

A New Tort Code Emerges in China: An
Introduction to the Discussion With a
Translation of Chapter 8- Tort Liability, of the
Official Discussion Draft of the Proposed
Revised Civil Code of the People's Republic
of China

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Abstract

In 1986, the Sixth National People's Congress enacted the General Principles of Civil Law of the People Republic of China ("1986 Code). The 1986 Code is now undergoing comprehensive revision. The Standing Committee of the National Peoples Congress (the national legislature) issued a comprehensive draft revised civil code for discussion on December 17, 2002 "Standing Committee Discussion Draft". Discussion in China of the 2002 Standing Committee Discussion Draft has recently centered on the chapter on property rights. Passed on March 16, 2007, after seven drafts, the property rights chapter has been the source, one can readily understand, of much more controversy than torts is likely to generate. "Chapter 8 - Tort Law" has not yet come up for formal discussion, but tort law has been the subject of much scholarly effort, and at least three alternative drafts of the chapter have been offered by scholars. Much of the exploration of the topic of tort law has taken place through the journal *Si Fa* (Private Law Review) and other publications of Peking University Press, such as the translation of the collection of essays edited by Gerald Postema, *Philosophy and the Law of Torts*.

TRANSLATION

A NEW TORT CODE EMERGES IN CHINA:
AN INTRODUCTION TO THE DISCUSSION
WITH A TRANSLATION OF CHAPTER 8—
TORT LIABILITY, OF THE OFFICIAL
DISCUSSION DRAFT OF THE PROPOSED
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REPUBLIC OF CHINA

*George W. Conk**

The People's Republic of China ("P.R.C.") is in the civil law tradition.¹ Since the turn in the late 1970's toward a market-oriented system to speed modernization of the country, Chinese law reform has accelerated.² The Constitution of the P.R.C. was

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1. See JIANFU CHEN, *FROM ADMINISTRATIVE AUTHORISATION TO PRIVATE LAW: A COMPARATIVE PERSPECTIVE OF THE DEVELOPING CIVIL LAW IN THE P.R.C.* 1995; see also Karin Buhmann, *Reforms of Administrative Law in the PRC and Vietnam: The Possible Role of the Legal Tradition*, 72 *NORDIC J. INT'L L.*, 253-90 (2002) (discussing the historic view of law as administrative order, distinct from Confucian norms governing conduct which may inform law but are not derived from law in the Confucianized legal tradition).

2. See, e.g., Stanley Lubman, *Bird in a Cage: Chinese Law Reform After Twenty Years*, 20 *Nw. J. Int'l L. & Bus.* 383 (2000) stating:

On balance, the overall thrust of the past twenty years of reform efforts has been positive, and further encouraging efforts are underway, including plans to advance judicial reform, add coherence to Chinese law-making and continue the development of administrative law. But even though Chinese economic reform has begun processes of differentiation and functional specialization of Chinese legal institutions that promise to expand rights and rights-consciousness, further reform continues to be confronted by the formidable ideological and institutional obstacles

See also Potter B. Pitman, *Legal Reform in China: Institutions, Culture, and Selective Adapta-*

rewritten in 1982.³ The revision included broad statements of “fundamental rights and duties of citizens,”⁴ including the declaration in Article 41 of the right to compensation if one’s legal rights are violated by the government. In 1986, the Sixth National People’s Congress enacted the General Principles of Civil Law of the People Republic of China (“1986 Code”).⁵ The 1986 Code is now undergoing comprehensive revision: The Standing Committee of the National People’s Congress (the national legislature) issued a comprehensive draft revised civil code for discussion on December 17, 2002 “Standing Committee Discussion Draft”).⁶

The pace of code revision is reminiscent, as is the document, of the American Law Institute’s Restatement process. Discussion in China of the 2002 Standing Committee Discussion Draft has recently centered on the chapter on property rights. Passed on March 16, 2007,⁷ after seven drafts, the property rights chapter has been the source, one can readily understand, of much more controversy than torts is likely to generate.⁸ Chapter

tion, 29 LAW & SOC. INQUIRY 465 (2004) (reviewing STANLEY B. LUBMAN, *BIRD IN A CAGE - LEGAL REFORM IN CHINA AFTER MAO* (1999) and RANDALL P. PEERENBOOM, *CHINA’S LONG MARCH TOWARD RULE OF LAW* (2002) and stating: “Lubman and Peerenboom both remind students of Chinese law not to confuse what appear to be familiar institutional forms in the operation of the Chinese legal regime with the acceptance of related international norms.”).

3. See Xian Fa [Constitution] (1982) (P.R.C.) (promulgated Dec. 4, 1982 by the Fifth National People’s Congress of the P.R.C.). English version available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Feb. 10, 2007).

4. Xian Fa [Constitution] arts. 33–56 (1982) (P.R.C.).

5. See Whitmore Gray & Henry Ruiheng Zheng, trans., *General Principles of Civil Law of the People’s Republic of China*, 52 LAW & CONTEMP. PROBS. 27 (1989) [hereinafter Gray & Zheng, *General Principles*], and Whitmore Gray & Henry Ruiheng Zheng, trans., *Opinion (for Trial Use) of the Supreme People’s Court on Questions Concerning the Implementation of the General Principles of Civil Law of the People’s Republic of China*, 52 LAW & CONTEMP. PROBS. 59 (1989).

6. *People’s Republic of China Civil Law (Draft)*, Dec. 17, 2002 (referred to as “Standing Committee Discussion Draft” or “Discussion Draft”).

7. Property Rights Law of the People’s Republic of China, passed Mar. 16, 2007, by the 5th Session of the 10th National People’s Congress, http://news.xinhuanet.com/politics/2007-03/19/content_5866990.htm (last visited Mar. 23, 2007).

8. See Joseph Kahn, *A Sharp Debate Erupts in China Over Ideologies*, N.Y. TIMES, Mar. 12, 2006, § Technology, at 1 (noting that debate has been prolonged by reactions to open letter by Peking University Professor Gong Xiantian criticizing draft code for failing to repeat the talismanic phrase that “socialist property is inviolable”). This debate has continued and Professor Gong has gathered supporters. His most recent open letter, insisting that the current draft violates the constitutional recognition of the sacred character of social property, appears on a website called “Mao Flag,” dedicated to the

8 - Tort Law has not yet come up for formal discussion, but tort law has been the subject of much scholarly effort, and at least three alternative drafts of the chapter have been offered by scholars.⁹

The 1986 Code contained one hundred fifty-six articles in all. It included chapters on basic principles and objectives (to protect the lawful civil rights and interest of citizens, legal entities, and to regulate civil relations), the status of natural persons (including the competent and the incompetent, households, and partnerships of individuals), the status of legal persons (recognizing legal persons as competent to perform civil acts and to independently enjoy civil rights and assume civil duties), defining civil acts, civil rights (property, contracts, intellectual property, and personal rights including right to life and health, good name, and the freedom to marry), civil liability (generally, and for contracts and torts), time limits, and the application of law to foreign civil relationships.¹⁰

CHAPTER 8 – TORT LAW

The 2002 Standing Committee Discussion Draft code revision, like the U.S. Restatements, affirms, modifies, and elaborates existing rules based on experience since the last promulgation. Like U.S. Restatements, the revision seeks to clarify, simplify, and improve the law; and, like U.S. Restatements, each new proposed draft grows longer. The Standing Committee's discussion Draft doubles the 1986 Code tort liability provisions from thirty-four articles to sixty-eight articles, which succinctly state basic principles of tort liability.

restoration of Mao Tse Deng thought, which may mark him as a fringe actor; but, as Professor Don Clarke has observed on the Chinese Law Professor Blog, Gong Xiantian has often attracted the attention of the official press, such as *People's Daily*. He has now reportedly obtained several hundred co-signers for his latest letter of protest. See Prof. Clarke's blog post of Dec. 15, 2006, and the open letter on the Mao Flag website, http://www.maoflag.net/Forum_showNote.asp?Board_ID=1-2&ID=203217; http://lawprofessors.typepad.com/china_law_prof_blog/ (last visited Dec. 15, 2006.) Compare People's (Renmin) University Law School Dean Wang Liming's recent commentary on the dispute: *Why the Draft Revised Law on Property Relations Fully Conforms to the Constitution*, *Peking University Newsnet*, Feb. 8, 2007, <http://www.acla.org.cn/pages/2007-2-8/s38276.html> (last visited Feb. 10, 2007.)

9. See discussion of drafts by Professor Zhang Xinbao, and Dean Wang Liming, *infra*.

10. See Gray & Zheng, *General Principles*, *supra* note 5.

The Standing Committee Discussion Draft's tort liability chapter is divided into sections on general provisions, compensation for harm, defenses, motor vehicle accident liability, environmental pollution liability, product liability, liability for ultrahazardous activity, liability for damage caused by animals and by objects, and special provisions such as liability of persons with diminished capacity and liability of website operators. The tort chapter of the Standing Committee Discussion Draft offers broad guidance while deferring to more specific provisions of laws such as those on product quality¹¹ and environmental protection.¹²

Codification movements have attracted the attention of scholars,¹³ but academics with whom the author has spoken have also expressed skepticism over the wisdom of further codification at this time, feeling that the judicial system needs to be strengthened and a larger body of decisions developed before further codification occurs.¹⁴ Such delay seems an unlikely prospect. A discussion draft by the Standing Committee—particularly a well-written one as is the tort law chapter—creates momentum. And the protracted and vigorous public debate over whether the 2002 Standing Committee Discussion Draft undermines the constitutionally declared “sacred and inviolable” character of socialist public property¹⁵ only gives more momentum to the codification process.

Much of the exploration of the topic of tort law has taken place through the journal *Si Fa (Private Law Review)* and other publications of Peking University Press, such as the translation of

11. See, e.g., Regulations of Shanghai Municipality on the Supervision Over Product Quality (1998), available at <http://www.shzj.gov.cn/english/policy/rsopq.jsp>. For a discussion of evolution and current status of P.R.C. national law on product quality, see generally JIANGSHENG LI, LAW ON PRODUCT QUALITY CONTROL AND PRODUCT LIABILITY IN CHINA 13–69 (2006).

12. 《中华人民共和国环境保护法》已由中华人民共和国第七届全国人民代表大会常务委员会第十一次会议于 1989年12月26日通过，自公布之日施行。

中华人民共和国主席 杨尚昆 1989年12月26日，

P.R.C. Environmental Protection Law, 7th National People's Congress, promulgated by the Standing Committee of the NPC Dec. 26, 1989, available in Chinese at http://www.law-lib.com/law/law_view.asp?id=6229 (last visited Feb. 15, 2007)

13. Xie Huaishi, *A Study of the Civil Code in Civil Law Continental Countries*, 1 *SI FA [PRIVATE LAW REVIEW]* (2000) (hereafter *SI FA*); Wei Leijie & Wang Mingsuo, *Codification of Civil Law, Deconstruction of Code and Reconstruction of Code — A Review on the Two Hundred Years Development of Civil Code*, 10 *SI FA* 58 (2005).

14. See, e.g., Yi Jiming, *Codification of Civil Law and Its Limits*, 3 *SI FA* 102 (2002).

15. Xian Fa [Constitution] art. 12 (1982) (P.R.C.).

the collection of essays edited by Gerald Postema, *Philosophy and the Law of Torts*.¹⁶ Postema's volume brings to the attention of Chinese scholars a wide range of torts theorists, including corrective justice theorist Jules Coleman, Benjamin Zipursky, and Arthur Ripstein, who emphasize the private law structure of tort law as a right of recovery not for risk, but for risk of injury realized, Gregory Keating, who espouses a tort law concept rooted in the social contract, and Mark Geistfeld, who argues that economic analysis complements, rather than competes with, a moral theory of tort law that promotes and protects liberty and security interests. *Si Fa* has also translated recent U.S. scholars' debates about the liability rules for drugs and medical devices in the Restatement of the Law of Product Liability, and difficulties federal regulators encountered in controlling tobacco use.¹⁷

It is a commonplace when among Chinese legal scholars and law students to hear talk of Guido Calabresi, Richard Posner, and Ronald Coase, whose seminal works brought the economist's perspective where it had never been—to unraveling the mysteries of the sometimes cacophonous common law decision-making process.¹⁸ It is, of course, easy to understand why a system that is shedding the economic determinism of Marxism and embracing the market would turn to law and economics approaches such as that of Calabresi, Coase, and Posner. It is therefore somewhat surprising that the language of the Standing Committee Discussion Draft lacks the ring of the economist's

16. PHILOSOPHY AND THE LAW OF TORTS (Gerald J. Postema ed., 2001).

17. *Si Fa* has translated into Chinese, *inter alia*, George W. Conk, *Is There a Design Defect in the Restatement (Third) of Torts: Products Liability?*, 109 YALE L.J. 1087 (2000); James A. Henderson, Jr. & Aaron D. Twerski, *Drug Designs Are Different*, 111 YALE L.J. 151 (2001); George W. Conk, *The True Test, Alternative Safer Designs for Drugs and Medical Devices in a Patent-Constrained Market*, 49 UCLA L. REV. 737 (2002); Margaret Gilhooley, *Tobacco Unregulated: Why The FDA Failed, And What To Do Now*, 111 YALE L.J. 1179 (2002).

18. See GUIDO CALABRESI, *THE COSTS OF ACCIDENTS* (1970) (explaining the institution of tort law as a means of reducing the societal cost of accidental injuries); Richard A. Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29, 33 (1972) (arguing dominant function of the fault system is to generate rules of liability that . . . will bring about . . . the efficient level . . . of accidents and safety"); Ronald G. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960) (viewing torts as a form of conflict management, the author illustrated how bargaining between parties in conflict, instead of regulation, could produce at least equal results with far lower "transaction costs"). Under the influence of Coase and the Chicago School, tort litigation, which has high "transaction costs," fell into disfavor for many, its instrumental value discounted by the associated costs.

perspective. The Draft sounds rather like Jules Coleman's corrective justice or Benjamin Zipursky and John Goldberg's civil recourse schools of thought, both of which see tort law as a means of correcting legal wrongs, rather than a means of seeking market-based adjustments in competition for scarce resources.¹⁹ That "(t)ort law is first and foremost a law of responsibilities and redress" as Goldberg and Zipursky put it,²⁰ rests very comfortably with the traditional language of Chinese law, which emphasizes as its purposes "to preserve the order of heaven, maintain the dynasty, and keep the balance or harmony of nature."²¹ The Standing Committee Discussion Draft, like Goldberg and Zipursky's discussion of tort, identifies "loci of responsibility," specifying burdened relationships—those of actors, owners, managers, transporters, manufacturers, employers, etc., with persons to whom duties of care are owed. The Standing Committee Discussion Draft's approach is also consistent with the mutuality of rights and responsibilities that the P.R.C. Constitution expresses,²² an approach that coheres with the traditional Chinese view that both a principle and its converse are required for full expression of a concept. The Chinese approach departs from our often atomistic view of rights that emphasizes rights as either sword or shield, rather than as organically linked with responsibilities.²³

19. Compare JULES A. COLEMAN, *RISKS AND WRONGS* (1992) (viewing torts as corrective justice—repair of harm done), with Benjamin C. Zipursky, *Rights, Wrongs, and Recourse in the Law of Torts*, 51 *VAND. L. REV.* 1 (1998) (identifying and analyzing the idea of rights, duties, and relational wrongs in tort law).

20. John C.P. Goldberg & Benjamin C. Zipursky, *Accidents of the Great Society*, 64 *MD. L. REV.* 364 (2005).

21. Ganzhi Di, Ph.D., *Chinese Linguistic Features Employed in the Language of Verdicts in Traditional Chinese Courts*, (2004) (unpublished paper).

22. See Xian Fa [Constitution] Ch. II, *The Rights and Duties of Citizens* (1982) (P.R.C.).

23. See, e.g., MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* 14 (1991). Glendon notes that the most distinctive features of rights dialect in the United States are exactly those that are most conspicuously:

[I]n tension with what we require in order to give a reasonably full and coherent account of what kind of society we are and what kind of polity we are trying to create: its penchant for absolute, extravagant formulations, its near-aphasia concerning responsibility, its excessive homage to individual independence and self-sufficiency, its habitual concentration on the individual and the state at the expense of the intermediate groups of civil society, and its unapologetic insularity. Not only does each of these traits make it difficult to give voice to common sense or moral intuitions, they also impede development of

The Standing Committee's Discussion Draft tort chapter begins: "One who through his fault causes bodily injury or damage to the property of another shall bear tort liability" (*youyu guocuo/qinhai taren/ renshen caichan/yingdang chengdan / qinquan zeren*). The sentence expresses in classic four-character phrases the general ethical principle on which liability is founded.²⁴ The use of traditional four-character phrases, parallel and balanced structures, helps to evoke the value of societal harmony (rather than interest-group competition), which is a current governmental theme as China seeks somehow to reconcile the yin-yang of social ownership and control with the individualistic entrepreneurial fervor that now grips much of China.

Section 1: *General Provisions*, Article 1 thus states the elementary ethical principle of the wrongdoer's responsibility to the injured. It does not hint of the "social engineering," "wealth maximizing," or other instrumentalist conceptions of tort law that Goldberg criticized in his essay, *Twentieth Century Tort Theory*, which appeared in Chinese translation in *Si Fa* in 2005.²⁵ This law of rights and responsibilities is surprising, because a society in which collectivist revolutionaries have given way to entrepreneurial vigor seems likely instead to adopt a view that emphasizes not assertions of personal responsibility, but a social utilitarian approach that frames the collective good as the justification for limitations on individual responsibility. Such an approach may yet prevail, but the broad principles of the draft code are not a path to that concept. The Standing Committee's Discussion Draft emphasizes from the start the principle of responsibility for wrongful conduct. The Standing Committee Discussion Draft also describes a full panoply of remedies for personal rights violations, including restitution, apology, and injunctive relief as well as, of course, the victim's right of

the sort of rational political discourse that is appropriate to the needs of a mature, complex, liberal, pluralistic republic.

24. 第一条 由于过错侵害他人人身、财产的，应当承担侵权责任。依照法律规定，推定侵权人有过错的，受害人不必证明侵权人的过错；侵权人能够证明自己没有过错的，不承担侵权责任。

Article 1. One who through his fault causes bodily injury or damage to the property of another shall bear tort liability. (literally: because of fault/ injure another/ bodily property/should bear/right-violation responsibility. Where the law stipulates that a tortfeasor is presumed to be at fault, the victim need not prove the tortfeasor to be at fault; if a tortfeasor can prove himself to have no fault, he has no liability in tort).

25. See John C.P. Goldberg, *Twentieth Century Tort Theory*, 91 GEO. L.J. 213 (2003), 9 SI FA 268 (2005).

compensation for harm done.²⁶ Article 8, for example, states: "One who causes bodily injury or property damage to another shall, as a tortfeasor, pay compensation for the damage done."²⁷

A complete statement in Chinese style includes its converse, conveying syntactically the sense of balance and harmony that is the hallmark of good governance. Thus, in Article 1, Clause 2, a rebuttable presumption is described, explaining that a victim need not prove the tortfeasor (right-violator) to be at fault; but if a tortfeasor can show that (s)he is without fault, (s)he bears no tort liability.²⁸

It is noteworthy too that the Standing Committee Discussion Draft employs the expression "tort liability," and not the broader formulation "civil liability," an expression that would apply to contract law as well as tort. The Standing Committee Discussion Draft makes clear that the responsibility described in this Chapter is for those who have been wronged—even if the responsibility of the actor is stipulated as a matter of law, even absent fault.²⁹

Antecedents of The Chinese Civil Code

Antecedents of the character of the draft revised civil code may be found in the mathematical inspiration of the civilian tradition. China's introduction to Western science came via the late sixteenth, early seventeenth century Italian Jesuit missionary Matteo Ricci, known in China as Li Madou.³⁰ Ricci, eager to spread the Gospel, gained the attention of the Emperor and the rulers of China by importing advanced lenses, clock-making, and astronomical skills; but most important was his translation (with Chinese convert and collaborator Xu Guangqi) of the first five

26. See Standing Committee Discussion Draft, Chapter 8: Tort Law, art. 4, *infra*.

27. 第八条 侵害他人人身、财产造成损害的, 侵权人应当赔偿损失。

28. 第一条

依照法律规定, 推定侵权人有过错的, 受害人不必证明侵权人的过错; 侵权人能够证明自己没有过错的, 不承担侵权责任。

Article 1.

Where the law stipulates that a tortfeasor is presumed to be at fault, the victim need not prove the tortfeasor to be at fault; if a tortfeasor can prove himself to have no fault, he has no liability in tort.

29. Standing Committee Discussion Draft, art. 2.

30. See generally JONATHAN SPENCE, *THE MEMORY PALACE OF MATTEO RICCI* (1985).

books of Euclid's *Geometry*.³¹ Its "formal logical system," Albert Einstein emphasized, was fundamental to the development of modern science, but was absent in traditional Chinese mathematics. The "astonishing thing," said Einstein was not that the Chinese failed to develop it, but that anyone ever had.³²

The profound impact of this introduction of Euclid can be felt in China's embrace of the Civil Law tradition, which takes the view that:

Faith in human reason altered the whole mode of discourse current in political and social philosophy in the late 1600's. Hobbes, Spinoza, and Pufendorf, though their purposes differed, "had in common a method which derived from central postulates a series of consequences in a descending level of generality, rigorously organized into a system of mathematical forms of logic." . . . If human reason could guide the course of human affairs, then the Civil Code was a product and a tool of that reason. Sagnac captured this rationalistic spirit of the code in the following passage:

The Civil Code should be simple and clear, like the laws of nature. It must be reduced to a small number of articles that flow logically from general principles of the new democratic society. The individual will know the laws that govern him; he will be delivered from the subtleties and infinite complications that deceivers invent at his expense.³³

The draft Civil Code follows this prescription. The Standing Committee's Discussion Draft employs language that in its plainness would do well as an illustration of "plain English style" in Strunk & White's classic, *The Elements of Style*.³⁴ It employs the

31. It was not a one-way street. Ricci also translated into Latin the works of Confucius. In fact, the romanization of the philosopher's name is Kong Fuzi.

32. DANIAN HU, CHINA & ALBERT EINSTEIN 5 (2005) (recounting the introduction by Ricci and other Jesuits to China of Western geometry, science, astronomy, and technology, including advanced lenses and clocks); see also LIONEL M. JENSEN, MANUFACTURING CONFUCIANISM: CHINESE TRADITIONS AND UNIVERSAL CIVILIZATION (1997) (The sixteenth and seventeenth century Jesuit missionaries' construction of the concept of Confucianism as a mode of mediation between European Christian humanism and Chinese intellectual and ethical traditions is brilliantly explored).

33. Shael Herman & David Hopkins, *Perspectives on Code Structure: Historical Experience, Modern Formats, and Policy Considerations*, 54 TUL. L. REV. 987, 998-99 (1980) (quoting P. SAGNAC, LA LÉGISLATION CIVILE DE LA RÉVOLUTION FRANÇAISE (1789-1804) at 385 (1898)).

34. WILLIAM STRUNK, JR. & E.B. WHITE, THE ELEMENTS OF STYLE, ix (1959): Vigorous writing is concise. A sentence should contain no unnecessary words,

balanced structures that are characteristic of Chinese expression, and it sets forth primarily basic principles from which specific applications and interpretations will be derived by courts and commentators. The Draft commences in Section 1, Article 1 with a statement of basic fault-based liability principles, with the burden of proof generally placed on the victim, followed in Article 4 by a statement of available remedies and applications to various categories, such as landowners, managers, transporters, motor vehicle owners and operators, manufacturers, and operators of nuclear facilities.

Though fault-based, the discussion draft does recognize a form of strict liability. Thus, Section 7: Ultrahazardous Activity, imposes responsibility on actors without requirement of proof of fault. It offers only two defenses—that the harm was due to an intentional act of the victim, or that it was due to an “irresistible force”—a *force majeure*.³⁵

The Draft generally eschews detail in favor of general principles, providing in Section 1, Article 7 that courts shall look to more detailed codes such as the Product Quality Law and the Environmental Protection Law, both of which contain specific requirements for standards of conduct.³⁶ Thus, as is typical, Section 6: Products Liability, begins in Article 35 with a simple statement of principle: “If a defect in a product causes bodily injury or property damage, the manufacturer bears tort liability,”³⁷ followed by a series of defenses. But the deference stated in Section 1, Article 7 evokes the Product Quality Law enacted in Shanghai. It describes principally what U.S. citizens would call

a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short, or that he avoid all detail and treat his subjects only in outline, but that every word tell.

35. 第七章 高度危险作业责任

Chapter 7. Liability for Ultrahazardous Activity

第四十一条 从事高空、高压、易燃、易爆、剧毒、放射性等对周围环境有高度危险的作业造成他人损害的，应当承担侵权责任。如果能够证明损害是由于受害人故意或者不可抗力造成的，不承担侵权责任。

Article 41. If one injures another by engaging in activity involving work at a height, high voltage, highly combustible materials, explosives, radiation, or the like which is highly dangerous to the surroundings, he shall bear tort liability. But if it can be proven that the damage is due to the victim's intentional act or is caused by *force majeure* [an irresistible force], tort liability shall not be imposed.

36. See *supra* notes 9 and 10.

37. 第三十五条 因产品存在缺陷造成人身、财产损害的，生产者应当承担侵权责任。

manufacturing defects and inadequate warnings and instructions.³⁸

The Broad Interpretive Powers of the Supreme People's Court

More specific provisions implementing or qualifying the Code, however, are not simply the province of more detailed legislation or of administrative regulations.³⁹ Unburdened by the "case or controversy" requirement of the U.S. Constitution, the Supreme People's Court of the P.R.C. can issue "Interpretations" unconstrained by the requirement of ruling on a particular case; and it regularly does so. Thus, the Supreme People's Court has issued extensive Interpretations, detailed rulings on such matters as evidence and burden of proof,⁴⁰ compensation for emotional injury,⁴¹ trial of compensation issues in personal injury, and wrongful death cases.⁴² These Supreme People's Court Interpretations announce the kinds of determinations that U.S. legal scholars would expect from statutes or administrative regulations, or to perhaps be offered in broad pronouncements made in the course of case-by-case adjudication.⁴³ For example, the

38. See Regulations of Shanghai Municipality on the Supervision Over Product Quality, *supra* note 11.

39. See, e.g., *Railway Court Suggests an Increase in Traveler Compensation*, China Law Digest, Vol. 2, Issue 11, <http://www.chinalawdigest.com/> (last accessed Dec. 26, 2006) *Fu Shasha*, Oct. 27, 2006, JINHUA SHIBAO [BEIJING TIMES], Oct. 27, 2006 <http://www.jinghua.cn/news/20061027/n101966.shtml>.

Beijing Railway Court has suggested that the Ministry of Railways raise the cap on compensation for travelers' personal injuries. Currently, the Ministry of Railways has already adjusted the corresponding standard for compensation, and has submitted it to the State Council for approval.

In 1994 the Ministry of Railways limited the liability of railway transportation enterprises for travelers' personal injuries to 40,000 RMB.

40. 最高人民法院关于民事诉讼证据的若干规定

Supreme People's Court, Several Rules of Evidence Concerning Civil Litigation, approved Dec. 6, 2001, available at <http://www.law-lib.com/law/law-view.asp?id=16829>. For English-language commentary on the rules, see Mo Zhang & Paul J. Zwier, *Burden of Proof: Developments in Modern Chinese Evidence Rules*, 10 TULSA J. COMP & INT'L L. 419 (2003).

41. 最高人民法院关于确定民事侵权精神损害赔偿责任若干问题的解释

Oct. 10, 2001, Interpretation of the Supreme People's Court Regarding Some Questions in Determining Compensation for Emotional Injury. No. 120-68. <http://www.court.gov.cn/lawdata> (last accessed Dec. 16, 2006).

42. 最高人民法院关于人身损害赔偿案件适用法律若干问题的解释

Interpretation of the Supreme People's Court of Some Issues Concerning the Application of Law in Cases of Compensation for Personal Injury, Dec. 4, 2003 [hereinafter Interpretation on Personal Injury Compensation].

43. Classic examples in U.S. jurisprudence would be the California Supreme

measure of damages in death cases is provided in the December 4, 2003 Interpretation:

Article 29. Compensation for death is calculated on the basis of 20 times the previous year's average net income of urban residents in the city where the court is located, or the average net income of rural residents where the court is located. However, if the decedent is 60 or over, compensation is reduced by one year for each year over 60, provided that the compensation is based on 5 years for decedents 75 or over.

Article 30 adds that if the party seeking damages can prove that the average cost of living is higher where the party is domiciled or operating, then damages may be calculated based on the higher standard.⁴⁴

Unlike the U.S. system in which damages are individualized, based on the principle of compensation making the victim whole, in China, the Supreme People's Court has decreed the use of geographic norms, employing average net income, with an age adjustment. The Chinese system of regional categorization has a leveling effect, raising some and holding down others, like U.S. law employs in such administrative systems as workers compensation. U.S. law imposes maximums in the statutory workers compensation systems, or sets compensation at a percentage of the statewide average weekly wage, but does not set compensation in the tort system by such categorical determinations. The baseline common law tort rule is that the wrongdoer is obligated to make the victim whole.⁴⁵

Court's embrace of "strict liability in tort" for defective products in *Greenman v. Yuba Power Products*, 377 P. 2d 897 (Cal. 1963) or the U.S. Supreme Court's landmark evidence ruling which invigorated the inherent gatekeeping authority of trial judges in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

44. Interpretation on Personal Injury Compensation, *supra* note 40.

45. See 1-1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 1.03 (1994), stating:

A compensation system, unlike a tort recovery, does not pretend to restore to the claimant what he or she has lost; it gives claimant a sum which, added to his or her remaining earning ability, if any, will presumably enable claimant to exist without being a burden to others.

If our compensation theory is correct, then the amount of compensation awarded may be expected to go not much higher than is necessary to keep the worker from destitution. This is indeed so

Up to a certain point, the amount of compensation for disability depends on the worker's previous earning level, for most acts award a percentage of average wage, somewhere between a half and two-thirds. But practically all acts also set a maximum in terms of dollars per week at a level which can hardly be

The Draft also adds a few prescriptions unexpectedly specific for a general code, such as Articles 63 and 64, which establish the right of one injured by tortious material published on a website to demand of the website operator that the material be removed and the infringer's registration information be provided. Oddly, however, the Standing Committee Discussion Draft fails to address some categories one would expect it to cover, including medical malpractice and professional responsibility—gaps quickly addressed by scholars responding to the Draft.

Alternative Drafts Emerge

The Standing Committee's efforts inspired competing drafts. Describing his effort, with customary academic gentility, as a "suggested draft," Professor Zhang Xinbao of the Institute of Law, Chinese Academy of Social Sciences, drafted ninety-three proposed articles. Professor Zhang's version—published in June 2002, six months before the date of issuance of the Standing Committee Draft—provides greater elaboration of the general principles and adds explicit recognition of certain torts not recognized in the Standing Committee draft.⁴⁶ Professor Zhang would add to the December 17, 2002 official discussion draft articles recognizing the torts of false imprisonment,⁴⁷ commercial

termed anything but subsistence. The hardships that earlier attended the imposition of fixed dollar maximums have been markedly alleviated by the rapid spread of sliding scale maximum limits, tied usually to the state's average weekly wage. A smaller number of states have adopted cost-of-living adjustment systems, under which existing awards are increased to take account of inflation.

46. 张新宝, 《中国民法典- 侵权行为发编草案建议稿》理由概说

Zhang Xinbao, *China's Draft Civil Code - Chapter on Liability for Tortious Conduct - A Suggested Version, with Analytic Discussion*, 3 S1 FA 14 (2002).

47. 第26条[对人身自由的侵害]

剥夺或限制公民人身自由的, 受害人有权请求停止侵害、赔礼道歉和适当的损害赔偿。受害人受到重大精神损害或者受到身体、健康损害以及财产损失的, 加害人应当承担第25条规定的民事责任。

Article 26. [Violation of Personal Liberty]

Where a citizen's personal liberty is taken away by force or other limitation, the victim shall have the right to demand the infringement cease, a full apology, and appropriate compensation for harm.

If the victim suffers serious emotional harm or health effects, the injurer bears civil liability for the harm to health as well as property damage, according to the provisions of Article 25 [which include medical expenses, wages, loss, and the like; and further provide that: "Where the harm is physical injury to a minor that causes the child to be handicapped or brings other serious consequences, the minor's parents or foster par-

libel,⁴⁸ false and improper consultative advice,⁴⁹ third party interference with contract,⁵⁰ fraud,⁵¹ interference with business activity,⁵² misappropriation of business assets including name, account information, etc.,⁵³ malicious prosecution,⁵⁴ and a new

ents themselves have the right to claim appropriate compensation for their emotional distress.”].

48. 第32条 【商业诽谤】

诽谤他人的不动产、动产、无形财产或者服务，造成他人经济损失的，应当承担赔偿责任。

Article 32 [Commercial Slander/Libel]

One who, by slander or libel of another's real property, chattel, intangible property, or service, causes economic loss to another shall bear responsibility to pay compensation.

49. 第33条 【不实信息与不当咨询意见】

负有信赖义务的人提供不实信息或不当咨询意见使受害人遭受损害的，应当承担赔偿责任。

Article 33 [Misrepresentation and Improper Advice]

If one with a fiduciary duty provides false information or improper consultative advice and the victim suffers a loss he shall bear responsibility to pay compensation.

50. 第34条 【第三人侵害合同】

第三人以引诱、胁迫、欺诈等方式使合同一方当事人违反合同的，合同对方当事人有权请求该第三人赔偿损失。

Article 34 [Third Party Interference with Contract]

If a third party induces, coerces, deceives, etc. another to breach a contract, the other party to the contract has the right to demand the third party compensate for the loss.

51. 第35条 【欺诈和胁迫】

以欺诈、胁迫手段取得他人钱财或者使他人作出不利于自己的决定而受到损害的，受害人有权请求加害人返还财产、赔偿损失。

Article 35 [Fraud and Coercion]

If one by means of fraud or coercion obtains the money of another or causes another to make decisions harmful to himself, the victim has the right to demand the injurer return the property, and pay compensation.

52. 第36条 【妨害经营】

妨害他人正常经营活动造成损害的，受害人有权请求加害人停止侵害、赔偿损失。

Article 36 [Interference with Business Activity]

If one interferes with another's normal/legitimate business activities and causes loss, the victim has the right to request that the tortfeasor stop the infringement and pay compensation for the loss.

53. 第37条 【窃用姓名、帐号、密码等进行交易】

窃用他人姓名、帐号、密码等进行交易造成他人损害的，受害人有权请求加害人赔偿损失。即使不能证明此等交易造成受害人实际损失，加害人从此等交易中获得的利益也依据本法关于不当得利的规定返还给受害人。

Article 37 [Usurpation of Other's Name, Accounts, or Code to do Business]

If by means of deceit one uses another's name, books of account, secret codes, or carries out a transaction, etc. causing loss to another, the victim has the right to demand that the injurer pay compensation for the loss. Even if it is not possible to prove in this kind of situation that the victim sustained an actual loss, the profit gained from such business by the tortfeasor shall be returned to the victim.

对交易安全负有义务的人应当按照本法第13条的规定承担补充赔偿责任，但能够证明自己没有过错的除外。

One who assumes responsibility for the safety of an undertaking shall bear the responsibility of paying unless he can prove himself not at fault.

54. 第39条 【恶意起诉、告发】

section on professional responsibility. The professional responsibility section includes any professional or specialist, encompassing legal malpractice, medical malpractice, and the responsibility of those in custodial relationships, such as at mental hospitals, nurseries, or schools.⁵⁵

One notices first in Professor Zhang's draft his substitution of the phrase *minshi zeren* "civil liability" for the phrase *qinquan zeren* "tort liability" (literally right violation responsibility) in the Standing Committee Discussion Draft. Tort liability is, of course, a form of civil liability, but it is a particular form. By recognizing that it is a form of responsibility grounded in wrongdoing, the phrase "tort liability" makes clear that this liability is not just a regulatory shift of burden, but rather a private law mechanism—in which not the State, but the aggrieved, and not the public, but the wrongdoer, are the actors. Use of the phrase *qinquan zeren* marks tort liability as a distinctive field of law, departing from the civil law mode in which tort liability is treated as a residual category—whatever is neither criminal nor contractual. Preservation of the distinctly private law character of the tort regime is

恶意对他人提起民事诉讼或者进行违法犯罪告发，起诉或告发的事实被证明不成立，并且给受害人造成财产损失的，应当承担赔偿责任。

Article 39 [Malicious Prosecution or Information Against Others]

If one maliciously brings a civil suit against another or accuses another of a crime, lodges a complaint, or prosecutes an action against another and the proof fails, causing harm to the victim, he shall compensate for the loss.

恶意起诉、告发行为对受害人的名誉、隐私或者其他人格尊严构成严重损害的，适用本法第27条、28条的规定。

If the malicious suit or accusation harms the victim's reputation, privacy, or other aspect of personal dignity, causing serious harm, the provisions of Article 27 [infringement of right of publicity], and Article 28 [right of privacy] of this law shall apply.

55. Articles 40–48. Professional Responsibility

第3节 专家责任

第40条 【专家与专家的执业活动】

具有专业知识或专门技能，依法取得国家认可的专业资格证书和执业证书、向公众提供专业服务的人，为本法所称的专家。

Section 3 Specialist Liability

Article 40 [Expert's and Specialist's activities]

A person who has a high degree of knowledge of or skill in a certain subject, qualified according to law to get qualification certificates and professional certificates, and who provides professional service to the public is named a specialist in accordance with this law.

专家以专业知识或专门技能向公众提供服务，为本法所称的专家执业活动。专家从事执业活动应当遵循相关的法律、法规、行业规范和操作规程等。

One in the business of providing expert or professional knowledge to the public is defined in this provision as a specialist. Specialists in their activities shall follow relevant laws, regulations, professional criteria and operation procedures, etc.

at stake. The Standing Committee Discussion Draft is the clearer on this issue.

Professor Zhang's suggested alternative draft was followed by other proposed alternatives. Another group of legal scholars led by the Renmin University Dean, Wang Liming, has produced another alternative draft of the Civil Code,⁵⁶ which appeared in 2004.

Professor Wang observes that in civil law countries, tort law is usually treated as a derivative of contracts, of the law of obligations. But tort law developed greatly in the twentieth century, he notes; and Chinese tort law is going to learn from common law countries to treat tort law as a distinct field. The basic idea is to combine the general logical principles of the civil law system and the flexible, highly developed and detailed categories of the common law system.⁵⁷

The People's University Draft (translation of which is the next stage in this project)⁵⁸ does not contain the softer "civil liability" formulation of Professor Zhang's draft. Rather, it begins with a well-crafted, straightforward statement of tort as a law of wrongs—though one with a place for strict liability:

「侵权行为应为一 般条款」

Tortious conduct - general principles

民事主体因过错侵害他人人身，财产权利的，应当承担侵权责任。

A legal person or entity which, due to fault, injures another's person or property rights, should bear tort liability.

没有过错，但法律规定应当承担侵权责任的，应当承担侵权责任。

But if, absent fault, the law stipulates that one should bear tort liability, he shall bear tort liability.

民事主体因故意或重大过失侵害他人合法利益的，应当承担侵权责任。

If a natural or legal person's intentional act or gross negli-

56. 中果民法点草按建议高及说明往黎明

Draft Civil Code of China—A Suggested Alternative and Discussion (Wang Liming, ed., China Legal System Publishers) (2004).

57. *See id.* at 498-515.

58. The third alternative draft is the product of Shandong University Professor Liang Huixing and colleagues. It concentrates on tort law. That, too, awaits our attention. *See* LIANG HUIXING, *ZHONGGUO MINFA DIAN CAO AN JIANYI GAO FU LIYOU, QINQUAN XINGWEI BIAN; DRAFT CIVIL CODE OF CHINA, A SUGGESTED VERSION WITH REASONS, Tortious Conduct Chapter* (Law Press, China 2004).

gence harms another's lawful interests, he shall bear tort liability.

过错的概念

The concept of fault.

过错包括故意和过失

Fault comprises both negligent and intentional acts.

行为人有意致人损害或者明知其行为会造成损害仍时时加害行为的，为故意。

An actor who purposely causes loss or acts despite knowing that his conduct always causes harm, acts intentionally.

行为人由于疏忽或者携带（懈怠）而未尽合理注意义务的，为过失。

One is negligent who acts due to carelessness or less than reasonable attention to duty.

过错推定

Presumed fault

法鲁（律）规定施行过错推定的，受害人不必证明加害人的过错。

If the law stipulates that fault be presumed, the victim accordingly need not prove the injurer's fault.

依照前款推定加害人有过错，加害人能够证明自己没过错的，不承担侵权责任。

Correspondingly when the injurer is presumed at fault, if the injurer can prove he is not at fault, he does not bear tort liability.

第一千八百二十六条 [过错责任的免除]

Exceptions to fault liability

加害人明确表示自己有过错的，受害人不必再证明侵权人的过错。

If an injurer acknowledges his fault, the victim need not again prove the tortfeasor to be at fault.

第一千八百二十七条 [侵害人格权]

Violation of personal rights

侵害人格权及合法的人格利益，应当承担民事责任的，应当根据受害法益的性质停止侵害，消除影响，恢复名誉，赔礼道歉并赔偿因此造成的财产损失。造成精神损害的，应当依法承担精神损害赔偿损失。

One who violates personal rights and lawful interests must bear civil liability, and must, in accordance with the nature of the legal interests of the victim, cease the infringement, eliminate the impact of the violation, restore the reputation, make a full apology, and compensate for any property damage. For emotional harm caused, the actor shall bear responsibility to compensate for the emotional injury/loss.

第一千八百二十八条 [侵害死者人格利益]

Violation of the interests of the deceased

侵害死者名誉，姓名，肖像，荣誉，隐私等人格利益，或者侵害遗体，遗骨，墓葬的，应当对死者的近亲属承担停止侵害，赔礼道歉，并赔偿因此造成的财产损失。造成精神损害的，应当依法承担精神损害赔偿赔偿责任。

One who harms/violates a deceased person's reputation, good name, likeness/portrait, honor, personal secrets, and other personal interests, or violates/desecrates the remains or grave of the dead, must, for the next of kin, bear responsibility to stop the violation, offer a full apology, and pay compensation for that harm and for property damage caused. And the actor who causes emotional harm shall, according to law, bear responsibility to pay compensation for that emotional harm.

In the version of Dean Wang Liming and the People's University team, the concept of personal rights and the corresponding right of recourse, as a personal right, seem to be in the ascendant.

CONCLUDING OBSERVATIONS

Formal legislative discussion and enactment await. As we have seen, legal scholars are pressing for greater elaboration of the Code's tort provisions. The U.S. experience may yet inform the code revision discussion in China. The Products Liability Restatement, translated into Chinese by a team based at the Yale China Law Center, is now in print.⁵⁹ Peking University Press has published the translation of works such as Gerald Postema's collection on the philosophy of tort law, under the general editorship of Yi Jiming, the founder and Editor of *Si Fa*. Yi, a resident scholar at the Institute of Law, Chinese Academy of Social Sciences, himself is interested in the current Third Restatement of Torts, Basic Principles. That treatise is at an advanced stage, but the liability of possessors of land has not yet been addressed—an issue that should be of particular interest to Chinese legal thinkers. And the Restatement project for the Law of Economic Loss has now gotten underway, perhaps early enough to inform the discussion in China.

Of course, the Chinese discussion will draw mainly on

59. 美国侵权法重述第三版：产品责任
AMERICAN TORT LAW RESTATEMENT (THIRD): PRODUCT LIABILITY (Law Press 2006).

China's practical experience of the last twenty years. That practice is on a large scale. Recent reports illustrate the point: 1) Since the Administrative Litigation Law was promulgated in 1989, the People's Courts at all levels have heard over one million first-instance administrative cases—grievances against governmental agencies. 2) Among those cases that have been resolved, the plaintiffs have won about thirty percent. 3) Adjustments are underway, such as the recent proposal to adjust the level of compensation for recent migrants not yet officially registered in their new locale, e.g., in southern Guangxi, bordering Vietnam, a peasant injured by a man on a motorbike was held entitled to be compensated at the level of urban workers because, despite his official residence outside Chongzuo City, the injured man had in fact been living and working in the city for ten years.⁶⁰ In western China, the High Court of Chongqing City, on the Yangtze, has announced it will issue guidelines on compensation for traffic accidents. The High Court held that compensation standards for migrant workers who have incomes from steady employment and who have lived in the city for longer than one year should be the same as for urban residents.⁶¹

As with any legal code, Chinese law will change with time. The hope of mathematical, deductive clarity will inevitably yield to experience, which is the life of the law.

When the author mentions this project to others in the United States, it is not uncommon to be asked: "Do they have tort law in China?" Hopefully, this introduction to the scholars' discussion and the translation of the Standing Committee's Discussion Draft's tort liability chapter, of the proposed revised Civil Code of the P.R.C. Draft of December 17, 2002, will contribute modestly to Western knowledge of the development of the rule of law in China.⁶²

60. Tang Guangxi *et al.*, *Guangxi: Migrant Workers Injured in Traffic Accidents Should Be Compensated as Urban Residents*, 1 CHINA LAW DIGEST, Issue 10, Dec. 2005, <http://www.chinalawdigest.com/article.php?aid=540> (last accessed Mar. 14, 2007).

61. Yi Shouhua *et al.*, *Chongqing City: Migrant Workers Injured in Traffic Accidents Should Be Compensated as Urban Residents*, 1 CHINA LAW DIGEST, Issue 10, Dec. 2005 <http://www.chinalawdigest.com/article.php?aid=537> (last accessed Mar. 14, 2007).

62. A Chinese-Pinyin-English version of this translation and an every-word Chinese-Pinyin-English glossary for the Standing Committee Discussion Draft are both available on SSRN at <http://ssrn.com/author=457563>.

《中华人民共和国民法 (草案) 第八编：侵权责任法》

2002 年12月17日

乔治·康克 译*

* © 英文翻译版权属于乔治·W·康克教授。本刊获得版权人授权许可刊发。该翻译由版权人在白海涛、李汉君、谭哲隽等人协助下完成。这里特别致谢如下：如果没有福尔德姆大学法学院的合作者法律博士白海涛、法律硕士、法律博士生（将于2007年获得法律博士学位）李汉君、法律硕士及法律博士生（将于2007年获得法律博士学位）谭哲隽的合作，我不会完成这项工作。这些合作者帮我录入，准备了拼音版，并完成了英文译本的草译。特别要感谢我的汉语老师，即纽约市立大学城市学院亚洲研究系教授姬建国博士，是他激励我，并以古典的教学方式——也就是福尔德姆大学校长最近所称的“将语言简化为语法和词典”的方式——教授我汉语，还向我展示了语言的音乐之美、韵律之雅、音节的对称以及遣词造句。

当然，如果没有《私法》创办者及主编法学博士易继明教授的约稿和邀请，没有法学博士王迁副教授翻译我的文章，就不会激发我对中国以及中国法的兴趣，也就不会有这项工作。同时，感谢在过去两年内邀请过我进行学术访问的华中科技大学法学院、中国社会科学院法学研究所、北京大学法学院、华东政法大学知识产权学院，感谢丹·凯普拉教授和福尔德姆法学院协助研究，感谢美国国务院福布莱特高级访问学者项目，感谢国际交流学者委员会。另外，还要感谢威特摩尔·格雷教授，他翻译的1986年《中华人民共和国民法通则》给了我许多教诲与激励。版权人电子邮箱

PEOPLE'S REPUBLIC OF CHINA CIVIL CODE (DRAFT)

Chapter 8: Tort Liability Law

(Dec. 17, 2002)

*George W. Conk, translator**

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I could not have undertaken this project without my Fordham student collaborators – Hal Blanchard, J.D., Han Jun Li, J.D. expected 2007, and Susan Zhejun Tan, L.L.M., J.D. expected 2008. They transcribed the chapter, prepared the pinyin transliteration, and a first rough draft English translation. The final translation is mine as are any errors.

Special thanks are due to my teacher, Prof. Jianguo Ji, Ph.D., City College of New York. He inspired me, and consented to teach me in the classical mode in which I was trained as a student—what Fr. Joseph McShane, President of Fordham, recently called “reducing the language to grammar and dictionary.” But of course it was more than that. He showed me the music of the language as well as the elegance of its rhythms, paired syllables, and evocative phraseology.

This project would never have happened were it not for the leadership of Yi Jiming, Ph.D., founder and editor in chief of *Si Fa*, Du Ying, Ph.D., editor, and Prof. Wang Qian, LL.M., who reached across oceans and continents to translate my work for *Si Fa*, prompting my own interest in China and Chinese law.

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第一章 一般规定

第一条 由于过错侵害他人人身、财产的，应当承担侵权责任。

依照法律规定，推定侵权人有过错的，受害人不必证明侵权人的过错；侵权人能够证明自己没有过错的，不承担侵权责任。

第二条 没有过错，但法律规定应当承担侵权责任的，应当承担侵权责任。

第三条 二人以上共同侵权造成他人损害的，应当承担连带责任。

第四条 承担侵权责任的方式主要有：

- (1) 停止侵害；
- (2) 排除妨碍；
- (3) 消除危险；
- (4) 返还财产；
- (5) 恢复原状；
- (6) 修理，重作，更换；
- (7) 赔偿损失；
- (8) 消除影响，恢复名誉；
- (9) 赔礼道歉。

以上承担侵权责任的方式，可以单独适用，也可以合并适用。

CHAPTER I. GENERAL PROVISIONS

Article 1. One who through his fault causes bodily injury or damage to the property of another shall bear tort liability.

Where the law stipulates that a tortfeasor is presumed to be at fault, the victim need not prove the tortfeasor to be at fault; if a tortfeasor can prove himself to have no fault, he has no liability in tort.

Article 2. There may be no fault, but if the law stipulates that tort liability should be borne in such cases, tort liability will be imposed.

or: The law may require that tort liability be borne, even in the absence of fault.

Article 3. Two or more persons who together tortiously cause harm to another shall bear joint tort liability.

Article 4. The principal ways to bear liability in tort are:

- (1) stopping the violation or infringement;
- (2) removing obstacles;
- (3) eliminating the danger;
- (4) returning the property;
- (5) restoring to original condition;
- (6) repairing, reworking, replacing;
- (7) compensating for loss;
- (8) eliminating ill effects and rehabilitating reputation;
- (9) making a full apology.

The above ways of bearing tort liability may be applied singly or in combination.

第五条 受害人应当证明侵害行为与损害后果之间存在因果关系。

法律规定应当由侵权人证明因果关系不存在，如果侵权人不能证明的，视为存在因果关系。

第六条 受害人死亡的，受害人的配偶、父母、子女有权要求侵权人承担侵权责任。受害人没有配偶、子女或者配偶、父母、子女死亡的，其兄弟姐妹、祖父母、外祖父母、孙子女、外孙子女有权要求侵权人承担侵权责任。

第七条 有关侵权行为的内容，责任方式、免责事由等，产品质量法、环境保护法等法律另有规定的，依照其规定。

Article 5. The victim must prove the existence of a cause-effect relationship between the injurious conduct and the resulting harm.

Where the law stipulates that a tortfeasor must prove that a cause-effect relationship does not exist, and the tortfeasor is unable to prove that, the law presumes that a causal relationship exists.

Article 6. In case of the victim's death, the victim's spouse, parents, and children have the right to demand that the wrongdoer bear tort liability. If the victim has no spouse or children, or the spouse, parents, and children are dead, his brothers and sisters, paternal grandparents, maternal grandparents, paternal grandchildren, and maternal grandchildren have the right to demand that the wrongdoer bear tort liability.

Article 7. Regarding issues such as standards for defining tortious conduct, ways of imposing liability, and legal defenses, etc., if laws such as the Product Quality Law and the Environmental Protection Law contain specific requirements, then those requirements shall govern.

第二章 损害赔偿

第八条 侵害他人人身、财产造成损害的，侵权人应当赔偿损失。

第九条 因防止、制止他人人身、财产遭受侵害而使自己受到损害的，由侵权人承担赔偿责任，收益人也可以给予适当的补偿。

第十条 侵害他人人身造成伤害的，应当赔偿医疗费，因误工减少的收入等合理的费用。致人残疾的，并应当赔偿残疾用具费、残疾赔偿金；致人死亡的，并应当赔偿丧葬费、死亡赔偿金。

第十一条 因误工减少的收入、残疾赔偿金、死亡赔偿金应当根据受害人的丧失劳动力状况、年龄、受教育程度、职业、收入等因素确定。

第十二条 受害人得到赔偿后发现新病情或者健康严重恶化，赔偿数额明显难以补偿损失，如果证明与侵权人的行为有因果关系的，受害人有权请求增加赔偿费用。

CHAPTER II. COMPENSATION FOR HARM

Article 8. One who causes bodily injury or property damage to another shall, as a tortfeasor, pay compensation for the damage done.

Article 9. If a rescuer, by preventing or avoiding damage to the person or property of another, himself suffers bodily injury or property damage, compensation is owed by the tortfeasor [to the rescuer]. The beneficiary of the action may also give compensation to the actor [, for which the tortfeasor is likewise responsible].

Article 10. A tortfeasor who causes physical injury to another shall pay reasonable compensation for medical treatment expenses, and reduced income due to missed work. For resulting disability, the tortfeasor should compensate the disabled person for prostheses and other useful devices. If death resulted, funeral and burial expenses and compensation for death should be paid.

Article 11. Wage loss, disability compensation, and death benefits shall be determined based on factors (including) the victim's age, degree of disability, level of educational attainment, profession, and income, etc. .

Article 12. If a new illness is discovered that may bring serious deterioration in the health (of the victim) after a victim has received compensation, and the compensation received is clearly insufficient, the victim has the right to request an increase in compensation, if it is proved that there is a causal relationship with the tortfeasor's conduct.

第十三条 侵害他人姓名权、名誉权、肖像权、隐私权等，侵权人应当按照因此获得的利益给予赔偿，也可以按照受害人的损失给予赔偿。侵权人获得的利益或者受害人的损失不能确定的，应当根据侵权行为的情节，给予十万元以下的赔偿。

第十四条 侵占他人财产的，应当返还财产；不能返还财产的，应当折价赔偿。

损坏他人财产的，应当恢复原状或者折价赔偿。

受害人因此遭受其他重大损失的，侵权人并应当赔偿损失。

第十五条 妨害他人行使物权造成损害的，侵权人应当赔偿损失。

第十六条 侵害他人的人格权或者毁损他人具有人格象征意义的特定物品的，受害人有权要求精神损害赔偿。

Article 13. If one violates another's rights - to his good name, reputation, right of publicity (right to one's own likeness), his privacy, etc., the tortfeasor shall give compensation according to the gain he obtained and may pay compensation according to the loss suffered by the victim. If neither the gain of the tortfeasor nor the loss of the victim can be determined, then compensation according to the circumstances of the wrongful conduct shall be given in an amount up to 100,000 RMB.

Article 14. One who trespasses against another's property shall restore the property; if he cannot do so he should reimburse the property's cost.

One who damages the property of another shall restore it to its original condition or pay cash compensation.

If the victim suffers significant consequential damage, the tortfeasor shall also compensate for that loss.

Article 15. Any person who forecloses another person from exercising property rights and causes losses shall compensate the losses.

or: If conduct impairs the property rights of another, the tortfeasor shall pay compensation for the loss.

Article 16. If someone harms the personal dignity of another, or the possessions that particularly symbolize that dignity, the victim has a right to seek compensation for the consequent emotional loss.

第十七条 精神损害赔偿的具体数额应当根据以下因素确定：

- (1) 侵权人的过错程度；
- (2) 侵害的手段、场合、行为方式等具体情节；
- (3) 侵权行为所造成的后果；
- (4) 侵权人获利的情况；
- (5) 侵权人承担责任的经济能力；
- (6) 受诉法院所在地平均生活水平。

第十八条 损害赔偿费用应当一次性支付。一次性支付确有困难的，可以定期支付。

第十九条 因同一侵权行为在造成损失的同时，受害人受有利益的，应当依照有关法律规定从赔偿额中扣除应当扣除的利益。

第二十条 当事人对造成的损害都没有过错的，可以根据实际情况，由当事人分担损失。

Article 17. The following factors shall determine the amount of non-economic damages:

- (1) the tortfeasor's level of fault;
- (2) the means, manner, occasion, and circumstances of the tortious conduct;
- (3) the effects of the tortious conduct;
- (4) the gain by the tortfeasor;
- (5) the tortfeasor's financial ability to bear the liability;
- (6) the average income level in the jurisdiction of the court.

Article 18. Compensation for damages shall be paid in a lump sum. If a single payment puts (the tortfeasor) in financial straits, payment may be made in fixed installments.

Article 19. If the victim receives some benefit as a consequence of the tortious conduct, the benefit received shall be deducted from the compensation awarded, in the manner stipulated by law.

Article 20. If, among parties who have caused harm, no fault can be identified for any particular party, responsibility for the damage shall be apportioned among the parties according to the particular circumstances.

第三章 抗辯事由

第二十一条 因正当防卫造成损害的，不承担侵权责任。正当防卫超过必要的限度，造成不应有的损害的，应当承担适当的侵权责任。

第二十二条 因紧急避险造成损害的，由引起险情发生的人承担侵权责任。如果危险是由自然原因引起的，紧急避险人不承担侵权责任或者承担适当的侵权责任。因紧急避险采取措施不当或者超过必要的限度，造成不应有的损害的，紧急避险人应当承担适当的侵权责任。

第二十三条 在自己的合法权益受到不法侵害，来不及请求有关部门介入的情况下，如果不采取措施以后就难以维护自己的合法权益的，权利人可以采取合理的自助措施，对侵权人的人身进行必要的限制或者对侵权人的财产进行扣留，但应当及时通知有关部门。

错误实施自助行为或者采取自助措施不当造成损害的，应当承担侵权责任。

第二十四条 受害人对于损害的发生也有过错的，可以减轻侵权人的侵权责任。

CHAPTER III. DEFENSES

Article 21. If proper self-defense causes harm, one bears no tort liability. But if the act exceeds the limits of defensive necessity, causing unwarranted damage, tort liability shall be apportioned appropriately (in light of the unwarranted harm done).

Article 22. If avoiding danger causes harm, the one who caused the danger to occur shall bear tort liability for the harm done. In the case of danger arising from natural causes, one who takes emergency action to avoid or reduce the harm bears no tort liability, or may bear appropriate tort liability. If in acting to avoid the urgent danger, one takes measures that are inappropriate, or exceed the limits of necessity, causing unwarranted damage, the emergency actor shall bear appropriate tort liability.

Article 23. Under circumstances in which one suffers unlawful infringement of his legal rights or interests and there is insufficient time to request intervention by a proper agency, and not taking measures would jeopardize one's rights and interests, a right-holder can undertake reasonable self help – such as imposing necessary physical restraint on the wrongdoer or detaining the tortfeasor's property. But he must inform the proper agency without unreasonable delay.

If self help is undertaken in error, or if such measures cause unwarranted damage, the actor must bear tort liability.

Article 24. When the victim is also at fault for the occurrence of the damage, the tort liability of the tortfeasor may be reduced.

第四章 机动车肇事责任

第二十五条 运行的机动车对非机动车或者行人造成损害，该机动车已参加第三者责任强制保险的，由保险公司在保险金额内予以赔偿。损失超过投保金额的部分，由机动车所有人承担损害赔偿赔偿责任，但机动车一方能够证明自己尽到注意义务的，可以减轻或者免除机动车所有人的损害赔偿赔偿责任。

运行的机动车对非机动车或者行人造成损害，该机动车没有参加第三者责任强制保险的，机动车所有人应当承担赔偿责任，但机动车一方能够证明自己尽到注意义务的，可以减轻或者免除机动车所有人的损害赔偿赔偿责任。

(另一方案：在封闭的道路上运行的机动车造成他人损害，机动车所有人有过错的，应当承担损害赔偿赔偿责任。在非封闭的道路上运行的机动车造成他人损害的，机动车所有人不能证明自己没有过错的，应当承担损害赔偿赔偿责任。)

CHAPTER IV. MOTOR VEHICLE ACCIDENT LIABILITY

Article 25. If a moving motor vehicle strikes a non-motorized vehicle or a pedestrian and causes harm, and the above motor vehicle is part of a compulsory third-party (liability) insurance plan, the insurance company, within the limits of insurance, shall pay compensation. Responsibility for loss in excess of the amount of insurance is borne by the owner of the motor vehicle – but if it can be shown that the vehicle operator exhausted safety measures, responsibility to pay compensation for the damage can be reduced or avoided.

When operation of a motor vehicle causes damage to a non-motorized vehicle or a pedestrian, and the motor vehicle does not participate in a mandatory third party insurance plan, the motor vehicle owner is responsible for compensation for the damage. But responsibility to pay compensation for damage can be reduced or avoided if it can be shown that the vehicle operator exhausted [reasonable] safety measures.

Alternate Version: If a motor vehicle while being operated on an open road causes harm to another, and the vehicle operator is at fault he shall bear responsibility to pay compensation for the damage. But if a vehicle operated on a limited access road causes damage and that vehicle cannot show itself to be without fault, the vehicle's operator or owner shall be responsible for paying compensation for the damage.

第二十六条 机动车之间发生碰撞造成他人损害，机动车参加第三者责任强制保险的，由保险公司在保险金额内予以赔偿。损失超过投保金额的部分，由有过错一方的机动车所有人承担损害赔偿责任。

机动车之间发生碰撞造成他人损害，机动车没有参加第三者责任强制保险的，有过错一方的机动车所有人承担损害赔偿责任。

第二十七条 出租、出借的机动车在运行中造成他人损害的，机动车所有人与承租人、借用人承担连带责任。机动车所有人对损害的发生没有过错的，向受害人赔偿后，可以向承租人、借用人追偿。

承租人使用融资租赁的机动车在运行中造成他人损害的，由承租人承担侵权责任。

第二十八条 盗窃的机动车在运行中造成他人损害的，盗窃人应当承担侵权责任，但机动车的所有人对机动车的管理有过失的，应当承担补充赔偿责任。

Article 26. When a motor vehicle collision occurs, causing damage to another, and a motor vehicle is in a mandatory third party liability insurance plan, the insurance company shall pay compensation within the insured amount (insurance policy limits). For the part of the damage in excess of the insured amount, the owner of the vehicle at fault bears the responsibility of paying compensation.

If a collision between motor vehicles causes damage, and the vehicle does not have the mandatory third party liability insurance, the owner of the vehicle at fault bears responsibility to pay compensation for the loss.

Article 27. If a leased or borrowed vehicle is so operated so as to cause damage to another, the vehicle owner, renter, and borrower bear joint liability. A vehicle owner without whose fault damage occurs, after paying compensation to the victim, can seek payment from the renter or borrower.

If a lease-financed vehicle is so operated as to cause damage to another, the lessee bears tort liability.

Article 28. If a stolen motor vehicle is operated so as to cause harm to another, the thief shall bear tort liability; but if the vehicle owner is at fault in managing the vehicle, he shall bear the responsibility for the balance of the compensation owed.

第二十九条 机动车在送交修理、委托保管或者出质期间，承修人、保管人或者质权人擅自驾驶车辆造成他人损害的，承修人、保管人或者质权人应当承担侵权责任。

第三十条 分期付款买卖的机动车转移占有给买方后在运行中造成他人损害的，由买方承担侵权责任。

Article 29. If a motor vehicle is under repair or in the custody and care of another, or is held as security for an obligation, and the repairer, the custodian, or the mortgagee in possession without authorization causes harm to another, then the repairer, custodian, or mortgagee in possession should bear tort liability.

Article 30. In an installment sale, the buyer bears tort liability after the purchaser takes possession of a motor vehicle if the vehicle is operated so as to cause damage to another.

第五章 污染环境责任

第三十一条 因污染环境侵害他人人身、财产的，有关单位或者个人应当承担侵权责任，但法律规定有免责情形的，依照其规定。

第三十二条 排污符合规定的标准，但给他人造成明显损害的，有关单位或者个人应当承担侵权责任。

第三十三条 导致污染的单位或者个人不能证明污染行为与损害后果之间没有因果关系的，视为因果关系存在。

第三十四条 因污染环境对他人造成损害，不能确定具体的加害人的，由与损害后果具有联系的排污单位或者个人根据其排放量的比例承担相应的侵权责任。

CHAPTER V. ENVIRONMENT POLLUTION LIABILITY

Article 31. If environmental pollution causes harm to the person or property of another, the organization or individual involved shall bear tort liability unless the organization or individual is within the legal provisions for exemption from liability.

Article 32. If pollutants are discharged within the stipulated/prescribed limits, yet the discharge results in identifiable/evident harm to another, etc., the organization or individual involved shall bear tort liability.

Article 33. If an agency or person who discharges a pollutant cannot prove that there is no causal relationship between the toxic discharge and consequent damage, a causal relationship shall be presumed to exist.

Article 34. In the case of environmental pollution causing harm to another, where the particular party causing harm cannot be identified, the unit or person shall be responsible for the damage related to the discharge based on the proportion of pollutant discharged.

第六章 产品责任

第三十五条 因产品存在缺陷造成人身、财产损害的，生产者应当承担侵权责任。

生产者能够证明有下列情形之一的，不承担侵权责任：

- (1) 未将产品投入流通的；
- (2) 产品投入流通时，引起损害的缺陷尚不存在的；
- (3) 将产品投入流通时的科学技术水平尚不能发现缺陷存在的。

第三十六条 由于销售者的过错使产品存在缺陷，造成人身、财产损害的，销售者应当承担侵权责任。

销售者不能指明缺陷产品的生产者也不能指明缺陷产品的供货者的，销售者应当承担侵权责任。

第三十七条 因产品存在缺陷造成人身、财产损害的，受害人可以向产品的生产者要求赔偿，也可以向产品的销售者要求赔偿。

产品缺陷由生产者造成的，销售者赔偿后，有权向生产者要求追偿。

因销售者的过错使产品存在缺陷的，生产者赔偿后，有权向销售者追偿。

CHAPTER VI. PRODUCT LIABILITY

Article 35. In case of a defect in a product causing bodily injury or property damage, the manufacturer shall bear tort liability.

If a manufacturer can show one of the following circumstances, it does not bear tort liability:

- (1) The product has not yet been placed into circulation;
- (2) When the product was placed in circulation, the injury-causing defect did not yet exist;
- (3) At the time the product was placed into circulation, science and technology were such that one could not discover the existence of the defect.

Article 36. If a seller's fault causes a product to have a defect, causing injury to the person or property of another, the seller shall bear tort liability.

In the case of a seller unable to identify the defective product's manufacturer and unable to identify the defective product's distributor, the seller shall bear tort liability.

Article 37. If a defect in a product causes bodily injury or property damage, the victim can demand compensation from the manufacturer, and can demand compensation from the seller.

If a product defect was caused by the manufacturer, the seller, after paying compensation, has the right to demand reimbursement from the manufacturer.

If a seller's fault makes a product defective, the manufacturer, after paying compensation, has the right to demand reimbursement from the seller.

第三十八条 因产品的说明错误，造成人身、财产损害的，产品的生产者、销售者应当承担连带责任，但人身、财产损害是由于受害人使用不当等原因造成的，产品的生产者、销售者不承担侵权责任。

第三十九条 因产品缺陷严重威胁使用者或者第三人的人身、财产安全的，使用者或者第三人有权要求生产者、销售者承担消除危险、排除妨碍等侵权责任。

第四十条 因运输者、仓储者等第三人的过错导致产品存在缺陷，造成人身、财产损害的，产品的生产者、销售者赔偿后，有权向第三人追偿。

Article 38. If a product's faulty [inadequate] instructions for use causes bodily injury, or damage to property, the manufacturer and seller bear joint liability, but if bodily injury or property damage is due to misuse by the victim, the product manufacturer and seller do not bear tort liability.

Article 39. If a product defect threatens serious harm to a user's or third party's personal safety or property, then the user or third party has the right to demand that the manufacturer, seller, or third party bear the burden of eliminating the danger, removing the obstacle, etc.

Article 40. In the case of a transporter, or warehouseman, or other third party's fault causing a product to have a defect that causes bodily injury or property damage, the product manufacturer or seller, after paying compensation, has the right to demand that the third party reimburse the cost.

第七章 高度危险作业责任

第四十一条 从事高空、高压、易燃、易爆、剧毒、放射性等对周围环境有高度危险的作业造成他人损害的，应当承担侵权责任。如果能够证明损害是由于受害人故意或者不可抗力造成的，不承担侵权责任。

第四十二条 航天器、航空器在运行中造成他人损害的，航天器、航空器的作业人应当承担侵权责任，但航天器、航空器的作业人能够证明损害是由于受害人故意造成的，不承担侵权责任。

第四十三条 核设施中[的]以及为核设施运输的核燃料、核废料及其他核物质，因其放射性、剧毒性、爆炸性或者其他危害性，造成他人损害的，核设施的所有人或者国家授权的经营人应当承担侵权责任，但核设施的所有人或者国家授权的经营人能够证明损害是由于受害人故意造成的，不承担侵权责任。

第四十四条 以高压制造、储藏、运送电力、液体、煤气，蒸汽等，因高压作用造成他人损害的，其所有人、占有人或者管理人应当承担侵权责任，但所有人、占有人或者管理人如果能够证明损害是由于受害人故意或者不可抗力造成的，不承担侵权责任。

CHAPTER VII. LIABILITY FOR ULTRAHAZARDOUS ACTIVITY

Article 41. If one injures another by engaging in activity involving work at a height, high voltage, highly combustible materials, explosives, radiation, or similar activity that is ultrahazardous to the surroundings, he shall bear tort liability. But if it can be proven that the damage is due to the victim's intentional act or is caused by force majeure [an irresistible force], tort liability shall not be imposed.

Article 42. If during operation, a spacecraft or aircraft causes damage to another, the operator [of the aircraft or spacecraft] shall bear tort liability. But if the operator can prove that the damage is due to the intentional act of the victim, the operator shall not bear tort liability.

Article 43. If in the operation of a nuclear facility or in transport, nuclear fuel, nuclear waste, or other nuclear materials, cause injury to others due to their radioactivity, toxicity, explosive, or other hazards, the owner or government licensed [authorized] nuclear facility manager shall bear tort liability; but if the owner or manager can show that the injury is due to the victim's intentional conduct, then tort liability will not be imposed [on the owner or manager].

Article 44. If the manufacture, storage, or transport of electricity, liquid, gas, or steam, because of the high power they contain, causes harm to another, the owner, person in possession, or manager shall bear tort liability. But if the owner, possessor, or manager can show the damage is due to the victim's intentional act, or that its cause is force majeure, then tort liability shall not be imposed.

第四十五条 制造、加工、使用、利用易燃、易爆、剧毒、放射性等高度危险物，因物的危险性质造成他人损害的，其所有人、占有人或者管理人应当承担侵权责任，但其所有人、占有人或者管理人如果能够证明损害是由于受害人故意或者不可抗力造成的，不承担侵权责任。

第四十六条 在所有人、占有人或者管理人之间运输的易燃、易爆、剧毒、放射性等高度危险物，因物的危险性质造成他人损害的，所有人、占有人或者管理人应当向受害人承担连带责任。实际承担责任的一方可以依据合同法关于风险负担的规定，向另一方追偿。

对运输中高度危险物因其危险性质造成的损害，运送人如果不能证明自己对于损害的发生没有过错的，应当承担连带责任。

Article 45. If in manufacturing, processing, use, or employment of ultrahazardous combustible, explosive, toxic, or radioactive materials, the materials because of their hazardous character cause injury to another, the owner, possessor, or manager shall bear tort liability; but if that owner, possessor, or manager can prove/show the injury is due to the victim's intentional act or to force majeure, he shall not bear tort liability.

Article 46. Among the owner, possessor, and manager transporting combustibles, explosives, poisons, radioactive material, or other ultrahazardous materials, if damage is caused to another due to the material's dangerous nature, the owner, possessor, and manager shall bear joint tort liability. On the basis of principles in the law of contract regarding the bearing of risk, any party who actually satisfies the liability may recover compensation from other parties.

If an ultrahazardous material, due to its dangerous character, causes damage while in transport, a transporter who cannot show himself to be without fault in the occurrence of the injury shall bear joint tort liability.

第四十七条 未进行使用，仅由自己占有中的易燃、易爆、剧毒、放射性等高度危险物放射性等高度危险物因其危险性质造成他人损害的，物的所有人应当承担侵权责任。

未进行使用，交由他人储藏中的易燃、易爆、剧毒、放射性等高度危险物因其危险性质造成他人损害的，物的仓储人和所有人应当承担连带责任。

不同所有人的高度危险物储藏在一处，因其危险性质造成他人损害的，如不能证明损害不是由于自己的物品造成的，仓储人与各所有人应当承担连带责任。

第四十八条 列车在运行中造成他人损害的，列车作业人应当承担侵权责任，但能够证明损害是由于受害人的故意或者不可抗力造成的，不承担侵权责任；列车作业人能够证明受害人对损害的发生有过失的，应当减轻其侵权责任。

Article 47. If, when not in use, but while in possession of combustible, explosive, toxic, radioactive, or other ultrahazardous materials, that dangerous character does harm to another, the material's owner shall bear tort liability.

When not in use, if another stores combustible, explosive, toxic, radioactive or other such ultrahazardous material, which because of its dangerous character causes damage, the warehouseman/bailee and the owner shall bear joint liability.

If different owners store ultrahazardous materials at the same place, which, because of their dangerous character cause injury to another, and one cannot show that the damage is not due to his own product, the warehouseman/bailee and the owner shall each bear joint liability.

Article 48. If a train while in operation causes injury to another, the train operator shall bear tort liability. But if the operator can show that the injury is due to the victim's intentional conduct or by force majeure (irresistible force), the operator shall not bear tort liability; if the train operator can show that the injury to the victim occurred due to his fault, the operator's liability shall be reduced or mitigated.

第四十九条 由于第三人的过错导致高度危险作业对他人造成损害的，高度危险的作业人赔偿后，有权向第三人追偿。

第五十条 遗失的高度危险物因其危险性质造成他人损害的，由其所有人或者遗失人承担侵权责任。

被抛弃的高度危险物因其危险性质造成他人损害的，由其原所有人或者抛弃人承担侵权责任。

第五十一条 非法占有的高度危险物造成他人损害的，由非法占有人承担侵权责任。该物的所有人不能证明自己为防止他人非法占有高度危险物尽到高度注意义务的，应当承担补充赔偿责任。

第五十二条 在依法划定的高度危险活动区域或者高度危险物存放区域内，他人未经许可进入该区域受到损害，高度危险的作业人采取足够安全措施尽到充分的警示、保护义务的，高度危险作业人对受害人在该区域内所遭受的损害不承担侵权责任。

Article 49. In case a third party's fault results in an ultrahazardous materials use/employment causing injury to another, the ultrahazardous material operator, after paying compensation, has the right of recoupment (indemnification) from the third party.

Article 50. If abandoned or lost ultrahazardous material due to its hazardous nature causes injury to another, the owner or the one who abandoned it bears tort liability.

If abandoned ultrahazardous material due to its dangerous character causes injury to another, the original owner or one who lost it bears tort liability.

Article 51. In case of unlawful possession of ultrahazardous material which causes injury to another, liability shall be borne by the one who unlawfully possesses the material. If the material's owner cannot show that he himself fulfilled the obligation to [safeguard the material by] prevent[ing] unlawful possession, he shall bear the responsibility for the balance of the compensation owed.

Article 52. If someone without permission enters a legal area for ultrahazardous activities or storage of hazardous materials and suffers injury in that area, and the area or facility operator took sufficient safety measures (precautions) to warn and protect others, the operator does not bear tort liability for the injuries suffered by the victim in that zone.

第八章 动物致人损害责任

第五十三条 饲养的动物造成他人损害的，动物饲养人或者管理人应当承担侵权责任，但动物饲养人或者管理人能够证明损害是由于受害人的过错造成的除外。由于第三人的过错造成损害的，第三人应当承担侵权责任。

第五十四条 自然保护区内的野生动物造成他人损害的，由管理单位承担赔偿责任，但管理单位能够证明损害是由于受害人的过错造成的除外。由于第三人的过错造成损害的，第三人应当承担侵权责任。

*CHAPTER VIII. LIABILITY FOR DAMAGES
CAUSED BY ANIMALS*

Article 53. If a domesticated animal causes harm to someone, the animal's keeper or manager shall bear tort liability, except if the keeper or manager can show that the injury is due to the victim's fault; or, if the injury is due to a third party's fault, the third party shall bear tort liability.

Article 54. If a wild animal in a wildlife/nature reservation causes injury to someone, the managing agency bears the obligation to compensate the victim, except if the agency can show the injury is due to the victim's fault. If a third party's fault causes harm then the third party shall bear liability.

第九章 物件致人损害责任

第五十五条 建筑物或者其他设施以及建筑物上的搁置物、悬挂物发生倒塌、脱落、坠落情形造成他人损害的，它的所有人或者管理人应当承担侵权责任，但能够证明自己没有过错的除外。

第五十六条 从建筑物中抛掷的物品或者从建筑物上脱落、坠落的物品致人损害，不能确定具体的侵权人的，由该建筑物的全体使用人承担侵权责任，但使用人能够证明自己不是具体侵权人的除外。

第五十七条 堆放物倒塌造成他人损害，堆放人不能证明自己堆放物品时尽到合理的注意义务或者对堆放物履行管理义务的，堆放人应当承担侵权责任。

第五十八条 在公共通道上设置妨碍通行的障碍物造成他人损害的，设置人应当承担侵权责任。

第五十九条 因林木折断、果实坠落造成他人损害，林木、果树的所有人或者管理人不能证明自己没有过错的，应当承担侵权责任。

CHAPTER IX. LIABILITY FOR DAMAGES CAUSED BY OBJECTS

Article 55. If a building or any other installation, or any fixture or hanging thing collapses, or comes loose, or falls down, causing injury to another, its owner or manager shall bear tort liability, unless he can show himself to be without fault.

Article 56. If an object thrown from within a building or something hanging on a building comes loose, or falls off, causing personal injury, and one cannot determine the specific wrongdoer/tortfeasor, then every user/occupant of the building shall bear tort liability, except if a user/occupant can show that he himself is not a wrongdoer.

Article 57. If the collapse of a stack causes injury to another, and the stacker cannot prove 1) that he took [exhausted] all reasonable care when stacking the material, or 2) that he executed his management duties, the stacker shall bear tort liability.

Article 58. If someone places an obstacle on a public way, causing injury [harm] to another, the one who placed the obstacle shall bear tort liability.

Article 59. If a tree [or branch] breaks, or fruit falls, causing injury to another, the tree or fruit tree owner or manager who cannot show he is without fault shall bear tort liability.

第六十条 在公共场所、道旁或者通道上挖坑、修缮、安装地下设施等，没有设置明显标志和采取安全措施造成他人损害的，施工人应当承担侵权责任。

因井等地下设施造成他人损害，地下设施的管理人不能证明自己尽到管理义务的，应当承担侵权责任。

Article 60. If in a public place, on the wayside, or on a thoroughfare one digs, makes repairs, installs underground equipment, etc. without warning clearly by signs or taking safety measures, causing harm to another, the worker shall bear tort liability.

If operations in underground facilities cause harm to another, and the below ground facility manager cannot prove himself to have met his management duties, he shall bear tort liability.

第十章 有关侵权责任主体的特殊规定

第六十一条 无民事行为能力人、限制民事行为能力人造成他人损害的，由监护人承担侵权责任。

有财产的无民事行为能力人、限制民事行为能力人造成他人损害的，从本人的财产中支付赔偿费用。不足部分，由监护人赔偿。

第六十二条 法人的工作人员因执行职务侵害他人人身、财产的，法人应当承担侵权责任。

法人赔偿后，可以向对造成损害有过错的工作人员追偿。

第六十三条 网站经营者明知网络用户通过该网站实施侵权行为，或者经权利人提出警告，仍不采取删除侵权内容等措施消除侵权后果的，网站经营者与该网络用户承担连带责任。

第六十四条 权利人要求提供通过该网站实施侵权行为的网络用户的注册资料，网站经营者无正当理由拒绝提供的，应当承担相应的侵权责任。

*CHAPTER X. SPECIAL PROVISIONS REGARDING THE
SUBJECT OF TORT LIABILITY*

Article 61. If a person without legal capacity, or with restricted legal capacity, causes harm to another, the guardian shall bear tort liability.

If a person without legal capacity or with restricted legal capacity who has assets causes harm, he shall pay costs from those assets. Any deficiency shall be satisfied by the guardian.

Article 62. If a legal person's staff, in carrying out duties, harm another physically, or in his property, the legal person shall bear tort liability.

After paying compensation, the legal person can pursue compensation from the employees whose fault caused the harm.

Article 63. If a website operator [permits and allows] an internet user to commit tortious acts, or if the operator still does not take measures to eliminate the consequences of the wrongful act by taking measures such as removing the tortious content after being warned by a right holder, then the website operator and the user of the site shall jointly bear tort liability.

Article 64. If a right holder demands an infringing website user's registration information, and the website operator without good cause refuses to provide the information, the operator shall bear related tort liability.

第六十五条 旅馆、银行的客户以及列车的乘客，在旅馆、银行、列车内受到他人侵害的，侵权人应当承担侵权责任。

在无法确认侵权人或者侵权人没有能力承担赔偿责任的情况下，旅馆、银行、列车的所有者或者经营者尽到保护义务的，不承担责任；未尽到保护义务的，应当承担补充赔偿责任。

第六十六条 教唆他人实施侵权行为的人，为共同侵权人，应当承担连带责任。

教唆限制民事行为能力人实施侵权行为的人，为共同侵权人，应当承担主要责任，与限制民事行为能力人的监护人承担连带责任。

教唆无民事行为能力人实施侵权行为的人，为侵权人，应当承担侵权责任。

第六十七条 二人以上同时实施同一种类的危险行为，其中一人或者数人的行为造成他人损害，行为人能够证明具体侵权人的，由该侵权人承担侵权责任；行为人不能证明具体侵权人的，行为人承担连带责任。

第六十八条 二人以上因分别行为造成同一损害，能够确定责任大小的，应当各自承担相应的侵权责任；不能确定责任大小的，应当平均承担侵权责任。

Article 65. If customers of an inn, a bank, or a train's passengers, at the inn, bank, or on the train suffer injury by another the tortfeasor shall bear tort liability.

In circumstances in which there is no way to identify the tortfeasor or the tortfeasor does not have the ability to bear the compensation responsibility, if the inn, bank, or railroad owners or managers have fulfilled their safety obligations, they shall not bear tort liability; but they shall bear responsibility to make the victim whole if the obligation to protect the customer or passenger has not been fulfilled.

Article 66. One who instructs another to carry out a tortious act is a joint tortfeasor, and shall bear joint liability.

One who instructs a person of restricted legal capacity to carry out a tortious act is a joint tortfeasor and shall bear principal liability[;] if the person of restricted legal capacity has a guardian, the guardian shall bear joint tort liability.

If one instructs a person without legal capacity to carry out a tortious act, he acts as a tortfeasor and shall bear tort liability.

Article 67. If two or more persons together engage in the same kind of dangerous conduct, and the conduct causes harm to another, then if the actors can show/prove the specific tortfeasor, the tortfeasor shall bear tort liability; but if an actor cannot show who is the specific tortfeasor between one or the others, the actor shall bear joint liability.

Article 68. If one or more persons' separate conduct causes the same harm, and one can determine the extent of the responsibility, each shall respectively bear proportionate tort liability; if one cannot show the specific extent, they shall each bear the mean tort liability.