

Study on Establishing a General Principle of Vicarious Liability within Tort Law in Taiwan's Civil Law

*Ching-Lang Lin**

Abstract

With the new life style predicted to happen in the future, new questions in tort law will arise. The vicarious liability in Taiwan's positive civil law may be confronted with many challenges. The purpose of this paper is to discuss certain of those challenges in non-traditional areas – namely educational, correctional and social care institutions. When some injuries are caused by their members, whether and how the institutions could be held responsible in order to meet the indemnification requirement would be a new and interesting subject in tort law.

This paper focuses on scholarly comparative legal research, not only on the use of French law and jurisprudence, but also on analyzing Taiwan's law and jurisprudence. In this paper, an attempt is made to work out a methodology for describing the face of vicarious liability in Taiwan's future tort law.

The paper suggests that we ought to establish a general principle of vicarious liability within tort law in Taiwan's civil law to deal with more and more complex questions in tort law. In Taiwan's positive civil law, only two vicarious liabilities are provided: parental and employer liabilities. There is no clear answer to the question whether employer liability is indeed vicarious liability. If we consider the employer as being held liable for its own negligent acts, parental liability would be the only one type of vicarious liability in Taiwan's positive civil law. Thus, we think that employer liability would not only be one type of the vicarious liability but also be supposed to enrich its function in tort law.

Equally as important, we should enlarge the scope of application of parental and employer vicarious liability. Parental liability is to be in charge of that for who

* PhD in law at Sciences Po Law School. Judge at Taiwan Taichung District Court.
E-mail: pierre961@gmail.com

has abstract, longtime, continual control over another one's life style. Meanwhile, employer liability is to be in charge of that for who has concrete control over another one's specific act.

Educational, correctional, social care institutions may be responsible for the injuries caused by their members, depending on their abstract or concrete control over their members. As a result, the concept of vicarious liability arises in ever - developing areas of the law, both in Taiwan and French law.

Keywords: vicarious liability, parental liability, employer liability, concrete control, abstract control, general principle of vicarious liability