



## Article

# A Comparative Study of Pure Economic Loss: Where Is Taiwan on the Map?

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### ABSTRACT

*This paper explores the complex issue of tort liability for pure economic loss in various jurisdictions, with a focus on Taiwan. Traditionally, many legal systems have denied recovery for pure economic loss in negligent torts, except under specific regulations. However, the ever-changing landscape of society and technology necessitates a reevaluation of established norms. The paper emphasizes that the prevailing view has often overextended its application, misinterpreting leading cases and wrongly denying recovery in situations where the leading cases did not require such denial. The problem lies in the interpretation of court decisions rather than the decisions themselves. The paper advocates for a comprehensive examination of the underlying premises of each precedent, including the facts, issues, assumptions, and relevant factors, to assess the soundness of justifications. The study then delves into how Germany, France, the U.K., the U.S., and Taiwan address pure economic loss. It also acknowledges the unique challenges in the U.S., where different states have distinct perspectives and judgments. As a result of the comparative study, the paper provides a comparative table summarizing the perspectives of different jurisdictions on various categories of pure economic losses, offering a comprehensive overview of the multifaceted legal scenarios.*

**Keywords:** *Pure Economic Loss, Duty of Care, Defective Product, Misrepresentation, Use of Source and Access*

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## I. INTRODUCTION

There has been a longstanding law in many jurisdictions where the prevailing view is that pure economic loss cannot be recovered in negligent torts. Taiwan is no exception unless a special regulation allows it. Despite the law being relatively settled, in light of the rapid changes in modern societies, values, emerging technologies, and intricate interdependence of people, we lack an in-depth explanation of the current norms as well as adaptation to the ever-changing world at present.

Although abundant court judgments and extensive scholarly literature follow the majority view, as Professor Peter Benson correctly pointed out, the current majority view has overextended the reach of certain leading cases because it misunderstands the basis of such cases. It turns out that the majority view, purporting to follow the leading case, denies recovery of pure economic loss in circumstances where the leading case actually did not require so. On the contrary, the imposition of liability might be explicable consistently with the opinion set forth in the leading case. The problem does not stem from the decisions made by the courts pertaining to pure economic loss but from how people interpret or explain these decisions.<sup>1</sup>

Therefore, instead of blindly applying the conclusion of a leading case to our current situation, it is crucially important to explore the underlying premises of each of the precedents and understand why it allowed or barred the recovery of pure economic loss. Only after we unpack its premises, such as the facts, the issues, the assumptions, etc., can we truly realize whether the justification is sound and if it can be applied in our current cases. This paper aims to conduct a case law review in different jurisdictions. It will be focused on not only the varying tort regimes, whether liberal or conservative, but also the different scenarios and premises on which each judgment was made. Hence, when citing a case for reference, this paper will briefly review the facts and disputes of the cases before jumping to the court's conclusion.

This paper will, at the beginning of Part II, discuss the categorization of pure economic loss, expecting to give readers a holistic overview of all kinds of pure economic losses. By categorizing pure economic losses into several main types and reviewing cases by their categories, the analysis will be more effective from a pragmatic view. The latter part of Part II will introduce the three tort regimes, including the liberal, conservative, and pragmatic regimes. Jurisdictions may take different approaches to regulate and deal with pure economic loss, depending on the tort regime they are in.

Following an overview of the categorization and tort regimes of pure

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1. Peter Benson, *The Problem with Pure Economic Loss*, 60 S. C. L. REV. 823, 827-28 (2009).



economic loss, in Part III, this paper will continue to elaborate on how Germany, France, and the U.K., which represent the conservative regime, the liberal regime, and the pragmatic regime, respectively, shall tackle the issues of pure economic loss. Despite that the regimes differ as much as two ends of a spectrum, by the end of Part III, readers will realize that the results of similar cases litigated in different regimes may not be as diverse as expected. This is because, in a conservative regime, there are exceptions made by the courts to recover the pure economic loss, while in a liberal regime, there are limitations imposed by the courts to prevent open-ended liability.

Further, in Part IV, this paper will conduct a comparative study of the laws in the U.S. It is relatively challenging as each State may have a different point of view and renders different judgments. In light of this, this paper will indicate the specific State when citing a U.S. court judgment. It is said that the court of California is more liberal than other States in allowing the recovery for pure economic loss. In 2020, the American Law Institute made significant progress on this topic by publishing the Restatement of Torts (Third): Liability for Economic Harm. In particular, Chapter 1 incorporates and elaborates on the issue of “unintentional infliction of economic loss.”

In Part V, it comes to the focus of this paper, i.e., laws and cases of pure economic loss in Taiwan. As the Taiwanese Civil Code models after the German Civil Code, it is not difficult to reach a consensus that Taiwan is also under a conservative regime in terms of tort liability for pure economic loss. Without being specified in the former part of Article 184(1) of the Civil Code, “pure economic loss” has been a longstanding yet highly contentious area of tort in Taiwan. Both the courts and commentators recognize the concept of pure economic loss. Still, there is conflicting authority as to whether an economic loss should be categorized as pure economic loss or consequential economic loss. Moreover, an emerging view supports the recovery of pure economic loss in negligent torts. At the end of Part V, this paper provides a summary table, setting forth views of Germany, France, the U.K., the U.S., and Taiwan in order to show where Taiwan is on the map of this comparative study.

## II. CATEGORIZATION AND TORT REGIMES OF PURE ECONOMIC LOSS

### A. *Categorization of Pure Economic Loss*

Pure economic loss generally refers to financial loss suffered by a person without any physical damage to his or her person or property. Before further discussing pure economic loss, we must distinguish it from consequential economic loss. There is a fundamental distinction between



pure economic loss and consequential economic loss: the former occurs independent of any physical damage to the victim's person or property, while the latter results directly from physical damage to the victim's person or property.<sup>2</sup> It is worth noting that if one suffers economic loss as a result of physical damage to "another party's" person or property, it falls under the category of pure economic loss as well and can be either "ricochet loss" or "transferred loss," as discussed below.

Professor Mauro Bussani and Professor Vernon Valentine Palmer have been devoted to the comparative research of pure economic loss, and in their book entitled "Pure Economic Loss in Europe," they categorize pure economic losses into four main types, including (i) ricochet loss, (ii) transferred loss, (iii) closure of public markets, transportation corridors and public infrastructure, and (iv) reliance upon flawed data, advice or professional services.<sup>3</sup> In addition, Professor Herbert Bernstein classifies cases of pure economic losses in the U.S. into three typical types, including (i) defective products, (ii) intellectual services, and (iii) interference with the use of resources and access.<sup>4</sup> These two approaches to categorization may seem different, but they have more in common. For example, the type of losses in relation to "reliance upon flawed data, advice or professional services" is similar to the cases of "intellectual services," and losses incurred from "closure of public infrastructure" should also be seen in cases of "interference with the use of resources and access." This similarity can serve as a valid ground for the comparative study. This paper below will elaborate on these concepts in turn.

### 1. Ricochet Loss

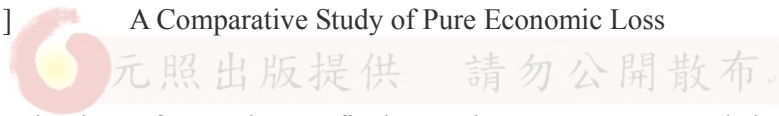
Ricochet loss refers to the economic loss suffered by the plaintiff as a result of physical harm to the person or property of others. The plaintiff is often referred to as a secondary victim. For example, A has a contract to tow B's ship. C's negligent sinking of the ship makes it impossible for A to perform his contract, thus depriving him of expected profits. A's economic loss is the ricochet effect of C's negligence toward B. Other cases of ricochet loss such as (i) the electronic cable cutting case, where the factory owner

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2. Willem H. van Boom, *Pure Economic Loss: A Comparative Perspective*, in PURE ECONOMIC LOSS 1, 3 (W.H. van Boom, H. Koziol & C.A. Witting eds., 2004).

3. MAURO BUSSANI ET AL., COMMON LAW AND CIVIL LAW PERSPECTIVES ON TORT LAW 145-49 (2023); Mauro Bussani & Vernon Valentine Palmer, *The Notion of Pure Economic Loss and Its Setting*, in PURE ECONOMIC LOSS IN EUROPE 3, 10-14 (Mauro Bussani & Vernon Valentine Palmer eds., 2003); Helmut Koziol, *Recovery for Economic Loss in the European Union*, 48 ARIZ. L. REV. 871, 887-94 (2006); van Boom, *supra* note 2, at 24-31.

4. Herbert Bernstein, *Civil Liability for Pure Economic Loss under American Tort Law*, 46 AM. J. COMP. L. SUPP. 111, 114-25 (1998).



incurred a loss of operating profit due to the power outage and the daily wages workers could not earn wages during the factory shutdown; (ii) the celebrity athlete's accident case, where the sports team and teammates suffered a loss of potential winnings because the athlete was unable to play for a while; and (iii) the husband's accident case, where the dutiful wife had to take care of the husband and thus could not keep running her business, suffering a revenue loss.<sup>5</sup> A typical characteristic of ricochet losses is that the tortious conduct interferes with a second victim's contract or prospective contractual relation.

## 2. *Transferred Loss*

The transferred loss also arises from physical harm to the person or property of others, which is different from "ricochet loss" in that it involves transferring the loss to the plaintiff based on a contract or by statute. The distinction between these two types of losses lies in the fact that "ricochet loss" represents independent losses suffered by secondary victims, whereas "transferred loss" involves transferring losses that occur on the primary victim to secondary victims. This transfer is typically based on leases, sales, or other contracts that separate property rights and usage rights or redistribute risks between parties. For example, A is a time charterer of a ship owned by B. While the ship is still in B's possession, C negligently damages the ship's propeller, thus necessitating repairs for two weeks. As a result, A's use of the ship is delayed, and, likely, A's original purpose for using the ship cannot be achieved two weeks later, resulting in pure economic loss. A similar outcome is achieved when the transfer takes place by operation of law. For example, B, who is employed by A, gets injured due to C's negligent driving and cannot work for three months; a specific law mandates that A must continue paying B's salary even though no work is being performed. Consequently, what would typically have been B's loss is statutorily transferred to A. A key characteristic of transferred loss is that it is liability-neutral from the perspective of the tortfeasor and should not cause indeterminate liability.<sup>6</sup>

## 3. *Losses from Closure of Public Infrastructures and Reliance Upon Flawed Data and Services*

As for the categories of "closure of public markets, transportation corridors, and public infrastructure" and "reliance upon flawed data, advice,

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5. BUSSANI ET AL., *supra* note 3, at 145-46; Bussani & Palmer, *supra* note 3, at 10-11.

6. BUSSANI ET AL., *supra* note 3, at 146-47; Bussani & Palmer, *supra* note 3, at 11-12.



or professional services,” they are relatively straightforward. The former includes cases such as the closure of markets due to infected cattle escaping or the closure of highways due to car accidents. The latter encompasses cases like the notary public’s negligence or accountant’s malpractice. Pure economic loss resulting from these categories can have a wide-reaching impact because anyone can use these public infrastructures or transportation routes or can have access to public information provided by professional parties. Therefore, in judicial practice, courts are reluctant to allow the plaintiff’s claims for recovery due to the so-called “floodgate” and litigation proliferation concern.<sup>7</sup>

#### B. *Tort Regimes under Comparative Law*

Professor Mauro Bussani and Professor Vernon Valentine Palmer further classify the regulatory systems governing pure economic losses in Europe into liberal, conservative, and pragmatic regimes. Following the same analysis, this paper is of the view that Taiwan and the United States are classified as conservative regime and pragmatic regime, respectively.

##### 1. *Liberal Regime*

The liberal regime is characterized by the presence of a general compensation provision in tort laws, which does not initially exclude pure economic loss, and legislators do not enumerate or limit the scope of protected rights and interests. Hence, in principle, it does not prevent plaintiffs from seeking compensation for pure economic loss under tort law. European countries under this regime include France, Belgium, Spain, Italy, and Greece. However, this does not imply that these countries do not restrict compensation for pure economic loss in specific cases. These limitations, usually based on policy considerations, are often more implicit or can be achieved by requiring plaintiffs to prove and establish causation in each case.<sup>8</sup> This paper will discuss these limitations in detail in Part III’s “C. France” section. Nevertheless, in terms of the chances of winning, compared to other regimes, plaintiffs in this regime are still likely to win the case. Please refer to a comparison table set forth in Part VI.

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7. BUSSANI ET AL., *supra* note 3, at 147-49; Bussani & Palmer, *supra* note 3, at 12-14.

8. Mauro Bussani & Vernon Valentine Palmer, *The Liability Regimes of Europe-Their Façades and Interiors*, in PURE ECONOMIC LOSS IN EUROPE, *supra* note 3, at 120, 123-24; Koziol, *supra* note 3, at 874.





## 2. *Conservative Regime*

Instead of a general compensation provision, the conservative regime is primarily characterized by an exclusive list of protected rights and interests under tort laws. European countries under this regime include Germany, Austria, Portugal, Finland, and Sweden. For instance, Section 823(1) of the German Civil Code enumerates the protected objects as life, health, freedom, property, or other absolute rights, and pure economic loss is not included among the objects protected by tort laws. Therefore, it is challenging for plaintiffs in this regime to claim compensation for pure economic loss. To recover pure economic loss under the conservative regime, special laws or an extensive interpretation of contract law principles are often used to create exceptions and allow for compensation. For example, Germany adopted the so-called principle of “contract with protective effects for third parties,” where the courts lowered the privity barrier in contract and applied these duties in favor of those who were not parties to any contract.<sup>9</sup>

Taiwanese tort laws are heavily influenced by Germany, and the rights and interests protected under tort laws are specified in Article 184 of the Civil Code. As such, when discussing issues related to pure economic loss in Taiwan, it is essential to start with Article 184 of the Civil Code, which provides that “(1) A person who, intentionally or negligently, has wrongfully damaged the rights of another is bound to compensate him for any injury arising therefrom; the same rule shall be applied when the injury is done intentionally in a manner against the rules of morals. (2) A person, who violates a statutory provision enacted for the protection of others and therefore prejudice to others, is bound to compensate for the injury, except no negligence in his act can be proved.” The issue lies in whether pure economic loss is recoverable under the former part of the first paragraph of Article 184 (hereinafter, the “former part of 184(1)”), which is the general clause of negligent tort in Taiwan. Currently, the prevailing view is that it only protects “rights” and not “interests.” It is worth noting that, however, the term “interests” mentioned here only refers to pure economic loss, and not consequential economic loss, as the latter presupposes the existence of physical harm and thus is recoverable under the former part of 184(1). This exclusion of pure economic loss is due to the uncertain nature of pure economic loss, the floodgate and litigation proliferation concern, and the intention to avoid excessive restrictions on the freedom of the liable party. Pure economic loss can only be recoverable under the latter part of the first paragraph and the second paragraph of Article 184 or the provisions of special torts, such as Article 191-3, holding liable a business owner whose

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9. Bussani & Palmer, *supra* note 8, at 125; Koziol, *supra* note 3, at 874.



products or services might damage others.<sup>10</sup>

However, with rapid technological advancements and the increasing interconnectivity of individuals, distinguishing between rights and interests has become increasingly challenging. In practice, many countries have developed various categories of rights to “expand the scope of right” and protect “interests.” For example, to address practical challenges, German law has started recognizing that the absolute rights protected under Section 823(1) of the German Civil Code also include the so-called “right of the established and ongoing commercial business.”<sup>11</sup>

### 3. *Pragmatic Regime*

The pragmatic regime is characterized by a similar approach taken by judges when handling cases related to pure economic loss, and it has nothing to do with how often a plaintiff succeeds. Judges in this regime share similar reasoning, techniques, and candor, which is why they are classified under the same pragmatic regime. European countries under this regime include the United Kingdom, Scotland, and the Netherlands. This regime adopts a cautious, case-by-case approach, which carefully considers socio-economic factors to grant recovery for pure economic loss. The outcome is not solely determined by a wide tort law provision or a checklist of protected absolute rights. Instead, the principal method of screening recovery is through the “duty of care” concept. Whether the defendant had a duty of care to protect the victim’s pure economic loss is a matter of judicial policymaking carried out by the judges in individual cases. Unlike other regimes, such a question has not been pre-judged by a legislator and codified into tort laws. Rather, judges play an important role in making a policy choice so as to strike a balance between protecting the plaintiff from harm and avoiding an undue burden on the defendant.<sup>12</sup>

Furthermore, the U.S. also follows a similar approach. U.S. courts typically begin with exploring whether there is a duty of care to protect

10. WANG ZE-JIAN (王澤鑑), QINQUAN XINGWEI FA (侵權行為法) [TORT LAW] 388-94 (2011); Chen Cong-Fu (陳聰富) [hereinafter Chen], *Lun Guoshi Qinhai Liyi zhi Qinquan Zeren: Qubie Quanli Qinhai yu Liyi Qinhai de Kunjing yu Tupuo* (論過失侵害利益之侵權責任：區別權利侵害與利益侵害的困境與突破) [Tortious Liability on Negligent Infringement on Interests: Dilemma from and Breakthrough for the Distinguishment of Infringement on Rights and Interests], 46 TAIDA FAXUE LUNCONG (臺大法學論叢) [NATIONAL TAIWAN UNIVERSITY LAW JOURNAL] 135, 136-46 (2017); YAO ZHI-MING (姚志明), QINQUAN XINGWEI FA YANJIU (YI) (侵權行為法研究(一)) [RESEARCH OF TORT LAW (I)] 3-19 (2003). But see CHEN ZHONG-WU (陳忠五), QIYUE ZEREN YU QINQUAN ZEREN DE BAOHU KETI (契約責任與侵權責任的保護客體) [PROTECTED OBJECTS OF CONTRACTUAL AND TORT LIABILITY] 294-97 (2008). Professor Chen reckons that the protected objects under the former part of Article 184(1) include not only “rights” but also extend to “interests”.

11. WANG, *supra* note 10, at 401-03.

12. Bussani & Palmer, *supra* note 8, at 124-25.



others from pure economic loss, particularly whether it is a contractual duty or one under tort laws. If it is a contractual duty, the U.S. has the “economic loss doctrine,” which requires the victim to seek damages from the breaching party only through warranty or contractual liability and prohibits them from asserting a tort liability claim. However, if an independent tort duty of care is separate from the contract, the victim can claim recovery from the wrongdoer based on tort liability. This paper will discuss it in detail in Part V.

In terms of tort regimes, it is worth noting that civil law countries tend to discuss pure economic loss by first inquiring “whether it is resulting from the infringement of certain right or interest protected under tort laws,” while common law countries are inclined to discuss pure economic loss by analyzing “whether the tortfeasor breached a duty of care” and “whether the damage or loss is certain, foreseeable, and thus recoverable.” It is primarily due to the inherent difference between civil law countries and common law countries--whether there is a codified tort law in place. In addition, even in civil law countries, the ideas of “interest” and “loss” should be carefully distinguished. Take the Taiwan Civil Code for example, “interest” is a protected object under the general tort clause, i.e., Article 184, while “loss” belongs to the realm of compensation scope, which is stipulated in Article 216. As such, before conducting a comparative study among these countries, we should bear in mind that “interest” and “loss” are actually different concepts, and misuse of terminology can lead to a misleading result in the study.

### III. COMPARATIVE STUDY OF PURE ECONOMIC LOSS IN EUROPE

#### A. *Overview*

A majority of European countries are reluctant to recognize the principle of compensating for pure economic loss, as it is complex both from a technical and a policy point of view. It could be illustrated by Article 2:102(4) of Principles of European Tort Law, which states: “Protection of pure economic interests or contractual relationships may be more limited in scope. In such cases, due regard must be had, especially to the proximity between the actor and the endangered person or to the fact that the actor is aware of the fact that he will cause damage even though his interests are necessarily valued lower than those of the victim.”

Regarding policy issues, the pervasive concern is that compensating for pure economic loss would open the floodgates to claims in two folds: first, the courts would be flooded with compensation lawsuits for pure economic losses; second, the defendant's liability might become unlimited. For



example, if someone causes an accident on a highway, other travelers might be affected due to the ensuing delay, or if an accountant wrongfully approves a company's financial statements, investors relying on this approval might suffer pure economic losses. However, it is hard to say whether this floodgate concern is real or illusive. Moreover, the liability amounts in personal injury cases can also be extensive. Take a public safety case for example, if defective drugs are released to the market, should it also be subject to the floodgate concern, and thus the compensation would also be limited? The best to be said is that it is all about policy considerations.<sup>13</sup>

This section will further introduce the regulatory models and judicial cases of pure economic loss in Germany, France, and the United Kingdom.

## B. *Germany*

### 1. *Conservative Regulatory Model*

There are three primary types of tortious conduct regulated under the German Civil Code (Bürgerliches Gesetzbuch, or BGB), including (i) intentionally or negligently, unlawfully injures the life, body, health, freedom, property, or any other right of others (Section 823(1)), (ii) the same duty is held if a person violates laws intended to protect others (Section 823(2)), and (iii) intentionally inflicts damage on others in a manner contrary to public policy (Section 826). As aforementioned, while Section 823(1) of the German Civil Code enumerates the absolute rights to be protected under tort laws, pure economic loss is not included. In addition, Section 826 theoretically covers the possibility of recovering pure economic loss but is limited to cases involving actions carried out "intentionally in a manner contrary to public policy," such as breach of contract, misrepresentation, or unfair competition.<sup>14</sup> Hence, it is challenging to recover pure economic loss under tort laws.

### 2. *Extended Scope to Protect against Pure Economic Loss*

#### a. *Right of the Established and Ongoing Commercial Business (Cable Cutting Case)*

German tort laws developed two approaches to extend the compensation scope to protect against pure economic loss. First, the Supreme Court introduced the concept of "right of the established and ongoing commercial

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13. CEES VAN DAM, *EUROPEAN TORT LAW* 209 (2d ed. 2013).

14. *Id.* at 211.



business” or “business right,” which is pure economic loss in nature. Still, the court interpreted it as “any other right” set forth in Section 823(1) so as to protect a company’s business from undue interference by others.<sup>15</sup> Nonetheless, the protection of such business rights has its limitations; namely, damage to these rights must be “direct” in nature. Take the famous cable cutting case, for instance, if someone cuts an electricity cable “near” a company’s premises, causing a power outage and resulting in the company’s loss of profits during the downtime. Such lost profits are not recoverable.<sup>16</sup> In contrast, if the electricity cable is “on” the company’s premises or if the power outage “directly” affects the company’s operations, causing damage to products, the company may be entitled to recover the lost profits from the damaged products. For example, a poultry company’s egg incubators require electricity to function, and otherwise, the power outage would result in a malformed chicken in a poor hatch. In this situation, the company could potentially claim compensation for damage to property (i.e., eggs) under Section 823(1), along with consequential economic losses (i.e., expected profits by selling chickens).<sup>17</sup> However, in modern Germany, the application of “business right” seemed to have evaded into the German anti-competition laws (*Gesetz gegen Wettbewerbsbeschränkung*, or *GWB*) and Section 826 of the Civil Code. As such, it is said that the notion of “business right” was no longer necessary.<sup>18</sup>

b. *Rights Associated with Property Ownership (Closure of Public Infrastructure Case)*

Other than expanding the scope of “any other right,” as mentioned above, the courts also explored broadening the definition of “property” by allowing recovery for not only physical damage to the property per se but also encroachment on the rights associated with property ownership, such as right to use, dispose and make profits. For example, a ship was “trapped at a mill’s dock” due to canal blockage caused by a collapse of river embankments and the following repair construction. The ship owner, unable to use the trapped ship to perform its obligations under the carriage contract with the mill or any other contract, was deprived of its rights associated with ownership and, therefore, was allowed to recover its lost profits incurred

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15. WANG, *supra* note 10, at 53, 401-03; van Boom, *supra* note 2, at 5-6; Erwin Deutsch, *Compensation for Pure Economic Loss in German Law*, in *CIVIL LIABILITY FOR PURE ECONOMIC LOSS* 73, 73-87 (Efstathios K. Banakas ed., Tony Weir trans., 1996).

16. Bundesgerichtshof [BGH] [Federal Court of Justice] Dec. 9, 1958, *NEUE JURISTISCHE WOCHENSCHRIFT* [NJW] 479 (1959) (Ger.) (as cited in VAN DAM, *supra* note 13, at 211).

17. Bundesgerichtshof [BGH] [Federal Court of Justice] Feb. 4, 1964, *NEUE JURISTISCHE WOCHENSCHRIFT* [NJW] 720 (1964) (Ger.) (as cited in VAN DAM, *supra* note 13, at 212).

18. WANG, *supra* note 10, at 403-04.



from this trapped ship. However, in contrast, three other ships were “unable to enter the mill’s dock” due to the same canal blockage. Even though they could not be used to perform the carriage contract with the mill, they would still be used to function as transportation vessels for other contracts. As such, the ship owner was not deprived of its rights associated with ownership and, therefore, was not allowed to recover its lost profits incurred from these three ships.<sup>19</sup>

In Taiwan, Professor Cong-Fu Chen is of the view that, unlike Section 823(1) of the German Civil Code, the former part of Article 184(1) of the Taiwan Civil Code only stipulates “rights” without enumerating any specific examples. Therefore, the scope of “rights” under the Taiwan Civil Code should be broader, intended to make up for the normative deficiencies as to rights and interests.<sup>20</sup>

c. *Special Provisions to Protect Ricochet Loss (Wrongful Death Case)*

In terms of wrongful death, Section 844(2) of the German Civil Code provides that the primary victim’s family members shall be entitled to recovery for pecuniary loss, such as maintenance. It does not specify the biological identity of the secondary victims entitled to recovery but defines them in terms of legal obligations; that is, persons to whom the primary victim owed a legal duty to provide maintenance or other support will qualify—for example, spouses, children, and parents.<sup>21</sup>

d. *Progressive Damage Exception (Defective Product Case)*

Losses incurred from defective products are generally considered as pure economic losses and, in principle, not recoverable under tort laws in Germany. However, in cases where a defective component causes damage to the product, an exception was made by the German court in 1976. In this case, the plaintiff purchased cleaning equipment from the defendant manufacturer, which contained a switch operated by a ballcock to control the automatic power cut-off. One day, the switch malfunctioned and led to a fire and subsequent damage to the cleaning equipment. The plaintiff sought

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19. Bundesgerichtshof [BGH] [Federal Court of Justice] Dec. 21, 1970, NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 886 (1971) (Ger.) (as cited in WANG, *supra* note 10, at 205; CHEN, *supra* note 10, at 150-51). English translation can be found at The University of Texas at Austin, *Foreign Law Translations/German Case* (Dec. 1, 2005), <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=690> (last visited Dec. 10, 2023).

20. CHEN, *supra* note 10, at 165.

21. BUSSANI ET AL., *supra* note 3, at 158.





compensation for the infringement of property ownership under Section 823(1) of the German Civil Code, and the court allowed it, reasoning that such a defective switch constituted a “progressive damage,” which would, in turn, cause physical damage to the cleaning equipment. Although this view had been challenged by many, there were still several cases recognizing the exception.<sup>22</sup>

e. *Contract with Protective Effects for Third Parties (Malpractice and Misrepresentation to Non-Clients)*

German courts also apply the principle of “contract with protective effects for third parties” to protect against pure economic losses. In particular, the courts lowered the privity barrier in contracts and applied these duties in favor of those who were not parties to any contract.<sup>23</sup> For example, in an accountant’s misrepresentation case, if investors relied on financial reports approved by the accountants and purchased a company’s stock but later discovered that the numbers in the financial reports were false--the company suffered a net loss instead of enjoying a net profit. Investors sued the accountants. The Supreme Court ruled that the principle of “contract with protective effects for third parties” can be applied in this case, emphasizing that accountants should have foreseen that their approved financial reports would be relied upon by many third parties to make investment decisions.<sup>24</sup> The same principle also applies in cases of lawyers’ malpractice. For instance, a lawyer promised his client that he would assist in drafting a will, making the client’s daughter the sole heir. However, the lawyer delayed the work, and before the will could be completed, the client passed away. The Supreme Court ruled that the daughter could seek damages from the lawyer because the contract between the lawyer and the client is meant to protect the “third-party beneficiary,” which includes the daughter.<sup>25</sup>

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22. Bundesgerichtshof [BGH] [Federal Court of Justice] Nov. 24, 1976, NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 379 (1977) (Ger.) (as cited in WANG, *supra* note 10, at 201-02; CHEN, *supra* note 10, at 152-53). English translation can be found at The University of Texas at Austin, *Foreign Law Translations/German Case* (Dec. 1, 2005), <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=1376> (last visited Dec. 10, 2023).

23. van Boom, *supra* note 2, at 6; VAN DAM, *supra* note 13, at 212; Wang Ze-Jian (王澤鑑), *Qiyue Guanxi Dui Disanren zhi Baohu Xiaoli (契約關係對第三人之保護效力)* [The Protective Effect of Contractual Relationships for Third Parties], in MINFA XUESHOU YU PANLI YANJIU (ER) (民法學說與判例研究(二)) [RESEARCH OF CIVIL LAW DOCTRINE AND PRECEDENT (II)] 33, 35-41 (Wang Ze-Jian (王澤鑑) ed., 2009).

24. Bundesgerichtshof [BGH] [Federal Court of Justice] Apr. 2, 1998, NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 1948 (1998) (Ger.) (as cited in VAN DAM, *supra* note 13, at 212); van Boom, *supra* note 2, at 6-7.

25. Bundesgerichtshof [BGH] [Federal Court of Justice] July 6, 1965, NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 1955 (1965) (Ger.) (as cited in VAN DAM, *supra* note 13, at 212).



These examples well demonstrate how the German courts have developed methods to compensate for pure economic losses.

### C. *France*

#### 1. *Liberal Regulatory Model*

Instead of having multiple tort clauses that enumerate and limit rights and interests protected thereunder, the French Civil Code has one general and comprehensive tort clause, i.e., Article 1240, which provides: “Anyone who, by his fault, causes damage to another, shall be obliged to compensate it.” Article 1240 does not limit the objects protected to any specific category of rights or interests, making it unnecessary to use the terminology or concept of “pure economic loss” at all. Article 1241 further clarifies: “Not only is anyone liable for the damage which he has caused by his intentional conducts, but he is also liable for that which is caused by his negligence or gross negligence.” These two articles establish a general principle of fault-based liability in France.

The French courts often allow compensation claims as long as the plaintiff can establish a direct causal link between the damage and the tortious conduct. For instance, a bus is delayed due to a traffic accident, causing the bus company to lose fares. The court allowed the bus company to sue the party responsible for the accident and claim compensation for the lost fares.<sup>26</sup> Similarly, the defendant ruptured a gas pipeline, leading to a temporary suspension of production at a nearby factory. The court allowed the factory to seek compensation for all the losses directly resulting from the damage to the gas pipeline.<sup>27</sup>

#### 2. *Restrictions on the Pure Economic Loss Claims*

Although the French tort laws provide comprehensive protections of all rights and interests, it does not necessarily suggest that the French liberal regime imposes no restriction or limitation when a plaintiff claims compensation for pure economic loss. In particular, Articles 1231-2, 1231-3, and 1231-4 of the French Civil Code require the plaintiff to prove and establish the “certain nature of loss,” “foreseeable nature of loss” and “direct nature of loss,” respectively, before he/she is allowed to recover pure

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26. Cour de cassation [Cass.] [supreme court for judicial matters] 2e civ., Apr. 28, 1965, D. 1965, 777 (Fr.) (as cited in VAN DAM, *supra* note 13, at 211).

27. Cour de cassation [Cass.] [supreme court for judicial matters] 2e civ., May 8, 1970, Bull. civ. II, No. 122 (Fr.) (as cited in VAN DAM, *supra* note 13, at 211).





economic loss.<sup>28</sup> It is worth noting that these provisions were originally intended for contractual obligations. However, they are often analogously applied to tort claims in judicial practice without any issues.<sup>29</sup>

The discussion of “directness” and “certainty” of loss usually falls within the realm of causation. Take cases of “ricochet loss” for example, the secondary victim can always argue that there exists causation as all actions may potentially have a causal connection to distant consequences. Hence, as a matter of policy, the French courts tend to exclude indirect or remote losses from being recovered. Otherwise, it would result in floodgates of liability.<sup>30</sup> For instance, a singer had an accident and had to cancel a concert; the concert organizer suffered losses and filed a lawsuit against the person responsible for the accident. The Supreme Court ruled that the losses incurred by the concert organizer were indirect and, therefore, dismissed the compensation claim.<sup>31</sup>

In addition, although Article 1231-2 of the French Civil Code provides that both the damages suffered and the loss of profits can be fully recovered, the courts typically require the plaintiffs to prove that their damages or losses are of a “certain nature.” For example, in the celebrity athlete’s accident case, where the football club (as the athlete’s employer) claimed damages resulting from the athlete’s being unable to play, the court ruled that the football club could only claim compensation for the “transfer fee” paid to acquire this athlete. The transfer fee is the amount paid to acquire a player from another team, and its exact amount was clear and certain. However, the court did not allow the football club’s claim for lost ticket revenue because it lacked certainty.<sup>32</sup>

Regarding the “foreseeable nature of loss,” courts require the plaintiff to prove that not only the “occurrence of losses” but also the “scope of losses” can be foreseen. Therefore, in judicial practice, it is nearly impossible to

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28. Christophe Radé & Laurent Bloch, *Compensation for Pure Economic Loss under French Law*, in PURE ECONOMIC LOSS 41, 44-47 (W.H. van Boom, H. Koziol & C.A. Witting eds., 2004); LI XU-HENG (李敘恆), LUN GUOSHI QINQUAN XINGWEI SUOZHI ZHI CHUNCUI JINGJI SUNSHI (論過失侵權行為所致之純粹經濟損失) [PURE ECONOMIC LOSS CAUSED BY NEGLIGENCE TORT] 50-53 (2013) (Unpublished master thesis, National Taiwan University) (on file with National Taiwan University Library).

29. Chen Zhong-Wu (陳忠五), *Faguo Qinquan Zeren Fa Shang Sunhai zhi Gainian* (法國侵權責任法上損害之概念) [*The Notion of Damages under French Tort Law*], 30 TAIDA FAXUE LUNCONG (臺大法學論叢) [NATIONAL TAIWAN UNIVERSITY LAW JOURNAL] 111, 136-37 (2001).

30. D. Marshall, *Liability for Pure Economic Loss Negligently Cause-French and English Law Compared*, 24 INT’L & COMP. L.Q. 748, 767-68 (1975).

31. Cour de cassation [Cass.] [supreme court for judicial matters] 2e civ., Nov. 14, 1958, Gaz. Pal. 1959, 1, 31 (Fr.) (as cited in CEES VAN DAM, *supra* note 13, at 210).

32. Cour d’appel [CA] [regional court of appeal] Colmar, Apr. 20, 1955, D. 1956, 723, n. Savatier (as cited in Marshall, *supra* note 30, at 769); Rudi Roscetti, *Necessity or Nuisance? A Comparative Review of the Approach towards the Recovery of Pure Economic Loss in English Law with that of French Law*, 1 MANCHESTER. REV. L. CRIME & ETHICS 60, 68 (2012).



recover the entire spectrum of losses.<sup>33</sup>

### 3. *Negligent Misrepresentation*

In determining liability for misrepresentation in France, some key points to consider are: first, the liability of a person's making negligent misrepresentation lies in the provision of false or inaccurate factual information rather than the expression of erroneous opinions about the future. Second, the standard of care will vary depending on their role or position, as different roles may have varying degrees of access to information. For example, a banker may not know as much about the financial position of a company as a stockbroker does. Consequently, different standards of care may apply.<sup>34</sup>

In judicial practice, there are also restrictions and limitations in establishing a misrepresentation claim. First of all, the plaintiff needs to prove sufficient causation. Take a bad investment case for example, where the investor, by relying on false financial or operating information provided by a broker-dealer, invested in a company's stock, leading to a substantial loss, is usually challenging to prove a real causal link between the defendant's false information and the plaintiff's action in response to such information, i.e., the decision to invest. The plaintiff even has to prove that he did read such false information somewhere. Second, the French courts impose a duty on the plaintiff to independently verify the information provided by the defendant and cannot blindly rely on it, even if it is false. For example, an investor has to assess and verify the information provided by the broker-dealer before making any investment decision.<sup>35</sup>

### D. *United Kingdom*

In the U.K., there is no universally recognized duty of care to protect others from pure economic loss. However, there are two important exceptions to this rule, deriving from the famous cases of *Caparo Industries plc v. Dickman* and *Hedley Byrne v. Heller & Partners*, both of which are related to misrepresentation.<sup>36</sup>

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33. René David, *Measure of Damages in the French Law of Contract*, 17 J. COMP. LEGIS. & INT'L L. 61, 67 (1935).

34. Marshall, *supra* note 30, at 783-85.

35. *Id.* at 786-88.

36. VAN DAM, *supra* note 13, at 213-17.



### 1. *Cases of Misrepresentation*

In the case of *Caparo Industries plc v. Dickman*, where an accountant approved a company's statutory financial statements, and an acquirer who planned to take over this company, relied on the financial statements, believing the company was profitable when it was actually in a loss-making position. The acquirer subsequently sued the accountant for damages. The House of Lords (which functioned as the supreme court prior to 2009) held that the defendant would owe the plaintiff a duty of care if it knew or should have known that the financial statements "would be communicated to the plaintiff (either as an individual or as a member of an identifiable group), especially in connection with a particular transaction of a particular kind and that the plaintiff would be very likely to rely on it for the purposes of deciding whether or not to enter upon that transaction or upon transactions of that kind." In this case, however, the purpose of the financial statements was to enable existing shareholders to value the company's results of operations, not to serve as a reference for investment decisions. Therefore, the accountant did not owe a duty of care for the losses incurred by the plaintiff's reliance on the financial statements to acquire the company's shares.<sup>37</sup>

Additionally, in the well-known case of *Hedley Byrne v. Heller & Partners*, where an advertising agency asked a bank for information about the solvency of one of its clients, and the bank gave positive information based on inadequate research. The client subsequently went bankrupt. The advertising agency, suffering losses following non-payment from its client, sued the bank for damage. The House of Lords decided unanimously that there can be a duty of care in order to prevent third parties from suffering pure economic loss from negligent misrepresentation, provided that there is a "special relationship" between the person who owes the duty and the person who suffers pure economic loss, where there is "assumption of responsibility," albeit no contract. However, in this case, the advertising agency did not eventually get a favorable judgment because the bank added a disclaimer when providing information to the advertising agency.<sup>38</sup>

In sum, although the plaintiffs in these two cases did not eventually win the cases, the courts did develop two exceptions for the recovery of pure economic loss, i.e., "foreseeability" and "assumption of responsibility."

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37. *Caparo Industries plc v. Dickman* [1990] 2 AC 605 (HL) (as cited in VAN DAM, *supra* note 13, at 213); van Boom, *supra* note 2, at 21.

38. *Hedley Byrne v. Heller & Partners* [1964] AC 465 (HL).



## 2. *Cases of Relational Economic Loss*

In the U.K., there are also cases of the so-called “relational economic loss,” which actually covers both ricochet loss and transferred loss, and scholars categorize it into two main types. The first type pertains to losses caused by injury to a person, while the second type relates to losses as a result of damage to a property.

### a. *Relational Economic Loss Caused by Injury to a Person (Wrongful Death Case)*

The first type refers to wrongful death cases, resulting in pure economic loss suffered by a third party, such as an employer (as seen in the case of the death of a star athlete in France) or family members who depended on the deceased person for their living. In the U.K., as a general rule, third parties cannot claim such relational economic loss against the tortfeasor. However, there is an exception set forth in the Fatal Accidents Act 1976, which allows dependents to recover the loss of their fanatical support. Nevertheless, if the victim did not die from the tortfeasor’s negligent conduct but only got injured (similar to the French case involving an accident with a singer), the U.K. courts generally will not allow a third party to sue for losses consequent upon the victim’s injury. The rationale behind it is that such relational economic losses are not certain in nature and will likely lead to a flood of litigation.<sup>39</sup>

### b. *Relational Economic Loss Caused by Damage to a Property*

The second type involves cases where A’s negligence results in damage to B’s property, leading to pure economic loss suffered by C. In such cases, C may have “contractual interest” or “non-contractual interest” in the property owned by B.

#### (a) *Cancelled Cruise Case*

Cases of “contractual interest” are straightforward. For example, C may have been authorized to use B’s property, but due to A’s negligence, C lost his right to use the property. In the case of *Candlewood Navigation Corp. Ltd. v. Mitsui OSK Lines Ltd.*, the plaintiff was the time charterer of a ship, which was later negligently damaged by the defendant. While the ship was

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39. Christian Witting, *Compensation for Pure Economic Loss from a Common Lawyer’s Perspective*, in PURE ECONOMIC LOSS 102, 124-25 (W.H. van Boom, H. Koziol & C.A. Witting eds., 2004).



under repair, the plaintiff still had to pay for the charter and lost certain profits as it was unable to perform delivery contracts with its clients. The Privy Council (the highest court of appeal for the Commonwealth) determined that the plaintiff could not recover such losses as what it had upon the ship was merely a contractual interest instead of a property right. Allowing the plaintiff to sue for tort liability to get what it bargained for under the contract would open up an exceedingly wide, new range of liability against the defendant.<sup>40</sup>

(b) Closure of Public Infrastructure Case

In contrast, cases of “non-contractual interest” can be ever-changing. Nevertheless, the rule is that no recovery will be granted to C since what C has in B’s property is merely an expectation, not even a contractual interest. For instance, in the case of *Weller & Co. v. Foot and Mouth Disease Research Institute*, the defendant institute was responsible for the negligent outbreak of foot-and-mouth disease. This entailed the forced slaughter of some cattle and movement restrictions on the remainder in the vicinity by a government order. The plaintiff, who ran a cattle auction market, typically generating revenue by collecting fees from the auctions of cattle, suffered pure economic loss due to the dwindling business and then sued the defendant institute for damages. The judge in the High Court noted that there might be potential floodgate problem by all other parties affected by the order, such as cattle transport companies and dairy companies, but indicated it is not a convincing reason to reject the plaintiff’s claims. He preferred to determine the case based on duty of care. Having said that, in this case, the plaintiff failed to establish that the defendant owed a duty of care as the plaintiff had no proprietary interest in anything which might be damaged by the disease outbreak.<sup>41</sup>

(c) Water Pollution Case

In a similar case to *Landcatch Ltd. v. International Oil Pollution Compensation Fund*, the plaintiff operated a business rearing salmon from eggs to smolts. Smolts were then sold to fish farmers. The defendant negligently grounded an oil tanker, causing a significant oil spill that polluted the surrounding sea. As a result, the government imposed a ban on sea-life harvesting in the affected area, preventing fish farmers in the vicinity

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40. *Candlewood Navigation Corp. Ltd. v. Mitsui OSK Lines Ltd.* [1986] 1 AC 1 (PC) (as cited in Witting, *supra* note 39, at 126-27).

41. *Weller & Co. v. Foot and Mouth Disease Research Institute* [1966] 1 QB 569 (as cited in Witting, *supra* note 39, at 125-26).



from harvesting salmons. This, in turn, led to a decline in the plaintiff's business of selling smolts, so the plaintiff sought damages. However, the court rejected the plaintiff's claim and opined that the case was nothing more than that, owing to market conditions, the plaintiff did not obtain the return on the investment in smolts which it had expected.<sup>42</sup>

(d) Defective Product Case

Another type that should fall into this category is a defective product case. For example, in the case of *Muirhead v. Industrial Tank Specialties Ltd.*, the plaintiff, a fish merchant, bought a fish tank from a manufacturer to store lobsters but the electric pump in the tank failed to function, resulting in the death of the whole stock of lobsters. The plaintiff sued the tank manufacturer for damages, and the court ruled that the plaintiff could only recover foreseeable physical loss (i.e., dead lobsters) and any consequential economic loss as a direct result of such physical damage (i.e., lost profits from dead lobsters). The plaintiff could not recover other economic losses, such as the cost to replace the defective pump, as it is nothing more than a pure economic loss.<sup>43</sup>

In sum, and by referring to the categorization of pure economic losses introduced by Professor Bussani and Professor Palmer, it seems that in the U.K., ricochet loss and transferred loss are not recoverable unless there is a special law, such as the Fatal Accidents Act 1976. Losses from the closure of public markets are not recoverable, while losses from reliance upon flawed data, advice or professional services may be recoverable based on the two exceptions, i.e., foreseeability and assumption of responsibility.

#### IV. COMPARATIVE STUDY OF PURE ECONOMIC LOSS IN THE UNITED STATES

Judges, lawyers, and professors in the U.S. have made significant progress on this topic. In 2020, the American Law Institute released the Restatement of Torts (Third): Liability for Economic Harm, which updates the content set forth in the Restatement of Torts (Second) and addresses some topics not previously covered. According to Section 1 of the Restatement of Torts (Third), an actor has no general duty to avoid the unintentional infliction of pure economic loss on another unless they are otherwise recognized on the terms stated in Sections 2 to 8. Section 2 defines

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42. *Landcatch Ltd. v. International Oil Pollution Compensation Fund* [1999] 2 Lloyd's Rep. 316 (as cited in Witting, *supra* note 39, at 127).

43. *Muirhead v. Industrial Tank Specialties Ltd.* [1985] 3 WLR 993 (as cited in CHEN CONG-FU (陳聰富), *QINQUAN XINGWEI FA YUANLI* (侵權行為法原理) [PRINCIPLES OF TORT LAW] 154-55 (2d ed. 2018)).



“economic loss” stipulated herein as pecuniary damage not arising from injury to the plaintiff’s person or property, also known as “pure economic loss.” Sections 3 to 8, respectively, provide exceptional circumstances where pure economic losses may be recoverable in connection with the contract, professional negligence, negligent misrepresentation, negligent performance of services, injury to a third person or to property not belonging to the claimant and public nuisance. This paper will introduce relevant U.S. doctrines and cases following this order.

#### A. *Defective Product Cases*

##### 1. *Economic Loss Doctrine*

Liability for defective products in the U.S. has been governed by the “economic loss doctrine,” which originated from the case of *Seely v. White Motor Co.*. In this case, the plaintiff purchased a truck from an automobile manufacturer for use in his business, but the truck was later overturned due to brake failure. Although the plaintiff was not injured, he sued the automobile manufacturer for compensation for the cost of truck repairs, the purchase price of the truck, and lost business profits. The court of California, intending to maintain the boundaries between contractual warranty and tort liability, avoiding the former from being devoured by the latter, ruled that even if the manufacturer was negligent, its tort liability was limited to damages resulting from physical injury. Economic losses, such as purchase price and lost profits, could not be recovered under torts and should only be claimed under contractual warranty.<sup>44</sup>

This opinion had been developed into the so-called “economic loss doctrine” and later expanded into a principle that applies not only in defective product cases but all other cases related to pure economic loss. In other words, even though there exists no contract between parties, “economic loss not accompanied by personal or property damage (i.e., pure economic loss)” cannot be recovered under torts. As such, courts and scholars have raised various criticisms. For instance, when there is no contract or no freedom of contract between the parties, the initial purpose of the “economic loss doctrine,” that is, to maintain the boundaries between contractual liability and tort liability, does not exist.<sup>45</sup> Hence, critics argue that, in such instances, the courts should take a step back and examine each

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44. *Seely v. White Motor Co.*, 63 Cal.2d 9 (Cal. 1965).

45. Vincent R. Johnson, *The Boundary-Line Function of the Economic Loss Rule*, 66 WASH. & LEE L. REV. 523, 539 (2009); Jeffrey L. Goodman et al., *A Guide to Understanding the Economic Loss Doctrine*, 67 DRAKE L. REV. 1, 19-25 (2019).





element of tort liability, in particular, duty of care.<sup>46</sup> This argument has evolved into one of the exceptions to the economic loss doctrine, i.e., the independent duty rule, which will be briefly reviewed in the section titled “B. Intellectual Service and Misrepresentation Cases.”

## 2. *Exceptions*

While the “economic loss doctrine” is recognized in most States across the U.S., with scholars recording its acceptance in a total of 28 states in 2019<sup>47</sup>, the application of the doctrine in the courts has also led to the development of numerous exceptions. These exceptions aim to address certain situations that may seem unreasonable. They include exceptions such as the “other property exception,” the “dangerous defect exception,” and the “consumer exception,” which will be elaborated in turn.

### a. *Other Property Exception and Integrated System Theory*

A leading case that introduced “other property exception” was *East River Steamship Corp. v. Transamerica Delaval, Inc.* In this case, the defendant manufactured a defective turbine, which was installed on a ship chartered by the plaintiff, and the plaintiff, unable to use the ship during its repair, claimed compensation for repair costs and lost income based on tort liability. The Supreme Court of the U.S. ruled that if a product only damages “itself,” resulting in pure economic loss, it is most naturally understood as a warranty claim instead of a tort liability.<sup>48</sup> It suggested that if a defective product damages “other property,” it could be recoverable under torts. A better example of “other property exception” might be the case of *Lloyd F. Smith Co., Inc. v. Den-Tal-Ez*, where a defective dental chair caused a fire that substantially damaged other areas of the building in which the dental office was located. The dentist sued the chair manufacturer for damages under torts, but the manufacturer sought to bar recovery in torts by asserting the economic loss doctrine. However, the court of Minnesota allowed the plaintiff to pursue tort remedies because damages were done to “other property,” not the dental chair itself.<sup>49</sup>

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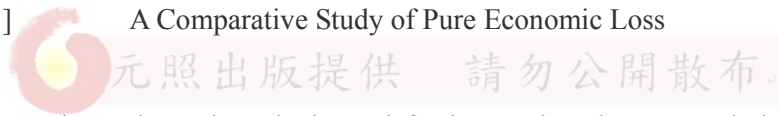
46. Johnson, *supra* note 45, at 553-66; Goodman et al., *supra* note 45, at 25-26.

47. Goodman et al., *supra* note 45, at 16-18. Those States include: Alabama, Delaware, Florida, Hawaii, Idaho, Indiana, Kentucky, Maine, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Wisconsin, Wyoming.

48. *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986); Andrew Gray, *Drowning in a Sea of Confusion: Applying the Economic Loss Doctrine to Component Parts, Services Contracts, and Fraud*, 84 WASH. U. L. REV. 1513, 1521 (2006).

49. *Lloyd F. Smith Co., Inc. v. Den-Tal-Ez*, 491 N.W.2d 11 (1992).





In order to determine whether a defective product damages only itself or also other property, the courts developed the “integrated system theory.”<sup>50</sup> According to this theory, if the damage is caused by a defective component of the product, the defective component is considered as an integrated part of the overall system rather than “other property.” The Supreme Court endorsed the integrated system theory in the case of *East River Steamship Corp. v. Transamerica Delaval, Inc.*, holding that the defective component of the turbine was an integrated part of the entire system (i.e., the turbine) and did not cause damage to property other than the product (i.e., the turbine) itself.<sup>51</sup>

In Taiwan, there exists extensive scholarly literature dealing with the issue of “damages on commodity injury.” Similarly, the prevailing view is that loss stemming from “damages on commodity injury” is typically pure economic loss and cannot be recovered under the former part of Article 184(1) of the Taiwan Civil Code, as clarified above.<sup>52</sup>

#### b. *Dangerous Defect Exception*

There is also an exception known as the “dangerous defect exception,” which allows a plaintiff to recover damages to the product “itself” under torts when a defective product creates an unreasonable danger or damages itself in a sudden and unforeseeable manner. Here, the determining factor for finding a product dangerous is “the manner in which the injury arose,” not

50. Goodman et al., *supra* note 45, at 37-42.

51. *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986), at 870.

52. Wang Ze-Jian (王澤鑑), *Shangpin Zhizaozhe Zeren yu Chuncui Jingji Sunshi* (商品製造者責任與純粹經濟損失) [*Product Manufacturer Liability and Pure Economic Loss*], in MINFA XUESHOU YU PANLI YANJIU (BA) (民法學說與判例研究(八)) [RESEARCH OF CIVIL LAW DOCTRINE AND PRECEDENT (VIII)] 233, 268-72 (Wang Ze-Jian (王澤鑑) ed., 2009); Zhan Sen-Lin (詹森林), *Xiaobao Fa Shangpin Zeren zhi Baohu Zhuti yu Baohu Ketu* (消保法商品責任之保護主體與保護客體—最高法院九十二年台上字第二三五六號電話語音信箱系統被第三人盜打國際電話案) [*Subjects and Objects of Product Liability under Consumer Protection Law—Supreme Court 92 Tai Shang Zi No.2356 The Case of the Unauthorized Use of Telephone Voicemail System by a Third Party to Make International Calls*], in MINSHI FALI YU PANJUE YANJIU (SI) (民事法理與判決研究(四)) [CIVIL LAW DOCTRINE AND CASE STUDY (IV)] 61, 67-68 (Zhan Sen-Lin (詹森林) ed., 2006); Chen Cong-Fu (陳聰富) [hereinafter Chen], *Jianwu Xiaci zhu Qinquan Zeren-Shangpin Zishang de Sunhai Peichang* (建物瑕疵之侵權責任—商品自傷的損害賠償) [*Tort Liability for Defects of Buildings: Damages on Commodity Injury*], 143 ZHENGDA FAXUE PINGLUN (政大法學評論) [NCCU LAW REVIEW] 61, 72-89 (2015). But see Chen Zhong-Wu (陳忠五), *Lun Xiaofeizhe Baohu Fa Shangpin Zeren de Baohu Fayi Fanwei* (論消費者保護法商品責任的保護法益範圍) [*Discussion on the Scope of Protected Interest in Product Liability under the Consumer Protection Law*], 134 TAIWAN FAXUE ZAZHI (台灣法學雜誌) [TAIWAN LAW JOURNAL] 77, 89-94 (2009); Lin Li-Min (林栗民), *SHANGPIN ZISHANG ZHI YANJIU: SUOYOUQUAN QINHAU HUO CHUNCUI JINGJI SHANG SUNSHI?* (商品自傷之研究：所有權侵害或純粹經濟上損失?) [DAMAGES ON COMMODITY INJURY: PROPERTY DAMAGE OR PURE ECONOMIC LOSS?] 7-35, 139-83 (2017) (Unpublished master thesis, National Taiwan University) (on file with National Taiwan University Library).



the presence or absence of physical harm to a person or property.<sup>53</sup> In the case of *Fireman's Fund Am. Ins. Cos. v. Burns Elec. Sec. Servs.*, the court of Illinois used the example of a fire alarm system. If a fire alarm fails to work and a building burns down, any subsequent damages are considered economic losses even though the building was physically damaged. Such economic losses can only be recovered under a warranty claim because the damage from the fire would be a foreseeable consequence of the failure of the product to work properly. However, if the fire is caused by a short circuit in the alarm itself, which is an unexpected outcome of a malfunctioning alarm, then all subsequent damages may be claimed under torts by applying this “dangerous defect exception.”<sup>54</sup>

### c. *Consumer Exception*

Under the consumer exception, the economic loss doctrine only applies in a commercial transaction between merchants and not to a consumer who purchases products for personal or residential use. The rationale behind this exception is that consumers usually lack negotiating skills and bargaining power and will often accept whatever warranty terms are offered by the manufacturer. As such, it is not fair to apply the economic loss doctrine in a consumer case.<sup>55</sup>

Along with the development, the “economic loss doctrine” has been included in the Restatement of Tort (Third): Liability for Economic Harm, and the “other property exception” and the “integrated system theory” have been incorporated into the Restatement of Torts (Second) and Restatement of Torts (Third): Product Liability, respectively.<sup>56</sup>

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53. Goodman et al., *supra* note 45, at 7-29.

54. *Fireman's Fund Am. Ins. Cos. v. Burns Elec. Sec. Servs.*, 417 N.E.2d 131 (Ill. App. Ct. 1980).

55. Goodman et al., *supra* note 45, at 51-55.

56. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 3 (AM. L. INST. 2020): Liability for Economic Harm (Preclusion of Tort Liability Arising from Contract) explicitly provides economic loss doctrine: “Except as provided elsewhere in this Restatement, there is no liability in tort for economic loss caused by negligence in the performance or negotiation of a contract between the parties.”

RESTATEMENT (SECOND) OF TORTS § 402A (AM. L. INST. 1965) (Special Liability of Seller of Product for Physical Harm to User or Consumer) suggests “other property exception”: “(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if (a) the seller is engaged in the business of selling such a product, and (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold. (2) The rule stated in subsection (1) applies although (a) the seller has exercised all possible care in the preparation and sale of his product, and (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.”

Comment to Section 21 of the Restatement of Torts (Third): Products Liability (Definition of “Harm to Persons or Property”) expresses the idea of “integrated system theory”: “What constitutes harm to other property rather than harm to the product itself may be difficult to determine. A product that nondangerously fails to function due to a product defect has clearly caused harm only to itself.



## B. *Intellectual Service and Misrepresentation Cases*

### 1. *Intellectual Services Affecting Third Parties*

Accountants, lawyers and other professionals who provide intellectual services such as information, advice, etc., do so ordinarily based on a contract. If they conduct malpractice or misrepresentation, clients can sue for breach of contract. However, if third parties also suffer a loss as a result of the negligently rendered intellectual services, can they recover under torts?

A classic case from the early years is *Ultramares Corp. v. Touche*, where accountants were negligent in conducting an audit, and as a result, the balance sheet they prepared presented incorrect information. Creditors relied on this false information and lent money to the company, which eventually went bankrupt and was unable to repay the debts. The creditors claimed compensation for pure economic losses due to the accountants' negligent misrepresentation. The court of New York found that the "end and aim" of the accountant's providing such a balance sheet was not for the creditors but for the company's internal auditing purpose, and even though the accountants had known that the balance sheet would be exhibited to others for financing transactions, they did not know the "identity" of these people. Therefore, the court was unwilling to impose liability for negligence; otherwise, it would "expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class."<sup>57</sup>

By comparison, in the case of *Biakanja v. Irving*, a notary public helped prepare a will that was not properly witnessed by two witnesses. As a result, the testator's sister, who would have been the sole heir under the will, inherited only one-eighth of the estate. The sister sued the notary public for negligence, claiming tort damages. The court ruled in favor of the sister, as the "end and aim" of the notary public's services were intended for the benefit of the sister, rendering the sister the "intended beneficiary." Consequently, the notary public owed her a duty of care.<sup>58</sup>

Subsequently, professional liability has been incorporated into Section 552 of the Restatement of Torts (Second), titled "Information Negligently Supplied for the Guidance of Others."<sup>59</sup> Compared to the traditional rule,

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However, when a component part of a machine or a system destroys the rest of the machine or system, the characterization process becomes more difficult. When the product or system is deemed to be an integrated whole, courts treat such damage as harm to the product itself."

57. *Ultramares Corp. v. Touche*, 255 N.Y. 170 (N.Y. 1931).

58. *Biakanja v. Irving*, 49 Cal.2d 647 (Cal. 1958).

59. RESTATEMENT (SECOND) OF TORTS § 552 (AM. L. INST. 1977): "(1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. (2)



under which the accountant's duty is owed only to those with whom he is in privity or to those who are known beneficiaries at the time of the accountant's undertaking, Section 522 extended the liability to a known and intended class of beneficiaries. For example, if the accountant knows that the report is to be prepared for bank borrowing (even though they do not know the identity of the bank), then his duty would run to the bank to whom the company delivered the report. The Restatement of Tort (Third): Liability for Economic Harm further divided the provisions of Section 552 into two folds for "non-clients": one to specifically stipulate negligent misrepresentation and the other to provide negligent performance of services.<sup>60</sup> The rationale behind it is that reliance on statements and services can give rise to different complications--liabilities for negligent misrepresentation that expand as easily as words travel would therefore become indeterminate and unduly widespread in many cases.<sup>61</sup>

Another rule is that the accountant's duty is owed to those whom the accountant should reasonably foresee as recipients from the company of the financial statements for business purposes. The court of New Jersey, in the case of *H. Rosenblum, Inc. v. Adler*, adopted this rule of foreseeability. In this case, the defendant was a partner in an accounting firm and conducted an annual financial audit for a publicly traded company. The audited

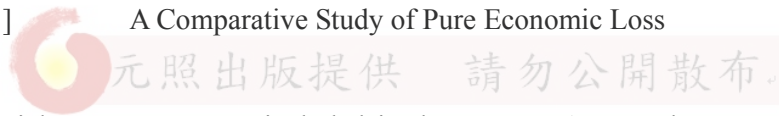
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Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction."

60. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 5 (AM. L. INST. 2020): "(1) An actor who, in the course of his or her business, profession, or employment, or in any transaction in which the actor has a pecuniary interest, supplies false information for the guidance of others is subject to liability for pecuniary loss caused to them by their reliance upon the information, if the actor fails to use reasonable care in obtaining or communicating it. (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered: (a) by the person or one of a limited group of persons for whose guidance the actor intends to supply the information, or for whose guidance the actor knows the recipient intends to supply it; and (b) through reliance upon the information in a transaction that the actor intends to influence, or that the actor knows the recipient intends to influence, or in a substantially similar transaction. [ . . . ] (5) This Section does not recognize liability for negligent misrepresentations made in the course of negotiating or performing a contract between the parties."

RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 6 (AM. L. INST. 2020): "(1) An actor who, in the course of his or her business, profession, or employment, or in any other transaction in which the actor has a pecuniary interest, performs a service for the benefit of others is subject to liability for pecuniary loss caused to them by their reliance upon the service, if the actor fails to exercise reasonable care in performing it. (2) The liability stated in Subsection (1) is limited to loss suffered: (a) by the person or one of a limited group of persons for whose benefit the actor performs the service; and (b) through reliance upon it in a transaction that the actor intends to influence. [ . . . ] (4) This Section does not recognize liability for negligence in the course of negotiating or performing a contract between the parties."

61. Comment a and Comment b of Restatement (Third) of Torts: Liability for Economic Harm § 5 (Am. L. Inst. 2020): Liability for Economic Harm.



financial statements were included in the company's annual report, which was made publicly available to investors. Subsequently, the plaintiff relied on these financial statements and entered into a merger agreement with the publicly traded company. However, the company had significant undisclosed losses and filed for bankruptcy shortly thereafter. The plaintiff alleged that the defendant had knowledge of this but failed to withdraw the audited financial statements, leading to the plaintiff making an erroneous merger decision. The plaintiff sought damages on grounds including fraud, negligence, and gross negligence. The court held that the accountants knew or should have known that the audited financial statements would be available and useful for other proper business purposes, such as public offerings of securities, credit, and corporate acquisitions. These were clearly foreseeable potential uses of the audited financials at the time of their preparation. Therefore, the accountants should be held liable under torts.<sup>62</sup> Nevertheless, there are still debates and concerns among scholars and judicial practice toward this rule of foreseeability, said to impose unreasonable and uncertain liability on accountants. Some argue that establishing a sufficient insurance mechanism to cover potentially substantial damages would be necessary if accountants were to be held responsible for potentially affected parties.<sup>63</sup>

## 2. *Misrepresentation in a Contractual Relationship*

In the misrepresentation cases where parties are in a contractual relationship or negotiation to sign a contract, typically the above-mentioned economic loss doctrine will kick in and be used as the defendant's initial argument. However, the courts have developed the "independent duty rule" and ruled that pure economic loss resulting from negligent misrepresentation is not barred by the economic loss doctrine. For example, in the case of *Level 3 Communications, LLC v. Liebert Corp.*, where the plaintiff, a telecommunications network company, had a long-standing relationship with the defendant, an equipment supplier, for the purchase of multiple uninterruptible power supply (UPS) systems. The product list annexed to the framework agreement did not explicitly include batteries. Nonetheless, the UPS systems had been delivered with the batteries as accessories. In one of the plaintiff's purchase orders, the defendant, due to a shortage of higher-capacity A-type batteries, offered to temporarily substitute lower-capacity B-type batteries and assured the plaintiff that the A-type

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62. *H. Rosenblum, Inc. v. Adler*, 93 N.J. 324 (N.J. 1983). The New Jersey legislature subsequently adopted a different law. N.J. STAT. ANN. § 2A:53A-25 (West 2003).

63. Bernstein, *supra* note 4, at 115-17; David Gruning, *Pure Economic Loss in American Tort Law: An Unstable Consensus*, 54 AM. J. COMP. L. SUPP. 187, 199-201 (2006).



batteries would arrive in four weeks. The A-type batteries ultimately arrived four months later. Consequently, the plaintiff did not replace the batteries in the systems. Several months later, the plaintiff's client demanded to replace the B-type batteries due to insufficient power. The plaintiff, lacking a strong claim under warranty against B-type batteries, sought damages for the costs associated with replacing the batteries under torts on the ground that the defendant made negligent misrepresentation when negotiating the purchase order. The defendant argued that the economic loss doctrine barred the plaintiff's claim. However, the court rejected the defendant's defense, reasoning that the tort of negligent misrepresentation is based not on principles of contractual obligation but on principles of duty and reasonable conduct. Here, the defendant provided false information to the plaintiff during a commercial transaction, thereby violating its duty of care. This constituted negligent misrepresentation under Section 552 of the Restatement of Torts (Second), allowing the plaintiff to pursue a claim for damages under tort law.<sup>64</sup>

Subsequently, the Restatement of Tort (Third): Liability for Economic Harm also incorporated liability for professional negligence resulting in pure economic loss for "clients," and it acknowledges the professional has an independent duty of care separated from the contractual duty.<sup>65</sup>

### C. *Interference with Use of Resource and Access Cases*

"Foreseeability" plays a crucial role in English and American laws when determining the existence of a duty of care and the scope of damages in cases pertaining to pure economic losses, such as "access cases" and "interference with the use of resources cases."

#### 1. *Water Pollution Cases*

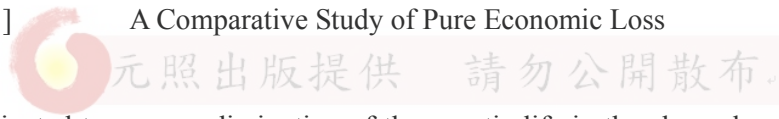
Fortunately, the U.S. courts have departed from the doctrine of no liability for pure economic loss in the cases of interference with fishermen's right or interest in harvesting seafood due to oil spills or chemical pollution. For example, in the case of *Union Oil v. Oppen*, the federal court held that the defendants had a duty to refrain from negligent conduct in their drilling operations, which conduct reasonable and foreseeably could have been

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64. *Level 3 Communications, LLC v. Liebert Corp.*, 535 F.3d 1146 (10th Cir. 2008).

65. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 4 (Am. L. Inst. 2020) (Professional Negligence Resulting in Economic Loss): "A professional is subject to liability in tort for economic loss caused by the negligent performance of an undertaking to serve a client." *See also*, Comment a of RESTATEMENT (THIRD) OF TORTS LIABILITY FOR ECONOMIC HARM § 4 (AM. L. INST. 2020): Liability for Economic Harm.





anticipated to cause a diminution of the aquatic life in the channel area and thus cause injury to the plaintiffs' business. Here, the foreseeability of this injury was used as the basis to determine whether the defendants owed the plaintiffs (i.e., commercial fishermen) a duty of care. Accordingly, the court allowed the plaintiffs to recover their lost profits.<sup>66</sup>

However, there is conflicting authority on whether pure economic loss suffered by those other than "commercial fishermen" should enjoy the same protection in the case of water pollution.<sup>67</sup> While the court of Virginia in the case of *Pruitt v. Allied Chemical Corp.* extended the protection scope to those other than "commercial fishermen (who have been determined as lawfully and directly make use of a resource of the sea in the case of *Union Oil v. Oppen*)," it introduced the element of "remoteness" to further differentiate among groups of plaintiffs. The plaintiffs in this case included not only commercial fishermen but also seafood wholesalers, retailers, processors, distributors, restaurateurs, and marina, boat tackle, and bait shop owners, as well as employees of all the above groups. They all claimed compensation for pure economic losses (mostly lost profits) due to the pollution of a chemical agent negligently released by the defendant to the bay area. Nevertheless, the court found that losses suffered by certain plaintiffs, such as seafood wholesalers, retailers, processors, distributors, and restaurateurs and their respective employees, were comparatively remote and diffuse, and therefore the court barred them from recovering their lost profits, while it granted recovery for boat, tackle and bait shop, and marina owners as they have suffered legally cognizable damages.<sup>68</sup>

## 2. *Interference with Access Cases*

In the case of *People Express Airlines, Inc. v. Consolidated Rail Corp.*, a fire broke out in a railroad tank car at the freight yard of the defendant (i.e., a rail company). Plaintiff, an airline transportation company, did not suffer any property damage as a result of the incident but sought recovery of losses caused by the interruption of its business. These losses included the cancellation of its flights and the inability to receive reservation calls. The court of New Jersey was of the view that "a defendant who has breached his duty of care to avoid the risk of economic injury to particularly foreseeable plaintiffs may be held liable for actual economic losses that are proximately caused by its breach of duty" and that "those economic losses are recoverable as damages when they are the natural and probable consequence of a defendant's negligence in the sense that they are reasonably to be

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66. *Union Oil v. Oppen*, 501 F.2d 558 (9th Cir. 1974).

67. Bernstein, *supra* note 4, at 124.

68. *Pruitt v. Allied Chemical Corp.*, 523 F. Supp. 975, 979-80 (E.D.Va. 1981).



anticipated in view of defendant's capacity to have foreseen that the particular plaintiff or identifiable class of plaintiffs is demonstrably within the risk created by defendant's negligence." Therefore, this case was remanded to the trial court to examine the element of foreseeability.<sup>69</sup>

Both water pollution cases and interference with access cases fall within the category of "public nuisance resulting in pure economic loss," which is provided in Section 8 of the Restatement of Tort (Third). The general principle is that as long as the plaintiff can prove it suffered a "special injury" distinct in kind from that suffered by the general public, the plaintiff should be able to recover such relevant pure economic loss.<sup>70</sup>

### 3. *Cable Cutting Cases*

Section 766C of the Restatement of Torts (Second) cited two relevant cases as a comparison to discuss the consequences of negligent interference with a contract or prospective contractual relation. The first case is *Byrd v. English*, which is frequently cited in this area. The plaintiff operated a large printing plant and employed many people, while the defendant was a contractor constructing a building nearby. One day, due to the defendant's negligence, an underground electricity cable was severed, causing the plaintiff to cease operations and incur a loss of profits. The court of Georgia held that the plaintiff could not recover for loss of profits as allowing such recovery would subject the defendant to unlimited liability. For example, if the plaintiff could assert business losses, then the plaintiff's customers could also claim interference with the contracts they had with the plaintiff, leading to economic losses, which would be unreasonable.<sup>71</sup>

The other case is *Newlin v. New England Tel. & Tel. Co.*, in which the plaintiff owned a mushroom plant, and the defendant was responsible for maintaining telephone poles on a public way nearby. However, due to the defendant's negligence, a telephone pole collapsed, resulting in a power outage at the plaintiff's mushroom plant, causing all the mushrooms to die. The court of Massachusetts determined that if the defendant had acted negligently and caused any harm to another person's person or property, regardless of whether the defendant could reasonably foresee the particular manner or direction in which the harm occurred, the defendant should be

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69. *People Express Airlines, Inc. v. Consolidated Rail Corp.*, 100 N.J. 246 (N.J. 1985).

70. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 8 (AM. L. INST. 2020) (Public Nuisance Resulting in Economic Loss): "An actor whose wrongful conduct harms or obstructs a public resource or public property is subject to liability for resulting economic loss if the court concludes that the claimant's losses are distinct in kind from those suffered by members of the affected community in general." Comment c of RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 8 (AM. L. INST. 2020): Liability for Economic Harm.

71. *Byrd v. English*, 117 Ga. 191 (Ga. 1903); Gruning, *supra* note 63, at 191-92.





held liable.<sup>72</sup>

According to Section 766C of the Restatement of Torts (Second), whether a claim for pecuniary harm can succeed in cases involving negligent interference with another person's contract (or potential contract) depends on whether any "physical harm" was caused.<sup>73</sup> In the case of *Byrd v. English*, as there was no physical harm but only loss of profits, the plaintiff's claim for damages could not be allowed. In contrast, in the case of *Newlin v. New England Tel. & Tel. Co.*, where the plaintiff suffered property damage due to the death of the mushrooms, Comment b of Section 766C allows the plaintiff to seek damages for the value of the mushrooms, and if the scope of lost profits can be reasonably determined, those may also be claimed for compensation. Nevertheless, in circumstances where there is physical harm, any economic loss resulting directly from it, in the majority view, is consequential economic loss.

The Restatement of Torts (Third): Liability for Economic Harm further elaborates this kind of liability, i.e., liability from injury to a third person or to property not belonging to the plaintiff, in Section 7. The general principle is that no recovery will be allowed, and the rationale behind it reiterates the concerns of imposing liabilities that are indeterminate and out of proportion to the culpability of the defendant.<sup>74</sup>

## V. LAWS AND CASES OF PURE ECONOMIC LOSS IN TAIWAN

### A. *Objects Protected under Tort Laws*

As aforementioned, the tort regime of pure economic loss adopted by

72. *Newlin v. New England Tel. & Tel. Co.*, 316 Mass. 234 (Mass. 1944).

73. RESTATEMENT (SECOND) OF TORTS § 766C (AM. L. INST. 1979) (Negligent interference with contract or prospective contractual relation): "One is not liable to another for pecuniary harm not deriving from physical harm to the other, if that harm results from the actor's negligently (a) causing a third person not to perform a contract with the other, or (b) interfering with the other's performance of his contract or making the performance more expensive or burdensome, or (c) interfering with the other's acquiring a contractual relation with a third person."

The comment pertinent to the foregoing section reads as follows: "b. Physical harm to the other. The rule stated in this Section applies when the plaintiff suffers only pecuniary loss, such as the loss of the financial benefits of a contract or of prospective trade or financial loss through being put to additional expense. If there is physical harm to the person or land or chattels of the plaintiff, the rule stated in this Section does not apply and there may be recovery for negligence that results in physical harm because of the nonperformance of a contract with the plaintiff. This recovery is of course subject to the usual rules governing liability for negligence. When recovery is allowed, the loss of expected profits or other pecuniary loss may, in an appropriate case, be recovered as 'parasitic' compensatory damages."

74. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 7 (AM. L. INST. 2020) (Economic Loss from Injury to a Third Person or to Property Not Belonging to the Claimant): "Except as provided elsewhere in this Restatement, a claimant cannot recover for economic loss caused by: (a) unintentional injury to another person; or (b) unintentional injury to property in which the claimant has no proprietary interest." Comment b of RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 7 (AM. L. INST. 2020): Liability for Economic Harm.



Taiwan is comparatively conservative because a significant part of the Taiwan Civil Code was influenced by the German Civil Code. In particular, Article 184 of Taiwan Civil Code primarily divides tortious conducts into three categories: (i) intentionally or negligently, wrongfully damaging the rights of others (former part of Article 184(1)), (ii) intentionally causing harm to others in a manner against the rule of good morals (latter part of Article 184(1)), and (iii) violating laws intended to protect others, resulting in harm to others (Article 184(2)). These three categories were borrowed from Sections 823(1), 826, and 823(2) of the German Civil Code, respectively.

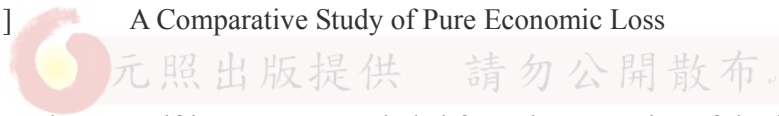
The majority of scholars in Taiwan argue that the objects protected under the former part of Article 184(1) are limited to absolute rights. In terms of “interests,” the infringement of which would cause pure economic loss, it cannot be treated as important as personal rights or property rights because it lacks publicity, i.e., the general public could not easily perceive the existence of such interests, as well as the incurred losses could be unlimited and uncertain. Therefore, unless economic loss occurs in conjunction with physical damage to a victim’s person or property, i.e., consequential economic loss, it is generally not recoverable under the former part of Article 184(1). On the contrary, consequential economic loss is typically recoverable under the former part of Article 184, and it pertains to “interests which have been lost” as set forth in Article 216, which is a general provision in connection with the ambit of recovery.<sup>75</sup>

An emerging view, however, contends that the rights protected under the former part of Article 184(1) should include “interests.” First of all, the terminology used in the former part of Article 184(1) and that in Section 823(1) of the German Civil Code are not entirely the same. In particular, while the latter contains an explicit list of absolute rights, the former generally provides “rights of others” without confining the scope of rights per se. As such, one can argue that the legislators did not intend to distinguish between so-called absolute rights and interests as the Germans did.<sup>76</sup> Additionally, they argue that rights and interests are essentially the same and there is no clear-cut distinction between the notions of rights and interests, making it an inadequate basis for differential protection under tort

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75. WANG, *supra* note 10, at 389-94; Lin Da-Yang (林大陽), *Chuncui Jingji Shang Sunshi Shiwu zhi Bianqian yu Fazhan (Shang)* (純粹經濟上損失實務之變遷與發展(上)) [*Change and Development of the Judicial Practice Relating to Pure Economic Loss (I)*], 1506 SIFA ZHOUKAN (司法周刊) [JUDICIAL WEEKLY] 2d-3d edition (2010); Huang Li (黃立), *Chuncui Jingji Shang Sunshi zhi Peichang Wenti* (純粹經濟上損失之賠償問題) [*Compensation Issues Relating to Pure Economic Loss*], 49 TAIWAN BENTU FAXUE ZAZHI (臺灣本土法學雜誌) [TAIWAN LAW JOURNAL] 134, 135-36 (2003).

76. YAO, *supra* note 10, at 24.



law. Furthermore, if interests are excluded from the protection of the former part of Article 184(1), which is a general negligent tort provision, it basically suggests that interests are only recoverable in cases of intentional torts regulated by the latter part of Article 184(1) and/or Article 184(2). If this is the case, the current tort laws do not provide adequate and sufficient protection for interests.<sup>77</sup>

In judicial practice, courts used to hold the view that “interests” such as contractual rights are protected under the former part of Article 184(1). For instance, in the 1988 Resolutions of the 19th Civil Division Meeting (II), the Supreme Court raised an issue for discussion: “X, a clerk working at Bank A’s credit department, intentionally colluded with Y, who lacked financial capability, by overestimating Y’s creditworthiness, resulting in an illegal and substantial loan granted. This action led to damages suffered by Bank A (as it failed to enforce its right against Y). Can Bank A sue X for compensation according to tort laws?” It concluded: “X, apart from failing to fulfill his/her contractual obligations to Bank A, has unlawfully infringed upon Bank A’s ownership of funds, causing damages as a result of the irrecoverable loan. It (an unrealized contractual right) constitutes the elements of tortious conduct stipulated in the former part of Article 184(1) of the Civil Code. Therefore, Bank A is entitled to claim compensation under the tort laws.”<sup>78</sup> However, courts have gradually shifted the point of view supporting that “rights” and “interests” should be distinguished from each other, and the former part of Article 184(1) only covers absolute rights. It is in line with the majority view of scholars. For example, in the 1997 Tai-Shang-Zi Judgment No. 3760, the Supreme Court stated: “A person who, intentionally or negligently, has wrongfully damaged the rights of another is bound to compensate him for any injury arising therefrom. The same rule shall be applied when the injury is done intentionally in a manner against the rules of morals. It is explicitly set forth in Article 184(1) of the Civil Code. This provision differentiates between two types of tortious conduct. In terms of the protected objects, the former part pertains to rights, while the latter part pertains to interests.”<sup>79</sup>

In addition, there is a growing understanding of the concept of pure economic loss in judicial practice in Taiwan. For instance, in the 2020 Tai-Shang-Zi Judgment No. 535, the Supreme Court stated: “According to the latter part of Article 184(1), those who intentionally harm others in a manner against the rules of good morals are liable for damages . . . the

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77. CHEN, *supra* note 10, at 294-97.

78. Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 77 Di 19 Ci Minshiting Huiyi Jueyi (Er) (77年度第19次民事庭會議決議(二)) [Resolutions of the 19th Civil Division Meeting (II)] (1988) (Taiwan).

79. Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 86 Tai Shang Zi No. 3760 (86年度台上字第3760號民事判決) (1997) (Taiwan).



objects protected by this provision are interests rather than rights, including what is known by scholars as ‘pure economic loss. The term pure economic loss refers to economic losses that occur without damage to rights or interests protected by law, meaning that the economic loss is ‘pure’ and not combined with other physical injuries, such as personal or property damage.”

As the term “pure economic loss” does not appear in any of the codified laws in Taiwan, when the judges discuss this issue, they usually refer to it as a concept “known by scholars.” Nevertheless, there have been more and more courts citing this term and weaving this concept into judgments.

#### B. *Scholarly Literature on Important Cases*

Following the courts’ recognition of the concept of pure economic loss, scholars have been studying courts’ judgments and providing fruitful analysis on this topic.

##### 1. *Industrial Safety Belt Case*

Professor Sen-Lin Zhan commented on the 2008 Tai-Shang-Zi Judgment No. 2348, where the Supreme Court failed to identify that losses suffered by the plaintiff were pure economic loss and deserve further analysis. Here, a construction company purchased and used a set of safety belts for a project. The seller guaranteed that the safety belts could withstand a load of 2,000 kilograms, but they broke due to a defect, resulting in the death of an employee. The company sought compensation from the seller for (1) the funeral expenses of the deceased employee, (2) fines paid to the company’s client for a 5-day work stoppage as ordered by the government authority due to the employee’s death, (3) continued payment of wages during the work stoppage, (4) prepaid machinery rental expenses, (5) loss and depreciation of relevant equipment due to the work stoppage, and (6) condolence payments paid to the deceased employee’s family. The Supreme Court only granted the plaintiff’s claim for (1) funeral expenses but remanded the claims for (2) to (6) to the trial court due to its failure to examine the plaintiff’s evidence.<sup>80</sup> Professor Sen-Lin Zhan commented on this judgment, stating that while the company suffered economic losses as a result of the death of the deceased employee due to the safety belt’s defect, it did not directly suffer any personal or property damage. Hence, all claims, including claims no. (2) to (6), essentially constitute pure economic losses.

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80. Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 97 Tai Shang Zi No. 2348 (97年度台上字第2348號民事判決) (2008) (Taiwan).



However, the Supreme Court failed to analyze and identify the nature of such losses before it made the judgment, which is disappointing.<sup>81</sup>

## 2. *Exhibition Equipment Theft Case*

There is another case involving multiple parties, which makes the nature of economic losses even more intriguing and confusing. In the 2009 Tai-Shang-Zi Judgment No. 1961 rendered by the Supreme Court, A engaged B to arrange for air transportation to deliver A's equipment to a trade exhibition in the U.S. B, in turn, engaged C to deal with the logistics, who further subcontracted the task to D, an airline company. Unfortunately, the equipment was stolen from D's warehouse. Subsequently, A sued B and D, claiming that they should be jointly and severally liable for the following losses pursuant to the former part of Article 184(1) of the Civil Code: (i) venue rental expenses incurred for the exhibition, as well as accommodation and transportation expenses for personnel traveling to the exhibition, and (ii) loss of the expected profits from selling such equipment at the exhibition. The Supreme Court held that the stolen equipment was damage to A's property, and therefore, A could recover damages under tort laws even from B, with whom A had a contract. However, the Supreme Court shifted to emphasize the different purpose and protected scope of contractual liability versus tort liability and as a result, the objects protected under the former part of Article 184(1), in principle, limited to "absolute rights" and do not extend to "interests," especially what is referred to by scholars as pure economic loss, to maintain the necessary distinction of contractual liability and tort liability, and to achieve a reasonable allocation and limitation of liability. Accordingly, the Supreme Court considered both the expenses and lost profits to be losses that did not result from personal or property harm but rather constituted pure economic loss. Consequently, these losses could not be recoverable under the former part of Article 184(1).<sup>82</sup>

Scholars do not universally agree with the Supreme Court's view on the nature of the losses. For instance, Professor Sen-Lin Zhan argued that the expenses incurred were indeed pure economic losses as they did not result from personal or property harm. If the equipment had not been stolen, such expenses would still be spent anyway. However, the lost profits were directly

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81. Zhan Sen-Lin (詹森林), *Chuncui Jingji Sunshi yu Xiaobao Fa zhi Shangpin Zeren-Zuigao Fayuan 97 Nian Taishang Zi Di 2348 Hao Panjue zhi Yanjiu* (純粹經濟損失與消保法之商品責任—最高法院97年臺上字第2348號判決之研究) [*Pure Economic Loss and Product Liability under Consumer Protection Law—A Study of the Supreme Court's Decision No. 97-Tai-Shang-2348*], 60 FALING YUEKAN (法令月刊) [THE LAW MONTHLY] 47, 61-64 (2009).

82. Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 98 Tai Shang Zi No. 1961 (98年度台上字第1961號民事判決) (2009) (Taiwan).



resulting from the stolen equipment and were consequential economic loss resulting from property damage. Therefore, it could be recoverable under the former part of Article 184(1).<sup>83</sup> Professor Cong-Fu Chen, on the other hand, believed that both the expenses and the lost profits constituted consequential economic losses resulting from property damage, i.e., the stolen equipment. As such, both the expenses and the lost profits could be recoverable under the former part of Article 184(1), and the ambit of recovery, according to Article 216, includes both the injury suffered and the interests which have been lost. In particular, the expenses incurred were regarded as a form of injury suffered, while the lost profits were categorized as lost interest.<sup>84</sup> Nevertheless, the compensation for expenses and lost profits are mutually exclusive. If A is entitled to recover lost profits as if the sales of equipment were successful, it should, of course, bear the expenses incurred as well.<sup>85</sup>

This paper is of the view that if we follow strictly the definition of “consequential economic loss,” i.e., a loss that results “directly” from physical damage to the victim’s person or property, it is not difficult to conclude that while the expenses incurred were indeed related to the stolen equipment, they were not like the lost profits, which were a direct result of the stolen equipment. As such, the expenses incurred should be pure economic loss but not consequential economic loss.

### 3. *Oyster Seed Case*

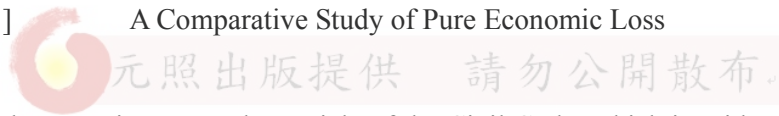
Similar to the aforementioned oil pollution cases resulting in lost profits for fishermen in the U.S., there was a seawater turbidity case that caused lost profits for oyster farmers in Taiwan. While the fact patterns of these cases looked similar, the courts’ views and reasoning were comparatively different. Unlike the U.S. courts, which recognized commercial fishermen’s harvesting right in the ocean and allowed them to recover lost profits, the courts in Taiwan were reluctant to borrow the concept of “right of the established and ongoing commercial business” from Germany by acknowledging oyster farmers’ harvesting business as a right. Alternatively, the courts evaded this

83. Zhan Sen-Lin (詹森林), *Taiwan Minshi Caichan Fa Ruogan Zhongyao Shiwu Fazhan zhi Huiyu-Chenglan zhi Wu zhi Xiaci Danbao yu Bu Wan Quan Jifu, Ji fu Bu Dang Deli Wu Falu shang Yuanyin zhi Juzheng* (台灣民事財產法若干重要實務發展之回顧—承攬之物之瑕疵擔保與不完全給付、給付不當得利無法律上原因之舉證) [A Retrospective Review of Significant Developments of Judicial Practice Relating to Taiwan Civil and Property Law—Proof of Warranty against Defects in Construction, Incomplete Performance, and Unjust Enrichment Without Legal Causes], 200 YUEDAN FAXUE ZAZHI (月旦法學雜誌) [THE TAIWAN LAW REVIEW] 245, 266 (2012).

84. Chen, Lun Xiaofeizhe Baohu Fa Shangpin Zeren de Baohu Fayi Fanwei (論消費者保護法商品責任的保護法益範圍) [Discussion on the Scope of Protected Interest in Product Liability under the Consumer Protection Law], *supra* note 52, at 72.

85. CHEN, *supra* note 43, at 142-43.





issue by resorting to another article of the Civil Code, which is said to cover pure economic loss.

In the 2011 Tai-Shang-Zi Judgment No. 250 rendered by the Supreme Court, the dispute was the defendant engaged in sand dredging in a coastal area, causing the seawater to become turbid, which in turn prevented oyster seeds in the neighboring area from attaching to the cultch strings and growing. Oyster farmers filed for damages under Article 191-3, a provision holding liable a business owner whose products or services might damage others. The trial courts granted the plaintiffs' claims. When the case reached the Supreme Court, the Supreme Court remanded the original judgment on the ground that the trial courts failed to analyze and identify the nature of losses suffered by oyster farmers. Were they "pure economic loss" or "interests which have been lost as a result of damage to the victim's person or property (i.e., consequential economic loss)?"<sup>86</sup>

Accordingly, the trial court (the High Court Tainan Branch), in the 2012 Gong-Shang-Geng-San-Zi Judgment No. 1, ruled in favor of the plaintiffs with the reasoning that (i) losses suffered by oyster farmers are pure economic loss, and (ii) pure economic loss is recoverable under Article 191-3. Considering that pure economic loss is not recoverable under the former part of Article 184(1), the trial court was of the view that such loss should be recoverable under Article 191-3 in order to provide equitable remedies for the oyster farmers given the affected coastal area was massive.<sup>87</sup>

However, Professor Zhong-Wu Chen believed that the loss suffered by the oyster farmers stemmed from damage to their "rights," as oyster farmers' cultch strings were located in the coastal area and were obviously visible, and the general public could reasonably perceive the existence of such cultch strings as well as the underlying interests. Unlike pure economic loss, whose nature is uncertain and unforeseeable, oyster farmers' proprietary interests in the cultch strings were reasonably foreseeable. Therefore, the nature of these interests was closer to the characteristics of "rights."<sup>88</sup> Professor Cong-Fu

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86. Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 100 Tai Shang Zi No. 250 (100年度台上字第250號民事判決) (2011) (Taiwan).

87. Taiwan Gaodeng Fayuan Tainan Fenyuan (臺灣高等法院臺南分院) [Taiwan High Court Taiwan Branch], Minshi (民事) [Civil Division], 101 Gong Shang Geng San Zi No. 1 (101年度公上更(三)字第1號民事判決) (2012) (Taiwan).

88. Chen Zhong-Wu (陳忠五), *Chousha Wuran Haiyu Yingxiang Fujin Kemiao Chengzhang: Quanli Qinhai huo Chuncui Jingji Sunshi?-Zuigao Fayuan 100 Niandu Taishang Zi Di 250 Hao Panjue Pingshi* (抽沙汙染海域影響附近蚵苗成長：權利侵害或純粹經濟損失？—最高法院100年度臺上字第250號判決評釋) [*Marine Pollution Resulting from Sand Dredging Affecting Nearby Oyster Seed Growth: A Case of Rights Infringement or Pure Economic Loss?-Analysis of Supreme Court Decision No. 100-Tai-Shang-250*], 187 TAIWAN FAXUE ZAZHI (台灣法學雜誌) [TAIWAN LAW JOURNAL] 31, 35-36 (2011).



Chen seemed to support this view.<sup>89</sup> On the contrary, Professor Qi-Zhou Ye argued that the damage to the oyster farmers indeed was “pure economic loss” as the successful attachment of oyster seeds to the cultch strings depended on various environmental and climatic factors, and sand dredging activities could not necessarily stop it. Accordingly, the expected attachment of oyster seeds cannot be seen as oyster farmers’ “right.”<sup>90</sup>

#### 4. *Accountants’ Misrepresentation Case*

In Taiwan, regulations governing the liability of accountants for misrepresentation in auditing financial statements are the Securities and Exchange Act and the Certified Public Accountant Act. However, prior to the amendment of the Securities and Exchange Act in 2006, Article 20 of the Act did not impose adequate responsibility and liability on accountants with respect to financial statement audits. Hence, many disappointed investors often resorted to tort laws to seek recovery, claiming that the Securities and Exchange Act and the Certified Public Accountant Act belong to the category of “laws intended to protect others” as stipulated in Article 184(2) of the Civil Code.

Nevertheless, there is conflicting authority on whether the Securities and Exchange Act and/or the Certified Public Accountant Act should constitute “laws intended to protect others.”<sup>91</sup> In particular, in the 2001 Chong-Su-Zi Judgment No. 706, the Taichung District Court held a negated view on this issue, that is, the Certified Public Accountant Act should not be deemed as “laws intended to protect others.” The court reasoned that “when accountants negligently violated generally accepted auditing standards, which merely serve as norms for accountants themselves to conduct audits [as required by the Certified Public Accountant Act]. It is difficult to consider them as laws

89. CHEN, *supra* note 10, at 178-81.

90. Ye Qi-Zhou (葉啟洲), *Chuncui Jingji Sunshi Zai Taiwan Qinquan Xingwei Fa Shang de Baohu-Yi Zuigao Fayuan Xiangguan Caipan Wei Zhongxin* (純粹經濟損失在臺灣侵權行為法上的保護—以最高法院相關裁判為中心) [Protection of Pure Economic Loss in Taiwanese Tort Law—Study on Decisions of Taiwan Supreme Court], 241 YUEDAN FAXUE ZAZHI (月旦法學雜誌) [THE TAIWAN LAW REVIEW] 47, 50-51 (2015).

91. ZHUANG YONG-CHEN (莊永丞), MINSHI PANJUE SHIWU YANBIAN YU FENXI-YI TOUBAO ZHONGXIN SUSONG ANJIAN WEI ZHONGXIN (YI) (民事判決實務演變與分析—以投保中心訴訟案件為中心(一)) [CIVIL JUDGMENT PRACTICE EVOLUTION AND ANALYSIS-FOCUS ON LITIGATION CASES OF THE SECURITIES AND FUTURES INVESTORS PROTECTION CENTER (I)] 27-30 (2020) (Unpublished project report, commissioned by the SFIPC) (on file with the SFIPC); Lin Zhi-Jie (林志潔) & Lin Xiao-Lun (林孝倫), *Cong Liba an Lun Taiwan Kuajishi Qianzheng Caibao Bushi zhi Falv Zeren: Yige Shizheng de Fenxi* (從力霸案論臺灣會計師簽證財報不實之法律責任：一個實證的分析) [Auditor’s Liability for Financial Statement Fraud in Taiwan from Li-Bar Verdict: An Empirical Analysis], 39 TAIDA FAXUE LUNCONG (臺大法學論叢) [NTU LAW JOURNAL] 223, 238-39 (2010).





intended to protect others.”<sup>92</sup> This view was endorsed by Professor Wan-Ru Zen, who argued that although laws in Taiwan should impose liability for negligent misrepresentation to protect investors, similar to that in English and American laws, it should be subject to strict criteria and limitations. Therefore, one should exercise extra caution when applying Civil Code provisions here; otherwise, it would undermine the aim and purpose of the Securities and Exchange Act.<sup>93</sup>

However, some courts believe that the Certified Public Accountant Act falls under the category of “laws intended to protect others” as stipulated in Article 184(2) of the Civil Code. For example, the 2002 Chong-Shang-Zi Judgment No. 164 rendered by the Taiwan High Court supported this view.<sup>94</sup> We expect the amended Securities and Exchange Act, by adding a specific Article 20-1 regulating false information in the financial statements, would gradually decrease the conflicting cases.

### 5. *Share Price Decline Case*

When it comes to the liability of a broker or issuer of shares, people usually think of the securities laws. However, in Taiwan, where relevant securities laws and dispute resolution methods are not as mature as in the U.S. or other developed markets, disappointed investors usually invoke tort laws to claim recovery in such cases. As such, there are quite a few cases surrounding pure economic loss in this space.

In the 2017 Bei-Jin-Jian-Zi Judgment No. 1 rendered by the Taipei District Court, the dispute was that the plaintiff purchased a total of 20,000 shares of an airline company’s shares in the public market. However, due to a continuous decline in the share price, the shares were underwater. The plaintiff sued the airline company, claiming that it had provided false information and that its directors had engaged in unlawful activities, which resulted in a continuous decline in the share price, causing the plaintiff to incur losses. Therefore, the plaintiff claimed for recovery under tort laws. The court held that the losses suffered by the plaintiff due to a decline in the share price constituted pure economic loss and did not fall under the purview of the absolute rights protected by the former part of Article 184(1) of the Civil Code. Additionally, the plaintiff failed to provide evidence to prove the

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92. Taizhong Difang Fayuan (臺中地方法院) [Taizhong District Court], Minshi (民事) [Civil Division], 90 Chong Su Zi No. 705 (90年度重訴字第706號民事判決) (2001) (Taiwan).

93. ZEN WAN-RU (曾宛如), GONGSI GUANLI YU ZIBEN SHICHANG FAZHI ZHUANLUN (ER) (公司管理與資本市場法制專論(二)) [ANALYSIS ON CORPORATE MANAGEMENT AND CAPITAL MARKET LEGAL FRAMEWORK (II)] 116 (2008).

94. Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 91 Chong Shang Zi No. 164 (91年度重上字第164號民事判決) (2002) (Taiwan).



defendant had violated any provisions of the Securities and Exchange Act [that was considered as “laws to protect others” by the court in this case]. Consequently, the plaintiff could not claim recovery by resorting to Article 184(2).<sup>95</sup>

Professor Zhe-Sheng Xie argued that “share ownership” represents a property value and is one of the “rights” protected by the former part of Article 184(1), and thus the “decline in the share price” should be considered as “damage actually suffered” [which is within the scope as stipulated in Article 216] according to the “value decrease theory,” [i.e., if there is a decrease in the value of a property as a result of the wrongful conduct, then there is harm or damage incurred]. However, Professor Zhe-Sheng Xie continued to argue that such damage was indeed pure economic loss and could be recoverable under the former part of Article 184(1) if it had been foreseen by the defendant.<sup>96</sup>

This paper agrees with the view that “share ownership” is a type of ownership and is thus protected under the former part of Article 184(1). The underlying rights of “share ownership” typically include shareholders’ voting right and disposal right, such as the right to transfer shares for consideration and to receive dividends. However, “share price” is the price that investors are willing to pay in the open market in exchange for share ownership, which may change due to various factors such as market conditions, company performance, and the sophistication of investors. It does not necessarily represent the inherent aspect of “share ownership” itself. Therefore, this paper argues that the “decline in the share price” is not a damage to the “share ownership” itself, as shareholders’ voting right and disposal right are not compromised regardless of such decline. Instead, it is a pure economic loss, for which the recovery cannot be claimed under the former part of Article 184(1). Professor Zhe-Sheng Xie proposed that it could be recovered under the former part of Article 184(1) if the element of foreseeability has been met. This opinion is in line with the view adopted in the pragmatic regime but, unfortunately, has not been incorporated into tort laws in Taiwan.

Similar to the share price decline cases, there are cases pertaining to structured notes that caused investors to lose money. Due to the global impact of the Lehman Brothers crisis, Taiwan experienced a series of disputes in connection with losses from various structured notes issued by banks and financial institutions. The plaintiffs, who had purchased structured

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95. Taibei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 106 Bei Jin Jian Zi No. 1 (106年度北金簡字第1號民事判決) (2017) (Taiwan).

96. Xie Zhe-Sheng (謝哲勝), *Qinquan Xingwei de Ketu yu Peichang Fanwei* (侵權行為的客體與賠償範圍) [Objects and Compensation Scope under the Tort Law], 188 YUEDAN FAXUE JIAOSHI (月旦法學教室) [TAIWAN JURIST] 13, 13-16 (2018).



notes and suffered investment losses, sued banks, brokers, financial advisors, and others under tort laws. However, courts often classified such losses suffered by investors as pure economic losses, making it challenging to claim for recovery under Article 184 of the Civil Code.<sup>97</sup>

### C. *Where is Taiwan on the Map of This Comparative Study?*

In order to visualize where Taiwan is on the map of this comparative legal study, below is a table setting forth views of France, Germany, the U.K., the U.S., and Taiwan in connection with different categories of pure economic losses, i.e., ricochet loss, defective products, transferred loss, loss from the closure of public infrastructure and loss from professional services and accountants' misrepresentation. It is a short version extracted from that made by Professor Francesco Parisi, Professor Vernon Palmer, and Professor Mauro Bussani,<sup>98</sup> supplemented with summaries of the U.S. and Taiwan.

In sum, Taiwan basically follows the footsteps of conservative regime in dealing with pure economic loss issues. However, due to the fast-changing modern societies and values, the traditional playbook is no longer sufficient to tackle emerging issues, which are often complex ones. As such, scholars have been delivering valuable thoughts and comments on this matter. In particular, Professor Ze-Jian Wang believes in the case where the current civil liability mechanism does not provide sufficient protection for the victims, we should consider certain pure economic loss as “rights” to be protected under the former part of Article 184(1), while at the same time, maximize the applicable scope of the latter part of Article 184(1) by interpreting its requirements as broadly as it can be. For example, the requirement of “intentionally” should be interpreted to include cases where the tortfeasor only had an “eventual intent.”<sup>99</sup>

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97. For example, Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 100 Tai Shang Zi No. 2178 (100年度台上字第2178號民事判決) (2011) (Taiwan); Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 102 Tai Shang Zi No. 1458 (102年度台上字第1458號民事判決) (2013) (Taiwan); Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 103 Tai Shang Zi No. 178 (103年度台上字第178號民事判決) (2014) (Taiwan).

98. Mauro Bussani & Vernon Valentine Palmer, *Summary and Survey of the Cases and Results*, in PURE ECONOMIC LOSS IN EUROPE, *supra* note 3, at 523, 526; Francesco Parisi et al., *The Comparative Law and Economics of Pure Economic Loss*, in LAW AND ECONOMICS WORKING PAPER SERIES 1, 13 (George Mason University School of Law ed., 2005).

99. WANG, *supra* note 10, at 417-19.

	France (liberal)	Germany (conservative)	U.K. (pragmatic)	U.S. (pragmatic)	Taiwan (conservative)
Ricochet loss (cable cutting case, with no physical damage) <sup>100</sup>	Recovery	No recovery (unless direct damage to the “business right” is involved)	No recovery	No recovery (§ 766C of Restatement of Tort II and § 7 of Restatement of Tort III) <sup>101</sup>	No recovery (“business right” is not acknowledged) <sup>101</sup>
Ricochet loss (celebrity athlete accident case) <sup>102</sup>	Recovery (but only the transfer fee is allowed)	No recovery (unless it is a wrongful death case, where the dependent can recover loss of financial support under Section 844(2) of the German Civil Code)	No recovery (unless it is a wrongful death case, where the dependent can recover loss of financial support under the Fatal Accidents Act 1976)	No recovery (§ 766C of Restatement of Tort II and § 7 of Restatement of Tort III) <sup>103</sup>	No recovery (in a case similar to the dutiful wife case) <sup>104</sup>

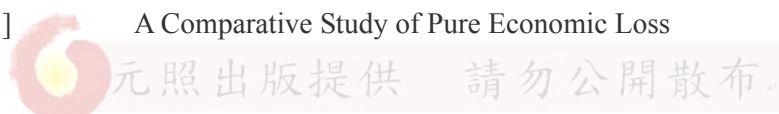
100. See also van Boom, *supra* note 2, at 9, 27-28; Chen, *Jiamvu Xiaoci zhu Qinquan Zeren-Shangpin Zishang de Sunhai Peichang* (建物瑕疵之侵權責任—商品自傷的損害賠償) [Tort Liability for Defects of Buildings: Damages on Commodity Injury], *supra* note 52, at 65-67.

101. In Taiwan, the concept of “right of the established and ongoing commercial business,” a.k.a. business right, is not recognized by the courts. See Taiwan Gaodeng Fayuan Taizhong Fenyuan (臺灣高等法院臺中分院) [Taiwan High Court Taichung Branch Court], Minshi (民事) [Civil Division], 99 Shang Yi Zi No. 414 (99年度上易字第414號民事判決) (2010) (Taiwan).

102. See also Marshall, *supra* note 30, at 751-65.

103. Gruning, *supra* note 63, at 192-93. In his opinion, no recovery will be allowed because the athlete’s employer itself suffered no physical harm, which is the decisive element for recovery as stipulated in Section 766C of the Restatement of Tort (Second).

104. WANG, *supra* note 10, at 399-400, 418. By citing the judgement of Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 88 Tai Shang Zi No. 1827 (88年度台上字第1827號民事判決) (1999) (Taiwan), Professor Wang is of the view that if a person suffers pure economic loss (in terms of labor expended in taking care of an injured family member) in a personal injury case, such person is not allowed to recover under tort laws. However, the story does not end here. Instead, the injured family member should be entitled to claim for such compensation as if he/she had hired a professional nurse to take care of him/her pursuant to the former part of Article 184(1) and Article 193. Professor agrees with and highly appreciates the view held by this judgement.



	France (liberal)	Germany (conservative)	U.K. (pragmatic)	U.S. (pragmatic)	Taiwan (conservative)
The defective component caught fire (with no other physical damage, but caused lost profits) <sup>105</sup>	Recovery	Recovery (progressive damage exception) <sup>106</sup>	No recovery	Recovery (dangerous defect exception trumps integrated system theory)	No recovery <sup>107</sup>
Transferred loss (the canceled cruise)	Recovery	No recovery (unless the charterer had taken possession of the cruise before the collision took place; otherwise, prior to the possession, the charterer only had a contractual right)	No recovery (the time charterer case) <sup>108</sup>	It depends (the right to use under a time charter cannot recover, while proprietary interest under a demise charter can recover) <sup>109</sup>	No recovery (but special recovery is provided in § 192 of the Civil Code in a wrongful death case) <sup>110</sup>

105. See also Chen, *supra* note 52, at 72-82; Lin, *supra* note 52, at 31-129, 136-37.

106. Mathias Reimann, *The Case Studies, in PURE ECONOMIC LOSS IN EUROPE*, *supra* note 3, at 171, 321-23. See also WANG, *supra* note 10, at 201-03; Chen, *Lun Xiaofeizhe Baohu Fa Shangpin Zeren de Baohu Fayi Fanwei* (論消費者保護法商品責任的保護法益範圍) [*Discussion on the Scope of Protected Interest in Product Liability under the Consumer Protection Law*], *supra* note 52, at 80-82.

107. WANG, *supra* note 10, at 203; Wang, *supra* note 52, at 266-76. Professor Wang is of the view that loss incurred from a defective product (regardless of whether it's a component or final product) should be considered as pure economic loss, because such defect had existed in the product upon receipt by the purchaser, and the purchaser accepted the product as is. Therefore, it did not constitute an infringement of the purchaser's property, which was defective from the beginning. Rather, the purchaser could only claim for compensation under product liability.

108. Witting, *supra* note 39, at 126.

109. Gruning, *supra* note 63, at 195-96. Take ship charter case for example, if the party has no more than a right to use a ship (i.e., time charter), it will not recover, while if the party has a proprietary interest in the ship (i.e., demise charter), it will recover.

110. WANG, *supra* note 10, at 398. In a wrongful death case, the dependent has a "legal right" to financial support from the deceased person, and thus suffers pure economic loss after the deceased person is no longer able to provide support. In the opinion of Professor Wang, such loss is transferred loss, and in principle, it cannot be recovered under tort laws. However, Article 192 of the Civil Code exceptionally allows it.



	France (liberal)	Germany (conservative)	U.K. (pragmatic)	U.S. (pragmatic)	Taiwan (conservative)
Closure of public infrastructure (block of access or highway, claiming lost profits due to traffic delay) <sup>111</sup>	Recovery	No recovery	No recovery	Recovery (§ 8 of Restatement of Tort III: limited to special injury)	No recovery (neither “business right” nor “tortious interference with a contract” is acknowledged) <sup>112</sup>
Flawed professional service (lawyer, notary public) to a non-client	Recovery	Recovery (§ 19 of the Federal Notary Law)	Recovery	It depends (§ 552 of Restatement of Tort II and § 6 of Restatement of Tort III: limited to a group for whose benefit the service is performed)	No recovery (but with conflicting authority on whether the Attorney Regulation Act is “laws intended to protect others” as set forth in § 184(2)) <sup>113</sup>

111. See also van Boom, *supra* note 2, at 9.

112. In Taiwan, neither “business right” (see Taiwan Gaodeng Fayuan Taizhong Fenyuan, *supra* note 101) nor “tortious interference of a contract” is recoverable under former part of Article 184(1). See also Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 92 Shang Yi Zi No. 1155 (92年上易字第1155號民事判決) (2003) (Taiwan); Taibei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 93 Lau Su Zi No. 106 (93年勞訴字第106號民事判決) (2004) (Taiwan).

113. Conflicting judgments, such as Taiwan Gaodeng Fayuan Taixiong Fenyuan (臺灣高等法院臺中分院) [Taiwan High Court Taichung Branch Court], Minshi (民事) [Civil Division], 92 Shang Zi No. 182 (92年上字第182號民事判決) (2003) (Taiwan) and Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 96 Shang Zi No. 502 (96年上字第502號民事判決) (2007) (Taiwan), as cited and discussed in Jiang Shi-Ming (姜世明), *Lvshi Lunli Ji Lvshi Minshi Zeren Zhi Guizhi Jiaocuo* (律師倫理及律師民事責任之規範交錯) [*The Interaction between Legal Ethics and Civil Liability of Lawyers*], 196 YUEDAN FAXUE ZAZHI (月





	France (liberal)	Germany (conservative)	U.K. (pragmatic)	U.S. (pragmatic)	Taiwan (conservative)
Misrepresentation (accountant) to a non-client <sup>114</sup>	It depends (can recover under torts if the accountant is a statutory accountant of the company; but cannot recover if the accountant is specifically hired for the given transaction, as it should be governed by contracts)	No recovery (can only resort to “contract with protective effects for third parties,” which is a contractual claim)	No recovery ( <i>Caparo</i> <i>Industries plc v.</i> <i>Dickman</i> )	It depends (§ 552 of Restatement of Tort II and § 5 of Restatement of Tort III: limited to a known and intended group)	No recovery (but with conflicting authority on whether the Securities and Exchange Act and the Certified Public Accountant Act are “laws intended to protect others” as set forth in § 184(2)) <sup>115</sup>

日法學雜誌] [THE TAIWAN LAW REVIEW] 38, 54-59 (2011). However, in the case where the lawyer failed to draft a valid will for the benefit of the legatee (a non-client), Professor Ze-Jian Wang is of the view that we should exceptionally consider such pure economic loss as “rights” to be protected under the former part of Article 184(1). See WANG, *supra* note 10, at 415-17.

<sup>114</sup> See also van Boom, *supra* note 2, at 21. Though in his opinion, under the German and French laws, recovery is relatively possible. In particular, the concept of

“contract with protective effects for third parties” in Germany can serve as a basis for recovery.

<sup>115</sup> See the subsection titled “4. Accountant’s Misrepresentation Case” above.





## VI. CONCLUSION

To conclude from the aforementioned, ricochet loss cases (in particular, the cable cutting case and the celebrity athlete accident case) share the same results: a liberal regime would allow recovery of the loss, but the conservative and pragmatic regimes would deny it. A common exception is recognized in the wrongful death case, where a dependent (secondary victim) lost his/her financial support from the deceased person (primary victim). Many countries have written it into laws to allow the dependent to recover such pecuniary loss. When it comes to a transferred loss case (in particular, the canceled cruise case), a similar result occurs: recovery is granted in a liberal regime but not in the conservative or pragmatic one (unless it is a demise charter). As a matter of fact, the closure of public infrastructure sometimes also involves ricochet loss. For example, in the case of a blockage in a highway as a result of a car accident, the primary victim is the injured person in the car crash, while the secondary victim is one of the highway users who are delayed or hindered from their respective schedules. As such, the result would be similar to that of ricochet loss: recovery is granted in a liberal regime but not in a conservative or pragmatic regime.

As for flawed professional services and misrepresentation cases, the Restatement of Torts (Third) has provided a helpful methodology by firstly dividing the recipients into “clients” and “non-clients” and then further dividing the services rendered to non-clients into “information or statements” and “professional services.” Each category requires a different level of duty of care and foreseeability to allow recovery.

While it may look satisfactory to have a table summarizing all different views, it has not cleared complex issues surrounding pure economic loss, if at all. Different jurisdictions may have different definitions or categories of pure economic loss, which makes the comparative study even more challenging. For example, in some jurisdictions, relational economic loss refers to ricochet loss only,<sup>116</sup> while in other jurisdictions, it includes both ricochet loss and transferred loss.<sup>117</sup> In addition, as shown above in the table, lost maintenance in a wrongful death case is more likely discussed as a ricochet loss in Germany and the U.K., while in Taiwan, it is considered as a transferred loss by Professor Wang. A small variance can lead to different results, so it might be confusing to consolidate all different views in one simple summary table. Nevertheless, this paper has endeavored to reveal pure economic loss in its true form in each jurisdiction. If not successful, it

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116. Bussani & Palmer, *supra* note 3, at 10.

117. Witting, *supra* note 39, at 124-25. The personal injury case under the section titled “VIII Relational Economic Loss” would be categorized as ricochet loss elsewhere.



only means that this topic is important and deserves more scholarly attention.

From the perspective of a comparative study, this paper wishes to echo what Professor Peter Benson has raised, that is, the problem lies not with what the courts do with pure economic loss, but with the current interpretation and explanation of what they do.<sup>118</sup> A good example is the most quoted statement of the American judge Cardozo in the famous case of *Ultramares Corp. v. Touche* that accountants should not be imposed with “indeterminate liability.”<sup>119</sup> Supporters have long used this quote to justify the exclusion rule barring the recovery of pure economic loss in negligent torts. However, Professor van Boom also urged people to rethink what is truly behind the statement. Cardozo was not making a general comment on pure economic loss in negligent torts, but rather suggesting that accountants in the given case should not be burdened with uncertain negligence liability.<sup>120</sup> Hence, when tackling the issue of pure economic loss in negligent torts, one should start with the fundamental principles of negligence. In particular, as a matter of fairness, a defendant’s liability should reflect the “seriousness,” both in kind and amount, of the foreseeable and thus avoidable consequences of his or her acts and omissions. This establishes a sufficient basis for imposing liability.<sup>121</sup>

Following the same logic, in analyzing the protected objects under the former part of Article 184(1) of the Taiwanese Civil Code, can’t we remove the distinct line between absolute rights and economic interests and resort to a more reliable and finely tuned set of criteria? This paper is of the view that, in light of the rapid changes in modern societies, values, emerging technologies, and intricate interdependence of people, we should revisit certain settled rules and regulations that bar the recovery for pure economic loss in negligent torts, by reviewing the legislative history and premises of judicial rulings, and reconsidering the purposes these laws and rulings intended to achieve. Beyond making sense of this longstanding rule, a comparative study may be of reference value for Taiwan’s tort regime – a relatively conservative one. If possible, the Taiwanese courts, when interpreting the protected objects under the former part of Article 184(1), can be more flexible and introduce concepts such as “business right” or “right associated with property ownership,” or leverage the “contract with protective effect for third parties” concept as the German courts do.

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118. Benson, *supra* note 1, at 829.

119. The original quote: “If liability for negligence exists, a thoughtless slip or blunder, the failure to detect a theft or forgery beneath the cover of deceptive entries, may expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class.”

120. van Boom, *supra* note 2, at 34.

121. Benson, *supra* note 1, at 833.



Alternatively, we may also consider having recourse to the latter part of Article 184(1) by broadening the scope of the requirement of “intentionally in a manner against the rules of morals,” so as to include cases where the tortfeasor only had an eventual intent or indirect intent.<sup>122</sup> One may argue that Taiwan is not a common law jurisdiction, and therefore, judges do not have the power to rule beyond the codified laws. Indeed, the alternative might be for the legislators to promulgate special regulations allowing pure economic loss to be recovered in certain situations where appropriate. We expect to see the development in this space produced by the courts, legislators, and scholars.

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122. CHEN, *supra* note 43, at 194-97.



## REFERENCES

- Benson, P. (2009). The Problem with Pure Economic Loss. *South Carolina Law Review*, 60, 823-879.
- Bernstein, H. (1998). Civil Liability for Pure Economic Loss under American Tort Law. *American Journal of Comparative Law Supplement*, 46, 111-132.
- Bussani, M. & Palmer, V. V. (2003). The Notion of Pure Economic Loss and Its Setting. In M. Bussani & V. V. Palmer (Eds.), *Pure Economic Loss in Europe* (pp. 3-24). Cambridge, U.K.: Cambridge University Press.
- Bussani, M. & Palmer, V. V. (2003). The Liability Regimes of Europe-Their Façades and Interiors. In M. Bussani & V. V. Palmer (Eds.), *Pure Economic Loss in Europe* (pp. 120-159). Cambridge, U.K.: Cambridge University Press.
- Bussani, M. & Palmer, V. V. (2003). Summary and Survey of the Cases and Results. In M. Bussani & V. V. Palmer (Eds.), *Pure Economic Loss in Europe* (pp. 523-529). Cambridge, U.K.: Cambridge University Press.
- Bussani, M., Sebok, A. J. & Infantino, M. (2023). *Common Law and Civil Law Perspectives on Tort Law*. New York, NY: Oxford University Press.
- Chen, C.-F. (陳聰富) (2015). Jianwu Xiaci zhu Qinqun Zeren-Shangpin Zishang de Sunhai Peichang (建物瑕疵之侵權責任—商品自傷的損害賠償) [Tort Liability for Defects of Buildings: Damages on Commodity Injury]. *Zhengda Faxue Pinglun (政大法學評論) [NCCU Law Review]*, 143, 61-122.
- Chen, C.-F. (陳聰富) (2017). Lun Guoshi Qin Hai Liyi zhi Qinqun Zeren: Qubie Quanli Qin Hai yu Liyi Qin Hai de Kunjing yu Tupuo (論過失侵害利益之侵權責任：區別權利侵害與利益侵害的困境與突破) [Tortious Liability on Negligent Infringement on Interests: Dilemma from and Breakthrough for the Distinguishment of Infringement on Rights and Interests]. *Taida Faxue Luncong (臺大法學論叢) [National Taiwan University Law Journal]*, 46(1), 135-200.
- Chen, C.-F. (陳聰富) (2018). *Qinqun Xingwei Fa Yuanli (侵權行為法原理) [Principles of Tort Law]*. 2d ed. Taipei, Taiwan: Yuan Zhao.
- Chen, Z.-W. (陳忠五) (2001). Faguo Qinqun Zeren Fa Shang Sunhai zhi Gainian (法國侵權責任法上損害之概念) [The Notion of Damages Under French Tort Law]. *Taida Faxue Luncong (臺大法學論叢) [National Taiwan University Law Journal]*, 30(4), 111-214.
- Chen, Z.-W. (陳忠五) (2008). *Qiyue Zeren yu Qinqun Zeren de Baohu Ketu*



- (契約責任與侵權責任的保護客體) [*Protected Objects of Contractual and Tort Liability*]. Taipei, Taiwan: Xin Xue Lin.
- Chen, Z.-W. (陳忠五) (2009). Lun Xiaofeizhe Baohu Fa Shangpin Zeren de Baohu Fayi Fanwei (論消費者保護法商品責任的保護法益範圍) [Discussion on the Scope of Protected Interest in Product Liability under the Consumer Protection Law]. *Taiwan Faxue Zazhi* (台灣法學雜誌) [*Taiwan Law Journal*], 134, 77-96.
- Chen, Z.-W. (陳忠五) (2011). Chousha Wuran Haiyu Yingxiang Fujin Kemiao Chengzhang: Quanli Qin Hai huo Chuncui Jingji Sunshi?-Zuigao Fayuan 100 Niandu Taishang Zi Di 250 Hao Panjue Pingshi (抽沙汙染海域影響附近蚵苗成長：權利侵害或純粹經濟損失？—最高法院100年度臺上字第250號判決評釋) [Marine Pollution Resulting from Sand Dredging Affecting Nearby Oyster Seed Growth: A Case of Rights Infringement or Pure Economic Loss?-Analysis of Supreme Court Decision No. 100-Tai-Shang-250]. *Taiwan Faxue Zazhi* (台灣法學雜誌) [*Taiwan Law Journal*], 187, 31-36.
- David, R. (1935). Measure of Damages in the French Law of Contract. *Journal of Comparative Legislation and International Law*, 17(1), 61-72.
- Deutsch, E. (1996). Compensation for Pure Economic Loss in German Law (Weir, T. Trans.). In E. K. Banakas (Ed.), *Civil Liability for Pure Economic Loss* (pp. 73-87). Amsterdam, Netherlands: Kluwer Law International.
- Goodman, J. L., Peacock, D. R. & Rutan, K. J. (2019). A Guide to Understanding the Economic Loss Doctrine. *Drake Law Review*, 67(1), 1-57.
- Gray, A. (2006). Drowning in a Sea of Confusion: Applying the Economic Loss Doctrine to Component Parts, Services Contracts, and Fraud. *Washington University Law Review*, 84, 1513-1539.
- Gruning, D. (2006). Pure Economic Loss in American Tort Law: An Unstable Consensus. *American Journal of Comparative Law Supplement*, 54, 187-208.
- Huang, L. (黃立) (2003). Chuncui Jingji Shang Sunshi zhi Peichang Wenti (純粹經濟上損失之賠償問題) [Compensation Issues Relating to Pure Economic Loss]. *Taiwan Bentu Faxue Zazhi* (臺灣本土法學雜誌) [*Taiwan Law Journal*], 49, 134-138.
- Jiang, S.-M. (姜世明) (2011). Lvshi Lunli Ji Lvshi Minshi Zeren Zhi Guizhi Jiaocuo (律師倫理及律師民事責任之規制交錯) [The Interaction between Legal Ethics and Civil Liability of Lawyers], *Yuedan Faxue Zazhi* (月旦法學雜誌) [*The Taiwan Law Review*], 196, 38-59.



- Johnson, V. R. (2009). The Boundary-Line Function of the Economic Loss Rule. *Washington and Lee Law Review*, 66, 523-585.
- Koziol, H. (2006). Recovery for Economic Loss in the European Union. *Arizona Law Review*, 48(4), 871-895.
- Li, X.-H. (李敘恆) (2013). *Lun Guoshi Qinquan Xingwei Suozhi zhi Chuncui Jingji Sunshi* (論過失侵權行為所致之純粹經濟損失) [*Pure Economic Loss Caused by Negligence Tort*] (Unpublished master thesis, National Taiwan University) (on file with National Taiwan University Library).
- Lin, D.-Y. (林大洋) (2010). *Chuncui Jingji Shang Sunshi Shiwu zhi Bianqian yu Fazhan (Shang)* (純粹經濟上損失實務之變遷與發展(上)) [Change and Development of the Judicial Practice Relating to Pure Economic Loss (I)]. *Sifa Zhoukan* (司法周刊) [*Judicial Weekly*], 1506, 2-3.
- Lin, L.-M. (林栗民) (2017). *Shangpin Zishang zhi Yanjiu: Suoyouquan Qinhuo huo Chuncui Jingji Shang Sunshi?* (商品自傷之研究：所有權侵害或純粹經濟上損失?) [*Damages on Commodity Injury: Property Damage or Pure Economic Loss?*] (Unpublished master thesis, National Taiwan University) (on file with National Taiwan University Library).
- Lin, Z.-J. (林志潔) & Lin, X.-L. (林孝倫) (2010). *Cong Liba An Lun Taiwan Kuaijishi Qianzheng Caibao Bushi zhi Falv Zeren: Yige Shizheng de Fenxi* (從力霸案論臺灣會計師簽證財報不實之法律責任：一個實證的分析) [*Auditor's Liability for Financial Statement Fraud in Taiwan from Li-Bar Verdict: An Empirical Analysis*]. *Taida Faxue Luncong* (臺大法學論叢) [*NTU Law Journal*], 39(3), 223-288.
- Marshall, D. (1975). Liability for Pure Economic Loss Negligently Cause-French and English Law Compared, *International and Comparative Law Quarterly*, 24, 748-790.
- Parisi, F., Palmer, V. V. & Bussani, M. (2005). The Comparative Law and Economics of Pure Economic Loss. In George Mason University School of Law (Ed.), *Law and Economics Working Paper Series 1* (pp. 1-27). California, U.S.: The Berkeley Electronic Press (Bepress).
- Radé, C. & Bloch, L. (2004). Compensation for Pure Economic Loss under French Law. In W.H. van Boom, H. Koziol & C.A. Witting (Eds.), *Pure Economic Loss* (pp. 41-47). Wien, Austria/New York, NY: Springer.
- Reimann, M. (2003). The Case Studies, In M. Bussani & V. V. Palmer (Eds.), *Pure Economic Loss in Europe* (pp. 171-520). Cambridge, U.K.: Cambridge University Press.





- Roscetti, R. (2012). Necessity or Nuisance? A Comparative Review of the Approach towards the Recovery of Pure Economic Loss in English Law with that of French Law. *Manchester Review of Law, Crime and Ethics*, 1, 60-71.
- van Boom, W. H. (2004). Pure Economic Loss: A Comparative Perspective. In W.H. van Boom, H. Koziol & C.A. Witting (Eds.), *Pure Economic Loss* (pp. 1-40). Wien, Austria/New York, NY: Springer.
- van Dam, C. (2013). *European Tort Law*. 2d ed. Oxford, U.K.: Oxford University Press.
- Wang, Z.-J. (王澤鑑) (2009). Qiyue Guanxi Dui Disanren zhi Baohu Xiaoli (契約關係對第三人之保護效力) [The Protective Effect of Contractual Relationships for Third Parties]. In Z.-J. Wang (王澤鑑) (Ed.), *Minfa Xueshou yu Panli Yanjiu (Er)* (民法學說與判例研究(二)) [*Research of Civil Law Doctrine and Precedent (II)*] (pp. 33-56). Taipei, Taiwan: Self-publishing.
- Wang, Z.-J. (王澤鑑) (2009). Shangpin Zhizaozhe Zeren yu Chuncui Jingji Sunshi (商品製造者責任與純粹經濟損失) [Product Manufacturer Liability and Pure Economic Loss]. In Z.-J. Wang (王澤鑑) (Ed.), *Minfa Xueshou yu Panli Yanjiu (Ba)* (民法學說與判例研究(八)) [*Research of Civil Law Doctrine and Precedent (VIII)*] (pp. 233-273). Taipei, Taiwan: Self-publishing.
- Wang, Z.-J. (王澤鑑) (2011). *Qinquan Xingwei Fa (Inquan Xingwei Fa)* [*Tort Law*]. Taipei, Taiwan: Self-Publishing.
- Witting, C. (2004). Compensation for Pure Economic Loss from a Common Lawyer's Perspective. In W.H. van Boom, H. Koziol & C.A. Witting (Eds.), *Pure Economic Loss* (pp. 102-140). Wien, Austria/New York, NY: Springer.
- Xie, Z.-S. (謝哲勝) (2018). Qinquan Xingwei de Ketu yu Peichang Fanwei (侵權行為的客體與賠償範圍) [Objects and Compensation Scope under the Tort Law]. *Yuedan Faxue Jiaoshi (Yuedan Faxue Jiaoshi)* [*Taiwan Jurist*], 188, 13-16.
- Yao, Z.-M. (姚志明) (2003). *Qinquan Xingwei Fa Yanjiu (Yi)* (侵權行為法研究(一)) [*Research of Tort Law (I)*]. Taipei, Taiwan: Yuan Zhao.
- Ye, Q.-Z. (葉啟洲) (2015). Chuncui Jingji Sunshi Zai Taiwan Qinquan Xingwei Fa Shang de Baohu-Yi Zuigao Fayuan Xiangguan Caipan Wei Zhongxin (純粹經濟損失在臺灣侵權行為法上的保護—以最高法院相關裁判為中心) [Protection of Pure Economic Loss in Taiwanese Tort Law-Study on Decisions of Taiwan Supreme Court]. *Yuedan Faxue Zazhi (Yuedan Faxue Zazhi)* [*The Taiwan Law Review*], 241, 47-76.





- Zen, W.-R. (曾宛如) (2008). *Gongsi Guanli yu Ziben Shichang Fazhi Zhuanlun (Er)* (公司管理與資本市場法制專論(二)) [*Analysis on Corporate Management and Capital Market Legal Framework (II)*]. Taipei, Taiwan: Yuan Zhao.
- Zhan, S.-L. (詹森林) (2006). Xiaobao Fa Shangpin Zeren zhi Baohu Zhuti yu Baohu Ketu (消保法商品責任之保護主體與保護客體—最高法院九十二年台上字第二三五六號電話語音信箱系統被第三人盜打國際電話案) [Subjects and Objects of Product Liability under Consumer Protection Law-Supreme Court 92 Tai Shang Zi No.2356 The Case of the Unauthorized Use of Telephone Voicemail System by a Third Party to Make International Calls]. In *Minshi Fali yu Panjue Yanjiu (Si)* (民事法理與判決研究(四)) [*Civil Law Doctrine and Case Study (IV)*] (pp. 61-68). Taipei, Taiwan: Yuan-Zhao.
- Zhan, S.-L. (詹森林) (2009). Chuncui Jingji Sunshi yu Xiaobao Fa zhi Shangpin Zeren-Zuigao Fayuan 97 Nian Taishang Zi Di 2348 Hao Panjue zhi Yanjiu (純粹經濟損失與消保法之商品責任—最高法院97年臺上字第2348號判決之研究) [Pure Economic Loss and Product Liability under Consumer Protection Law-A Study of the Supreme Court's Decision No. 97-Tai-Shang-2348]. *Faling Yuekan (法令月刊)* [*The Law Monthly*], 60(7), 47-64.
- Zhan, S.-L. (詹森林) (2012). Taiwan Minshi Caichan Fa Ruogan Zhongyao Shiwu Fazhan zhi Huigu-Chenglan zhi Wu zhi Xiaci Danbao yu Bu Wan Quan Jifu, Ji fu Bu Dang Deli Wu Falu shang Yuanyin zhi Juzheng (台灣民事財產法若干重要實務發展之回顧—承攬之物之瑕疵擔保與不完全給付、給付不當得利無法律上原因之舉證) [A Retrospective Review of Significant Developments of Judicial Practice Relating to Taiwan Civil and Property Law-Proof of Warranty against Defects in Construction, Incomplete Performance, and Unjust Enrichment Without Legal Causes]. *Yuedan Faxue Zazhi (月旦法學雜誌)* [*The Taiwan Law Review*], 200, 245-266.
- Zhuang, Y.-C. (莊永丞) (2020). *Minshi Panjue Shiwu Yanbian yu Fenxi-Yi Toubao Zhongxin Susong Anjian Wei Zhongxin (Yi)* (民事判決實務演變與分析—以投保中心訴訟案件為中心(一)) [*Civil Judgment Practice Evolution and Analysis-Focus on Litigation Cases of the Securities and Futures Investors Protection Center (I)*] (Unpublished project report, commissioned by the SFIPC) (on file with the SFIPC).



## 純粹經濟上損失之比較法研究： 臺灣位於地圖何處？

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### 摘 要

本文探討各國侵權行為法對於純粹經濟上損失的不同規範，進行比較法研究，尤其著重德、法、英、美等國，同時也將臺灣法納入這張比較法的世界地圖，進行分析、比較。傳統通說認為被害人不得依據過失侵權責任主張純粹經濟上損失之損害賠償，除非法律另有特別規定。然而，有鑑於社會及科技日新月異，許多相關規範需要被重新評估。本文認為通說可能有過度解釋某些經典裁判之嫌，擴大適用於其他案例，但卻誤解了該等裁判背後的真義。問題癥結在於如何解釋法院的裁判，而不在於裁判的結果。本文主張重新檢視裁判的基本前提，包括事實、問題、假設和相關因素，以評估適用的合理性。本文依序介紹德國、法國、英國、美國和臺灣如何處理純粹經濟上損失，在美國，因各州不同的法律見解及認定，因此使比較法研究更具挑戰性。本文最終以一個比較表格作結，摘要上述各國對於不同類別純粹經濟上損失的觀點，期能提供讀者一個更全面的概覽。

**關鍵詞：**純粹經濟上損失、注意義務、瑕疵商品、不實陳述、資源及通道使用