

The Imputation Principle of the Liability for Damages of Paragraph 1, Article 68 of the Land Act

*Yu-Hung Yen**

Abstract

As the subject of the judgment of the Imputation Principle is judged by “liability subject”, and the object of the judgment of the Imputation Principle should thereby be judged by “whether the intention or negligence of the liability subject is an element of the liability for damages”. According to Article 68, Paragraph 1 of Land Act, the liability for damages doesn’t require the intention or negligence of the Land Office as an element of the liability. Following the premise, the Imputation Principle with regard to such liability here should be based on strict liability. In terms of the imputation cause of the liability for damages to determine if the Land Office should be the tortfeasor, strict liability based upon distributive justice should apply in this case as the Land Office can spread the risk by collecting registration fees, earmarking a certain percentage of the Registration Fund, which is according to Article 70, Paragraph 1 of the Land Act, and using the Registration Fund to compensate for the damages suffered by the injured persons. Respecting the exemption cause stipulated in the proviso of Article 68, Paragraph 1 of the Land Act, provided that the Land Office can prove that the cause of the error, omission, or fraud in registration can be entirely imputed to the injured persons, the Land Office is thereby not held legally responsible for the compensatory damages. However, providing that the Land Office can only prove that regarding the cause of the error, omission, or fraud in registration the injured persons are only liable for part of it, the liability for damage could be reduced or released based on Article 5 of the State Compensation Law in compliance *mutatis mutandis* with the provisions of Article 217 of the Civil Code by reason of

* Associate Professor, College of Law, National Taiwan University.

E-mail: yhyen@ntu.edu.tw

contributory negligence of the injured person, which is raised by the Land Office notwithstanding its ineligibility for the exemption from liability.

Keywords: Land Act, Liability for damages, Imputation principle, Imputation cause, Distributive justice, Exemption cause, Registration Fund