

A Comparative Study on Tort Liability of Animal Possessor in Civil Code

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Abstract

The Article 190 of the Civil Code of Taiwan provides that “if injury is caused by an animal, the possessor is bound to compensate the injured person for any injury arising therefrom, unless reasonable care in keeping according to the species and nature of the animal has been exercised, or unless the injury would have been occasioned notwithstanding the exercise of such reasonable care.” Though the law imposes liability for compensation on animal possessors, the legal obligation traditionally emphasizes that the rights and duties between subjects; nonetheless, the way people take care of their pets in the circumstances of feeding with family members, institution shelter and even escaping from these places etc., may play an important role to define “an animal possessor” in modern society. The system of torts in Civil Code may not be applied without the concept of ownership and possession in Part III— Rights in Rem. Apart from Civil Code, there are some special policies and regulations, which have their own legislative purposes. Yet, we need a comprehensive consideration for reasonable outcomes of right protection under the single system. To ensure people’s freedom in social activities, and balance the risk and interests between human and animals, this article is organized logically connected sections. First, I review common types of “damages causes by animals”, the identification of animal possessors, causality between behavior of animal attacking and the injured party, essential connotation of reasonable care according to types and nature of animals. Second, I review relevant legislation and judicial practices from Article 718 of the Japanese Civil Code, as well as substantial changes of strict liability for animals in the U.S. in

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recent years, such as the Tracey vs. Solesky case, for comparative reference. Finally, I'll bring up proposals for reasonable interpretation of Article 190, which is in accordance with tort purposes and encourages a civilized society with animal well-being consideration. This may not only ensure that human rights are respected and fulfilled but also increase predictability of the application of laws.

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