

Tortious Liability on Negligent Infringement on Interests: Dilemma From and Breakthrough For the Distiguishment of Infringement on Rights and Interests

Tsung-Fu Chen *

Abstract

Article 184 of Taiwan Civil Code follows the model of German Civil Code, establishing the tort liability through the distinction between the infringement on rights and the infringement on interests, which has been confirmed by recent Taiwan Supreme Court judgments although it is debatable on this issue from academics in the past. Following this distinction, it raises an important issue about the requirements to impose a tort liability on the tortfeasor when he negligently, rather than intentionally, infringes upon the interests of another.

Recently, some controversial court cases have appeared as to the tort liability of negligent infringement on interests of another, such as the case of loss of money, the case of injury of oyster-farmers, the case of house in which someone committed suicide, and the case of sales of defective buildings. Such cases ignite fierce debates among law scholars. This paper explores the ways in which German law deals with such cases, including the broad interpretation of the “rights” elucidated under article 823 (1) of German Civil Code and the establishment of a theory of the protection for a third party to a contract. Since the Taiwan court is unwilling to receive the German doctrine of the theory of the protection for a third party to a contract, this paper suggests that, in addition to expand the scope of the concept of ‘right’ protected by the tort law in appropriate cases, it is desirable to utilize the second sentence of article 184 (1) of Taiwan

* Professor of Law, College of Law, National Taiwan University.
E-mail: congfu@ms6.hinet.net

Civil Code to deal with those controversial cases of negligent infringement on the interests of another.

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