

Tort Law of the People's Republic of China

Full text

Decree of the President of the People's Republic of China (No. 21)

The Tort Law of the People's Republic of China, which was adopted at the 12th session of the Standing Committee of the Eleventh National People's Congress on December 26, 2009, is hereby promulgated and shall come into force on July 1, 2010.

President of the People's Republic of China: Hu Jintao
December 26, 2009

Tort Law of the People's Republic of China
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Chapter I General Provisions

Article 1 In order to protect the legitimate rights and interests of parties in civil law relationships, clarify the tort liability, prevent and punish tortious conduct, and promote the social harmony and stability, this Law is formulated.

Article 2 Those who infringe upon civil rights and interests shall be subject to the tort liability according to this Law.

"Civil rights and interests" used in this Law shall include the right to life, the right to health, the right to name, the right to reputation, the right to honor, right to self image, right of privacy, marital autonomy, guardianship, ownership, usufruct, security interest, copyright, patent right, exclusive right to use a trademark, right to discovery, equities, right of succession, and other personal and property rights and

interests.

Article 3 The victim of a tort shall be entitled to require the tortfeasor to assume the tort liability.

Article 4 Where a tortfeasor shall assume administrative liability or criminal liability for the same conduct, it shall not prejudice the tort liability that the tortfeasor shall legally assume.

Where the assets of a tortfeasor are not adequate for payments for the tort liability and administrative liability or criminal liability for the same conduct, the tortfeasor shall first assume the tort liability.

Article 5 Where any other law provides otherwise for any tort liability in particular, such special provisions shall prevail.

Chapter II Constituting Liability and Methods of Assuming Liability

Article 6 One who is at fault for infringement upon a civil right or interest of another person shall be subject to the tort liability.

One who is at fault as construed according to legal provisions and cannot prove otherwise shall be subject to the tort liability.

Article 7 One who shall assume the tort liability for infringing upon a civil right or interest of another person, whether at fault or not, as provided for by law, shall be subject to such legal provisions.

Article 8 Where two or more persons jointly commit a tort, causing harm to another person, they shall be liable jointly and severally.

Article 9 One who abets or assists another person in committing a tort shall be liable jointly and severally with the tortfeasor.

One who abets or assists a person who does not have civil conduct capacity or only has limited civil conduct capacity in committing a tort shall assume the tort liability; the guardian of such a person without civil conduct capacity or with limited civil conduct capacity shall assume the relevant liability if failing to fulfill his guardian duties.

Article 10 Where two or more persons engage in a conduct that endangers the personal or property safety of another person, if only the conduct of one or several of them causes harm to another person and the specific tortfeasor can be determined, the tortfeasor shall be liable; or if the specific tortfeasor cannot be determined, all of them shall be liable jointly and severally.

Article 11 Where two or more persons commit torts respectively, causing the same harm, and each tort is sufficient to cause the entire harm, the tortfeasors shall be liable jointly and severally.

Article 12 Where two or more persons commit torts respectively, causing the same harm, if the seriousness of liability of each tortfeasor can be determined, the tortfeasors shall assume corresponding liabilities respectively; or if the seriousness of liability of each tortfeasor is hard to be determined, the

tortfeasors shall evenly assume the compensatory liability.

Article 13 Where the joint and several liability shall be assumed by the tortfeasors according to law, the victim of torts shall be entitled to require some or all of the tortfeasors to assume the liability.

Article 14 The compensation amounts corresponding to the tortfeasors who are jointly and severally liable shall be determined according to the seriousness of each tortfeasor; and if the seriousness of each tortfeasor cannot be determined, the tortfeasors shall evenly assume the compensatory liability.

A tortfeasor who has paid an amount of compensation exceeding his contribution shall be entitled to be reimbursed by the other tortfeasors who are jointly and severally liable.

Article 15 The methods of assuming tort liabilities shall include:

1. cessation of infringement;
2. removal of obstruction;
3. elimination of danger;
4. return of property;
5. restoration to the original status;
6. compensation for losses;
7. apology; and
8. elimination of consequences and restoration of reputation.

The above methods of assuming the tort liability may be adopted individually or jointly.

Article 16 Where a tort causes any personal injury to another person, the tortfeasor shall compensate the victim for the reasonable costs and expenses for treatment and rehabilitation, such as medical treatment expenses, nursing fees and travel expenses, as well as the lost wages. If the victim suffers any disability, the tortfeasor shall also pay the costs of disability assistance equipment for the living of the victim and the disability indemnity. If it causes the death of the victim, the tortfeasor shall also pay the funeral service fees and the death compensation.

Article 17 Where the same tort causes the deaths of several persons, a uniform amount of death compensation may be determined.

Article 18 Where a tort causes the death to the victim, the close relative of the victim shall be entitled to require the tortfeasor to assume the tort liability. Where the victim of a tort, which is an entity, is split or merged, the entity succeeding to the rights of the victim shall be entitled to require the tortfeasor to assume the tort liability.

Where a tort causes the death to the victim, those who have paid the medical treatment expenses, funeral service fees and other reasonable costs and expenses for the victim shall be entitled to require the tortfeasor to compensate them for such costs and expenses, except that the tortfeasor has already paid such costs and expenses.

Article 19 Where a tort causes any harm to the property of another person, the amount of loss to the property shall be calculated as per the market price at the time of occurrence of the loss or calculated otherwise.

Article 20 Where any harm caused by a tort to a personal right or interest of another person gives rise to any loss to the property of the victim of the tort, the tortfeasor shall make compensation as per the loss sustained by the victim as the result of the tort. If the loss sustained by the victim is hard to be determined and the tortfeasor obtains any benefit from the tort, the tortfeasor shall make compensation as per the benefit obtained by it. If the benefit obtained by the tortfeasor from the tort is hard to be determined, the victim and the tortfeasor disagree to the amount of compensation after consultation, and an action is brought to a people's court, the people's court shall determine the amount of compensation based on the actual situations.

Article 21 Where a tort endangers the personal or property safety of another person, the victim of the tort may require the tortfeasor to assume the tort liabilities including but not limited to cession of infringement, removal of obstruction and elimination of danger.

Article 22 Where any harm caused by a tort to a personal right or interest of another person inflicts a serious mental distress on the victim of the tort, the victim of the tort may require compensation for the infliction of mental distress.

Article 23 Where one sustains any harm as the result of preventing or stopping the infringement upon the civil right or interest of another person, the tortfeasor shall be liable for the harm. If the tortfeasor flees or is unable to assume the liability and the victim of the tort requires compensation, the beneficiary shall properly make compensation.

Article 24 Where neither the victim nor the actor is at fault for the occurrence of a damage, both of them may share the damage based on the actual situations.

Article 25 After the occurrence of any harm, the parties may consult each other about the methods to pay for compensations. If the consultation fails, the compensations shall be paid in a lump sum. If it is hard to make the payment in a lump sum, the payment may be made in installments but a corresponding security shall be provided.

Chapter III Circumstances to Waive Liability and Mitigate Liability

Article 26 Where the victim of a tort is also at fault as to the occurrence of harm, the liability of the tortfeasor may be mitigated.

Article 27 The actor shall not be liable for any harm that is caused intentionally by the victim.

Article 28 Where any harm is caused by a third party, the third party shall assume the tort liability.

Article 29 Where any harm to another person is caused by a force majeure, the tortfeasor shall not be liable, except as otherwise provided for by law.

Article 30 Where any harm is caused by self-defense, the person exercising self-defense shall not be liable. If the self-defense exceeds the necessary limit, causing any undue harm, the person exercising self-defense shall assume proper liability.

Article 31 Where any harm is caused by any conduct of necessity, the person causing the occurrence of danger shall be liable. If the danger is as the result of a natural cause, the person causing the harm for necessity shall not be liable or shall make proper compensation. If improper measures of necessity are taken or a necessary limit is exceeded, causing any undue harm, the person causing the harm for necessity shall assume proper liability.

Chapter IV Special Provisions on Tortfeasors

Article 32 Where a person without civil conduct capacity or with limited civil conduct capacity causes any harm to another person, the guardian shall assume the tort liability. If the guardian has fulfilled his guardian duties, his tort liability may be mitigated.

Where a person without civil conduct capacity or with limited civil conduct capacity, who has property, causes any harm to another person, the compensations shall be paid out of his own property. The guardian shall make up any deficit of the compensations.

Article 33 Where a person with full civil conduct capacity causes any harm to another person as the result of his temporary loss of consciousness or control of his conduct, if he is at fault, he shall assume the tort liability; or if he is not at fault, the victim shall be compensated properly according to the economic condition of the person causing the harm.

Where a person with full civil conduct capacity causes any harm to another person as the result of his temporary loss of consciousness or control of his conduct due to alcohol intoxication or abuse of narcotic or psychoactive drug, he shall assume the tort liability.

Article 34 Where an employee of an employer which is an entity causes any harm to another person in the execution of his work duty, the employer shall assume the tort liability.

Where, during the period of labor dispatch, a dispatched employee causes any harm to another person in the execution of his work duty, the entity employer receiving the dispatched employee shall assume the tort liability; and the entity employer dispatching the employee, if at fault, shall assume the corresponding complementary liability.

Article 35 Where, in a labor relationship formed between individuals, the party providing labor services causes any harm to another person as the result of the labor services, the party receiving labor services shall assume the tort liability. If the party providing labor services causes any harm to himself as the result of the labor services, both parties shall assume corresponding liabilities according to their respective faults.

Article 36 A network user or network service provider who infringes upon the civil right or interest of another person through network shall assume the tort liability.

Where a network user commits a tort through the network services, the victim of the tort shall be entitled to notify the network service provider to take such necessary measures as deletion, block or disconnection. If, after being notified, the network service provider fails to take necessary measures in a

timely manner, it shall be jointly and severally liable for any additional harm with the network user.

Where a network service provider knows that a network user is infringing upon a civil right or interest of another person through its network services, and fails to take necessary measures, it shall be jointly and severally liable for any additional harm with the network user.

Article 37 The manager of a public venue such as hotel, shopping center, bank, station or entertainment place or the organizer of a mass activity shall assume the tort liability for any harm caused to another person as the result of his failure to fulfill the duty of safety protection.

If the harm to another person is caused by a third party, the third party shall assume the tort liability; and the manager or organizer, if failing to fulfill the duty of safety protection, shall assume the corresponding complementary liability.

Article 38 Where a person without civil conduct capacity sustains any personal injury during the period of studying or living in a kindergarten, school or any other educational institution, the kindergarten, school or other educational institution shall be liable unless it can prove that it has fulfilled its duties of education and management.

Article 39 Where a person with limited civil conduct capacity sustains any personal injury during the period of studying or living in a school or any other educational institution, the school or other educational institution shall be liable if failing to fulfill its duties of education and management.

Article 40 Where, during the period of studying or living in a kindergarten, a school or any other educational institution, a person without civil conduct capacity or with limited civil conduct capacity sustains any personal injury caused by any person other than those of the kindergarten, school or other education institution, the person causing the harm shall assume the tort liability; and the kindergarten, school or other educational institution shall assume the corresponding complementary liability if failing to fulfill its duties of management.

Chapter V Product Liability

Article 41 Where a defective product causes any harm to another person, the manufacturer shall assume the tort liability.

Article 42 Where a product with any defect caused by the fault of the seller causes any harm to another person, the seller shall assume the tort liability.

Where a seller can neither specify the manufacturer of a defective product nor specify the supplier of the defective product, the seller shall assume the tort liability.

Article 43 Where any harm is caused by a defective product, the victim may require compensation to be made by the manufacturer of the product or the seller of the product.

If the defect of the product is caused by the manufacturer and the seller has made the compensation for the defect, the seller shall be entitled to be reimbursed by the manufacturer.

If the defect of the product is caused by the fault of the seller and the manufacturer has made the compensation for the defect, the manufacturer shall be entitled to be reimbursed by the seller.

Article 44 Where any harm is caused to another person by a defective product and the defect is caused by the fault of a third party such as carrier or warehouseman, the manufacturer or seller of the product that has paid the compensation shall be entitled to be reimbursed by the third party.

Article 45 Where the defect of a product endangers the personal or property safety of another person, the victim shall be entitled to require the manufacturer or seller to assume the tort liabilities by removing the obstruction or eliminating the danger.

Article 46 Where any defect of a product is found after the product is put into circulation, the manufacturer or seller shall take such remedial measures as warning and recall in a timely manner. The manufacturer or seller who fails to take remedial measures in a timely manner or take sufficient and effective measures and has caused any harm shall assume the tort liability.

Article 47 Where a manufacturer or seller knowing any defect of a product continues to manufacture or sell the product and the defect causes a death or any serious damage to the health of another person, the victim shall be entitled to require the corresponding punitive compensation.

Chapter VI Liability for Motor Vehicle Traffic Accident

Article 48 Where a motor vehicle traffic accident causes any harm, the compensatory liability shall be assumed according to the relevant provisions of the Road Traffic Safety Law.

Article 49 Where the owner and the user of a motor vehicle are not the same person due to the relationship of a lease, a borrowing or any other reason and the liability of a traffic accident is attributed to the motor vehicle, the insurance company shall make compensation within the liability limit of the mandatory motor vehicle insurance. The user of the motor vehicle shall make up any deficit of the compensation; and if the owner of the motor vehicle is at fault as to the harm, he shall assume the corresponding compensatory liability.

Article 50 Where a motor vehicle has been transferred and delivered from one party to another through sale or in any other transaction method but the registration of ownership transfer has not been conducted, if the liability of a traffic accident is attributed to the motor vehicle, the insurance company shall make compensation within the liability limit of the mandatory motor vehicle insurance. The transferee of the motor vehicle shall make up any deficit of the compensation.

Article 51 Where an illegally assembled motor vehicle or a motor vehicle reaching the standard of retirement, which has been transferred through sale or in any other transfer method, causes a traffic accident and a harm, the transferor and the transferee shall be liable jointly and severally.

Article 52 Where a traffic accident occurs to a motor vehicle that has been obtained by theft, robbery or snatch and causes a harm, the thief, robber or snatcher shall assume the compensatory liability. The insurance company that makes advances for rescue expenses within the liability limit of the mandatory motor vehicle insurance shall be entitled to be reimbursed by the person liable for the traffic accident.

Article 53 Where the driver of a motor vehicle flees after a traffic accident occurs to the motor vehicle, if the motor vehicle is covered by the mandatory insurance, the insurance company shall make compensation within the liability limit of the mandatory motor vehicle insurance; or if the motor vehicle cannot be identified or is not covered by the mandatory insurance, and the expenses for the death of or personal injury to the victim, such as rescue and funeral fees, need to be paid, the advances shall be made out of the Social Assistance Fund for Road Traffic Accidents. After advances are made out of the Social Assistance Fund for Road Traffic Accidents, the governing body of the fund shall be entitled to be reimbursed by the person liable for the traffic accident.

Chapter VII Liability for Medical Malpractice

Article 54 Where a patient sustains any harm during diagnosis and treatment, if the medical institution or any of its medical staff is at fault, the medical institution shall assume the compensatory liability.

Article 55 During the diagnosis and treatments, the medical staff shall explain the illness condition and relevant medical measures to their patients. If any operation, special examination or special treatment is needed, the medical staff shall explain the medical risks, alternate medical treatment plans and other information to the patient in a timely manner, and obtain a written consent of the patient; or, when it is not proper to explain the information to the patient, explain the information to the close relative of the patient, and obtain a written consent of the close relative.

Where any medical staff member fails to fulfill the duties in the preceding paragraph and causes any harm to a patient, the medical institution shall assume the compensatory liability.

Article 56 Where the opinion of a patient or his close relative cannot be obtained in the case of an emergency such as rescue of a patient in critic condition, with the approval of the person in charge of the medical institution or an authorized person in charge, the corresponding medical measures may be taken immediately.

Article 57 Where any medical staff member fails to fulfill the obligations of diagnosis and treatment up to the standard at the time of the diagnosis and treatment and causes any harm to a patient, the medical institution shall assume the compensatory liability.

Article 58 Under any of the following circumstances, a medical institution shall be at fault constructively for any harm caused to a patient:

1. violating a law, administrative regulation or rule, or any other provision on the procedures and standards for diagnosis and treatment;
2. concealing or refusing to provide the medical history data related to a dispute; or
3. forging, tampering or destroying any medical history data.

Article 59 Where any harm to a patient is caused by the defect of any drug, medical disinfectant or medical instrument or by the transfusion of substandard blood, the patient may require a compensation from the manufacturer or institution providing blood, or require a compensation from the medical institution. If the patient requires a compensation from the medical institution, the medical institution that has paid the compensation shall be entitled to be reimbursed by the liable manufacturer or institution

providing blood.

Article 60 Under any of the following circumstances, a medical institution shall not assume compensatory liability for any harm caused to a patient:

1. the patient or his close relative does not cooperate with the medical institution in the diagnosis and treatment in line with the procedures and standards for diagnosis and treatment;
2. the medical staff have fulfilled the duty of reasonable diagnosis and treatment in the case of an emergency such as rescue of a patient in critical condition; or
3. diagnosis and treatment of the patient is difficult due to the medical level at the time.

Under the circumstance in item 1 of the preceding paragraph, if the medical institution or any of its medical staff is also at fault, the medical institution shall assume the corresponding compensatory liability.

Article 61 A medical institution and its medical staff shall fill out and properly keep the hospital admission logs, medical treatment order slips, test reports, operation and anesthesia records, pathology records, nurse care records, medical expenses sheets and other medical history data according to the relevant provisions.

Where a patient files a request for consulting or copying the medical history data in the preceding paragraph, the medical institution shall provide the data.

Article 62 A medical institution and its medical staff shall keep confidential the privacy of a patient. If any privacy data of a patient is divulged or any of the medical history data of a patient is open to the public without the consent of the patient, causing any harm to the patient, the medical institution shall assume the tort liability.

Article 63 A medical institution and its medical staff shall not conduct unnecessary examinations in violation of the procedures and standards for diagnosis and treatment.

Article 64 The legitimate rights and interests of a medical institution and its medical staff shall be protected by law. Anyone who interrupts the order of the medical system or obstructs the work or life of medical staff shall be subject to legal liability.

Chapter VIII Liability for Environmental Pollution

Article 65 Where any harm is caused by environmental pollution, the polluter shall assume the tort liability.

Article 66 Where any dispute arises over an environmental pollution, the polluter shall assume the burden to prove that it should not be liable or its liability could be mitigated under certain circumstances as provided for by law or to prove that there is no causation between its conduct and the harm.

Article 67 Where the environmental pollution is caused by two or more polluters, the seriousness of liability of each polluter shall be determined according to the type of pollutant, volume of emission and other factors.

Article 68 Where any harm is caused by environmental pollution for the fault of a third party, the victim

may require a compensation from either the polluter or the third party. After making compensation, the polluter shall be entitled to be reimbursed by the third party.

Chapter IX Liability for Ultrahazardous Activity

Article 69 One who causes any harm to another person while engaging in any ultrahazardous operation shall assume the tort liability.

Article 70 Where a nuclear accident occurs to a civil nuclear facility and causes any harm to another person, the operator of the civil nuclear facility shall assume the tort liability unless it can prove that the harm is caused by a situation such as war or by the victim intentionally.

Article 71 Where a civil aircraft causes any harm to another person, the operator of the civil aircraft shall assume the tort liability unless it can prove that the harm is caused by the victim intentionally.

Article 72 Where the possession or use of inflammable, explosive, acutely toxic, radioactive or any other ultrahazardous materials causes any harm to another person, the possessor or user shall assume the tort liability unless it can prove that the harm is caused by the victim intentionally or by a force majeure. If the victim is grossly negligent for the occurrence of the harm, the liability of the possessor or user may be mitigated.

Article 73 Where any harm is caused to another person by an aerial, high pressure or underground excavation activity or by the use of high speed rail transport vehicle, the operator shall assume the tort liability unless it can prove that the harm is caused by the victim intentionally or by a force majeure. If the victim is negligent for the occurrence of the harm, the liability of the operator may be mitigated.

Article 74 Where any harm is caused to another person by the loss or abandonment of ultrahazardous materials, the owner shall assume the tort liability. If the owner has delivered the ultrahazardous materials to another person for management, the person who manages the materials shall assume the tort liability; and if the owner is at fault, he shall be liable jointly and severally with the person who manages the materials.

Article 75 Where any harm to another person is caused by the illegal possession of ultrahazardous materials, the illegal possessor shall assume the tort liability. If the owner and the managing person cannot prove that it has fulfilled its duty of a high degree of care in preventing others from illegal possession, they shall be liable jointly and severally with the illegal possessor.

Article 76 Where any harm is caused by the entry into an area of ultrahazardous activities or an area of storing ultrahazardous materials, if the managing person has taken safety measures and fulfilled its duty of warning, its liability may be mitigated or it may assume no liability.

Article 77 Where any legal provision prescribes a limit of compensation for liability for an ultrahazardous activity, such a provision shall apply.

Chapter X Liability for Harm Caused by Domestic Animal

Article 78 Where a domestic animal causes any harm to another person, the keeper or manager of the animal shall assume the tort liability, but may assume no liability or assume mitigated liability, if it can prove that the harm is caused by the victim intentionally or by the gross negligence of the victim.

Article 79 Where any harm is caused to another person by a failure to take safety measures against an animal in violation of management rules, the keeper or manager of the animal shall assume the tort liability.

Article 80 Where any dangerous animal such as a fierce dog that is prohibited from keeping causes any harm to another person, the keeper or manager of the animal shall assume the tort liability.

Article 81 Where any animal of a zoo causes any harm to another person, the zoo shall assume the tort liability unless it can prove that it has fulfilled its duties of management.

Article 82 Where an abandoned or fleeing animal causes any harm to another person during the time period of its abandonment or fleeing, the original keeper or manager of the animal shall assume the tort liability.

Article 83 Where any harm is caused to another person by an animal for the fault of a third party, the victim may require a compensation from the keeper or manager of the animal, or require a compensation from the third party. After making compensation, the keeper or manager of the animal shall be entitled to be reimbursed by the third party.

Article 84 Animals shall be kept in accordance with the law, in the manner of respecting the social morals, and without interference with the life of others.

Chapter XI Liability for Harm Caused by Object

Article 85 Where any building, structure or facility or any thing laid thereon or suspended therefrom falls off or falls down, causing any harm to another person, if the owner, manager or user cannot prove that he is not at fault, he shall assume the tort liability. After making compensation, the owner, manager or user shall be entitled to be reimbursed by other liable persons if any.

Article 86 Where any building, structure or facility collapses, causing any harm to another person, the construction employer and contractor shall be liable jointly and severally. After making compensation, the construction employer or contractor shall be entitled to be reimbursed by other liable persons if any. Where the collapse of any building, structure or facility, which causes any harm to another person, is attributed to any other liable person, the other liable person shall assume the tort liability.

Article 87 Where any object thrown out of a building or falling down from a building causes any harm to another person and it is hard to determine the specific tortfeasor, all the users of the building who possibly commit the tort but those who can prove that they are not the tortfeasor shall make indemnity.

Article 88 Where a pile of objects collapse and cause any harm to another person, the person making the pile shall assume the tort liability if it cannot prove that it has no fault.

Article 89 Where any harm is caused to another person by objects piled, dumped or scattered on a

public road, which obstruct passage, the relevant entity or individual shall assume the tort liability.

Article 90 Where any harm is caused to another person by a broken tree, the owner or manager of the tree shall assume the tort liability if it cannot prove that he is not at fault.

Article 91 Where anyone digs a pit, repairs or installs any underground facility, etc. at a public venue or on a public road but fails to set up any obvious warning sign or take any safety measure, and causes any harm to another person, the person shall assume the tort liability.

Where a manhole or any other underground facility causes any harm to another person, the manager of the manhole or the facility shall assume the tort liability if he cannot prove that he has fulfilled the duties of management.

Chapter XII Supplementary Provision

Article 92 This Law shall come into force on July 1, 2010.