Theory of Proportional Liability in Tort Law

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This study is concerned with the distribution of damage or mitigation of liability in cases in which tortious behaviour and other factors concur to cause a certain amount of damage. Such an intermediate solution has been found in Japanese case law since the 1970s. These representative cases are either (1) cases in which the predisposition of the victim was concurrent with the conduct of the tortfeasor in traffic accidents, or (2) cases in which the breach of duties imposed on possessors and owners of structures on land (Civil Code Art. 717, State Redress Act Art. 2), in addition to the occurrence of uncontrollable factors, caused a certain amount of damage. In such a situation this study focuses on the theoretical bases which legally justify the above mentioned proportional solutions.

The first part of this study is aimed at finding a general theory for the proportional solution through a comparison with German law, in which the discussion about the introduction of proportional liability has been increasingly animated since the 2000s. On the other hand, the second part of this study is devoted to analyzing 6 types of cases in which the proportional solution can be taken. In conclusion, it has been proven that there are three types of theoretical forms which lead to the proportional solution, i. e. (1) proportional liability based on the uncertainty of the "connection of illegality" (in German "Rechtswidrigkeitszusammen-hang"), (2) proportional liability based on the "alternativeness of victims" (in German "alternative Opferschaft"), and (3) proportional liability based on the difficulty of the decision about whether the succeeding injury should be included in the scope of compensation. The first and second theoretical forms are given also as the result of the comparative study in the first part. The third theoretical form was discovered exclusively from the case study in the second part.

Finally, this study attempts to build the theoretical bases which legally justify proportional solutions. Therefore the issue of how each case should be solved belongs to future studies.