differentiation between the two, to provide a reference for handling related cases in practice [1].

2. Fundamental Distinction between Contract Fraud Crime and Civil Fraud

2.1 Criteria for Distinguishing Objective Conduct

2.1.1 Differences in Deceptive Content

Although both contract fraud crime and civil fraud involve deceit, their objects of deception differ. Civil fraud typically involves misrepresentations regarding secondary terms or incidental matters of a transaction, such as modestly exaggerating product quality or embellishing service effectiveness. Such deception does not violate the principle of good faith and does not fundamentally undermine the basis of the transaction. The counterparty, even if aware of the truth, may still be willing to proceed with the transaction but may demand better terms or a reduced price. In contrast, deception in contract fraud targets the core elements of the transaction, such as the subject's qualifications, capacity to perform, or the

authenticity of the subject matter. According to Article 224 of the Criminal Law, deceptive acts such as fabricating an entity, impersonating another person, using forged property rights certificates as collateral, or gaining trust by performing a small contract without the ability to fulfill larger obligations all involve misrepresentations of fundamental facts. Fundamental facts refer to those that, if known to the counterparty, would have precluded the transaction. In judicial practice, the "hypothetical restoration method" may be employed to assess this: assuming the deceived party had been aware of the fact in question, whether they would still have entered into the contract with the actor. If the answer is "no," it indicates deception regarding fundamental facts.

2.1.2 Differences in the Degree of Deception

Even if the deceptive content involves significant matters, it cannot automatically be classified as contract fraud crime. It is also necessary to examine whether the deception reaches a certain degree. The assessment of this degree should center on whether the victim's transactional purpose can be achieved. In civil fraud, the actor typically provides substantial consideration, allowing the counterparty to achieve their basic transactional purpose. Even if defects exist, they can be remedied through civil remedies, and the counterparty's losses are limited and controllable [2]. Although the counterparty may pay consideration exceeding the intrinsic value of the subject matter due to deception, they still achieve the purpose of acquiring the subject matter, with the excess portion recoverable through civil means such as contract rescission or claims for compensation. In contract fraud, however, there is either no consideration or grossly unfair consideration, preventing the victim from achieving their transactional purpose and resulting in serious property damage. The assessment of this degree should adopt the substantive property loss standard, which is not merely a calculation of numerical gains or losses but rather focuses on whether the victim's transactional purpose is achieved and whether the economic and social objectives of the transaction are realized.

2.2 Criteria for Determining Subjective Purpose

2.2.1 Contractual Capacity at the Time of Signing

The determination of the intent to illegally possess cannot be separated from the examination of objective circumstances. The starting point for assessment is whether the actor had the capacity to perform the contract at the time of signing. Here, the capacity to perform includes both economic capability and legal capacity. If the actor, knowing they lacked the ability to perform or the right to dispose of the subject matter, nevertheless entered into the contract and received payment, this may give rise to a presumption of subjective bad faith. In terms of financial capacity, it is necessary to examine whether the actor had a stable income, sufficient financial resources, or property to guarantee the fulfillment of contractual obligations, with particular attention paid to whether the actor was already in a state of severe indebtedness at the time of contracting, with numerous overdue debts that could not be repaid. Regarding legal capacity, it must be examined whether the actor held ownership or lawful disposition rights over the contract's subject matter, and in cases of agency, whether genuine agency authority existed.

2.2.2 Actual Conduct During Performance

First, the manner of handling the obtained property. How the actor disposes of property after receiving it serves as important evidence for determining subjective intent. If the acquired property is used for the purposes stipulated in the contract or for production and operation, even if the actor ultimately becomes unable to return it due to poor management, it should generally not be classified as fraud. This is because the actor subjectively demonstrated an intention to perform; the failure to fulfill obligations resulted from objective factors such as operational risks or market fluctuations, constituting non-performance rather than a criminal offense. However, if the property is squandered on high-end consumption, gambling debts, or other personal liabilities unrelated to the contract, this constitutes active evidence of an intent to illegally possess. The flow of funds must be traced, and bank statements, expenditure receipts, and other documents should be reviewed to determine the use of the property.

Second, the presence and extent of actual performance. Whether the actor engaged in actual performance, whether such performance aligned with the contract's terms, and the proportion of performance relative to the total obligation all reflect the party's true intention. The absence of any performance or merely perfunctory performance may be presumed to indicate a lack of intent to perform. In cases where there is substantial performance, even if full performance is not ultimately achieved, criminal liability should be assessed with caution [3].

2.2.3 Remedial Attitude After the Fact

The remedial attitude after the breach is an important supplementary factor in determining whether the actor harbored an intent to illegally possess and holds significant reference value in judicial practice. If, after being unable to perform the contract, the actor demonstrates a proactive remedial attitude—such as actively communicating with the counterparty, truthfully explaining the reasons for

non-performance and actual difficulties, sincerely proposing feasible solutions, taking measures to mitigate or reduce losses, or making efforts to raise funds to repay debts—this typically negates or diminishes the finding of an intent to illegally possess. Such conduct aligns more closely with the general characteristics of a civil breach. Conversely, if the actor disappears or severs contact after receiving the property, refuses to perform contractual obligations, fabricates false excuses to delay or evade, or even threatens creditors, transfers or conceals assets, or squanders the obtained funds, these actions may serve as important indicators of an intent to illegally possess. However, it is essential to distinguish between temporary avoidance due to short-term financial difficulties and absconding with the funds, to avoid criminalizing ordinary civil disputes. In the specific determination process, the principle of comprehensive and prudent assessment must be upheld. All objective circumstances—including pre-contract qualifications and capacity, actual conduct during performance, and remedial attitude after breach—should be organically linked to form a complete and closed chain of evidence. Only when the standard of proof beyond a reasonable doubt is met can a determination of intent to illegally possess be made.

3. Demarcation Dilemmas in Judicial Practice and Recommendations for Refinement

3.1 Issues Prevalent in Current Judicial Practice

3.1.1 Excessive Reliance on Subjective Intent to the Detriment of Objective Conduct Analysis

Empirical review of numerous judicial rulings reveals a tendency in certain judgments to disproportionately emphasize the element of "intent to illegally possess," treating it as the singular criterion for distinction. In such instances, conviction follows merely upon establishing the presence of this intent, often without adequate substantiation that the objective conduct meets the requisite threshold of criminality. This approach risks overcriminalizing acts of contractual breach, given that a subjective disinclination to perform can be inferred in a majority of breach cases. Basing criminal liability thereon would unduly expand the purview of criminal law.

3.1.2 Divergent Applications of Criminal Law Concerning Liability Arising from Apparent Authority

In cases involving acquisition in good faith or apparent agency, judicial outcomes vary considerably across courts, reflecting disparate adjudicative rationales. One perspective holds that the crime of fraud is not constituted if a bona fide third party suffers no loss, as property loss to the victim is an essential element for the consummation of fraud. Here, the third party acquires rights via principles of apparent authority, thereby fulfilling the transactional purpose without incurring property loss; consequently, the actor's conduct should be addressed as a civil dispute. An opposing view maintains that fraud is established, yet disagreement persists regarding victim identification. Some posit the bona fide third party as the victim, having been deceived into transferring property—a fact unaltered by their subsequent acquisition of rights. Others contend the true rights-holder is the victim, as

they ultimately bear the property loss and suffer infringement of their proprietary interests.

3.1.3 Inconsistent Standards for Determining Property Loss

Property loss constitutes a fundamental element of fraud, directly pivotal to demarcating criminal from non-criminal conduct. However, persistent ambiguity persists both in theory and practice regarding the definition and precise assessment of property loss, giving rise to three principal doctrines:

- The Doctrine of Formal Individual Property asserts that loss occurs whenever a victim transfers property based on erroneous belief, irrespective of whether corresponding consideration or economic compensation is received. This doctrine prioritizes the protection of the victim's freedom of disposition over property.
- The Doctrine of Holistic Property advocates for a macroscopic comparison of the victim's aggregate assets before and after the transaction, recognizing loss only where a net diminution in total value is evidenced. This approach centers on the comprehensive economic impact on the victim.

These competing doctrines find expression in judicial practice. Owing to divergent evaluative standards, factually analogous cases frequently yield contradictory rulings, underscoring a pressing need for conceptual unification [4].

3.2 Recommendations for Improvement

3.2.1 Adhering to the Unity of Subjectivity and Objectivity: Establishing an "Objective-First, Subjective-Second" Analytical Approach

In determining the crime of contract fraud, a scientifically sound analytical approach must be established, avoiding overemphasis on either subjective intent or objective conduct in isolation. The recommended approach is as follows: First, examine whether the actor's objective conduct aligns with the behavioral structure of fraud—namely, the presence of deceptive acts, whether the victim was induced into a mistaken belief, whether a disposition of property occurred, and whether property loss resulted. At this stage, the focus should be on whether the deception pertained to fundamental facts underlying the contract's formation or performance, whether the degree of deception sufficed to prevent the victim from achieving their transactional purpose, and whether the victim suffered substantive property loss. Only when the objective conduct satisfies the structural elements of fraud does it warrant proceeding to the second step. Second, comprehensively assess all circumstances—such as the actor's capacity to perform at the time of contracting, actual conduct during performance, the manner of handling acquired property, and post-breach remedial attitude—to infer whether the actor possessed the intent to illegally possess. At this stage, it is crucial that the various factors corroborate each other to form a complete chain of evidence, as reliance on any single factor is insufficient. This tiered "objective-first, subjective-second" methodology helps prevent the criminalization of mere contractual breaches while also

guarding against the undue exoneration of genuinely criminal conduct, thereby achieving a unity of objective and subjective elements. For complex cases, the "reverse elimination method" may be employed, whereby arguments proceed from the premise that the defendant is not guilty; only if reasons for excluding criminal liability are absent should a guilty determination be made.

3.2.2 Correctly Handling the Relationship Between Civil Law and Criminal Law: Appropriately Incorporating the Doctrine of Apparent Authority

In cases involving liability arising from apparent authority, the relationship between criminal and civil law must be handled correctly. While upholding the independence of criminal law, full respect must be accorded to the institutional arrangements and value judgments of civil law. Regarding the determination of property loss, when the elements for acquisition in good faith or apparent agency are satisfied, it should be recognized that the bona fide third party has lawfully acquired the corresponding rights, and the true rights-holder or principal has consequently suffered property loss. This is a clear provision of civil law, which criminal law should respect and adopt as the basis for establishing property loss. Concerning victim identification, the true rights-holder or principal should be deemed the victim, not the deceived bona fide third party. Although the bona fide third party was deceived, they acquired the corresponding rights through the doctrine of apparent authority and achieved their transactional purpose; thus, they should not be recognized as the victim. For the determination of the specific offense, guidance should be drawn from the theory of "new triangular fraud," under which the actor should be found guilty of fraud or contract fraud based on the specific circumstances of the case. By incorporating the doctrines of apparent authority and new triangular fraud, a harmonized evaluation between criminal and civil law can be achieved, effectively protecting the reliance interests of bona fide third parties while legally combating fraudulent criminal conduct.

3.2.3 Unifying the Standard for Determining Property Loss: Adopting the Substantive Individual Property Theory

A unified standard for determining property loss should be established by adopting the Substantive Individual Property Theory. This theory considers not only the objective increase or decrease in the quantum of property but also, and more importantly, focuses on whether the victim's transactional purpose has been realized. The following key points should guide the specific assessment: Property loss should be recognized when the actor provides no consideration or grossly unreasonable consideration (e.g., paying only a small fraction of the market price), as the victim receives no corresponding return after delivering their property. Where the actor provides reasonable consideration, but the property obtained by the victim does not align with their pursued objective—such as in cases of passing off inferior goods as superior ones or counterfeits as genuine—the victim, despite receiving some property, should still be considered to have suffered a property loss because the property fails to fulfill the transactional purpose. In cases of partial performance by the actor, the portion that has been performed in conformity with the contract and which the victim has actually taken

possession of and can normally use should not be counted as property loss. Only the unperformed or non-conforming portions constitute loss. Where effective security exists, the value of the collateral should be deducted from the property loss, as the victim can obtain compensation by realizing the security interest; only the portion of the claim exceeding the collateral's value constitutes loss. A unified standard for determining property loss promotes fairness and legitimacy in judicial outcomes and facilitates the parties' formation of stable expectations regarding such outcomes [5].

4. Conclusion

The delineation of the boundary between the crime of contract fraud and civil fraud represents a significant and persistent challenge within the field of intersecting criminal and civil law. Clarifying this distinction is crucial for the effective functioning of the criminal law in combating crime and for the robust protection of citizens' property rights. This study demonstrates that the criteria for distinguishing the two should adhere to the principle of unifying subjective and objective elements. Objectively, the focus should be on examining the content and degree of deception. The determination of the presence or absence of the intent to illegally possess should not be confined solely to subjective presumption or isolated observation of objective results; it requires a comprehensive subjective judgment based on all circumstances. Furthermore, this study affirms the applicability of civil law doctrines, particularly concerning liability arising from apparent authority, within criminal cases involving new types of disputes. By adopting the theory of "new triangular fraud," a harmonious and unified evaluation across criminal and civil law can be achieved. This approach serves the dual purpose of safeguarding the reliance interests of bona fide third parties while effectively punishing fraudulent criminal conduct. Theoretical research and the summarization of practical experience constitute an ongoing, evolving process. It necessitates the concerted efforts of both academic and judicial communities to ultimately achieve the unification of legal efficacy and social impact.

References

- [1] Zhu Yong. Normative Structure and Judicial Application of the Intent to Exclude in the Crime of Contract Fraud [J]. Chinese Criminal Science, 2025, (05): 109-123.
- [2] Jiang Su. From Mutual Exclusion to Parallelism: Rethinking the Relationship Between Civil Fraud and Criminal Fraud [J]. Tribune of Political Science and Law, 2024, 42(06): 140-150.
- [3] Zhang Yangbiao. A Systemic Reflection on the Determination of the Crime of Contract Fraud from the Perspective of Criminal-Civil Distinction [J]. Western Law Review, 2024, (01): 14-32.
- [4] Liang Xu, Zhao Ziwei. Practical Dilemmas and Rule Construction in the Criminal-Civil Distinction of Fraud-Related Conduct [J]. Hebei Law Science, 2023, 41(12): 176-194.
- [5] Fu Han. The Distinction Between the Crime of Contract Fraud and Civil Fraud [J]. People's Judicature, 2022, (08): 28-30.