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Dr. Mei Gechlik
Founder and Director, China Guiding Cases Project

Pei Zhang and Aaron Gu
Editors, China Guiding Cases Project

Guiding Case No. 19: CGCP Annotations

April 30, 2016 Edition*

* The citation of this piece is: Mei Gechlik, Pei Zhang, & Aaron Gu, Guiding Case No. 19: CGCP Annotations, STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, Guiding Cases in Perspective™, Apr. 30, 2016, http://cgc.law.stanford.edu/guiding-cases/guiding-case-19/. The authors thank Siqing Li for editing the Chinese version of this piece, Oma Lee for assisting in the translation of the Chinese version into English, and Jordan Corrente Beck for editing the English version.

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I. The Process of Selecting Guiding Case No. 19

ZHAO Chunming et al. v. The Automobile Transport Company of Fushan District, Yantai Municipality, WEI Deping, et al., A Motor Vehicle Traffic Accident Liability Dispute (“Guiding Case No. 19” or “GC19”) is one of the guiding cases (“GCs”) included in the fifth batch of GCs released by the Supreme People’s Court (“SPC”) on November 8, 2013. Its original judgments are the (2009) Bao Min Yi (Min) Chu Zi No. 1128 Civil Judgment rendered by the Baoshan District People’s Court of Shanghai Municipality and the (2010) Hu Er Zhong Min Yi (Min) Zhong Zi No. 1353 Civil Judgment rendered by the No. 2 Intermediate People’s Court of Shanghai Municipality.

This case was selected as a GC through the following process (see Chart 1):

1. On January 15, 2013, the Higher People’s Court of Shanghai Municipality recommended this case to the Office for the Work on Case Guidance of the SPC.

2. The Office for the Work on Case Guidance of the SPC sent this case to the First Civil Tribunal for comment. The First Civil Tribunal considered the results of and reasons for the adjudication to be in accordance with relevant judicial interpretations of the SPC. The Research Office of the SPC reported the case to the leader in charge of the matter and then submitted it to the Adjudication Committee. On February 18, 2013, the Adjudication Committee of the SPC agreed to confirm the case as a GC. The SPC released this GC on November 8.

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2. The first-instance judgment has not been found and may have been excluded from publication. Accordingly, these annotations focus on a comparison of GC19 and the second-instance judgment of the underlying case.


4. See 最高人民法院案例指导工作办公室 (The Office for the Work on Case Guidance of the Supreme People’s Court), 指导案例 19 号《赵春明等诉烟台市福山区汽车运输公司卫德平等机动车交通事故责任纠纷案》的理解与参照 (Understanding and Referring to Guiding Case No. 19, ZHAO Chunming et al. v. The Automobile Transport Company of Fushan District, Yantai Municipality, WEI Deping, et al., A Motor Vehicle Traffic Accident Liability Dispute), 《人民法院·应用》 (THE PEOPLE’S JUDICATURE·CASES), Issue No. 6 (2014).


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II. Comparison Between Guiding Case No. 19 and Its Original Judgment

1. Basic Facts of the Case

Based on the “Basic Facts of the Case” section of GC19, the following table compares the similarities and differences between GC19 and the original second-instance judgment:

<table>
<thead>
<tr>
<th>Guiding Case No. 19</th>
<th>Original Second-Instance Judgment</th>
</tr>
</thead>
<tbody>
<tr>
<td>At approximately 5:30 on November 25, 2008, a truck bearing counterfeit plate Lu F41703 (and) driven by defendant LIN Zedong) was travelling on a certain section of Tongsan Expressway and collided with a passenger vehicle traveling in the same direction [and] driven by defendant ZHOU Yaping. The two vehicles rushed down the embankment. The passenger vehicle rolled over, causing FENG Yongju, a passenger in the vehicle, to die at the scene. Upon the traffic police department’s determination, the truck driver LIN Zedong bore primary liability, the passenger vehicle driver ZHOU Yaping bore secondary liability, and</td>
<td>Essentially the same.</td>
</tr>
</tbody>
</table>

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>2</strong> FENG Yongju bore no liability for the accident. The plaintiffs ZHAO Chunming, a certain ZHAO, a certain FENG, and a certain HOU are, respectively, the husband, son, father, and mother of the deceased, FENG Yongju.</td>
<td><strong>2</strong> Essentially the same, but the insurance is not mentioned as “compulsory third-party liability insurance for motor vehicles”, but as “compulsory traffic accident liability insurance for motor vehicles”.</td>
</tr>
<tr>
<td><strong>2</strong> The truck registered with the vehicle administration department [as bearing] license plate Lu F41703 was not the truck that caused the traffic accident. The owner of the truck registered with that license plate was The Automobile Transport Company of Fushan District, Yantai Municipality (hereinafter referred to as “Fushan Company”), and [its] actual owner was defendant WEI Deping. The truck had the compulsory third-party liability insurance for motor vehicles, [provided by] Yantai Center Branch of Yongan Property Insurance Company Limited (hereinafter referred to as “Yongan Insurance Company”).</td>
<td><strong>2</strong> Essentially the same, but with more details.</td>
</tr>
<tr>
<td><strong>3</strong> The actual owner of the truck bearing license plate Lu F41703 as a counterfeit plate ([i.e.,] the truck that caused the traffic accident) was defendant WEI Guanghui (卫广辉). LIN Zedong was the driver employed by WEI Guanghui. As reflected in the registration information at the vehicle administration department, from April 26, 2004 to July 2, 2008, [the owner of] the truck registered with license plate Lu F41703 made 15 applications for a replacement license plate and vehicle license on grounds of [their] damage or loss. The application form filed on August 23, 2007 by WEI Guanghui for a replacement vehicle license was affixed with the seal of Fushan Company. After the accident, Fushan Company sent personnel to the traffic police department to deal with matters related [to the accident]. In the course of handling [the case], WEI Guanghui stated that WEI Deping had knowledge of the counterfeit plate and received payment for the counterfeit plate, [and that] after the accident, WEI Guanghui borrowed from WEI Deping the insurance policy of the truck registered with license plate Lu F41703 to deal with the accident, and the insurance policy was still kept by WEI Guanghui.</td>
<td><strong>3</strong> Essentially the same, but with more details.</td>
</tr>
<tr>
<td><strong>4</strong> The registered owner of the passenger vehicle involved in the accident was defendant ZHU Rongming, but the vehicle had changed hands several times and the current actual owner was ZHOU Yaping. ZHU Rongming neither controlled the passenger vehicle nor benefited from the operation of the passenger vehicle. Defendant Shanghai Tengfei Construction Engineering Co., Ltd. (hereinafter referred to as “Tengfei Company”) was the employer of ZHOU Yaping, but, at the time of the</td>
<td><strong>4</strong> Essentially the same, but with the following differences: Does not mention “but the vehicle had changed hands several times”; The insurance is not classified as “compulsory third-party liability insurance for motor vehicles”, but as “compulsory traffic accident liability insurance for motor vehicles”.</td>
</tr>
</tbody>
</table>
accident, ZHOU Yaping was not performing [job-related] duties. The passenger vehicle had the compulsory third-party liability insurance for motor vehicles, [provided by] the Shanghai Branch of PICC Property and Casualty Company Limited (hereinafter referred to as “PICC Company”).

<table>
<thead>
<tr>
<th>Guiding Case No. 19</th>
<th>Original Second-Instance Judgment</th>
</tr>
</thead>
<tbody>
<tr>
<td>accident, ZHOU Yaping was not performing [job-related] duties. The passenger vehicle had the compulsory third-party liability insurance for motor vehicles, [provided by] the Shanghai Branch of PICC Property and Casualty Company Limited (hereinafter referred to as “PICC Company”).; and The determinations that “ZHU Rongming neither controlled the passenger vehicle nor benefited from the operation of the passenger vehicle” and “at the time of the accident, ZHOU Yaping was not performing [job-related] duties” are made in the section providing the reasoning part of the first-instance adjudication rather than in the section describing the facts of the case.</td>
<td></td>
</tr>
</tbody>
</table>

Overall, the “Basic Facts of the Case” section of GC19 is largely based on the original second-instance judgment.

2. Reasons for the Adjudication

The Baoshan District People’s Court of Shanghai Municipality rendered the first-instance judgment:

1. [The court orders] defendants WEI Guanghui and LIN Zedong to compensate the four plaintiffs for funeral expenses, mental injury solatium, death damages, travelling expenses, lost wages, accommodation expenses, living expenses of dependents, and lawyers’ fees in a total amount of 396,863 yuan.

2. [The court orders] defendant ZHOU Yaping to compensate the four plaintiffs for funeral expenses, mental injury solatium, death damages, travelling expenses, lost wages, accommodation expenses, living expenses of dependents, and lawyers’ fees in a total amount of 170,084 yuan.

3. [The court orders] defendants Fushan Company and WEI Deping to bear joint and several liability for the first compensation obligation stated in the main body of the aforementioned judgment; [and] defendants WEI Guanghui, LIN Zedong, and ZHOU Yaping to mutually bear joint and several liability for the first and second compensation obligations stated in the main body of the aforementioned judgment.

4. [The court] rejects the four plaintiffs’ other litigation claims.

Dissatisfied with the judgment, WEI Deping appealed to the No. 2 Intermediate People’s Court of Shanghai Municipality, which decided to reject the appeal and uphold the original judgment.

GC19 quite clearly provides the adjudication reasons of the No. 2 Intermediate People’s Court of Shanghai Municipality, but there are still differences. Based on the “Reasons for the Adjudication” section of GC19, the following table compares the similarities and differences between GC19 and the original second-instance judgment:
<table>
<thead>
<tr>
<th>Guiding Case No. 19</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Based on the determination of liability for the traffic accident, LIN Zedong, the driver of the truck causing the accident, bore primary liability for the accident. WEI Guanghui was the actual owner of the truck that caused the accident and also the employer of LIN Zedong. Therefore, WEI Guanghui and LIN Zedong should jointly and severally bear primary liability for compensating the losses arising from the accident in this case. The Lu F41703 truck insured by Yongan Insurance Company was not the actual truck that caused the accident, and [Yongan Insurance Company] had no knowledge that the motor vehicle license plate Lu 41703 was [used] as a counterfeit plate [by] the truck that caused the accident; therefore, Yongan Insurance Company was not liable for compensation for the accident in this case.</td>
</tr>
<tr>
<td></td>
<td>Essentially the same, but with the following differences: Only states that LIN Zedong “bore liability”, without using the word “primary”, but subsequent text refers to an exact compensation ratio which clearly conveys that “LIN Zedong, the driver of the truck causing the accident, bore primary liability for the accident”; and Does not mention that Yongan Insurance Company “had no knowledge that the motor vehicle license plate Lu 41703 was [used] as a counterfeit plate [by] the truck that caused the accident”.</td>
</tr>
<tr>
<td>2</td>
<td>Based on the determination of liability for the traffic accident, ZHOU Yaping, the driver of the passenger vehicle in this case, bore secondary liability for the accident, and ZHOU Yaping was the actual owner of that passenger vehicle; therefore, ZHOU Yaping should bear secondary liability for compensating the losses arising from the accident in this case. Although ZHU Rongming was the registered owner of the passenger vehicle, the passenger vehicle had changed hands several times and ZHU Rongming neither controlled the vehicle nor benefited from its operation, and therefore he bore no liability for the accident in this case. Although ZHOU Yaping was employed by Tengfei Company, ZHOU Yaping was not performing his duties for Tengfei Company at the time of the accident, and therefore Tengfei Company also bore no liability in this case. As for PICC Company, which insured the passenger vehicle, since the deceased, FENG Yongju, was a person inside the vehicle, the compulsory traffic accident liability insurance for motor vehicles was, in accordance with law, inapplicable; therefore, PICC Company bore no liability in this case.</td>
</tr>
<tr>
<td></td>
<td>Essentially the same, but with the following differences: The expression “[b]ased on the determination of liability for the traffic accident, ZHOU Yaping, the driver of the passenger vehicle in this case, bore secondary liability for the accident” does not appear in the first-instance or second-instance reasoning parts, but appears in the part that describes the facts of the case; Only mentions “bore liability”, without using the word “secondary”, but subsequent text refers to the exact compensation ratio which still clearly conveys the meaning that “ZHOU Yaping, the driver of the passenger vehicle in this case, bore secondary liability for the accident”; and Does not mention “the passenger vehicle had changed hands several times”.</td>
</tr>
<tr>
<td>3</td>
<td>In addition, although the proportions of liability borne by WEI Guanghui and LIN Zedong on the one side and ZHOU Yaping on the other side were different, the occurrence of the accident was a joint tortious act of both sides. Therefore, WEI Guanghui and LIN Zedong, with respect to ZHOU Yaping’s share of liability, and ZHOU Yaping, with respect to WEI Deping and LIN Zedong’s share of liability, should bear joint and several liability.</td>
</tr>
<tr>
<td></td>
<td>Essentially the same.</td>
</tr>
<tr>
<td>4</td>
<td>(1) Lending motor vehicle license plates to others would connive at [their] using counterfeit plates to drive</td>
</tr>
<tr>
<td></td>
<td>Not mentioned.</td>
</tr>
</tbody>
</table>
Guiding Case No. 19 | Original Second-Instance Judgment
---|---
On the road motor vehicles that did not meet the technical standards for safety, and [thus] increase the hazardousness of road traffic, and endanger public safety. [Where] a motor vehicle bearing a counterfeit plate causes an accident, the lender of the license plate is also at fault. With respect to the liability for compensation that the [owner or custodian of the] vehicle bearing the counterfeit plate and causing the accident should be responsible for, the lender of the license plate should bear joint and several liability.

Only with expressions like “WEI Deping, the actual owner [of the Lu F41703 truck], knew that WEI Guanghui et al. used [their] own motor vehicle license plate as a counterfeit plate but did not put [this act] to a stop” and “Therefore, Fushan Company and WEI Deping should bear joint and several liability for the share of liability borne by WEI Guanghui and LIN Zedong’s side”. Other expressions are not in the original second-instance judgment.

Only provides “the Road Traffic Safety Law of the People’s Republic of China” as the legal basis in the “After adjudication, the original trial court opined” section (where the reasoning of the court of first instance is mentioned).

(2) Fushan Company and WEI Deping, the registered owner and actual owner of the Lu F41703 truck, knew that WEI Guanghui et al. used [their] own motor vehicle license plate as a counterfeit plate but did not put [this act] to a stop. They also provided [WEI Guanghui et al.] with convenience, conniving at [their] driving on public roads the truck bearing the counterfeit plate. The act of Fushan Company and WEI Deping was a type of lending of motor vehicle license plates to others and that act violated relevant legal provisions concerning motor vehicle administration stated in the Road Traffic Safety Law of the People’s Republic of China etc. Therefore, Fushan Company and WEI Deping should bear joint and several liability for the share of liability borne by WEI Guanghui and LIN Zedong’s side.

Overall, there are quite a few differences between the “Reasons for the Adjudication” section of GC19 and the original second-instance judgment. The analysis of these differences touches on the reasons for selecting the case as a GC, which are discussed below.

### III. Reasons for Selecting Guiding Case No. 19

Article 5 of the *Interpretation of the Supreme People’s Court Concerning Several Issues on the Application of Law in the Adjudication of Road Traffic Accident Compensation Cases* (the “Interpretation on Road Traffic Accident Compensation”), which makes a person whose vehicle license plate is used as a counterfeit plate civilly liable where the vehicle bearing the counterfeit plate causes an accident, was already in effect prior to the release of GC19. Article 5 states:

[6](http://www.chinacourt.org/law/detail/2012/11/id/146025.shtml)
Where a motor vehicle bearing a counterfeit plate has a traffic accident and causes harm, the liability is attributed to the party [controlling] the motor vehicle, and the party [upon which harm was inflicted] requests that the liability for compensation be borne by the owner or custodian of the motor vehicle bearing the counterfeit plate, a people’s court should support [the request]. Where the owner or custodian of a motor vehicle whose plate is used as a counterfeit plate consented to the use of the counterfeit plate, [he] should bear joint and several liability with the owner or custodian of the motor vehicle bearing the counterfeit plate. (emphasis added)

However, this judicial interpretation does not clarify whether “consent” includes implied consent. Through the “Main Points of the Adjudication” of GC19, the SPC clarifies the above issue:

[Where] an owner or custodian of a motor vehicle lends his motor vehicle license plate to another person for use as a counterfeit plate, or [he] has knowledge that another person is using his motor vehicle license plate as a counterfeit plate but does not put [this act] to a stop, and the motor vehicle bearing the counterfeit plate has a traffic accident and causes harm to others, the owner or the custodian of the motor vehicle and the owner or the custodian of the motor vehicle bearing the counterfeit plate should bear joint and several liability [for the accident]. (emphasis added)

GC19 “adds further detail to the provisions of the Interpretation on Road Traffic Accident Compensation […]. By increasing the cost of violating the law for the lender of the motor vehicle license plate, [GC19] curbs illegal acts of using motor vehicle counterfeit plates, protects victims’ legal rights and interests and the order of motor vehicles administration, and promotes the road traffic safety.”7 Therefore, the case was selected as a GC.

IV. Brief Comments

With respect to the similarities and differences between GC19 and the original second-instance judgment and to the reasons for selecting the case as a GC, the authors have the following observations.

1. The Legal Bases for the Adjudication of the Underlying Case of Guiding Case No. 19 are Unclear

In the “Related Legal Rule(s)” section of GC19, Article 8 of the Tort Liability Law of the People’s Republic of China (the “Tort Liability Law”)8 and Article 16 of the Road Traffic

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7. 最高人民法院案例指导工作办公室 (The Office for the Work on Case Guidance of the Supreme People’s Court), supra note 4, at 93.
Safety Law of the People’s Republic of China (the “Road Traffic Safety Law”)\(^9\) are listed. In addition, the Road Traffic Safety Law is explicitly mentioned in the “Reasons for the Adjudication” section of GC19:

Fushan Company and WEI Deping, the registered owner and actual owner of the Lu F41703 truck, knew that WEI Guanghui et al. used [their] own motor vehicle license plate as a counterfeit plate but did not put [this act] to a stop. They also provided [WEI Guanghui et al.] with convenience, conniving at [their] driving on public roads the truck bearing the counterfeit plate. The act of Fushan Company and WEI Deping was a type of lending of motor vehicle license plates to others and that act violated relevant legal provisions concerning motor vehicle administration stated in the Road Traffic Safety Law of the People’s Republic of China, etc. (emphasis added)

The original second-instance judgment makes no reference to the Tort Liability Law; the Road Traffic Safety Law appears only once in the second-instance judgment. In the “After adjudication, the original trial court opines” section, the Road Traffic Safety Law is listed as one of the legal bases, but Article 16 of that law is not mentioned.

The authors posit an additional explanation for the adjudication here. The original first-instance and second-instance judgments of GC19 were rendered on May 18, 2010 and August 5, 2010, respectively. The Tort Liability Law did not come into effect until July 1, 2010. According to Article 1 of the Notice of the Supreme People’s Court Concerning Several Issues on the Application of the “Tort Liability Law of the People’s Republic of China”,\(^10\) in “cases with civil disputes arising from tortious acts that had occurred before the Tort Liability Law came into effect, the legal provisions effective at that time apply.” Therefore, the Tort Liability Law cannot serve as the legal basis of this case.

Since the Tort Liability Law came into effect on July 1, 2010, the applicable legal basis for joint tortious acts in the context of motor vehicles bearing counterfeit plates should be Article 8 of the Tort Liability Law and other related legal provisions.\(^11\) Article 8 of the Tort Liability Law states that “[w]here two or more persons jointly commit a tortious act and cause harm to others, they should bear joint and several liability.” Other related legal provisions primarily include: the Road Traffic Safety Law, related rules of the Ministry of Public Security, and related judicial interpretations on road traffic accidents released by the SPC.\(^12\) Article 16, Item 4 of the Road Traffic Safety Law provides:

No units or individuals may: [...] (4) use the certificates of registration, license plates, vehicle licenses, conformity inspection marks, or insurance labels of other motor vehicles.

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\(^11\) 最高人民法院案例指导工作办公室 (The Office for the Work on Case Guidance of the Supreme People’s Court), supra note 4, at 96.

\(^12\) See id. at 94.
Article 96, Paragraph 3 of that law states:

Where [a unit or individual] uses the motor vehicle certificate of registration, license plate, vehicle license, conformity inspection mark, or insurance label of another vehicle, the traffic administration department of the public security organ [may] detain the motor vehicle [bearing any of the above items] and impose and collect a fine ranging from 2,000 yuan to 5,000 yuan.

Of these legal provisions, Article 5 of the *Interpretation on Road Traffic Accident Compensation*, as mentioned in Part III of this article, is undoubtedly most in-line with the “Main Points of the Adjudication” of this case. In fact, the SPC explicitly points out:

The most striking provision of this article is [the one on] the joint and several liability of the owner or custodian of the motor vehicle who consented to the use of [the motor vehicle] license plate as a counterfeit plate. The “Main Points of the Adjudication” of GC 19 are in line with this provision.¹³

Nevertheless, the SPC does not mention this provision in the “Related Legal Rule(s)” section of GC19. Is this because this judicial interpretation was issued after the original judgment had been rendered? If the answer is affirmative, the *Tort Liability Law* also came into effect after the first-instance judgment had been rendered, but was nonetheless listed in the “Related Legal Rule(s)” section. Is the exclusion of the judicial interpretation due to the fact that “Related Legal Rule(s)” section should only contain provisions from legislation, but not those from judicial interpretations? In the authors’ opinion, judicial interpretations, as one of the sources of Chinese law, should be listed in “Related Legal Rule(s)” in order to increase the reference value of GCs.

Furthermore, in this GC, the SPC directly applies the *Road Traffic Safety Law*, without quoting relevant provisions of the law. This increases readers’ difficulty in understanding the GC. Had the SPC first quoted specific relevant provisions in the “Reasons for the Adjudication” section and then explained how those provisions applied to this case, this would have greatly helped readers and courts handling subsequent cases to understand the GC.

2. The Description of the Defendants’ Acts in the “Main Points of the Adjudication”, “Basic Facts of the Case” and “Reasons for the Adjudication” Sections are not Consistent

The “Main Points of the Adjudication” of GC19 read:

[Where] an owner or custodian of a motor vehicle *lends his motor vehicle license plate to another person for use as a counterfeit plate*, or *he has knowledge that another person is using his motor vehicle license plate as a counterfeit plate but does not put [this act] to a stop*, and the motor vehicle bearing the counterfeit plate has a traffic accident and causes harm to others. the owner or the custodian of the motor vehicle and the owner or the custodian of the motor vehicle bearing the counterfeit plate should bear joint and several liability [for the accident] (emphasis added).

¹³ Id.
This “Main Points of the Adjudication” section provides an illustration of two scenarios where a person whose vehicle license plate is used as counterfeit plate would bear joint and several liability. The first is “active”, i.e., “lends his motor vehicle license plate to another person for use as a counterfeit plate”, and the second is “passive”, i.e., “[he] has knowledge that another person is using his motor vehicle license plate as a counterfeit plate but does not put [this act] to a stop”.

The statement above is clear. However, the descriptions of the defendants’ acts in the “Main Points of the Adjudication”, “Basic Facts of the Case”, and “Reasons for the Adjudication” sections are not consistent. In the “Basic Facts of the Case” section, Fushan Company’s acts are described as follows:

The application form filed on August 23, 2007 by WEI Guanghui for a replacement vehicle license was affixed with the seal of Fushan Company. After the accident, Fushan Company sent personnel to the traffic police department to deal with matters related to the accident. In the course of handling the case, WEI Guanghui stated that WEI Deping had knowledge of the counterfeit plate and received payment for the counterfeit plate. After the accident, WEI Guanghui borrowed from WEI Deping the insurance policy of the truck registered with license plate Lu F41703 to deal with the accident, and the insurance policy was still kept by WEI Guanghui.

Such a description would likely lead readers to think that both Fushan Company and WEI Deping actively lent “their motor vehicle license plates to another person for use as counterfeit plates”.

However, in the “Reasons for the Adjudication” section, the SPC writes:

Fushan Company and WEI Deping, the registered owner and actual owner of the Lu F41703 truck, knew that WEI Guanghui et al. used [their] own motor vehicle license plate as a counterfeit plate but did not put [this act] to a stop. They also provided [WEI Guanghui et al.] with convenience, conniving at [their] driving on public roads the truck bearing the counterfeit plate. The act of Fushan Company and WEI Deping was a type of lending of motor vehicle license plates to others and that act violated relevant legal provisions concerning motor vehicle administration stated in the Road Traffic Safety Law of the People’s Republic of China etc. (emphasis added)

The above statement suggests that the SPC opined that the two defendants’ acts constituted “having knowledge that another person is using [the] motor vehicle license plate as a counterfeit plate but does not put [this act] to a stop”, rather than “lending [the] motor vehicle license plate to another person for use as a counterfeit plate”.

The inconsistencies among the three sections show that the “Basic Facts of the Case” and “Reasons for the Adjudication” sections were not precisely prepared. The inconsistencies could not only confuse readers, but also make it difficult for lower courts to accurately apply the principles when they reference the GC.