

# Understanding and Application of Fair Responsibility in the Civil Code

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**Abstract:** Article 1186 of the Civil Code limits the scope of fair liability and effectively prevents the abuse of fair liability. Fair liability has undergone three legislative changes, and there are disputes as to whether fair liability is an independent imputation principle or a liability distribution rule. Through the understanding of Article 1186 of the Civil Code, the applicable scope of fair liability can be better clarified. The scope of application of fair liability in academic circles mainly includes the following four: The first is the fair liability for damage caused by emergency avoidance; the second is the fair liability for suffering damage due to righteousness; the third is the fair liability for the damage caused by people with full civil capacity falling into an unconscious state or losing control; the fourth is the damage caused by people throwing objects at height Responsibility for fairness.

**Keywords:** Fair liability; Imputation principle; Restricted application

## 1. The basic theory of fair responsibility

### 1.1 Legislative changes of fair responsibility

The so-called fair liability means that both parties have no fault for the occurrence of the damage, and the two parties shall share the loss in accordance with the provisions of the law. Rules for the parties to appropriately share the consequences of damage. The legislation on fair liability has gone through the General Principles of Civil Law, Tort Liability Law and the Civil Code. Article 132 of the General Principles of Civil Law is the earliest provision of fair responsibility in my country, and it is the origin of fair responsibility. Article 24 of the Tort Liability Law has substantially revised Article 132 of the General Principles of Civil Law, replacing the "party" with "actors and victims", and replacing "sharing civil liability" with "sharing losses". Article 1186 of the Civil Code has made substantial changes to fair liability, replacing "according to actual conditions" with "in accordance with the provisions of the law", limiting the scope of fair liability.<sup>[1]</sup>

### 1.2 The nature of fair responsibility

Regarding the nature of fair responsibility, some scholars believe that it is the principle of imputation, such as Professor Wang Liming, and some scholars believe that it is the rule of responsibility distribution, such as Professor Cheng Xiao. I think that fair responsibility is the rule of responsibility distribution, which can be confirmed from the following aspects. One is that the legislators have weakened the fairness responsibility in the system. Fair liability is in the same chapter as the principle of fault liability and the principle of no-fault liability in the Tort Liability Law. The Civil Code places the "fault principle" and the "no-fault principle" in the general provisions of Chapter 1 of the tort liability, and places fair liability in the compensation for damages in Chapter 2. It can be seen from this that the legislator denied the principle of imputation that fair responsibility is independent. The second is to restrict the applicable conditions of fair liability. This requires judges to apply fair liability in accordance with the provisions of the law. The law should be a law in a narrow sense. This makes the scope of fair liability extremely narrow.<sup>[2]</sup>

## 2. Understanding of the Civil Code Article 1186 Fair Responsibility

### 2.1 Understanding of "victims" and "perpetrators"

The "victim" in Article 1186 of the Civil Code should refer to the person who has suffered damage due to the perpetrator's infringement. If the specific tort liability has not yet been determined, or the legal effect has not been expressed as "tort liability", the concept of "victim" is used. Some scholars believe that the perpetrator refers to the person who should share the loss, and some scholars believe that the perpetrator refers to the person who directly committed the act of infringement. Because the actor in fair liability is not necessarily the person who ultimately bears the responsibility, I agree with the first point of view, that is, the actor refers to the person who should share the loss.<sup>[3]</sup>

### 2.2 Understanding of "neither the victim nor the perpetrator is at fault"

"Neither the victim nor the perpetrator is at fault for the occurrence of the damage" is one of the constituent elements of fair liability. Whether the perpetrator and the victim are at fault is crucial to the application of fair liability. No fault of the person is a basic element of the responsibility of the principle of fairness, and no fault of the victim is also a component of the responsibility of the principle of fairness. The value of the victim's no fault is that once the perpetrator is at fault, fair responsibility cannot be applied,

that is, fair responsibility The application not only requires that the perpetrator is not at fault, but also that the victim is not at fault.<sup>[4]</sup>

### **2.3 Understanding of "the provisions of the law"**

Article 1186 of the Civil Code changed the "according to the actual situation" to "in accordance with the provisions of the law" in the "Civil Code". However, it can only be based on the provisions of the law, which limits the scope of fair responsibility and fundamentally prevents the abuse of fair responsibility. The "law" here should not be understood in a broad sense, but in a narrow sense, that is, it refers to the normative legal documents formulated by the National People's Congress and its Standing Committee. This is a restriction on the scope of fair liability through legal reservations, and it also reserves space for the application of fair liability in the future.<sup>[5]</sup>

### **2.4 Understanding of "sharing the loss"**

Article 1186 of the Civil Code does not modify the "losses shared by both parties". Loss sharing is not about the perpetrator's full compensation of the victim's loss, nor the non-compensation of the victim's loss, nor the equal distribution of the consequences of damage between the perpetrator and the victim. Loss sharing needs to be determined according to the actual situation. Not only must the actor's means and the size of the loss be considered, but also the actual situation of both parties, so as to share the victim's loss more reasonably, and this kind of sharing only It can be the direct economic loss of the victim's property and life, not the indirect economic loss, let alone the mental loss.

## **3. Applicable scope of fair liability**

The Civil Code stipulates that the applicable legal articles of fair liability are Article 182, Article 183, Article 1190, Article 1254, which are fair liability for damage caused by emergency avoidance of danger, and damage caused by the courage of justice. This is the law's provisions on the scope of fair liability. Different scholars have different views on the scope of fair liability, such as Professor Guo Ming rui.

### **3.1 Fair liability for damage caused by emergency avoidance**

Article 182 of my country's Civil Code stipulates the fair liability for damage caused by emergency avoidance of danger. In the case of human damage due to emergency avoidance, the application of fair liability needs to meet certain conditions, that is, the danger caused by natural causes. Only in this case can fair liability apply, which is carried out by the emergency avoider or beneficiary. Appropriate compensation, if the danger is not caused by natural causes, can only be borne by the person who caused the danger. In addition, the application of fair liability in the case of damage caused by emergency avoidance also requires appropriate avoidance.

### **3.2 Fair liability for damage suffered due to brave actions**

Article 183 of my country's Civil Code stipulates the fair liability for damages due to brave acts of righteousness. The beneficiary shall give appropriate compensation to the fair responsibility for the damage suffered due to righteousness. However, this kind of compensation has a priority. The first priority is that while the infringer bears the tort liability, the beneficiary can bear the fair responsibility, and the victim shall be appropriately compensated. The second priority is that when there is no infringer, the infringer has escaped, or is unable to bear civil liability, the beneficiary should bear fair responsibility and give appropriate compensation to the victim. Although the law stipulates that fair liability is applicable to damage suffered due to righteousness, I believe that this kind of situation belongs to the content of the non-causal management system.

### **3.3 Fair liability for damages caused by persons with full capacity for civil conduct falling into an unconscious state or losing control**

Article 1190 of my country's Civil Code stipulates that persons with full capacity for civil conduct fall into an unconscious state or lose control and cause harm. If a person with full civil capacity falls into an unconscious state or loses control and causes damages, three conditions must be met before fair liability can be applied: one is that the subject must be a person with full civil capacity; The second is that the perpetrator is unconscious about falling into an unconscious state or losing control ; the third is not a no-fault infringement. When these three conditions are met, a person with full capacity for civil conduct who causes harm in an unconscious state will provide appropriate compensation to the victim.

### **3.4 Fair liability for damage caused by high-altitude throwing objects**

Article 1254 of my country's Civil Code stipulates the fair liability for damage caused by throwing objects at height. The damage caused by high-altitude throwing shall be appropriately compensated by the building users who may cause the damage. Many scholars believe that this article should apply fair liability, but it is actually inappropriate to apply fair liability for damage caused by high-altitude throwing. The application of fair liability should meet the corresponding prerequisites, that is, tort, damage consequences and causality. Fair liability requires the perpetrator to carry out certain torts, while the possible offenders of throwing objects at heights did not commit torts. Therefore, it is inappropriate to apply fair liability for damages caused by throwing objects at heights.

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