

The Concept of Damage in Personal Injury Cases

*Tsung-Fu Chen**

Abstract

The damages are the aim of tort lawsuits for most plaintiffs in personal injury cases. Nonetheless, the concept of damage is far from clear under the tort law. It might denote the real loss suffered by the injured party, but it might indicate the pecuniary difference between the amount of the plaintiff's financial condition after a specific accident and that prior to the accident. The latter Differentiated Amount Theory was prevalent in both academic fields and court decisions in the past.

The Differentiated Amount Theory, however, has been greatly challenged by both the theorists and the courts due to its inherent drawbacks when dealing with some special cases. As a result, other theories including the Real Loss Theory and the Normative Concept of Damage Theory were encouraged by both theorists and courts.

This paper employed German and Japanese articles on damages to analyze Taiwanese relevant court decisions. It revealed that the Differentiated Amount Theory has been removed from the court practice for a long time, especially in recent court decisions. Instead, the Normative Concept of Damage Theory has been emphasized by many court decisions that dealt with some special cases on damages. This article thoroughly reviewed Taiwanese court decisions and indicated the trend of the court

* Associate Professor of Law, College of Law, National Taiwan University. J.S.D., New York University, U.S.A.

decisions in terms of the legal policy on the award of damages in personal injury cases.

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