

amounts of borrowed debt serves as the grounds for appropriation.

However, this intention is fictitious and normative. If the actual intention is the issue, it is difficult to suppose the intention to appropriate new debt that does not yet exist. In addition, for existing debt as well, because the debtor continues to make repayment with no way of knowing that the debt has been eliminated due to the principal appropriation of the amount exceeding the limit, it is difficult to read in the fact of the designation of appropriation to separate debt, and it is impossible to be exact.

Against this backdrop of some judicial precedents allowing the intention to appropriate despite such difficulties, there is a principle of debtor protection indicated in the Interest Restriction Law. However, judicial precedents have not been thorough in that direction. If that direction is delved into thoroughly, a resolution will probably be reached of either recognizing intention in a more abstract and normative form by adhering to the tenor of the Interest Restriction Law or simply adopting the natural appropriation theory.

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10. Decision of the Supreme Court Clarifying that PTSD is Included in 'Injury' under the Penal Code

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For a case in which the defendant confined four female victims and during the period of their confinement assaulted and intimidated them, thereby causing PTSD (post-traumatic stress disorder), on July 24, 2012, the Supreme Court made a decision that such actions constituted a crime of confinement causing injury (Article 221 of the Penal Code). This decision was the first by the Supreme Court to clarify a judgment that PTSD is included in "injury" under the Penal Code.

Japan's Penal Code has several provisions for punishment in the event

that “injury” is caused to a person, and those provisions can be broadly divided into three types. (i) The first type is the provision to punish those who have deliberately injured a person, and the crime of causing injury (Article 204) falls under this type. (ii) The second type is the provision to punish those who have injured a person due to negligence, and the crime of causing injury through negligence (Article 209) and the crime of causing injury through negligence in the pursuit of social activities, etc., (Article 211) fall under this type. (iii) The third type is a series of special provisions for punishment in the event that a person is injured as a result of a specific type of crime that was committed deliberately. The crime of confinement causing injury (Article 221) that was applied in this case is one of the latter. A crime of confinement causing injury is a crime that is constituted when the defendant deliberately “confined” a victim, and as a result, the victim was “injured” (however, the defendant was not aware that injury would be caused). The “injury” referred to in all of these provisions is conventionally and ordinarily understood as causing a disorder to a person’s physiology. Physiological disorders include not only disorders of physical functions, but also disorders of mental functions. Judicial precedents thus far have shown that sleep disorders caused by psychological weakness or mental stress, for example, fall under “injury.” The point of contention in this case was whether PTSD could be included in such disorders of mental functions.

In this case, the defendant argued that PTSD is not included in “injury” under the Penal Code. The reason for this is that if mental responses, such as PTSD, are included in “injury,” the concept of “injury” will unjustly expand, and it cannot be said that objective criteria for determining whether or not it is PTSD have been established. However, the Tokyo High Court indicated the following points and dismissed this argument (September 24, 2010 decision). PTSD is determined according to diagnostic criteria that are shared throughout the world, such as the American Psychiatric Association’s DSM-IV-TR and the WHO’s ICD-10. Accordingly, even if PTSD is included in “injury,” that will not cause the scope of “injury” to expand unjustly. In addition, PTSD is already recognized as a specific mental illness in the field of psychiatric medicine, and it is a serious mental disorder on an entirely different level from mere temporary mental distress or psychological stress. The Supreme Court

agreed that this judgment by the Tokyo High Court was just, and supported the conclusion that PTSD falls under “injury” in the Penal Code.

Conventionally, there were opinions opposed to PTSD being included in “injury” under the Penal Code. The first of those opinions maintained that because the concept and judgment criteria for PTSD have not yet been established, the recognition of “injury” would be unstable if PTSD were included in “injury” under the Penal Code. This argument is similar to the defendant’s argument in this case. The second opinion is that prudence should be taken for including PTSD in “injury” for crimes of type (iii) above. This opinion is summarized as follows. Crimes of type (iii), such as the crime of confinement causing injury that is the issue in this case, constitute cases in which the victim was injured as a result of the deliberate commission of a specific crime (confinement, rape, robbery, etc.). Let us then consider that the mental shock caused by those crimes would be included in “injury.” If so, in the event that the victim of confinement, rape, or robbery has suffered mental shock, the defendant would be questioned not for a crime of confinement (Article 220), rape (Article 177), or robbery (Article 236), but rather for a more serious crime of confinement causing injury (Article 221), rape causing injury (paragraph (2) of Article 181), or robbery causing injury (Article 240). However, it can naturally be expected that a victim of confinement, rape, or robbery will suffer mental shock. Therefore, the statutory penalties for crimes of confinement, rape, or robbery probably were determined by supposing that the victim would suffer such a degree of mental shock. Therefore, deeming this degree of mental shock as “injury” and questioning the defendant for a crime of confinement causing injury, rape causing injury or robbery causing injury must go against the tenor of legislating these provisions.

This second argument certainly has some degree of persuasive power. However, this argument does not provide definite grounds for excluding PTSD from “injury.” There are counterarguments against this argument maintaining that it is not known whether or not statutory penalties in provisions for crimes of confinement, rape, or robbery were stipulated based on supposition of mental harm suffered by the victim. In addition, as stated by the Tokyo High Court in this case, an important point is that PTSD is a serious mental illness on a different level from mere mental

shock that can naturally be expected to occur following confinement, rape, or robbery. Based on the above, the Supreme Court decision that PTSD is included in “injury” under the Penal Code could be sustained.

(on 23 January 2013)