

**Essay on the Protected Objects of Contractual Liability and
Delictual Liability: Rethinking the Legitimacy on the
Distinction between Rights and Interests**

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Abstract

From the point of view that civil liability protects both individual's 'rights' and 'interests', this study aims to explore if it is legitimate to distinguish 'rights' from 'interests' in order to give them different protections.

Article 184 I paragraph 1st of the Civil Code (Taiwan) provides that anyone who, by his own fault, intentional or unintentional, infringes upon others' 'rights' is liable for the damage caused to the victim. The principle set by this provision leaves doubts about whether 'interests' enter into the range of protection of this general clause of the law of delict. The core of the problem is whether an unintentional infringement upon an so-called 'interest', especially claims arising from the law of obligations, possession, enterprise interest or pure economic interest etc., would be sufficient to establish a liability for the damage caused to the victim.

Whereas the answer of the contractual liability to this question is obviously affirmative, that of the delictual liability presents much difficulties. For the contracting parties, the 'interest' under a contractual relationship is to them 'certain' and 'foreseeable'. This explains why contractual liability protects equally rights and interests. But for the author of a delict, the 'uncertainty' and the 'unforeseeability' of the interest under a social relationship make it necessary to take account of another value, i.e. freedom to act, and therefore to limit the liability of the author.

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That's why the academic writers have controversy on the range of protection of article 184 I paragraph 1st. The majority of them considers that unintentional infringement upon an 'interest' should be excluded from the application of the above provision. Nevertheless, the courts, especially the Supreme court, hesitate since longtime to take a clear position on this problem.

This study takes a different position. It argues that the 'right' and 'interest' have the same nature and it is impossible to distinguish clearly one from another. The other provisions of the existing delictual liability and contractual liability are not the most appropriate means for the protection of the constantly increasing 'interests' in the modern society. The only way is to have recourse to the general clause of the law of delict and extend the its range of protection to 'interests'.

Consequently, there is no legitimacy on the distinction between 'rights' and 'interests' neither for contractual liability nor for delictual liability. Under the application of article 184 I paragraph 1st of the Civil Code, any unintentional infringement upon either a 'right' or an 'interest' would make the author liable for the compensation of the damage caused to the victim. If, taking account of the 'uncertainty' and the 'unforseeability' of the interest, the legal policy necessitates some limitation of liability, it is by way of the legal techniques such as damage, unlawfulness, fault, causation etc. that the courts can also control the liability to its reasonable measure.

Keywords: Contractual liability, Delictual liability, Protected objects, Right, Interest, Distinguished protection, Equalized protection, Liability based on fault