



# Typological Identification of Joint Debts Based on Mutual Intent Expression of Spouses

Jiayi Wu<sup>a</sup>

School of Law, Shandong University, Weihai 264200, China

<sup>a</sup>202100640140@mail.sdu.edu.cn

**Abstract.** Referees assessing whether a spouse's debt is joint must balance market transaction security with marriage and family protection. Identifying such debts should involve a typified analysis, starting with shared intentions and interests, and then making value judgments. Analyzing expressions of intention during debt establishment and comparing them with creditor's rights laws is crucial. This approach helps resolve disputes in marriage and family matters while ensuring the security of market transactions.

**Keywords:** Joint debts of husband and wife; Joint debt signing rules; Joint production and operation; Private lending.

## 1 INTRODUCTION

Looking back at the legislative history of Article 1064 of the Civil Code, we can see that the legislative purpose of this article is to clarify the identification of joint debts between husbands and wives, and to specify the nature of the debt incurred by each spouse.[1] However, in judicial practice, there is still room for typification in the identification of debts based on mutual intention. This gives rise to the core issue explored in this article: What are the contentious situations regarding mutual intention between spouses? How can they be identified through a typified approach? These are questions that merit further exploration. Focusing on the identification rules for joint debts based on mutual intention among spouses, this article closely examines the theoretical basis of Article 1064 of the Civil Code and uses a typified method to analyze three scenarios: "express," "implied," and "simple silence," offering suggestions for the legislation and judiciary within the current family law system of our country.

## 2 SHARED DEBTS OF HUSBAND AND WIFE WITH COMMON EXPRESSION OF INTENTION

Joint debts of a husband and wife with a reference to a common intention to debts that both spouses clearly agree to bear together, either in writing or orally. This means that

both spouses sign a contract or otherwise expressly express their agreement to share certain debts.[2]

In joint debts with a common expression of intention, the explicit expressions of both spouses are usually bound by the general principles of interpretation for expressions of intention, including relevant provisions in contract law. If the contract text clearly expresses common intentions of both spouses, the court will usually interpret the intention to assume debt in accordance with the general rules in the General Provisions of the Civil Code. [3]

### 3 EXPLICIT EXPRESSION OF INTENTION

According to Article 140 of the Civil Code, an actor may express his or her intention expressly or implicitly. Explicit expression of intention means that the actor takes affirmative actions to ensure that the counter party directly and clearly knows and understands the content of the expression of intention.[4] For oral expressions, the burden of proof is difficult to fulfill, but sufficient evidence can help determine that the debt is a joint debt between a husband and wife. When it comes to the written form, the rules of joint debt and joint signing are primarily adhered to.[2]

As for the content of Co-signed document, it should be a legally binding document such as an IOU, a sales contract, etc. An IOU is a written note that serves to define the debtor-creditor relationship between the involved parties. It is essentially a debt voucher. The content of the legal relationship involved in documents such as witness certificates does not pertain to a creditor-debtor relationship. If a document does not show evidence of the establishment of such ancillary debts, joint debts between husband and wife cannot be established, even if signed. Even if the IOU is signed by someone other than the debtor, it is not necessarily considered a joint debt between husband and wife. There are still many specific circumstances that need to be analyzed. Although the party who did not borrow the debt signed the IOU, he clearly denied orally that the debt was a joint obligation of the husband and wife, stating that it did not constitute a joint debt of the husband and wife. [5] In the Xu Rongfen case, even though the non-borrowing party signed the IOU, they did so as a witness. [6] The purpose was solely to witness the loan agreement to prevent the borrowing party from defaulting on the debt and to establish the non-negligibility of the contract. It did not mean to assume the debt. Therefore, there is no joint debts between husbands and wives.[3]

In the explicit expression of intention, a commonly disputed issue arises - whether repaying the debt by the non-borrowing party constitutes a joint debt of the husband and wife. Debts established by one spouse are neither explicitly expressed verbally nor signed in writing. If the non-lending party repays the debt in the name of the debtor's spouse, this does not constitute a joint debt between husband and wife. This repayment does not constitute a ratification of the debt.[5]

## 4 IMPLIED EXPRESSION OF MEANING

Implication is referred to as “expression through other inferred acts”, “implied expression of intention”, and “indirect expression of intention”. [8] The expression of intention of both spouses can exist in the form of tacit expression. In addition to the general tacit expression, the spouses’ intention should be clearly expressed to jointly or separately infer joint liability. [9] In the *Ran Xian* case, the court held that ratification could be expressed through tacit approval, but such approval should be a clear and affirmative action, and its true intention can be deduced from “personal actions”. [10] Courts usually focus on subsequent performance, such as “joint repayment” and “settlement of debts through the spouse’s bank account”, to determine the establishment of ratification. Determining whether the non-borrower’s payment of part or all of the debt for the debtor spouse and other joint repayments constitutes implicit ratification is a challenging issue in practice.

On the one hand, the concept, nature and legal effects of repayment behavior should be clarified. First, the concepts of debt settlement and debt performance are different. Comprehensive and appropriate conditions must be met for repayment to achieve the elimination of debt. [8] The contract performance process includes, but is not limited to, issues such as inability to perform, incomplete performance, and delayed performance. Secondly, the legal implications of debt settlement and debt repayment are entirely different. The act of repaying debts can lead to the elimination of the creditor-debtor relationship, but fulfilling debts does not necessarily result in debt elimination. For example, if the debtor is unable to fully or partially perform, the legal effect of extinguishing the debt will not be realized. Finally, satisfaction is considered a legal fact. Some people believe that repayment should be classified as a quasi-legal act. Quasi-legal acts refer to acts of expression of invalid intention, which are both expressive acts and legal acts. However, they differ from them because the realization of their legal effect does not depend on the intention of the actor but is directly stipulated by the law. [9] According to the theory of quasi-legal acts, the decision regarding the purpose of repayment is not an explicit expression of intention but is mostly tacit. [10] In the process of carrying out legal actions, there is an implicit expression of intention that can be inferred. Therefore, the author believes that repaying debt does not equate to fulfilling the debt; it only serves to eliminate the debt. In other words, the repayment can be made by someone other than the debtor. However, based on the quasi-legal nature of the act, the court has the authority to presume the existence of an expression of intention in the case of tacit consent.

On the other hand, the relationship between liquidation behavior and ratification should be clarified. There are usually two behavioral patterns for ratification. One way is when the non-borrowing party expresses its intention during debt collection, and the other is when the non-borrowing party actively pays off the debt, which can be considered as ratification. [11] Some courts believe that when the non-borrowing party is aware of the debt’s existence and voluntarily pays off part of it, this action should be considered as implicit ratification. At this time, the agreement between the husband and wife to assume the debt is established. This behavior is sufficient to be considered as post hoc ratification. Based on mutual agreement, the debt should be considered a joint debt

of the couple. <sup>[7]</sup>Other courts have taken a different view. The non-borrower's act of paying off the interest on the debt essentially fulfills the repayment obligation on behalf of the debtor. However, the debt does not necessarily need to be used to live together as a couple. The non-borrowing party's repayment of debts not used for joint living should not be considered as ratification. Therefore, no joint debt will be established between husband and wife.<sup>[12]</sup> This view restricts the expression of implied meaning based on behavioral presumption and limits it to the level of common interests. There is no distinction between these two views. The essence is to allocate responsibilities based on risk control capabilities. If the non-lending party is aware of the debt, does not object, and has a stronger risk control ability compared to the creditor who has not clarified the non-lending party's intention beforehand, then the non-lending party should be held accountable. At this time, it is determined that the intention constitutes ratification, and the husband and wife are jointly liable for the debt. <sup>[11]</sup>Otherwise, it does not constitute ratification. Although the current mainstream view in judicial adjudication is to presume that repayment behavior establishes the consent of the couple, the author believes that the expression of intention of the non-borrower should not be extrapolated, and a cautious attitude should be maintained.<sup>[13]</sup> When one spouse only provides a bank account and other facilities for the debtor and appears to have joint repayment behavior, his behavior has no intention of fulfilling the joint debt. If the property involved in the debt is not used for the couple's common life, the spouse should not be deemed a joint debtor. Constitutes subsequent ratification. <sup>[12]</sup>The court should handle the matter after substantively considering the allocation of risks based on the knowledge of the non-lending party and the trading habits between the creditor and the debtor.

## 5 SIMPLE SILENCE

The tacit expression of inaction refers to simple silence, characterized by the absence of explicit agreement or disagreement.<sup>[14]</sup> If pure silence is considered an indication of intent, it typically occurs in three main situations: adherence to legal requirements, mutual agreement between the parties, or customary practices during transactions. <sup>[15]</sup>As far as the rules for joint expression of intention between husband and wife are concerned, when there is neither a legal provision nor an agreement between the parties, the identification of transaction habits becomes the key. Trading habits should exhibit significant regional and industry-specific characteristics. This makes the identification of trading habits in practice extremely challenging. However, regardless of the transaction custom, it is essential that both parties are aware of the custom and express their willingness to accept its implications. <sup>[6]</sup>The identification of this expression of intention essentially relies on the prior consideration of an explicit or implicit expression of intention. Based on this, it is presumed whether the expression of intention is established or not.

Mere silence, by its nature of inaction, can only be cautiously presumed to constitute consent. <sup>[6]</sup>Feuerbach, the father of modern criminal jurisprudence, once said, "Omission is usually predicated on a special legal basis that stipulates the actor's obligations."

This legal basis usually refers to laws and contracts. "No one can become a person without this foundation." A criminal who commits a crime by omission. It can be seen that the identification of omissions is strictly interpreted in the field of criminal law. Therefore, the court should be more cautious in inferring the intention to do nothing and should not expand the intention of the non-debtor spouse, which could damage the boundaries of their freedom of action. For example, if the non-borrowing party is aware of the spouse's debt and does not raise any objection, including when both spouses are present when the debt is raised, and the loan is processed through the non-borrowing party's account, it can be cautiously presumed to constitute a joint debt between the husband and wife. For simple silence, knowledge is an essential condition. However, determining the existence and extent of knowledge is also quite complicated in practice.

The spouse should have prior knowledge of the debt, meaning they should be informed before taking on the debt. The spouse's ratification of the debt is an expression of intention after the debt-raising act has been implemented. This indicates that the spouse did not express consent to the debt when it was borrowed. Defining knowledge is challenging because the difficulty stems from discerning the true intention of the person acquiring it. Being informed is the prerequisite for the true expression of intention and the basis for obtaining "consent". [19] Only when the parties are aware of the existence and content of the debt can they then express their agreement or disagreement. Otherwise, it is very easy for a spouse to be "forced into debt".

There are also challenges in identifying the manifestations of informed knowledge. In practice, the court generally considers circumstances such as "writing or reading the IOU", "signing as a non-borrower, such as a guarantor", and "witnessing the establishment of the debt". [20] At this time, the extent of knowledge has not yet been determined. Simple knowledge does not necessarily imply a shared intention between husband and wife. When the spouse is informed, it only means that he is aware that the debt has been established. The function of this is to enhance the non-repudiation of the establishment of the debt and reduce the risk of the debtor neglecting to fulfill the agreed debt. However, this behavior is not sufficient as a basis for establishing a presumption of joint debt between husband and wife. To determine the establishment of joint debts, they should be classified. One type of behavior indicates that the spouse is aware of the debt but does not intend to pay it off. This is usually manifested when the spouse signs as a "certifier" or "witness" without any intention of accepting the debt. In the Hu Lihua case, the court of first instance determined that the debtor's spouse signed the IOU as a witness. This act indicated that their identity was distinct from that of the debtor and the creditor, clearly expressing their unwillingness to jointly bear the debt. Therefore, it should not be presumed that a joint debt between a husband and wife was established. [21] Another form of conduct occurs when one spouse manifests an intention to assume debt obligations, commonly through an act of signing on as a 'guarantor' or 'co-signer'. In the Huarong case, when the creditor and the debtor signed a loan contract, if the debtor's spouse signed a guarantee agreement as a guarantor, the court determined that the guarantee liability should be borne in accordance with the provisions of the guarantee agreement. [22] This reflects the court's full respect for the autonomy of will among the parties.

The court has three main views on the non-debtor's knowledge. [11]The first view holds that if the non-borrowing party is aware of the existence and specific content of the debt, but neither expresses clear approval nor makes clear objections after the debt is established, it will be deemed that they have made a mutual agreement through silence. The meaning of taking on debt. The restrictions on this presumption of joint debt are relatively broad and are not subject to additional conditions, making it more difficult to prove the ambiguous attitude of the non-debtor.[23] At this time, the debts are all presumed to be joint debts of the husband and wife, which imposes obligations on the non-debtor party. The second perspective suggests that if the non-borrowing party is aware of the debt's existence and does not explicitly object, the creditor may reasonably assume that the non-borrowing party has consented, thereby establishing a joint debt between husband and wife. The third perspective suggests that the non-borrowing party does not necessarily need to be aware of the specific circumstances of the debt. It is sufficient for them to know that the debt is utilized for joint production and business activities, which is then considered a joint debt of the husband and wife. The author believes that there is essentially no difference between the second view and the first view. It refines the content of the initial scenario, making it easier to substantiate. The third perspective suggests that joint debts between spouses should not solely depend on a mutual expression of intention but should also consider shared interests. Regardless of whether the non-borrowing party is aware of it or not, if the debt is used for joint production and operation, it will be considered a joint debt of the couple. However, this goes beyond the scope of a joint expression of intention.

## 6 CONCLUSION

In this article, the author uses a typological analysis method based on Article 1064 of the Civil Code to explore the issue of recognizing joint debts between spouses of the common intention type. For the common intention type, the main types of intention expression—explicit, implied, and silence—are primarily used to establish joint debts between spouses. Among these, the most contentious type is implied intention expression, which requires a cautious approach to infer consensus. By combining the case analysis with judicial opinions, this study offers a new perspective on clarifying the issue of recognizing joint debts between spouses. It provides new ideas for balancing domestic interests of the family with fair market transaction protection, and possesses notable theoretical and practical value.

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