

Research on practical issues of “entrustment-type” fraud cases under *Chinese Criminal Law*

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Abstract. “Entrustment-type” fraud, a criminal act wherein the entrustor seeks to achieve a specific objective by commissioning another party to handle matters, and the entrusted party, with the intent to illegally possess property, deceives the entrustor through fabricated facts or concealment of the truth, inducing the entrustor to dispose of property. In practice, such fraud often involves the entrusted party fabricating social connections, capabilities, progress of matters, or intended use of funds to defraud property. Judicial determination focuses on whether the entrusted party harbors the “intent to illegally possess.” Where evidence is insufficient, facts are unclear, or there is no intent to possess others’ property, even if false, exaggerated, or fraudulent conduct exists, it may not constitute this offense. Regarding post-incident property recovery, the legal nature of the defrauded property as non-loss property complicates recovery through criminal incidental civil procedures; while civil litigation is feasible, it carries significant risks. In criminal confiscation and restitution processes, the support for restitution claims and the scope of property compensation depend on factors such as the purpose of the entrustment and the manner of fund disposition.

Keywords: entrustment-type fraud, intent to illegally possess, crime of fraud

1. Introduction

In the context of China’s traditional “guanxi” (relationship-based) society, the practice of pursuing specific interests through entrustment relationships is deeply rooted in cultural norms. However, this trust-based social interaction has been exploited by wrongdoers in recent years, giving rise to “entrustment-type” fraud as a novel crime characterized by covert methods, substantial sums involved, and concentrated regional distribution. From a legal normative perspective, although “entrustment-type” fraud falls under Article 266 of the *Criminal Law of the People’s Republic of China* as a subtype of the crime of fraud, its judicial recognition in practice requires scrutiny of whether the suspect possesses the “intent to illegally possess.” This determination carries unique implications, particularly affecting subsequent restitution issues. Grounded in empirical research, this paper analyzes multiple judicial case studies to systematically outline the judicial recognition standards and property disposition rules for entrustment-type fraud, aiming to explore its current judicial practice and challenges.

2. Basic concept and typological analysis of “entrustment-type” fraud

2.1. Basic concept of “entrustment-type” fraud

Pursuant to Article 266 of the *Criminal Law of the People’s Republic of China*, the crime of fraud is defined as the act of deceiving public or private property through fabricated facts or concealment of the truth with the intent to illegally possess. As a specialized subtype of fraud, “entrustment-type” fraud occurs when an entrustor, seeking to achieve specific objectives—such as securing school admissions, job transfers, “rescuing” detained individuals, obtaining household registrations, vehicle quotas, or special administrative approvals (whether lawful or unlawful)—commissions another party to act or facilitate relationships. The entrusted party, with the intent to illegally possess, employs methods such as fabricating facts (e.g., falsely claiming acquaintance with officials, inventing positions, exaggerating capabilities, or making false promises) or concealing the truth, leading the entrustor—acting as the victim—to form a mistaken understanding. This misconception prompts the entrustor to dispose of property labeled as “service fees,” “operational funds,” or “entrustment expenses,” ultimately resulting in loss. This behavior pattern satisfies the

general constitutive elements of fraud while exhibiting distinct practical manifestations in judicial recognition due to the involvement of the entrustment relationship.

2.2. Typological analysis of “entrustment-type” fraud

Based on an analysis of multiple judicial cases, “entrustment-type” fraud can be categorized into three typical types according to the trustee’s specific fraudulent methods and the degree of subjective malice.

2.2.1. Fabricated identity

This type involves the entrusted party fabricating a false special identity relevant to the entrusted matter, convincing the entrustor of their capability to handle it. This often manifests as claiming to be a “relative or friend of an official or leader” or a “person with specific duties” directly linked to the ability to act. For instance, in the case *Geng v. People’s Procuratorate* (2018), Case No. 518, Final Appeal of Beijing 01 Criminal Cases, the defendant Geng fabricated the identity of the “brother of the mayor of Taiyuan,” asserting the ability to facilitate a job transfer, though lacking such status, leading to a conviction for fraud. Similarly, in *Lv v. People’s Procuratorate* (2017), Case No. 333, Final Appeal of Hubei 06 Criminal Cases, the unemployed defendant Lv falsely presented himself as a “bank credit officer,” promising employment at a bank, resulting in a fraud conviction due to the fabricated identity.

2.2.2. Fabricated facts

Here, the entrusted party lacks the actual ability to handle the entrusted matter but fabricates ongoing efforts, potentially performing superficial actions. However, the progress is far removed from the entrusted goal, or the actions lack substantial connection to the outcome, rendering fulfillment impossible. Based on the actor’s genuine subjective intent and adhering to the principle of consistency between subjective and objective elements, for intermediaries who fail to assist in achieving the entrustment’s purpose, if they fabricate circumstances of aiding in the fulfillment of the entrustment or transferring property when obtaining assets, this indicates an intent to illegally possess at the time of acquisition, thereby constituting the crime of fraud [1]. For example, in *Wang v. People’s Procuratorate* (2015), Case No. 40, Second Final Appeal of Yunnan Intermediate People’s Court Criminal Cases, the victim Wang’s husband was detained for a criminal offense, and the fugitive Huang offered to secure bail or immunity, a promise deemed unfulfillable under law, leading to a fraud conviction. In another case, suspect Gu falsely claimed to assist Xu in purchasing a property, using fabricated chat records and fake contracts to defraud 1,022,500 RMB, which was spent on restaurant operations, debt repayment, and personal consumption, resulting in a fraud conviction due to the lack of substantive performance. Thus, if the entrusted party has not undertaken any actions related to the entrusted matter and lacks any purpose of securing improper benefits for the entrustor, but instead harbors only an intent to illegally possess the entrustor’s property, this constitutes the crime of fraud [2].

2.2.3. Severe exaggeration

In this category, the entrusted party does not fabricate an identity but grossly exaggerates their ability to handle the matter or the process and outcome, fostering unreasonable expectations in the entrustor, despite lacking effective progress or feasibility. Notably, minor exaggeration without false promises may not constitute a crime. In *Lin v. People’s Procuratorate* (2020), Case No. 122, First Instance of Beijing 0117 Criminal Cases and *Yuan v. People’s Procuratorate* (2022), Case No. 153, First Instance of Shanxi 0104 Criminal Cases, defendants Lin and Yuan exaggerated their capabilities, failed to deliver, refused refunds, and absconded, leading to fraud convictions based on intent to illegally possess. Conversely, in *Chen v. People’s Procuratorate* (2015), Case No. 407, First Instance of Li Jin Criminal Cases, Chen’s slight exaggeration of connections was deemed insufficient for fraud, as genuine links existed, resulting in an acquittal.

3. Judicial recognition of “entrustment-type” fraud

Normatively, while “entrustment-type” fraud and civil fraud both involve deceptive conduct, they differ qualitatively in legal evaluation, with the critical distinction lying in whether the entrusted party possesses the criminally significant “intent to illegally possess.” The investigative focus in entrustment-type fraud should be on the objective “deceptive conduct”. However, not all statements inconsistent with facts constitute criminal fraud; rather, the degree of exaggeration or fabrication by the actor should be examined, and a complete chain of evidence should be established. Otherwise, hastily determining that a party constitutes fraud would violate the principle of criminal restraint, improperly expanding the scope of criminal punishment [3]. In judicial practice, determining this subjective element requires moving beyond a singular factual observation to a three-dimensional evidence review system—covering pre-act, in-act, and post-act phases—to infer subjective intent from objective behavior patterns.

3.1. Pre-act phase

Judicial authorities initially assess the authenticity of the entrusted party's qualifications. Fabrication or excessive embellishment of basic identity, professional background, social relationships, or associates, used as the primary means to gain trust and property, serves as a key presumption of "intent to illegally possess." For instance, in *Lin v. People's Procuratorate* (2020), Case No. 122, First Instance of Beijing 0117 Criminal Cases, the defendant's fabricated government connections strengthened the intent finding. Additionally, scrutiny of the entrusted matter's legality and feasibility is crucial. Promises to handle matters clearly violating laws, regulations, or objective principles—such as unlawful administrative approvals or extralegal bail—indicate inherent fraudulence, directly mapping the entrusted party's knowledge of infeasibility to intent.

3.2. In-act phase

Focus shifts to the authenticity of the entrusted party's actions and the relevance of fund usage. Deliberate concealment of identity, preventing progress verification, reflects an active maintenance of information asymmetry, diverging from civil good faith principles and serving as indirect evidence of intent. Substantive review of performance is essential: superficial procedural actions, delays with fabricated excuses, or failure to advance the matter—without evidence of effective efforts—suggest a lack of genuine intent, aligning with the objective markers of "intent to illegally possess." Fund usage compliance is decisive; diversion to personal consumption, debt repayment, unrelated investments, or untraceable destinations severs the link to the entrusted purpose, indicating intent to exclude the entrustor's rights. Even partial misuse requires comprehensive assessment of the deviation ratio and circumstances.

3.3. Post-act phase

After non-fulfillment or defective performance, the entrusted party's attitude toward refunds becomes a pivotal intent indicator. Proactive restitution typically implies an initial lack of intent, suggesting a civil breach rather than a crime. Conversely, refusal to refund under pretexts like "service fees" or "costs," or evasion through delays or disappearance, reveals an intent to illegally control property. Evidence destruction—e.g., deleting records or destroying documents—further reinforces this inference by indicating an intent to conceal fraud and evade liability, contrasting with reasonable civil remedies post-breach.

4. Common scenarios not constituting "entrustment-type" fraud

In criminal justice practice, the "intent to illegally possess" is the core criterion for "entrustment-type" fraud. However, complex case details—fraud methods, task progress, and fund use—sometimes lead to non-prosecution or acquittal, reflecting evidentiary, factual, and intentional boundaries.

4.1. Insufficient evidence

Some cases lack a complete proof system. In *Liu v. People's Procuratorate* (2017), Case No. 149, Final Appeal of Hebei 02 Criminal Cases, Liu concealed a permit failure and demanded fees, but a refund clause and joint efforts with the entrustor undermined the fraud element, leading to an acquittal due to an incomplete evidence chain. Similarly, in *Zhong v. People's Procuratorate* (2020), Case No. 58, Prosecution Decision of Yuan Jian Criminal Cases, Zhong's liaison efforts for a job transfer showed only minor defects, insufficient for fraud, resulting in a non-prosecution decision.

4.2. Unclear facts

Obstacles in verifying key facts may lead to acquittals under the "benefit of the doubt" principle. In *Zhang v. People's Procuratorate* (2017), J Case No. 449, Final Appeal of Hebei 02 Criminal Cases, untraceable funds and a missing co-conspirator obscured Zhang's role, leading to an acquittal. In *Ren v. People's Procuratorate* (2014), Case No. 00081, Second Final Appeal of Henan Intermediate Criminal Cases, Ren's disclosure of inability and investigation efforts conflicted with fraud intent, resulting in a not-guilty verdict due to factual ambiguity.

4.3. Absence of "intent to illegally possess"

Some cases lack this intent's objective markers. In *Li v. People's Procuratorate* (2014), Case No. 339, First Instance of Sui Bei Criminal Cases, Li's voluntary refund post-failure aligned with civil breach, not fraud. In *Jiang v. People's Procuratorate* (2016), Case No. 41, First Instance of Henan 0103 Criminal Cases, a refund clause and fund use for the matter negated intent, leading to an acquittal. Cases like *Liu v. People's Procuratorate* (2021), Case No. Z18, Prosecution Decision of Rui Jian Criminal Cases and *Yang v. People's Procuratorate* (2021), Case No. 19, Prosecution Decision of Duo Jian Yi Bu Criminal Cases further illustrate intent's requirement for objective-subjective alignment.

5. Property recovery issues in “entrustment-type” fraud

5.1. Remedial procedures

In the property restitution legal relationship of “entrustment-type” fraud, civil remedies are normatively feasible but practically constrained. Under Article 153 of the *Civil Code of the People’s Republic of China*, contracts with unlawful purposes violating public order and morals are void, requiring restitution of acquired property. Thus, entrustors may sue for contract invalidity or unjust enrichment. However, courts often deny such claims due to the unlawful nature of the conduct, citing public order and morals or criminal involvement, increasing litigation risks. False litigation (e.g., framing as a loan) may violate Article 307 of the *Criminal Law of the People’s Republic of China* on false litigation.

In criminal proceedings, restitution via incidental civil actions is limited. Article 101 of the Criminal Procedure Law of the People’s Republic of China and Article 175 of the Interpretation of the Supreme People’s Court on the Application of the Criminal Procedure Law restrict such actions to personal injury or property damage by crime. Per Article 5 of the Supreme People’s Court Provisions on the Scope of Incidental Civil Actions in Criminal Cases, defrauded property losses fall under criminal confiscation or restitution, not civil suits, to avoid procedural conflicts.

5.2. Property restitution and scope

Post-conviction, whether property should be returned to entrustors is debated. Affirmative views argue that, as fraud under Article 266 of the *Criminal Law*, victims’ property rights deserve protection despite unlawful entrustment purposes, if deception induced the payment. More specifically, these views suggest that, despite the entrusted party’s severe exaggeration or fabrication of false facts constituting fraud in criminal law for an entrustment contract formed for school admissions, the contract may still be deemed valid and effective in civil law. In such cases, the entrustor may request the return of the principal amount of the entrustment fees, as well as appropriate interest and related losses [4]. In contrast, negative views, citing legal order unity, argue that void contracts and non-recoverable unlawful payments under civil law should extend to criminal law, especially for criminal purposes (e.g., bribery), per Article 64 of the *Criminal Law* mandating confiscation. Some scholars argue that if the entrusted matter violates mandatory provisions of law affecting validity, the contract should be deemed void, and the principle that payments made for unlawful reasons are not refundable should not apply. Instead, a practice should be established to return the principal amount of the entrustment fees, while disallowing interest or other damages, thereby achieving a negative evaluation of the unlawful conduct of both parties [5]. In practical, some courts confiscated funds used for bribery.

Restitution likelihood ties to the entrustment’s illegality and performance. “Pure fraud” (no performance) favors restitution, while “half-fraud” or “intercepted bribery” (partial criminal acts) leans toward confiscation. Scope, per Article 64, excludes reasonable costs (e.g., material fees) but includes personal use or investments. For third-party transfers, *Civil Code* Article 311’s regarding the rules of bona fide acquisition: traceable if knowingly or cheaply acquired, untraceable if bona fide with fair value, unless public order overrides.

6. Conclusion

“Entrustment-type” fraud, spanning civil and criminal norms, requires balancing crime control and rights protection. Judicial recognition hinges on “intent to illegally possess,” assessed via pre-act identity, in-act behavior, and post-act refund attitudes, with fraud’s criminality distinguished from civil exaggeration. Property disposition follows a “tiered unlawfulness” approach: restitution for “pure fraud,” confiscation for “half-fraud” or “intercepted bribery.” Future improvements could refine intent rules, standardize unlawful payment applications, and enhance typological research to align property protection with public order.

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