

# A Study on Punitive Damage System to Product Liability

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**Abstract** The law of the People's Republic of Tort Liability Law (hereinafter referred to as the Tort Liability Law) comes into force. This act includes punitive damage among product liability, but Chinese current Product Quality Law. this paper utilizes, the methods of legal interpretation, legislative studies, comparative studies and practical analysis are used, and based on the understanding of current legislation, some existing problems and conflicts have been put forward. Finally, it is concluded that the Product Quality Law should introduce the contents of punitive damage to complete Chinese product liability system.

**Key words** Punitive damage; Product liability; Tort liability law; Infringement

## 1 Introduction

Punitive damage, also known as exemplary damages or vindictive damages, is meaning the perpetrator to implement some kind of malicious behavior, or when the behavior existed gross negligence, in order to perpetrators from punishment and pursuit the purpose of deterring such behavior effect, the court conduct the decree to pay compensation at the same time, usually to sentence the perpetrator of the victim to pay more than their actual damage range of the compensation<sup>[1]</sup>. Punitive damage case law is British & US law system product, particularly applicable in the United States, and gradually to other common law countries and civil law countries. Educational circles fail to come to an agreement of the content about this system, which are roughly divided into two ideas: including compensatory damages or not including compensatory damages. The nature of this system is mainly related to its ownership in public law or private law, at home and abroad there are several theoretical perspectives: a) Although Punitive damage have the punitive and deterring factors, but are still civil liabilities<sup>[2]</sup>; b) Punitive damage are criminal and should not be admitted into the private law system<sup>[3]</sup>; c) Punitive damage are quasi-criminal liabilities<sup>[4]</sup>; d) Punitive damage are economic liabilities<sup>[5]</sup>. The representative views of Punitive damage on the function are: a) That the purpose of Punitive damage is to suffer the plaintiffs' losses and let them to gain full compensation<sup>[6]</sup>. b) That the function of Punitive damage is punitive (or sanctions), contain (or prevention) and compensation (damages fill)<sup>[7]</sup>. c) That Punitive damage have four kinds of functions which are punishment, containment, law enforcement and compensation<sup>[8]</sup>. d) The Punitive damage have seven kinds of functions that to punish the defendant, to stop the defendant repeating, to stop the other people doing the same behavior, the maintenance of peace, to induce the private prosecution of illegal activities, to compensate the loss of the plaintiff that can not be filled in other laws, to pay the legal fees to the plaintiff<sup>[9]</sup>. From the view of legislation and litigation procedures, almost all countries of the world put the Punitive damage in civil law and basis on tort liability or contractual liability. View from the field of social law, 1993, China's Consumer Protection Law adopted this system, the new Tort Liability Law explicitly Punitive damage into the field of tort, and these is have a great significance for the expansion of the scope about application of the Punitive damage.

## 2 About the Issues

### 2.1 Legal origin of Punitive damage in China's Product Liability Law

Product liability from the mid-nineteenth century appears as a legal problem, is refers specifically to a liability result from product defect, which has become a relatively independent area of law. Many countries in the world are put the problem of damages caused by defective product into the product liability law for provision and adjustment. There is not a single "product liability law" in China, while the product liability and product quality supervision are provided in a "Product Quality Law". This legislative system has Chinese characteristics. This content of the legislative model is the integration of public and private law, and using a variety of economic law to adjust the conduct of market subject, and to supervise state intervention in economic life, in order to protect the whole interests of society.

Since 1993, the Consumer Protection Law was enacted, Punitive damage in the field of product liability has been a hot topic of research in China. The 49th article of the law provided fraud operators

bear “double liability” to consumers, China's Contract Law recognized this system in the contract area in 113th article. The 96th article of Food Safety Law provided, resulting in consumers personal, property or other damage by the production does not meet food safety standards, or knowingly the food does not meet safety standards still sell, the food producers and sellers, can take “ten times of the compensation” to consumers. In addition, the article VIII, and article IX in the interpretation of supreme people's court on the trial of a number of issues about the law applicable of real estate sales have also provided Punitive damage. The 47th article of Tort Liability Law explicitly introduces Punitive damage into the scope of product liability. However, current Product Quality Law is still adopting the traditional principle of homogeneity compensation for defective Product Damage. It has brought some doubts and problems.

## **2.2 Specific problems of punitive damage in China's Product Liability Law**

### **2.2.1 Legislative loopholes of product liability in China**

Tort Liability Law is a basic civil law and product liability is a special kind of infringements, specifically, is a result of damage caused by objects generated violations. Special kind of infringements are more regulated in special laws in China, that is, on tort liability caused by the defective products, the Tort Liability Law and Product Quality Law are general law and special law. From the point view of time order, these two laws were both examined and adopted by the National People's Congress, that Tort Liability Law is the new law while Product Quality Law is the old law. Competing with the general principles of law applicable, it seems that the same agency laws, special law is superior to the general law applicable, and the new law is superior to the old law applicable can be both used. As mentioned above, Chinese Product Quality Law does not provide for Punitive damage, but to take the traditional homogeneity principle of compensation. The basic characteristic of the principle of homogeneity compensation is compensatory, role in the application of civil liability when the damage is difficult to restitution, using the remedy way to fill the victim's actual loss. It is a direct relief to victims. Homogeneous formation of relief is based on the legal concept of the performance of private equity and fairness. Its production is based on a theoretical assumption that all the civil subjects in society have the equal legal status and everybody has roughly the same benefits and chances in market competition and distribution. However, in reality product liability, there are certain limitations exist in this principle.

### **2.2.2 Subjective state of mind and consequence in elements of punitive damage**

In the world, the U.S. is typically recognized Punitive damage system, the applicable penalty in the subjective element of liability, generally requires the following elements: First, the perpetrator has subjective intent. Second, the actor has malicious. Third, the actor do not interest in the interests of others. Fourth, the perpetrator has great subjective fault. Then, have caused damage consequences, usually the victim proof the actual damage has occurred. Furthermore, the victim needs to prove that the damage is caused by acts of perpetrator's behavior, that behavior and the damage there is a causal relationship. Finally, Punitive damage must be attached to general damages.

According to China's Tort Liability Law, the 47th article in the field of product liability for Punitive damage' applicable conditions includes that: First, the infringer has the subjective intent, that knowing the defective products still production or sale. Second, with serious damage that causing the Victims serious health or death. Third, the harm results and the infringer's conduct have causal relationship. It is worth noting, Punitive damage under this article only a limited scope of “causing death of another person or health of serious damage”, and other damage, such as property damage does not apply to Punitive damage. The 47th article of Consumer Protection Law provides seller providing goods or services need only fraudulent acts result in consumers who have suffered losses will have to bear “double liability”, while in the Food Safety Law, producer and seller knowing the food does not meet food safety standards, still produce and sell, resulting in consumers personal, property or other damage, can take “ten times of the compensation” to consumers. From this, in Chinese product liability legislation, the subjective element for Punitive damage is intentional, which does not recognize the case of gross negligence, that also require to clear consequences of violation. China's Product Quality Law does not recognize Punitive damage, while the 46th article: “Defects within this Law, is meaning the product has the threatening unreasonable safety risk to the health and property of others; products have the national standards or industry standards for protect human health and property safety, is incompatible with the standards.” Is it just the product liability cause serious personal injury can be applicable to the Punitive damage, and property losses are not allowed, it really need to further clarity and perfection.

### **2.2.3 The amount of punitive damage**

The United States Restatement of Tort Law II section 908 (2) provides that Punitive damage can be

for the defendant's evil motive or his reckless disregard for the rights of others and make a bad character behavior. The court in the application of Punitive damage generally should also take into account some factors such as the economic conditions of the perpetrator, the influence of the perpetrator's behavior, the relationship between the perpetrator and the victims, the sustained level of the behavior, whether the perpetrator has gotten profits from the behavior, and the cost the victim bear to avoid loss. When assessing the amount of Punitive damage, the court may properly consider many combinative factors such as the nature of the act, the nature and extent of damage which defendant expected to result and the amount of the defendant's property, and so on.

The "defects" of Punitive damage system is actually reflected the excessive punishment prescribed that lead to imbalance of fairness. China's Tort Liability Law does not provide a specific amount of Punitive damage, or set the limits of Punitive damage, but gives judges greater discretion. However, can be used as reference in the product liability field which the Consumer Protection Law and Food Safety Law don't have the same amount for the Punitive damage. This is clearly not conducive to the actual operation of the legal system. In addition, some argue for the conceptual problems, such as the newly promulgated Tort Liability Law which stipulated the victim has the right to call for "corresponding Punitive damage" and how does the "corresponding" should be explained, Tort Liability Law did not give clear criteria. It is necessary to be clear in Product Quality Law.

### **3 Rational Judged on the Issues**

#### **3.1 The coordination of legal system**

As mentioned above, regarding Punitive damage system in product liability that Product Quality Law was not provided. Then how deal with the relationship between the Product Quality Law and Tort Liability Law reasonably and how applies the existing laws in one coherent system, which is the problem we urgently need to study. To solve the problems, we must firstly understand the meaning of legal system. Legal system is defined as an organic unified whole, formed as all the current legal norms in one country, which accord to different legal departments<sup>[10]</sup>. Socialist legal system with Chinese characteristics must be "a full range of highly structured, internal harmony, scientific style", the legal aspects are match to each other, do not has conflict, and take a comprehensive adjustment for the socialist economic, political and cultural life. Important to note that although the legal system possibility has a conflict among the laws, but it requires the constant improvement of the legal system and legal system is no problem. The contradictions of legal system lead to "system violated" in the legal order. System violation is usually formed as "norm conflict" or "value judgments conflict"<sup>[11]</sup>.

Seeing from the existing legislation, setting Punitive damage into the responsibility of defective products liability, the Tort Liability Law adopts a clear positive attitude but Product Quality Law is not provided. The contradiction here is not simply related to the effectiveness but the conflict of norm legislative loopholes. Furthermore, this legal loophole in the conflict is not only contradictory norms but also the contradictions that can be resolved. There are some deficiencies and defects of laws that they are difficult to overcome, its important performance are the contradictions of legal abstraction, stability and specificity of real life, which development and change all the time. These are inevitable limitations of law. However, there is not absolutely any solution about the application of law. Law requires effective implementation and its vulnerability of run up needs the resolution and protection accord to the coordination of the interpretations. In the civil cases of British and US law system, the equity is often played "remedy" role for the common law. There are also many Methods in the civil law for the "not satisfactory" to complement and interpretation. Between the competing applicable principles in the legal norms, the most important one is: if the two laws were legislated by the same authority, and special provisions are inconsistent with the general provisions, special provisions are applied, that is often said the particular law is priority for appliance.

#### **3.2 The elimination of the legal norms' conflict**

On one hand, in the provisions of product liability system, Tort Liability Law and Product Quality Law are the general law and special law. General law and special law are classified with the standard of the application. General law refers to general persons, general issues, general time, general space and general range to effective. Special law refers to specific persons, specific issues effectively, and in a particular area and time to effective<sup>[10]</sup>. The article V of Tort Liability Law states: "Other law about tort has specifically otherwise provided, in accordance with its provisions." With this applicable principle of tort liability, if other laws were made for another tort liability provisions, special laws prevail. Does that mean that in product liability should not apply the system of Punitive damage? Is not true. The principle

of new law is priority for appliance, also known as post-law principle, is meaning when the old and the new law has different provisions on the same matter, the new law's effect is better than the old one, and its role is to avoid the applicable conflict brought by the law amendments, and to provide legal protection for the perfection and improvement of law. Discussed in this article, although the old law is special law, but based on the legal norms' obvious consideration of interest, which more severely punish the infringer and protect the legitimate rights and interests of "vulnerable" status people who are the product consumers and users in product liability, and safeguard the socialist market economic order, therefore does not apply to the exceptions of established legal principles. In the general case, although the Product Quality Law doesn't set the Punitive damage system into product quality, but involves accountability of the caused by product defect, it shall be in accordance with the Tort Liability Law after it comes into force. However, after all, Chinese Product Quality Law has its own characteristics; the natures of the scope and approach are different from the Tort Liability Law. There are still different views about how to deal with this conflict in the academic and practitioners. Real life is complex and variable, how the perpetrator to grasp and how the judiciary to judge, whether may lead to different treatments in referee because of different understandings, which is very possible. In other words, if the three parties are contesting, the law will enable each of them to a rational reason, the consequences that were unable to reach the "perfection" of judge effect, and can hardly realize fairness in serious.

On the other hand, for any liability, the value should be used for the final measured and judged. Among the producers, sellers and buyers, their legal statuses are formally equal, but the buyers are always disadvantaged in comparison with the producers and sellers in many aspects such as the possession of the means of production and information. The two sides can hardly exist substantive equality. Damage in the product defect cases, victims often suffers not only financial loss, but suffered serious personal injuries. Although the national authority use the punish sanctions to against the counterfeit and unfair competition, but such a phenomenon remains despite repeated prohibitions. Whether need to breakthrough the homogeneity principle of compensation in product responsibilities and introduce the Punitive damage to enhance the protection of the weak and to realize the value of law and justice, which the Tort Liability Law gives a positive answer. But the current Product Liability Law as an important law of product quality, failed to include Punitive damage into product liability, that there is not enough. Tort Liability Law is more general and broad, it need to the Product Quality Law as a special law to supplement in practice, and to improve the legal system in the field of product liability, should design the Punitive damage into the current Product Quality Law.

## **4 The Proposal of Introducing Punitive Damage into Product Liability Law**

### **4.1 The subjective state of mind and consequence in the elements of punitive damage**

The 47th article of Chinese Tort Liability Law as follows: "knowing a defective product still production, a sale, causing the death or serious harm to the health of others, is entitled to request the infringer corresponding Punitive damage." Accordingly, the subjective state of mind of Punitive damage required "knowingly" that is the intentionally mentality of the perpetrator, but it did not admit to the Punitive damage system of harm which caused by gross negligence. The scope of this section only provides for "causing another person death or serious damage of health", the victim only suffered other damage such as property damage can not use this article as a compensative basis.

First of all, how serious the subjective element of the producers and sellers that Punitive damage should be applied, although the provision of subjective severity in the product liability clearly, seems to obvious, but the author has the opinion that the regulations should be clear, such as except intentional, whether there is a situation of damage caused by gross negligence. The subjective elements leading to product liability include gross negligence, in the Tort Liability Law, China does not provide the Punitive damage in that situation. Consumer Protection Law and Food Safety Law are also not admitted, but the Product Quality Law provisions the subjective element of perpetrator liable for damages is "fault", which is obviously not enough. In practice, often the subjective state of mind for the actors is not easy to judge, if there is victim's personal and health has suffered serious damage which caused by gross negligence, actually avoid the attribution of Punitive damage that is grossly not conducive to the protected of consumers and users. Thus, including the acts of gross negligence which caused serious damage into Punitive damage attributable treatment is necessary, not only corresponding the subjective state of the product liability, also reducing the accidents of product defects, playing a practical role in protection of the consumers and users.

Then, China's Product Quality Law acknowledges that the products responsibilities include

personal injury, property and other losses. Consumer Protection Law and Food Safety Law are provide the perpetrator bear liability of punitive commitment to both based on victims' personal injury caused by product defect and property or other damages. Tort Liability Law as the general tort law, even more limit the scope of Punitive damage than special laws and further restrict the victim to propose Punitive damage appeal when they are suffered loss of property or other damages. While Product Quality Law can not find correspondence, which is very negative in the consumers and users, and also brought the legislative confusion between general law and special legal norms. Therefore should be expanding the scope of Punitive damage system in Product Quality Law, when the victim suffered property and other losses may also can request the Punitive damage.

#### **4.2 The amount of punitive damage to determine**

The 47th article of Tort Liability Law which stipulated the victim has the right to call for "corresponding Punitive damage" and here the "corresponding" is undoubtedly to be limit the scope and extent of the Punitive damage may raise. However, the multiple meanings of legal context, scholars have different understandings and interpretations about it. "Corresponding" can be meaning "appropriate Punitive damage legal norms", such as China's Consumer Protection Law, Food Safety Law and other laws which provisions in the product liability system. It can be also understood as "appropriate price" means the infringer take the "pay price" or "purchase price" as the base to determine the amount of Punitive damage.

Author believes that China's Tort Liability Act to prevent the abuse of Punitive damage and avoid the requirements of the amount of Punitive damage is extremely high, the "corresponding" here primarily refers to the amount requested of Punitive damage should be consistent with the infringer's subjective malicious and the damage of the acts, and the right to appeal Punitive damage should not be abused. The court determines the amount the Punitive damage in specific case should also pay attention to and containment of the system, punitive effect, not result in the unjust application of law. "The starting point of such legislation is that compensation can not be expected. Operators in the decision-making can not determine the cost of their offense, so as to achieve the effect of deterrence. However, the main disadvantages of this provision is that the uncertainty of operation." "On one hand, consumers are often uncertain amount of damage, and on the other hand the standard is a combination of factors mainly gives judge discretion this way in china under the current legal environment is not suitable."<sup>[12]</sup> Therefore, there is necessary to determine the specific amount of Punitive damage.

For the base amount of Punitive damage, China's current legislation has different standards, as "pay price" (such as Food Safety Law), "purchase price" (such as Consumer Protection Law) and the area error ratio (applicable to Immovable Property). "In broad perspective, the pay price can mean the purchase price of commodities, including consumer has to pay and should be paid; from the narrow perspective, it can be understood as the actual price paid. The price does not include the part of not fulfilled<sup>[12]</sup>." It may cause confusion such as the case of installment sale of products in judicial practice. Author agrees that, in the field of products liability Consumer Protection Law is the general law, its determination which "the cost price to purchase goods and receive services" should be used for the base applicable standards of Punitive damage. It more better to implement the legislation intended of laws to protect consumers and users and reduce the applicable dispute.

Meanwhile, for the multiple of Punitive damage, economic analysis jurists call the proportion about the victim has been compensated in all victims as "performed errors", that is, when the product of compensatory damages and performed errors lower than producers' prevention costs and court should do the verdict of Punitive damage, even though the amount of compensatory damages above the producers' prevention costs. In other words, we can refer to this result to determine the multiples of Punitive damage. Namely, the multiple of Punitive damage equal to the quotient between compensatory damages and enterprises' costs to avoid the accident and then multiplied by the marginal probability, in order to compensate for the performed errors. Producing the calculation that "Punitive damage = (punishable multiple - 1) × multiple of compensatory damages, that is, the multiple of performed errors<sup>[13]</sup>".

## **5 Conclusion**

Both from the realization of law value and the parallel application of legal norms with the internal coordination in law systems, to establish Punitive damage in Chinese Product Quality Law are very necessary. Every provision has its two aspects, the design of Punitive damage system is impossible "perfect". Even if there are some defects in the system of Punitive damage, this system has a great value in Chinese present stage of socialist market economy environment and also suitable for practical

applications. Establish Punitive damage in Product Quality Law should take attention and improvement from the current weaknesses. This is not only conducive to China's product liability regulation, coordinate the uniform application of law throughout the legal system and to resolve the conflict in lots of areas of product liability legislation, but also meet the pressing social needs, enhance the protection of consumers and product users' legal rights, maintain a good and health socio-economic order.

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