

The Strict Liability under European Continental Law and Comments on Article 191-3 of the Taiwanese Civil Code

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Abstract

This article is both to explore the legislative model of strict liability under European law and to analyze and clarify the key factors of Article 191-3 of Taiwan Civil Code under case studies. It examines over 90 court cases relating to Article 191-3 of Taiwan Civil Code and find out some significant facts of these cases.

In terms of the exploration of European law, the article discusses German, French, and Italian laws, as well as Principles of European Tort Law.

With respect to the findings of the case studies concerning Article 191-3, first, the liability of this article is based on fault, but not on strict liability. This article is a presumption of negligence and causation, which scope of application is wider than that of strict liability.

Second, the defendant that may be imposed the liability under this article includes anyone who undertakes risky jobs or activities, disregard of whether it is a natural person or a legal person. The critical element of imposing the liability under this article is whether a job or an activity is the one with extraordinary risk.

In order to make a decision as to the extraordinary dangerous activities, the court takes into account the following factors: (1) the defendant gains benefits from the risky enterprises; (2) the defendant is superior to the victim as to taking the precautions of preventing the loss; (3) it is unfair to impose the victim the burden of proving the defendant's fault; (4) the risky activity incurs a great personal injury on the victim, (5) the cost of preventing the losses incurred by

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the activity is small, compared to the large amount of losses incurred by that activity; (6) the activity shall be viewed as a risky resource under ordinary life; (7) the risk shall be special, extraordinary, high, and unreasonable risk; (8) the defendant produces the risk and is able to control the risk and distribute the loss.

Keywords: strict liability, presumption of negligence, extraordinary dangerous activities, European tort law, Italian civil code, the custodian liability on things, enterprise manager's liability