The Legal Application and Resolving Mechanism of “Campus Naked Loans” Threat

ZHENFAN WU

ABSTRACT

The exposure of 10G bulk of nude photos has brought considerable attention of the whole society since these photos are the collateral of campus loans for students. It not only causes the devastating mental and psychological damage to the borrowers, but also poses a great threat to them. This paper will carry out the research on the legal application and solving mechanism of “naked loan” threat on campus, and will introduce the basic theory of this phenomenon, and analyze the current situation of domestic and foreign research on campus loans. Based on the typical case of college student Li, the case and jurisprudence analysis of the dispute of campus loan with the nude photos as the collateral are carried out. Finally, the paper summarizes the shortcomings of the legal settlement mechanism of “naked loan” threats in our country and puts forward some suggestions on legislation, justice and law enforcement.

KEYWORDS
Campus “naked loan”; legal application; resolving mechanism.

THE BASIC THEORY OF NAKED LOAN THREAT ON CAMPUS

Research background

In early June 2016, a female college student who was hunting for money to open the online store borrowed 120,000 Yuan via P2P platform with her nude photos as the collateral. Only four months later, the debt snowballed to 450,000 Yuan. Since the student could not pay back the money on time, the loan shark started to threaten the girl with exposing the pictures and other improper conditions. In that December, someone leaked 10G bulk of nude photos and videos online, including the private information of 167 female college students, their relatives’ contact information and their naked photos. Since then, the issue of “naked loan” has brought tremendous focus all over the nation.

Definition, composition and establishment of campus naked loan legal relationship

With its unique social status, the "naked loan" of the campus has aggregated a staggering number of potential borrowers, facilitating the publicity. Campus naked credit legal relationship is a private lending civil legal relationship, which refers that
the borrowing side are college students, the loan party are non-financial institutions and their branch offices’ natural persons, legal persons or other organizations, with the nude photos, videos, private information of the borrowers and their families as the collateral. The legal relationship of naked loan on campus is made up of the relationship between loan legal relationship and guarantee legal relationship, which is essentially a contractual legal relationship.

The constitution of the legal relationship of naked loans on campus

(1) The subject
According to “The provisions on the application of law in private lending cases”, the subject of the naked loan can be defined as follows:
① The lender shall be the general natural person, legal person or other organization, excluding the financial institution and its branches approved by the financial supervision department for the loan business. In practice, generally the lender is natural person. There has not been any case of lending company or legal person or other organizations to participate in the naked loan.
② A borrower is a student who has full capacity for civil conduct.

(2) The object
The object of the legal relationship of naked loan on campus is the payment behavior and collateral, which have different performances in legal loan relationship and legal guarantee relationship.

i. In the legal loan relationship, the theoretical object is the behavior of the lender to provide the loan and the behavior of the lender to pay the loan back. The contract of naked loan on campus is often a natural person's loan contract, the establishing element of which is that the borrower pays the loan to the lender. Therefore, the payment of the loan by the lender is not the object of loan contract legal relationship but the establishing element of the legal relationship, as well as the pre-contract obligation. Therefore, in practice, the object of the legal relationship of the loan contract is mainly the paying behavior by the borrower.

ii. In the legal guarantee relationship, the identity of the object includes the type and the source of guarantee.

Different forms of guarantee differ on the object's determination: in guarantee, the object is the behavior of guarantee. Since the legal guarantee parties of campus naked loan are also the legal loan relationship parties, the object collateral is not the warranty. The collateral the borrower provided is not only the nude photos, but also their private information and reputation. As for the loan sharks, they do not deliberate much about the realization of the nude photos, but the fear and resistance of the borrower for leaking their privacy and nude photos. Therefore, the guarantee of naked loan guarantee on campus comes from the attention of the borrower to his own reputation and privacy. In other words, the more important the borrower is to his own reputation and privacy, the stronger the guarantee.

(3) The content
The content of naked loan legal relationship refers to the specific rights and obligations of the two parties in the legal relationship, including the rights and obligations under the contract of loan and guarantee. In the legal relationship, the rights and obligations of the two parties shall be mutually obligatory. Therefore, the obligations of the parties hereto shall be introduced.
The obligations of the lender:

a. Obligation to issue a loan: In practice, this obligation is the pre-contractual obligation of the lender, whose nonperformance will result in the absence of the contract.

b. Obligation to keep personal information safe, such as borrower’s nude photos: Before the expiration, the lender should keep the borrower's nude photos and other private information and prevent them from leaking.

c. Obligation to destroy the nude photos after the contract’s purpose has been completed: this obligation is a post-contract obligation. After the purpose of the contract has achieved, based on the principle of good faith, loan sharks have to destroy the attachments of the guarantee.

The obligations of the borrower:

The obligation to return the loan: the obligation is the borrower's primary obligation

Obligation to pay interest: the borrower only needs to pay the interest that is under the statutory effective interest rate which is 36%.

The obligation to provide nude photos, video, and other personal information: Freedom of contract is fundamental spirit of modern contract law, hence not fulfilling the obligations will lead to the failure of the contract.

The essential elements of the naked loan legal relationship

The establishment of the civil legal relationship of naked loan on campus must meet the following requirements:

1. The parties are required to sign an oral or written loan contract and a guarantee contract: the contracts need to meet certain content requirements. In accordance with Article 197 of the Contract Law of the People's Republic of China: “The borrowing contract should be in written form, except that the loan between natural persons is otherwise agreed. The contents of the loan contract include the type of loan, currency, the use of loan, amount, interest rate and other terms and conditions. Whereas the guarantee contract needs to clarify the types of the main creditor’s right, amount terms of the debt and the range of the guarantee, etc.”

2. The declaration of will of the parties is true and flawless: the parties have a clear declaration of will of borrowing, loans and the establishment of the guarantee, and once made it has to be bound by the meaning of the contract. The declaration of will of the parties should be flawless means that the parties are full of civil capacity and there is no coercion, fraud, major misunderstanding and other flaws.

3. The parties have to fulfill the pre-contract obligation: as mentioned above, naked loans always happened among natural persons, hence the lenders have the obligation to provide the loan, whereas the guarantors have to provide the nude photos, personal information to the lender.

The connotation of campus naked loan

The jurisprudential analysis of the campus naked loan

1. The naked loan on campus is manifested as civil behavior. That is, the campus naked loan behavior is the civil behavior committed between the equal parties. Borrowers and lenders are equal in legal status. Even if one party fails to fulfill its
obligations, the other party can only request their performance, yet shall not take personal coercive measures.

(2) The behavior of campus naked loan is manifested as civil legal acts, that is, the civil behavior with the purpose of establishment, alternation, termination of civil rights and civil obligations. Therefore, both parties have to express the clear declaration of will for the purpose of establishing the loan legal relationship and guarantee legal relationship and clarify the binding on both sides.

(3) Campus naked loan behavior is manifested as a mutual compensated civil legal act. That is, its establishment and effectiveness of the legal action needs the meaning of both parties, and both parties have mutual rights and mutual obligations to each other.

The connotation of “Campus”

"Campus" refers to the carrier of the "naked loan". Since the “naked loan” usually occurs among college students, it is always mentioned along with the word “campus”. The characteristics of students and campus can interpret the reasons why this kind of risky loan happened plenty of times.

(1) The campus provides a large number of potential borrowers for the "naked loan" lender

Borrowers of "naked loans" are mostly from 18 to 30 years old, and the campus is the most common place for women of this age. This feature can greatly reduce the lender's publicity and transaction costs, and greatly promote the proliferation of naked loans.

(2) College students are lack of social experience and have not yet formed stable value system.

Although college students are the persons of fully civil capacity, they, whose social experience is extremely scarce, are extremely vulnerable to the encouragement and temptation of others. And they have not yet formed a stable value system, hence they are so easy to be influenced by money worship, hedonism and corrosion, which will result in the twisted values that they would do anything for money.

(3) College students do not have a stable source of income, their credit is extremely scarce.

In the face of the high interest and costs of "naked loans", college students, who do not have stable income, have no capacity to pay the loan, most of whom are also from bad families. Therefore, the only way they can pay back the loan is using their flesh. As a result, this vicious phenomenon cannot be avoided.

(4) It is difficult for colleges to monitor and they can barely do a thing for the naked loan.

Although students and schools are formed by a kind of administrative legal relationship, the school can merely reach out to the teaching and some specific aspects to monitor the students, whereas “naked loan” is beyond that scope of supervision. What the school can do is to prohibit the promotion of naked loan in the campus. Due to the characteristic of naked loan, it is always promoted secretly, hence it is more difficult for colleges to control.

Connotation of “naked loan”

The author believes that "naked loans" have three levels of meanings:
"Naked loan" refers to "the use of naked photos as IOU to guarantee the loan": This is the most intuitive and superficial explanation of "naked loan" as well as how most people understand it. "Naked" refers to the exposure of flesh.

"Naked loan" is also reflected in the exposure of reputation and privacy: the guarantee provided by the borrower is not just nudity, but also their own reputation and privacy, which are also "naked".

"Naked loans" is more like a performance for the lack of credit and security value:

i. The threshold of campus naked loan is very low, basically they do not audit the borrower's credit and solvency. Immediately the “naked photos” are provided, they will lend the money. Since the lender has no idea of the credit of the borrower, so the lender’s credit is “naked” as well.

ii. The borrower's nude photos basically do not have any liquidity, “naked photos” only, in default of realization of the function, has a guarantee function, so the value of the borrower's guarantee is also incomprehensive.

Connotation of “threat”

"Threat" means that the campus naked loan may have a negative impact on the borrower, lender, school, society and other subjects.

1. The threat to the borrower: the threat to the borrower is mainly manifested as if the borrower does not pay the debts due, they will suffer various rights violations during the time when their nude photos are being published.

2. The threat to the lender: the lender's threat comes mainly from the borrower's inability to pay the debt and legal interest as well as the negative evaluation for his misbehaviors by law.

3. The threat to the school: the most intuitive threat to the school is to corrupt the campus culture, which will lead to money worship, hedonism and other vicious values, and will finally affect the ultimate goal of school’s teaching activities.

4. The threat to society: the breeding and spread of “naked loan” on campus will cause great damage to the credit system and financial order of the whole society.

AN ANALYSIS OF THE CURRENT SITUATION OF CAMPUS LOANS AT HOME AND ABROAD

An Analysis of the Current Situation of Campus Loan in China

Domestic scholars have conducted deeply research on campus loan disputes whereby they have explained its causes, problems, harms, and resolving mechanisms in detail. Among them, Hailing Zhan and Xiurong categorized campus loan problems into three points in their literature of "Risk and Prevention Mechanism of Campus Network Loans" (2016): 1. The loan procedure is simple and illegal naked debt instrument even appears 2. Campus loan turned into usury 3. College students are not appropriate credit object 4. Lack of campus loan supervision [1]. Li Chen’s “Investigation on the Network Loan of College Students” (2016), he utilized questionnaire for data collection and analysis, with which he summarized the source, purpose, method for calculating interests and management fees of campus loan, which provided great convenience for later researches[2]. In the article of “Exploration and
Reflection on Campus Loan Platform” (2013), Yuan Shen categorized campus loan platforms into “installment shopping platform”, “P2P loan platform”, “traditional e-commerce platform”, and thoroughly conducted a rigorous, prudent mathematical economics analysis on these three platforms[3]. Chunmei Zheng pointed out three problems existing in the campus loan domestically in her paper of “The Mechanism Design of the Development of Campus Credit Platform in China from the Perspective of Game Theory” (2016): ① installment fee is not transparent that online loans are turning into usury ② the enthusiasm of college students is not high, the platform overdue repayment rate is high ③ the credit information system is not perfect, the platform credit information is missing. Through the "game theory" perspective, she also analyzed the interaction among lending platform, college students, and the supervision department [4].

An Analysis of the Status Quo of Overseas Study on Campus Loans

Foreign use of campus loans is mainly to help low-income families to pay tuition fees, which is fundamentally different from the domestic "consumer loans", of which the United States campus credit system is the most mature. The US campus loan is divided into three parts: federal government loans, private sector loans and network credit platform loans [5]. US campus lending threshold is quite high, whether it is the lender's access or borrower's audit, are way beyond the standard of domestic loan platforms.

The top two US lending platform are SoFi and CommonBond, where they are using the "future elite target crowd + alumni financing" mode of operation, and use social networks to greatly reduce the default rate[6]. In addition, the US lending platform has very strict audit, they have provided detailed, operational eligibility and standards for different amounts, different levels of loans.

A TYPICAL CASE AND JURISPRUDENTIAL ANALYSIS OF CAMPUS NAKED LOAN DISPUTES

The following part will introduce the case of college student Li to explain the legal application and jurisprudential analysis of naked loan.

Due to the lack of start-up capital for the online shop on Alibaba, Li borrowed money from Wu through naked loan.

Through the borrowing platform, Li found the lender Wu, and signed the following loan contract: borrowing 10,000 yuan and pay off within three months, with a monthly rate of 35%, calculated by compound interest and at the same time pay 20% deposit to the platform and 15% intermediary fees. The repayment, penalty is in accordance with the implementation of 10,000 yuan, along with the nude photos and video as a guarantee. Here, the main legal issues involved are the validity of the loan contract and its related provisions, and the effectiveness of the guarantee contract.

The validity of the loan contract and its related terms

(1) The overall effect of the loan contract
The author believes that although some of the terms have flaws, the loan contract itself is still valid, because the loan contract meets all the elements of the contract in force:

i. Contract parties have the corresponding contracting capacity: both sides of the campus are people full of civil capacity

ii. Both parties of the contract expressed the truth: both sides of the contract have a clear and true declaration of will that there are no situations of coercions, fraud or a major misunderstanding, and the both sides of the contract are aware of its legal consequences.

iii. Contract does not violate the laws and administrative regulations of the mandatory provisions, public order and good custom. Although some of the terms of the contract are contrary to the mandatory provisions of the law, which means the specific provisions of the contract are invalid, this does not affect the overall effectiveness of the contract.

1. The validity of the interest clause

According to Article 26 of the provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Lending Cases: "When the interest rate agreed upon by both parties is less than 24% of the annual interest rate, the court shall support the lender’s request to collect the interest at the agreed rate from the borrower, and the lender requests the borrower to pay interest at the agreed rate. When the interest rate is more than 36% of annual interest rate, the exceeded part will be invalid. [7]" In this case, the monthly interest rate is as high as 35%, as a consequence the interest clause is invalid, the borrower can only claim 3% of the principle interest, and the law only protects the 2% interest.

2. The effect of the compound interest clause

In "Provisions of the Supreme People's Court on Several Issues concerning the application of law in the trial of cases involving private lending", it has published very complex provisions on the compound interest. In short, the overall interest including the compound part that is not more than 24% annual interest rate will be supported by the law, the beyond is invalid. The compounding results in this case are clearly more than 24% of the annual interest rate, therefore the compound interest clause is invalid.

3. The effect of deposit and the intermediary fee

Article 200 of the Contract Law of the People's Republic of China stipulates that "the interest on the loan shall not be deducted in advance from the principal, and if the interest is deducted in advance from the principal amount, the loan shall be returned and the interest shall be calculated according to the actual amount of the loan."[8], the deposit and intermediary fee have essential difference with the interest, yet there is no doubt that these two will cause damage to the debtor on the use of funds, and their usufruct. Then should the provisions of this article be applied here with substantial reason?

a. The effect of the terms of the deposit

According to Article 18 (2) of the General Provisions of Loans, the debtor has the right to extract and use all loans in accordance with the contract and agreement [9]. The deposit clause seriously infringes the debtor's right to use, proceeds and dispose the borrowing funds, which is bound to affect the realization of the purpose of the loan contract. Based on the principle of good faith and the principle of fairness of civil law,
it should be determined that the deposit clause is invalid and the deposit part should be deducted in principal amount.

b. The effect of the terms of the intermediary fee

Intermediary fees are essentially brokerage expenses paid for network loan platform. The author holds the belief that the terms of the intermediary fee has its legitimacy into effect. The online loan platform facilitates the transaction of both parties, which has paid a certain amount of labor, thus it has the right to charge from both sides. And the intermediary fee is the profit of the loan platform, which is the basis of providing services to its customers. Therefore, the intermediary fee clause itself is not illegal, yet it is much better and fairer to be shared equally by both parties.

The validity of the guarantee contract

The validity of the guarantee contract is not controversial. However, the guarantee contract took nude debt instrument as the guarantee has violated the public order and good morals, hence it should be invalid.

When Li cannot repay the loan on time, Wu blackmailed her with the nude photos.

Li could not repay the loan on time, but the lender Wu told Li that if the repayment was not returned within the period of grace, he would send all the nude photos and video to Li’s parents and to the Internet for sale, in order to threaten Li to repay the principal and high interest.

China's law only approves interest rate of 3% of the monthly interest rate, but the case of the monthly interest rate is as high as 35%, so there will be a large amount of interest that is not owned by Wu. Therefore, Wu had subjective intention to possess other people's property. And objectively, Wu forced Li to pay back the loan with nude photos and other coercion. And by no means is WU not a person with full criminal capacity, therefore his behavior of forcing Li may has constituted the crime of extortion.

Li could not pay the loan, hence Wu made other improper requests

Since Li was still not able to repay the loan, Wu asked Li to pay by sex and recording the process. In order to prevent the naked photos from leaking, Li had to accept the request. Wu repeatedly violated Li’s will to force Li to have sex with himself and others for several times and made profit from it.

Wu violated Li’s will to force her having sex with himself and others

Wu's intimidation violated women’s right of sexual freedom.

In this case, Wu forced Li for adultery with coercive means, which seriously violated Li’s will. According to "The Criminal Law", this behavior should be seen as rape. For those who also had sexual intercourse with Li, if they had known in advance of the situation, they would also have constituted a common crime.

Wu forced Li to have sex with others and profit from them
In the case, Wu also forced Li to have sexual intercourse with others and made profit from it. According to “The Criminal Law”, Wu constituted the crime of compelling others to prostitute, whose behavior was also corresponded with the statutory aggravating circumstances of “forced prostitution after raping”, which should be severely punished.

According to the provisions of Article 358 (3) of the Criminal Law of the People's Republic of China, the offenses of the first two crimes, as well as killing, injury, rape and kidnapping shall be punished in accordance with the provisions of all of the crimes[10]. Wu should be convicted of rape and forced prostitution with cumulative punishment.

**Wu posted Li’s naked photos online.**

Although Li paid off some of the loan by the sexual intercourse with Wu and others, Wu still posted Li’s personal information, nude photos, and videos online to make more profits as a “pimp”, and indicated that Li was a prostitute. When Li heard of the situation, she committed suicide.

Selling and spreading Li’s nude photos and videos violated Li’s privacy.

According to the "Interpretation of the Supreme People's Court on Several Issues concerning the determination of the liability for compensation for mental damage caused by civil torts": "In violation of social and public interests, social morality, infringement of other people's privacy or other personal interests, if the victim has sued the people's court for the purpose of infringement, and compensation for mental injury, the people's court shall accept the case according to law. [11]" In this case, Wu violated Li’s will to upload the nude photos online, which directly caused mental and physical damage to Li. It followed that it seemed that Wu’s behavior should be convicted as infringement and he should undertake the liability for tort damages. However, we neglect the situation of "Victim Commitment".

"Victim Commitment" has the following four elements: ① the victim must have the ability to agree; ② agreement should be clear, true; ③ agreement should be explained in advance; ④ agreement should not violate the law and public order. The first three elements are clearly satisfied, but the fourth element of the "public order and good morals" still needs to be discussed. Suppose such a scenario, A wants to share B’s nude photos with everyone under B’s agreement. However, the consequence after is too negative, so B sued A, claiming that their previous commitment to violate the public order and good morals, which should be invalid. It is obvious that the judge would be unlikely to support B’s claims. Privacy right, in which the patriarchy principle does not intervene individuals’ disposition, differs from life right. Frankly speaking, the behavior of the publishing of other’s naked photos violates the public order and good custom. The main act benefits the behavior encroach was public interest, which should be primarily protected by criminal law and administrative law. The imaginal cases and the case of Li had no difference in essential but the latter was camouflaged by the cloth of "naked loan" which by no means would exert substantial influence on the basic legal relationship. In a nutshell, the judgement here is the question of value, which depends on the inner conviction of individual judge in practice.
Wu indicated that Li is a prostitute online to make profit from prostitution.

Article 101 of the General Principles of Civil Law: “Citizens and legal persons enjoy the right of reputation, the dignity of citizens’ personal dignity is protected by law, and means of insulting or defamation of the reputation of citizens and legal persons is prohibited [12].” Therefore, only by spreading false information that is detrimental to the reputation of others can he infringe upon the reputation of another person. So the key to judge whether Wu has violated Li’s reputation is to figure out whether the behavior of having sexual intercourse has constituted prostitution.

Although objectively, the sexual intercourse of Li and others has contributed to the establishment of Wu’s forced prostitution. Li still got some profit from this behavior since she paid off some of the loan by having sex with others. But subjectively, the prostitution was against Li’s will. Hence the author believes that Li did not convict the crime of prostitution and the information Wu uploaded online was not true, which violated Li’s right of reputation.

Spread and sell Li’s nude photos and videos online

① Needless to say, according to the provisions of Article 363 of the Criminal Law, Wu would constitute the crime of trafficking and spreading pornographic material.

② According to Article 246 of the Criminal Law of the People's Republic of China, "Whoever insults others openly with violence or other methods or fabricates facts and slanders others, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, as well as criminal detention, public surveillance or deprivation of political rights. [13]" Wu’s behavior of openly selling and spreading the Li’s nude photos have met the objective behavior insulting others, the plot is very serious, hence has constituted crime of insulting.

③ The imaginative concurrence of the crime of selling and distributing pornographic goods and insulting.

A certain behavior of Wu causes two consequences, against two different legal interests, and in accordance with the provisions of China's "criminal law", it has constituted two crimes. According to the punishment principle of imaginative concurrence in our country, the crime with severer punishment should be taken, that is solely punish the felony.

Li committed suicide because of feeling ashamed

Here we need to explore the problem of two things: first, whether Wu violated Li’s right to life; second, whether Li’s death will affect the establishment of Wu’s charges. There is only one answer to the two questions, that is, whether there is any causal relationship between Li’s death and Wu's behavior.

(1) Causal relationship in tort law

"The causal relationship between the infringement, refers to the fact that the causal relationship between the illegal behavior and the damage, if there is no such illegal behavior, damage does not occur, the behavior is the cause of damage results; conversely, even in the absence of the behavior, damage may occur, the behavior is not the cause of the damage occurred. [14]" In this case, Wu’s behavior of uploading nude photos and insulting led directly to the Li’s death, which means if Wu's behavior
does not exist, Li would not die, consequently there is a causal relationship between the tort liability law on Wu's behavior with Li's death.

(2) Causal relationship in criminal law

The causality in criminal law is much stricter than the law of tort liability, and the doctrine of comparative causation is adopted: "Between behavior and result, according to the experience of people's daily life, there is a general occurrence of this result based on this behavior. When there is a considerable relationship between the criminal law, there is the causal relationship." Wu’s behavior on violating Li’s reputation on the caused the serious consequences of Li’s death, although it not alone constitutes a crime, it will become the aggravating circumstance of the insulting crime.

In summary, here Wu violated Li's right to life, and constituted the aggravating circumstance of the insulting crime.

THE LEGAL ADJUSTMENT MECHANISM AND PERFECTING SUGGESTIONS ON THE CAMPUS NAKED LOAN

Problems in the Legal Adjustment Mechanism of Campus Naked Loan in China

The legal adjustment mechanism of campus naked loan refers to the open legal ecological system which was determined by law, covering legislation, judicial, law enforcement object with autonomy, development, openness legal ecological system.

Campus naked loan storm once exposed 10G bulk of nude photos and videos, which surface considerable deficiency of the legal adjustment mechanism of campus naked loan in China. The main problems are inadequate supervision, poor accountability and dilatoriness of remedy in three aspects:

Inadequate supervision

(1) The state has no adequate supervision of the online lending platform

Online loan platforms, represented by "Borrowing treasure", is the biggest hotbed for "campus naked loan". Since P2P finance itself is a new thing, the development in our country is still at the experimental stage, which inevitably cause the lagging of the law. Many network loan platforms seize the loopholes in the policy, to make profit by "false advertising", "high interest", and other illegal and immoral methods. After several years of development, net loan market has issued a scale and ecology, but also exposed a lot of problems. At this point, legislators should speed up the introduction of relevant laws and regulations and improve the network loan platform with practical guidelines

(2) Innate supervision for users of online loan platform

The current net loan platform always deems themselves as an independent third party platform to escape from regulatory responsibilities, even though sometimes they are even aware of the existence of illegal means.

Responsibility is not claimed properly

"Campus naked loans" problems are often accompanied by a large number of civil tort liability, criminal responsibility and administrative responsibility, but the process of investigating responsibilities is accompanied by a lot of problems.
(1) The Lack of Administrative Responsibility of Online Loan Platform.

The lack of supervision of the network loan platform will inevitably lead to the lack of accountability for the platform. The "online naked loan" problem was led by dereliction of duty of the third party lending platform, hence they should take some administrative responsibility, but due to the lack of corresponding legislation from the executive department of law enforcement, online loan platform is often able to fleeing from liabilities.

(2) It is difficult to identify the Internet infringement liability person.

The identification of the responsible person of network infringement has always been a difficult problem to be solved in practice. One of civil litigation condition is to clear the defendant, it is difficult for victims to have the technical conditions to accurately locate the infringer; even if the defendant charged directly to the loan, the burden of proof of the lender’s tort still falls on the victim, then the victim has a great risk to lose. However, "naked campus loan" is bound to cause great damage to the right of reputation, privacy, the right to health of borrowers, the law must compensate to them, hence the problem of tort liability law is difficult to avoid.

(3) The corresponding crime crackdown is insufficient

"Campus naked loan" will lead to the crime of insult, blackmail and impose exactions on forced prostitution and a series of charges, the corresponding lenders have great social danger, thus criminal law has to evaluate them. However, until January 19, 2017, China only had its first arrest of naked loan lender - Gansu police solved the case of naked loan and convicted the suspect as crime of blackmail.

Remedy is not in time

When the nude photos of the borrowers were posted on the Internet, they spread over a wide range, which greatly affected the physical and psychological health of the borrowers. As the victim, the remedy of the rights and interests of the borrower is not satisfactory, which is directly related to the imperfect of the accountability mechanism. However, even if the court has filed the case, the remedy is still not timely and fully, since testification and the execution of the judgment will have serious procrastination; also in the aspect of compensation amount, by the ceiling of compensation for spiritual damages, victims often do not receive fair compensation.

Suggestions on the legal adjustment mechanism of campus naked loan threat

The legal adjustment mechanism of campus naked loan threat refers to a set of legal ecosystem covering legislation, judicature and law enforcement, hence the corresponding improvement suggestions should be put forward from these three aspects.

Legislative level: this level is mainly from the point of view of prevention and supervision.

(1) Perfection of credit right system

The problem of naked loan on campus reflects the great problem of our country's personal credit system, therefore it is urgent to perfect the system of credit right.

①Writing the right of credit into the constitution
As the fundamental law of China, the "Constitution" plays a leading role in our legal system. The first step in the perfection of the credit right system is to stipulate that “right of credit” should be the basic right of citizens to lay the legal foundation for the specific provisions of the credit right in the departmental law.

○ In civil law, the right of credit should be specified

In the general principles of civil law, the nature of credit right should be determined:

Credit right is a kind of personality right

The right of credit is often reflected in specific economic interests, with the carriers of bill of exchange and letter of credit. However, the author thinks that right of credit should be a kind of right of personality for the following reasons: i. First, the right of credit can not be directly used for commodity exchange activities; ii. Credit right and human beings are inseparable which cannot exist independently of the subject of rights; iii. Although credit right is closely related to the property right, it does not have the property content, which, as a result, cannot be quantified.

b. Credit right is an independent special personality right

In view of the fact that the right of credit has its own connotation and denotation, and in judicial practice, there are many disputes about the right of credit, which has the fundamental difference with the so-called "kissing rights" and so on. Therefore, the author thinks that the right of credit should be isolated from the general personality right and be protected as a special independent personality right.

Perfect the combination of credit right and the existing civil law

The conflict between right of credit and right of privacy

Personal credit information disclosure is a legal obligation of credit right, which will inevitably lead to degrade personal privacy; but if blindly protect personal privacy, the right of credit will not be implemented; hence the credit right and the right of privacy is an inherent conflict of rights. However, the two are equal in the legal status, and how to choose and balance them is a difficult problem. From the author’s perspective, they can be balanced from these three aspects: i. Firstly, strictly limited the subject of credit collection: the collection of personal credit information subject should be limited to the special administrative department and its authorized units, any other individuals or organizations shall not collect. ii. Strictly limited the extension to which personal credit information should be disclosed: Personal credit information inquiry can only be carried out by the specific subject (such as oneself and the counterparty) in the national credit information inquiry network. iii. Strictly limit the use of credit information disclosure: personal credit information can only be used for legal commercial use; otherwise serious legal responsibility will be taken.

The connection between right of credit and tort liability

Although the credit right is a kind of personality right, the infringement of right of credit is often the cause for the loss of economic interests, which is similar to the right of reputation of legal persons. Of course, it does not exclude the possibility that the infringement of the right of credit leads to the loss of spiritual interests. The infringement of the right of credit should also meet the requirements of the establishment of the general tort liability, and the scope of compensation includes both direct and indirect losses.

c. Construction of specific system of credit right: the author believes that the specific system of credit right should include at least three aspects: credit collection system, rating system and supervisory system.
Perfect the restrictive provisions of the collateral in the Guarantee Law.
China's "Guarantee Law" only stipulates the applicable exclusive scope of mortgage property in Article 37, and the reasons for the exclusion is basically because of property defects, the scope of the pledge is limited to the principle of "movable property", yet the application of other collateral is not clearly defined, where can be seen that legislation is clearly flawed. The author believes that the "Guarantee Law" should at least clearly exclude the nude photos, video and other similar collaterals that may be against the personal rights.

The reference of “contracts violating the public order and good faith” in the Contract Law can also achieve the same exclusive results. However, the ordinary people are not professional legal persons after all, and when the clause is advocated, they have often resorted to the courts; nevertheless the negative legal consequences have already occurred. Therefore, if those immoral things pledged are not explicitly excluded, the corresponding educational role, guiding role and preventive role of law will be meaningless.

(3) Speeding up the formulation and improvement of laws and regulations on network credit

In August 24, 2016, the CBRC issued the "Interim Measures for the administration of business activities of network lending intermediary institutions", which stipulates more specific requirements from all aspects of online loan, yet there is still room for improvement for the campus naked loan threat:

- Set more stringent access threshold to replace the record registration system;
- Improve the platform of the information disclosure system;
- Deeply classify administrative responsibility, increase the civil liability, such as joint and several liabilities;
- Strengthen the supervision of loan platform for borrowers and lenders

Judicial level

The proposal of this level is mainly aimed at two defects of the campus naked loan threat, the legal settlement mechanism is not in place and the remedy is not in time.

(1) Joint liability of net loan platform

In the premise of perfecting the legislation, if the online loan platform failed to perform its regulatory responsibilities, or deliberately letting users to take naked loan activities, the court may decide the platform has taken joint liabilities with the borrower due to the loss of personality right infringement according to law.

(2) Adjusting the distribution of the liability of proof

The nude photos and other information of borrowers are often posted online, hence one of the major difficulties of network infringement is the determination of the infringer. Therefore, in order to ensure that the borrower can be remedied in a timely manner, the distribution of the liability of proof for the infringer can be adjusted appropriately.

- The distribution of the discretion of judge in individual cases

The nude photos of the borrower are kept by the lender; hence the lender is closely related to the leaking of the photos. Therefore, in the judicial practice, the author believes that if the borrower sues the lender to the court as the defendant, the borrower only need to provide evidence of the damage, infringement behaviors, and the relationship of the lender with the infringement facts. And the lender has to prove that
there is no fault and there is no causal relationship between the tort and the consequences of the damage.

② The harness of criminal lawsuit with civil claims

If the criminal liability is involved, the borrower may reduce his liability of proof in the form of criminal incidental civil action. Because in criminal proceedings, the prosecution will bear the burden of proof, and the facts identified in the criminal proceedings may be invoked directly in incidental civil action.

(1) The breach of the top thread of the compensation for spiritual damages and the application of punitive compensation

In the cases of naked loan on campus, borrowers always suffer great mental damages. However, different areas always set various limitation for the mental damage compensation, all of which are very low. Such as the opinions of the superior people's Court of Shandong on the trial of personal injury compensation cases, the standard of compensation for serious mental damage is only three thousand yuan to five thousand yuan. This obviously lack of protection for borrowers, therefore, the author believes that punitive compensation can be used here to break through the limit of mental compensation, so as to better protect the borrower, and also to strengthen the prevention of naked loans.

(2) Non-private prosecution in crime of non-private prosecution

The crime that is most likely to be involved in the campus naked loan is the “crime of insulting”, whereas the crime of insulting a kind of crime of private prosecution, which will be dealt with only if the situation has been exposed. According to the second paragraph of Article 266 of the Criminal Law of the People’s Republic of China, “the crime in the preceding paragraph is dealt with only if it has been exposed, except for the one with serious harm to social order and national interests.” [15]

In the case of campus naked loan, it is necessary to determine whether the exposure of nude photos online constitute “serious harm to social order”. The author believes that “serious harm to social order” requires value judgments. Therefore, it is not easy for people to draw a unified standard. The reason why legislators established this flexible regulation is that it will be easier for specific judicial practice to be executed more flexibly with the criminal policy. Therefore, it has legal basis here to non-private prosecution the crime of private prosecution, so as to better claim responsibility.

Law enforcement level

(1) The administrative licensing authority shall strictly examine and verify the qualifications of the net loan platform

The author believes that online loan platform is not just an intermediary platform, which will develop into a highly ecological financial market, so it is necessary to enhance the access threshold rather than implementing the survival of the fittest algorithm, in order to maintain the healthy development of the whole industry, so as to avoid similar tragedies.

(2) Strengthen the supervision of network lending platform and illegal liability: as for the already established online loan platform, the relevant law enforcement agencies should strengthen the supervision and accountability of the platform, to purify the online loan platforms to ensure that naked loans will not happen.
(3) Authorize the online loan platform regulatory obligations: online loan platform can apply the “contract filing system”, which means that both parties have to record their contract and only when the contract is audited can it be valid. When a dispute happens, it should be subject to the contract on the record, so that the issue of "Black-White" Contract can be avoided.

CONCLUSION

Through the research of this paper, the author summarizes the basic connotation and content of the problem of naked loan on campus, and through the comprehensive application of constitution, civil law, criminal law and administrative law, the legal liability of campus naked loan threat is explained. The paper comes to the conclusion that there are still three perspectives that need to be enhanced, which are insufficient supervision, the responsibility is not claimed in place, the remedy is not in time in the problem of campus naked loan. Moreover, the author proposed relevant suggestion from the aspects of legislation, judicial and law enforcement, with the hope to solve the issue of campus naked loan fundamentally.

REFERENCES

1. General Principles of Civil Law of the People's Republic of China
2. The contract law of the People's Republic of China
4. Li Chen “Investigation on the Network Loan of College Students” (2016).
7. Li Huang “Development of campus loans in China from the operating mechanism of foreign student loans”.
8. Chunmei Zheng “Comparison and regulation analysis of campus loan platform at home and abroad”.
9. “Provisions of the Supreme People's Court on Several Issues concerning the application of law in the trial of cases involving private lending”.
10. General provisions of loans
11. Criminal law of the People's Republic of China
12. "Interpretation of the Supreme People's Court on Several Issues concerning the determination of the liability for compensation for mental damage caused by civil torts"
13. General principles of the civil law of the people's Republic of China