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Volume: 8, Issue 4, 2021 (Oct-Dec)

INTERNATIONAL JOURNAL OF LAW, EDUCATION, SOCIAL AND SPORTS STUDIES (IJLESS)

A Peer Reviewed and Refereed Journal

DOI: 10.33329/ijless.8.4

<http://ijless.kypublications.com/>

ISSN: 2455-0418 (Print), 2394-9724 (online)

2021©KY PUBLICATIONS, INDIA

www.kypublications.com

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THE NECESSARY ORIENTATION AND ACTUAL PATH OF EQUITABLE LIABILITY

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[DOI: 10.33329/ijless.8.4.69](https://doi.org/10.33329/ijless.8.4.69)



ABSTRACT

The application of the principle of equitable liability stipulated in article 24 of Tort Liability Law has a tendency of unreasonable expansion and application in judicial practice, which is closely related to the legislative purpose and value selection of equitable liability. In the era of "Tort Law", whether the equitable liability clause is the general liability principle or the loss sharing rule has become the focus of academic and practical circles. This paper tries to analyze the difference and connection between the principle of equitable liability and the principle of dual imputation from the applicable conditions of the principle and explore its essence and nature. In addition, from the practice of specific cases, sum up the outstanding problems of equitable liability principle. With the promulgation of the Civil Code, the status, applicable conditions and applicable scope of equitable liability principle will be further clarified.

Keywords: Equitable liability, loss-sharing, Applicability of expansion

1. Introduction

The reason for the expansion of the application of equitable liability in judicial practice lies in the different understanding of the nature of equitable liability. Starting from different interpretation paths, the definition of equitable liability is different, and its application scope is certainly different. China's existing theories mainly have the following dimensions:

The nature of equitable liability is discussed in the system of imputation principle. There are different understandings about the relationship between equitable liability and the current two imputation principles. Some scholars believe that equitable liability is an imputation principle independent of fault liability and no-fault liability, which can make up the defect of traditional dual imputation. At present, there are few scholars who hold this view. Some scholars believe that from the analysis of the system, basis and function of the imputation principle, the equitable liability is not a parallel principle with the fault liability principle, but a complementary principle, which should be applied when the fault liability principle is difficult to apply. Other scholars believe that equitable liability has the inherent character of the principle of imputation but is different from the principle of imputation. Article 24 of Tort Liability Law is a kind of liability imputation clause. On the one hand, it is a liability imputation clause. Different from general liability consequence clause, it has abstractness

and generality, prescriptive elements and scope of equitable liability, and has inherent character of liability imputation principle. On the other hand, it is different from the principle of imputation, which is manifested in the priority of the principle of fault and no-fault liability in the application, that is, when fault and no-fault are not applicable, the clause is applied, which has the nature of a bottom-saving clause.

This paper discusses the equitable liability clause from the perspective of the constituent elements of tort liability. Looking at equitable liability from this perspective, its fundamental significance is to solve the exceptional cases that cannot be dealt with according to the traditional tort liability. At this time, no fault should also be liable according to the equitable liability clause. In terms of the constitutive elements of tort liability, whether it is "non act", not have a considerable causal relationship, do have an illegal cause of obstruction, so as not to consider the fault, or the perpetrator does not have at fault, or has an exemption cause, there may be the possibility of applying the equitable liability clause.

According to Article 132 of the General Principles of the Civil Law, "if the parties are not at fault for causing damage, the parties may share civil liability according to the actual situation". From the perspective of legislative skills, this provision is not stipulated in the imputation principle of the establishment of responsibility in the section of the articles on responsibility. Article 24 of the Tort Liability Law stipulates that "if neither the victim nor the perpetrator is at fault for the occurrence of damage, both parties may share the loss according to the actual situation." Therefore, legislators believe that Article 132 of the General Principles of Civil Law and Article 24 of the Tort Liability Law do not solve the problem of tort liability, but only the meaning of loss sharing, which is only the loss sharing clause under specific circumstances. Based on the above reasons, when interpreting Article 24 of the Tort Liability Law, the Supreme People's court held that the equitable liability clause is a provision on how to share the loss between the two parties when the principle of imputation cannot be applied to deal with the damage after the occurrence of the damage. The above provisions are neither the principle of fault liability nor the principle of strict liability. They do not constitute tort liability, do not deal with the problem of imputation, and of course, they can not become the principle of imputation. Article 1186 of the Civil Code stipulates that "if neither the victim nor the perpetrator is at fault for the occurrence of the damage, the losses shall be shared by both parties in accordance with the provisions of the law." The change from "can be based on the actual situation" to "in accordance with the provisions of the law" is a further limitation of the applicable circumstances under the determination of the nature of sharing losses. Therefore, it should be clear that equitable liability is not an imputation principle, but a legal loss sharing principle.

This paper holds that it is more reasonable to determine the nature of equitable liability from the perspective of loss sharing. The perpetrator has no subjective fault, which neither meets the applicable conditions of the fault principle nor belongs to the legal situation of the application of the no fault principle. Therefore, the application of equitable liability does not lie in determining the attribution of liability, and should not be considered in the system of the imputation principle. At the same time, in order to properly change the situation of damage consequences caused by the victim without fault, consider the unequal economic situation between the perpetrator and the victim, and create a legal compensation mechanism through equitable liability to reverse the damage situation. At the same time, we should stick to the point that the Tort Liability Law is not a bottom-up law for relief, just as equitable liability is not a bottom-up clause for loss sharing, and equitable liability is not "the omnipotent illegal tool of judges in dealing with tort liability disputes".

In other words, if there is no loss, there must be responsibility or compensation for damage. In the tort law system, fault liability and no fault liability can determine the responsibility of relevant subjects, and seek the balance between case fairness and social fairness through equitable liability. In

addition, there must be a blank field of bearing losses. This part of the blank or the situation that can not be attributed to the perpetrator and the victim (at least the situation that can not make the perpetrator bear responsibility) can not be solved by the "right relief law" of the Tort Liability Law. The better way out should be to seek "social relief". With the further improvement of the social security system and insurance system, a diversified "comprehensive relief system" composed of tort liability, social insurance, statutory insurance, commercial insurance and compensation fund will be established in the future, so as to most effectively realize the transfer and dispersion of damage. However, based on China's national conditions and the current situation of social development, the social security mechanism is not perfect. The tort law is endowed with the value function of realizing corrective justice. "Seeking solutions within the tort liability has become an inevitable trend". The improper expansion and application of the equitable liability clause is closely related to the current level of social development.

2. Applicable conditions of equitable liability

The discussion of equitable liability in different dimensions is analyzed from different angles. The demonstration process of some scholars is logical, systematic and reasonable. This paper holds that no matter which path to start from, it must be the analysis of equitable liability, fault liability and no fault liability. In order to clarify the nature of equitable liability, it will be clearer to explain the distinction and relationship between fault liability and no fault liability in the applicable situation. The specific constituent elements are as follows:

(1) **Main elements:** For the understanding of the actor and the victim stipulated in article 1186 of the Civil Code, we should first distinguish between the actor and the infringer, the victim and the infringed. "Infringer" and "infringed" are based on the premise of constituting tort liability. The "actor" in this article may not be the person who ultimately bears the responsibility. Even if he ultimately bears the consequences, the legislation avoids the expression of "tort liability", but the "sharing" of loss. "Victim" refers to the person who suffers damage due to the infringement of the perpetrator. The concept of "victim" is different from that of "infringed" in this part. It can be seen that in the tort system, the determination of responsibility is one level for the treatment of damage, and the sharing of damage consequences is another level. Secondly, the understanding of the actor should also explain whether the beneficiary is included. Similarly, from the perspective of system interpretation, "actor" should only refer to the perpetrator. Similarly, in the emergency avoidance caused by natural reasons, the "victim and beneficiary" in Article 156 of the opinions on the General Principles of Civil Law can not be interpreted as "victim and perpetrator".

(2) **Subjective element:** The applicable conditions of fault liability include fault, damage behavior, damage result and causality, emphasizing that "there is fault before there is responsibility". The applicable conditions of equitable liability are that both parties have no fault and there is a causal relationship between behavior and result. For the application of equitable liability, because the actor is not at fault, his behavior is not evaluated, at least not negative evaluation, but the sharing of loss consequences. In a sense, what corresponds to fault liability is equitable liability, and there is no intersection in the scope of application.

(3) **Elements of causality:** There are two views on the causality argument of the equitable liability clause. Some scholars hold the view of damage equivalence, that is, the damage of one party is related to the behavior of the other party. This correlation is only a conditional relationship between the two parties, not the equivalent causality in tort liability. In fact, this judgment weakens the establishment standard of causal elements in tort liability, which means to strengthen the relief to the victim from the perspective of social security, fill the victim's loss, and make the perpetrator share the loss deeper and wider. If analyzed from this perspective, it is impossible to treat equitable liability, fault liability and no fault liability in the same dimension. The equitable liability clause is more like the "landslide" in the

case that the principle of tort liability attribution is difficult to achieve relief, and it is the choice of "second to none".

Other scholars argue that in discussing equitable liability within the tort law system, we should adhere to the argument of considerable causality, "the 'fairness' of equitable liability is reflected in the omission of fault elements. If the elements of causation are further weakened, it will cause the parties to bear too broad obligations and shake the value system of tort liability."

This paper agrees with this view. Equivalent causality is one of the categories of causality in German law. It belongs to the judgment of causality in law, which is opposite to the factual causality. Adhere to considerable causality and avoid making judgments only based on facts. Even the perpetrator's normal behavior in daily activities may face the consequences of sharing losses. The broad and extensibility of its identification makes the equitable liability abused. Equitable liability is intended to share losses, but the law can not force people to do things that are difficult to complete, and can not frighten ordinary people when they talk about "losses". Even if we pay attention to the protection of victims, we should not at the cost of damaging freedom of conduct.

From the analysis and comparison of the applicable conditions, equitable liability should belong to the exception of fault liability. Equitable liability emphasizes "no fault" and "no fault" is of great significance under the application of fair liability. It is different logic from not considering whether there is fault under the application of no fault liability. Obviously, it is different from not considering fault in no fault liability. When making decisions on the application of no fault liability, legislators made complex interest measurement and cautious value judgment, and set specific exemption clauses according to the actual situation. If there is no liability according to the exemption of no fault liability, but the actor shares the loss according to fair liability, it will lead to the value conflict of the legal system. In other words, the exemption clause of no fault liability and equitable liability have applicable premise and significance, and should not choose one or the other, otherwise the effectiveness of equitable liability will be better than that of no fault liability, and the policy measurement and value judgment of the exemption clause of no fault liability will fail.

3. Expansion of fair responsibility in judicial practice

(1) *Single applicable conditions*: The application of equitable liability is based on the premise that both the perpetrator and the victim have no fault, but it is not the only element. It should not be judged directly without fault. The reason for this judicial disorder is that the analysis of the applicable conditions of equitable liability is too one-sided, ignoring the main elements and causal elements. Article 1186 of the Civil Code and Article 24 of the Tort Liability Law stipulate that the subjects of equitable liability are the actor and the victim. There are disputes about the understanding of the actor in the academic circles, mainly whether the beneficiary belongs to the actor.

In the case of labor relations, when a worker dies of sudden illness due to accidents or his own health reasons during work and there is no evidence to prove the fault of the work unit, the court often determines that the work unit shall bear the economic compensation liability based on the fact that the behavior of the worker generates income for the employing unit and the benefit of the employing unit is much greater than the remuneration of the employed person. The beneficiary compensation rule is interpreted as the due meaning of equitable liability, and the court's definition of "benefit" is often very broad in practice, resulting in the expansion of the scope of application of equitable liability.

For example, in the case of responsibility dispute between Chao Lin and educational institutions of senior middle schools in Jiangnan District, Nanning, Chao Lin was injured in the triple jump project of the school sports meeting. The court held that the school could benefit from holding the sports meeting, so the school should bear the responsibility. The court defined this interest as the positive impact of the holding of the sports meeting on school education publicity and popularity

improvement. For another example, in the case of personal injury compensation dispute between Ping Li and Nian Gong v. Mayflower Company, the court held that although the defendant suffered losses in economic interests, the plaintiff suffered serious personal injury. Compared with the plaintiff, the defendant was the beneficiary, and finally required the defendant to bear equitable liability according to the benefit compensation rules.

(2) **Generalization of applicable cases:** Based on the consideration of the economic conditions of the perpetrator and the victim, equitable liability is applicable to the occasion where the economic capacity of both parties is unequal. For example, between restaurant, hotel and other operators and consumers who need to make compensation according to the principle of equitable liability after the person responsible for safety and security fails to fulfill the obligation of reasonable care. However, the problem in practice is that the reasonable duty of care has been fulfilled and still needs to be compensated. This is one of the common cases of the expansion of equitable liability. Ignoring the institutional value and application conditions of equitable liability clauses, they tend to settle disputes and stop disputes by "robbing the rich to help the poor" to realize social correction and justice. In the "Shengxiu Cui case", the court of second instance held that the company had fulfilled its safety and security obligations and had no subjective fault. However, according to Article 157 of the General Opinion of the Supreme Court, the victim's death occurred in the implementation of acts conducive to the company, and combined with the family economic situation of the deceased, the court ruled that the company should compensate 10% of the economic losses.

In the era of "tort law", the improper application of equitable liability in the situation of unequal economic capacity of both parties and the emphasis on the loss sharing of the strong to the weak belong to the thorough understanding of the unreasonable equitable liability clause mentioned above, and also confuse the equitable liability and the fair principle to a certain extent. If there is only the first extended application in practice, it seems reasonable to follow. At least regard equitable liability as an exception to fault liability, which can not achieve the result of abuse. However, the improper application of equitable liability in the context of equal economic capacity is the second case of expanded application. If the victim is injured in the process of participating in sports activities, the perpetrator without fault shall bear the responsibility.

This is clearly stipulated in article 1176 of the Civil Code. Due to physical confrontation in sports and competitive activities, a certain degree of physical contact and conflict belong to normal movements. Participants should be aware of the risk of activities. On this premise, participating in sports activities belongs to tacit consent to the risk, and suffering damage belongs to self willing risk behavior. If the actor without fault is judged to bear equitable liability, the participants will be afraid to bear responsibility or compensate for losses, and can not play a real level in sports activities, so as to weaken the competitiveness of the game and lose the color of competitive sports activities.

Equitable liability has no applicable space in the field of no fault liability. In the case of no fault liability, because there is a factual causality between the act and the damage, the actor should bear the loss by invoking equitable liability, which is the third expanded application case in judicial practice. Product liability is a typical no fault liability, but there are legal reasons for exemption. When consumers suffer damage due to products that meet the statutory exemption, some courts will judge the enterprise to bear equitable liability and compensate the victims based on the correlation between behavior and damage.

4. Conclusion

In the tort system, in order to accurately grasp the nature of equitable liability, we must pay attention to the relationship between equitable liability and dual imputation principle; At the same time, for the application of equitable liability, we must clarify the difference between equitable liability and dual imputation principle. Only in this way can we fully understand the equitable liability clause.

With the promulgation and implementation of the Civil Code, the situation of the expanded application of equitable liability should be improved. With the development and progress of social economy and the continuous improvement of the social security system, the equitable liability should return to its most essential system values and requirements, so as to achieve the real implementation rather than remain in the debate. Otherwise, the purpose of legislators setting equitable liability cannot be realized, and even if it is implemented with "Chinese characteristics", it is difficult to cover up the veil of wrong application. Seeking social fairness and justice is our pursuit, but the excessive burden of criticizing the perpetrator will inevitably lead to reverse injustice, which is the "responsibility" that the equitable liability should not bear. We should continue to reflect on the interpretation of article 1186 of the Civil Code, and hope that the application of the equitable liability clause can return to the calm in the near future.

ACKNOWLEDGMENTS

This paper is supported by the Beijing Philosophy and Social Science Foundation Research Base project (19JDFXB007).

WORKS CITED

- Wang, Liming. "Research on Tort Liability Law: Volume I". China Renmin University Press (2010):278-279.Print.
- Wang, Zongtao. "Application of equitable liability in tort law: a comparative study of legislation and judicature - understanding of Article 24 of the Tort Liability Law". *Strait law*.2 (2011).Print.
- Guo, Mingrui. "On the nature and application of equitable liability". *Gansu Social Sciences*.5 (2012).Print.
- Li, Xiang. "Analysis on the application of equitable liability", *Journal of Jiaozuo University*.4 (2018).Print.
- Li, Peng. "On equitable liability in China's Tort Liability Law." *Law journal*.11 (2010).Print.
- Yin, Zhiqiang. "Understanding and application of equitable liability in the Civil Code", *Social science research*.5 (2020).Print.
- Yin, Zhonghua and Liu, Zhen. "On the scope of application of the general provisions of "equitable liability" - oriented towards the improvement of the tort liability series of the Civil Code." *Journal of Hubei University of Economics (humanities and social sciences edition)*.1(2020).Print.
- Jiao, Huijun. "How to apply the principle of equitable liability in judicial practice." *People's forum*.20 (2010).Print.
- Zhang, Jiayong. "Also on the legal application of "elevator dissuading smoking case"." *Research on the rule of law*.2 (2018).Print.
- Ye, Jinqiang. "The development of equivalent causality theory." *China law*.1 (2018).Print.
- Zhang, Shanbin. "Problems and Countermeasures in the application of the principle of equitable liability." *Hebei law*. 12(2016).Print.