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### Responsibility to Compensate Damage Caused by Houses and Other Construction Works

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#### Abstract

The article's abstract outlines the theoretical framework for investigating the legal responsibility for paying damages incurred by houses and other construction projects in various nations. The article has delved deeper into the understanding and analysis of three doctrines chosen by countries as the basis for establishing liability for compensation for damages caused by houses and other construction works: Doctrine of speculative fault, doctrine of strict liability, and doctrine of negligence. The article has

developed concepts and analyzed the characteristics of houses and other construction works. On that basis, the article has built the concept of liability to compensate for damage caused by houses and other construction works and also analyzed the characteristics of this liability in the following aspects: nature of responsibility; the cause of the damage; conditions giving rise to liability; damages to be compensated; and the basis for determining the entity responsible for compensation.

**Keywords:** Responsibility, Compensate Damage, House and Construction Works

#### 1. Introduction

In recent years, under the strong impact of the process of industrialization and urbanization, a series of projects have been built to meet the needs of accommodation, study, entertainment, etc. for people. The rapid increase in quantity while quality factors are not guaranteed is one of the reasons leading to the constantly increasing number of accidents caused by houses and other construction projects, causing great damage to people and property. In previous years, accidents occurred in small numbers, but in recent years, the number of accidents has become more dense. Accidents occur not only due to the impact of civil works but, more dangerously, also due to the impact of industrial works and traffic works, causing huge human losses and assets. Typically, the Can Tho bridge collapse on September 26, 2007 left more than 50 people dead and more than 100 others injured; the bridge span of the Ho Chi Minh City-Trung Luong expressway collapsed on March 10, 2009, seriously injuring two workers; The partial collapse of office and commercial building CR4-1 (District 7, Ho Chi Minh City) on December 30, 2008, caused 2 deaths and more than 10 injuries. The railing of Van Mon Primary School (Bac Ninh) collapsed on the morning of December 12, 2017, injuring 13 students. Besides, current research projects mainly stop at studying a few the content of the liability to compensate for damage caused by houses and other construction works has not been fully and comprehensively researched into the provisions of law related to this liability. Therefore, the article will go in-depth and explore the theoretical contents of the liability to compensate for damage caused by houses and other construction works in terms of the object causing the damage, characteristics of responsibility, responsible subject, theories determining responsibility, etc.

#### 2. The Doctrines Determine Liability for Compensation for Damage caused by Houses and Other Construction Works *Negligence Doctrine*

This doctrine is applied in England and America (countries following the common law legal tradition) and some Northern European countries (Denmark, Finland, Sweden, etc.). The above countries do not consider the liability to compensate for damage caused by houses and other construction works as a type of liability to compensate for damage caused by property, but consider it to be a liability to compensate for damage caused by actions caused by humans. Therefore, this liability is built on the element of fault, which is due to negligence.

“Negligence” is the omission or failure to exercise reasonable standards of care that a reasonable person (“a reasonable prudent person”) would exercise in similar circumstances in order to avoid harm to those to whom he or she belongs. legal duty to care

suffered damage. According to this doctrine, liability for damages will arise when four conditions are met: (1) There is a duty of care to the injured person ("common duty of care") of the possessor ("occupier"). "houses and other construction works; (2) There is a violation of that obligation by the owner of the house or other construction project; (3) There is damage; (4) There is a cause-and-effect relationship between the breach of duty and the damage.

#### Legal duty of care

To claim compensation for damages under this doctrine, the first important thing is that the injured party must prove that the possessors ("occupiers") of houses or other constructions have an obligation according to the provisions of the law. The law is to pay attention to ensuring the safety of your life, property, and health. However, the level of "care" of the property owner or the owner of the house or other construction project towards the damaged person depends on the "legal status" of the damaged person as a "customer". "Lawful visitors" or "non-lawful visitors". If the person suffering damage is a "legal guest", the level of concern and safety assurance of the owner, the possessor, or the person assigned to manage and use the house or other construction work must be higher than that of the owner. If the person suffering damage is an "uninvited guest". The next important thing is that the person suffering damage must prove that the owner or the owner of the house or other construction project has violated that duty of care, and it is this violation that has given rise to the damage (between breach of duty and damages that are causally related to each other).

#### *Presumed Fault Liability*

This doctrine is applied in some countries, such as Germany (Articles 836-838), Hungary (Article 5:650), Poland (Article 434), etc. According to this doctrine, liability for compensation for damage caused by houses or other construction works will be established when the following conditions are met: (1) The person suffering damage can prove three elements: there is damage, and there is the impact of the house or construction work itself. other and there is a cause-and-effect relationship between the damage and the impact of houses and other constructions (damage is a consequence of the impact of houses and other constructions); (2) The owner, the possessor, or the person assigned to manage the house or other construction project cannot prove that they are not at fault in allowing the house or other construction project to cause damage. At that time, the Court speculated that the owner, the possessor, or the person assigned to manage the house or other construction project was at fault and forced these people to be responsible for compensation for damages.

According to this doctrine, fault is not a condition giving rise to liability but is a basis for excluding liability for compensation for the owner, the possessor, or the person assigned to manage the house or other construction works. As long as the homeowner, possessor, or person assigned to manage the house or other construction project can prove that they are not at fault, they will not be responsible for compensation for damages.

In essence, liability for presumptive error is still liability based on the element of fault; however, the error here is a presumptive error. Owners, owners, and people assigned to manage and use houses and other construction projects are presumed to be at fault. To refute that speculation and, at the

same time, eliminate liability, the owner, the possessor, or the person assigned to manage and use the house or other construction project must prove the opposite: that I was not at fault. I took all the necessary measures to prevent damage, but in the end, the damage still occurred.

The biggest advantage of speculative fault liability over traditional fault liability is that, in this liability, the burden of proving fault has been shifted from the plaintiff to the defendant. Liability built on the doctrine of speculative error has created more favorable conditions for injured people to sue for their legal rights and interests. However, this does not mean that this doctrine imposes an "unfair" legal responsibility on the owner, the possessor, or the person assigned to manage and use the house or other construction works. Because, according to this doctrine, the defendant still has an opportunity to "free" himself from liability by presenting evidence that he has taken all necessary measures to prevent damage. but eventually the damage still occurs (no error). Only when these subjects cannot provide evidence to prove that they are not at fault will they be presumed by the court to be at fault and forced to bear responsibility. As owners, possessors, and people assigned to manage and use houses and other construction works, these subjects are often people with knowledge and a certain understanding of houses and construction works. Other construction projects are under their ownership, possession, and management. Therefore, they will also have certain advantages when they present evidence proving that they have fully implemented the necessary preventive and care measures, but their houses and other construction projects still cause damage.

In short, compared to legal liability based on traditional fault factors, liability based on presumptive fault ensures fairness for both parties (owner, possessor, person assigned to manage and use the house, other construction works, and the injured party) in presenting evidence to protect their legitimate rights and interests.

#### *Doctrine of Strict Liability*

This theory is applied in several countries, like France, Spain, Quebec (Canada), and so on. According to this theory, the responsibility for compensating damages caused by houses or other buildings arises when the victim proves three elements: (1) there is damage; (2) there is an inherent action of the house or other building; and (3) there is a causal relationship between the damage occurring and the inherent action of the house or other building (the damage is a consequence of the collapse of the house or other building). The plaintiff doesn't need to prove the fault of the owner, occupier, or manager of the house or other building in causing its collapse and resulting damage; conversely, the defendant cannot be exempted from responsibility just by proving that they are not at fault.

Similar to the theory of fault by presumption, in the doctrine of strict liability, fault is not a condition for liability to compensate for damages. However, if in the responsibility for fault by presumption, the defendant can be exempted from liability if they prove they are not at fault ("did not violate any construction and maintenance regulations and did not act wrongly during construction and maintenance to prevent damage [11, Article 6:560], "had complied with necessary caution to avoid risk [9, Article 836]). Then, in strict liability, even if the defendant proves they are not at fault, they still have to compensate for damages, unless the

defendant proves that the damage occurred due to force majeure, entirely due to the victim's fault, or caused by a third party. This doctrine has created the most favorable conditions for victims to claim compensation for damages.

### **3. The Concept and Characteristics of Houses and other Buildings**

#### ***The Concept of "Houses and Other Construction Projects"***

Even though they're frequently mentioned in legal documents, there's no clear definition for these two concepts. The Civil Code of 1995 was the first to formally use the phrase "houses, other buildings" in Article 631. Article 627 in the Civil Code of 2005 and Article 605 in the Civil Code of 2015 followed. Over 20 years have passed since its inception, but there's still no definition for the general concept of "houses, other buildings" in the Civil Code or related legal documents.

When it comes to the concept of "housing", only the 2005 Housing Law (now the 2014 Housing Law) provides a definition, but it's for "residential housing" (not "housing" in general). According to this, "residential housing" is defined as "construction built for living and serving the daily needs of households and individuals".

On the concept of "other construction works" the Construction Law of 2003 (and currently the Construction Law of 2014) only provides a definition for "construction work". Accordingly, "construction work is a product created by human labor, construction materials, and equipment installed in the work, linked to a specific location on land, which may include parts below ground, above ground, under water, and above water, built according to design".

#### ***Characteristics of Houses and Other Construction Works***

As the subject of liability for damages caused by houses and other buildings, these structures have the following characteristics:

Firstly, houses and other buildings are man-made creations. Secondly, houses and other buildings represent a combination of construction materials and installed equipment. This characteristic helps distinguish between "liability for damages caused by houses and other buildings" and "liability for damages caused by objects thrown or falling from the building".

Thirdly, houses and other buildings must be permanently attached to the land.

### **The Concept, Nature, and Characteristics of Liability for Damages Caused by Houses and Other Construction Works**

#### **The Concept**

Liability for damages is a type of civil responsibility that arises when a person violates legal obligations, causing harm to others, and must compensate for the material or emotional losses they have caused.

At its core, the responsibility for damage compensation is a type of civil liability governed by civil law. This responsibility arises when damage occurs as a result of a breach of duty, which could be a duty agreed upon in a contract or an extra-contractual duty. When it arises, the obligation to compensate for damage always brings about a financial disadvantage for the person held responsible. Based on the origin of this responsibility, it can be divided into contractual damage compensation and extra-contractual

damage compensation. Currently, in legal science, there are various theories that exist around this topic.

#### **The Essence**

In countries traditionally following continental law (like France, Germany, Italy, Spain, Japan, South Korea, and even Vietnam), this is seen as a type of liability for damages caused by property—a kind of responsibility arising from homes or other buildings causing harm on their own without needing to prove fault. Typically, at least one provision in the Civil Code is dedicated to regulating this liability.

In contrast, there are no specific regulations pertaining to this responsibility in nations that traditionally follow case law, such as the UK and the US. This responsibility falls under the category of "liability for harm occurring on premises". The term "premises" in this context is understood as "any fixed or mobile structure, including ships, vehicles, or aircraft". The scope of this responsibility is quite broad; it not only includes compensating for damages in cases where houses or other buildings collapse, causing harm, but also includes compensating for damages in cases where other assets on the land cause harm.

Based on the analysis above, in essence, the responsibility to compensate for damages caused by houses or other construction projects is a type of liability for damages caused by property that arises without the need for fault. This responsibility comes into play when the damage is due to the direct impact of the house or other construction project. It's considered that a house or construction project causes damage itself when the damage occurs not due to the impact of an irresistible event (rain, storm, lightning, earthquake, tsunami, etc.) causing it to collapse, break down, or erode, causing damage; not due to any illegal act or fault of any entity directly impacting the house or other construction project (pulling, jerking, pushing over, smashing, etc.); nor due to any object directly impacting the house or other construction project (for example, Mr. A's tree falls and crushes Mr. B's roof, causing injury to Mr. C). Houses or other construction projects cause damage themselves (collapse, break down, erode, etc.) due to their internal defects. These defects may stem from mistakes in construction or during maintenance of the house or other construction projects. Thus, it can be seen that the deep-rooted cause of houses or other construction projects causing damage could still be human error. However, this is an "indirect fault" rather than a "direct fault": a fault in management (not caring for maintenance or timely repair of damages causing houses or other construction projects to cause damage) rather than a fault in using houses or other construction projects to cause damage. Proving this fault is extremely difficult and even impossible in many cases. Therefore, to protect the legal rights and interests of those who suffer damage, the law does not require them to prove this fault. When houses or other construction projects cause damage, owners, possessors, managers, and users must take responsibility for compensating for damages, even if they can prove they are not at fault. They are only exempt from liability if they can prove that the damage occurred due to an irresistible event, entirely due to the fault of the damaged party or the fault of a third party.

Meanwhile, according to the provisions of Article 631 of the 1995 Civil Code and Article 627 of the 2005 Civil Code, it is the responsibility to compensate for damages caused by illegal actions or faults of the "owner, person entrusted by

the owner to manage and use houses and other buildings". To be compensated, the victim must prove the fault of the owner or person entrusted by the owner in "letting houses or other buildings collapse, get damaged, or cause harm to others". The damage in this case is not due to the direct impact of houses or other buildings but to the illegal actions or faults of the owner or person entrusted by the owner. Therefore, fundamentally, this is not a responsibility to compensate for damages caused by property but a responsibility to compensate for damages caused by illegal actions with faults (of the owner or person entrusted by the owner).

When the 2015 Civil Code came into existence, the responsibility for compensating damages caused by houses and other construction works continued to be stipulated in Article 605 with two sections: Section 1 outlines the compensation responsibility of the homeowners, those entrusted with the management and use of houses and other constructions, and Section 2 defines the joint liability for damage compensation of the contractor with the homeowners, possessors, and those entrusted with the management and use of houses and other constructions.

### Characteristics

Besides the common features of liability for compensation for damages outside of contracts, the responsibility for compensating damages caused by houses and other construction works also has the following unique characteristics:

Firstly, let's talk about what causes the damage: In terms of compensation for damage caused by houses or other buildings, the cause of the damage is usually the building itself. As we've discussed in Section 1.4, houses or other buildings can cause damage in four scenarios: due to uncontrollable events; because of the impact of another property; due to illegal human actions (like pulling, pushing over, demolishing, etc.); and because of the building itself causing damage.

Second, on the conditions for liability: In the case of compensation for damages caused by houses or other construction works, to be compensated, the victim only needs to prove three conditions: there is damage; there is a direct impact from the house or construction work; and there is a causal relationship between the damage and the direct impact of the house or construction work. There's no need to prove any fault from the owner, occupier, or manager of the house or other construction works.

Thirdly, about compensated damages: When illegal actions cause harm, the compensated damages will include harm to honor, dignity, and reputation. However, when houses or other buildings cause damage themselves, the harm they cause cannot include damage to honor, dignity, and reputation. This stems from the way houses or buildings cause damage and the nature of honor, dignity, and reputation. Honor, dignity, and reputation are personal values always associated with a specific organization or individual. The honor, dignity, and reputation of an entity are "formed by their actions and behavior, from their contributions and achievements over the years of their lives, and are evaluated by society according to social ethical standards and principles". These values can only be harmed when someone else "insults" them, meaning someone else uses language or actions that are derogatory or contemptuous, causing the harmed person to feel humiliated

and their self-esteem to be injured; or when someone else disseminates false information, causing misunderstandings about the harmed person's ethics and character, causing these people's reputations to decline. Houses or other buildings themselves are just a type of immovable property, so naturally they cannot perform such actions. Therefore, the damage caused by houses or other buildings cannot include damage to honor, dignity, and reputation.

Fourthly, regarding the subject responsible for compensating damages and the basis for determining the subject responsible for compensating damages: In compensating damages caused by houses and other construction works, when houses and other construction works cause damage, CSH, the person assigned to manage and use houses and other construction works, is responsible for compensation. Although the damage is caused by houses and other construction works, CSH, the person CSH assigns to manage and use houses, may not be at fault, but they still have to take responsibility for compensating damages. The basis for obliging these subjects to be responsible for compensating damages according to different theories is determined differently:

Fifthly, we'll discuss the shared responsibility for compensation of damages by shareholders, possessors, and those entrusted with the management and use of houses and other construction projects with the contractor.

In terms of liability for damages caused by houses or other construction projects, the homeowners, possessors, and those entrusted with the management and use of these properties are jointly responsible for compensating for the damages, even if they haven't committed any unlawful acts. This applies when the damage is partly due to unlawful acts or negligence by the builder and partly due to the inherent issues of the house or construction project. Moreover, their joint responsibility is with the builder, not with those unlawfully possessing or using the house or construction project. For instance, if a builder's careless workmanship, deviation from design, or failure to adhere to standards results in subpar quality, or if factors like time, climate, and weather exacerbate existing defects during use.

### 4. Conclusion

The article presents a theoretical basis for studying the liability for damages caused by houses and other construction works within the legal systems of various countries. It delves into and analyzes three doctrines that countries choose as foundations for building liability for damages caused by houses and other construction works: the doctrine of fault by presumption, the doctrine of strict liability, and the doctrine of negligence. The article constructs a concept, analyzing the characteristics of houses and other construction works. Based on this, it builds a concept of liability for damages caused by houses and other construction works while also analyzing the features of this responsibility from various aspects: the nature of responsibility, causes of damage, conditions that give rise to responsibility, compensated damages, and the basis for determining the subject responsible for compensation.

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