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The Practical Dilemma and Path Optimization of Judicial Application of Fairness and Responsibility

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Abstract. Article 1186 of the Civil Code imposes comprehensive limitations on the scope of application of fairness liability, replacing "may be determined based on actual circumstances" with "shall be prescribed by law." However, judicial practice still occasionally breaches this principle in applying fairness liability. Common manifestations include conflicts in legal basis for application, failure to implement reversed burden of proof, and insufficient reasoning in judicial decisions. To address these issues, it is essential to optimize the logic of the imputation system, strengthen procedural safeguards and risk-sharing mechanisms, and establish transparent, predictable adjudicative rules. This will ensure citizens perceive fairness and justice in every judicial decision.

Keywords: fair responsibility, concept of equity, risk sharing, burden of proof

1. Introduction

As a crucial institution balancing social interests within China's tort law system, the equitable liability mechanism underwent a significant legislative transformation under Article 1186 of the Civil Code. The amendment shifted from the original Tort Liability Law's provision in Article 24"based on actual circumstances"-to "in accordance with legal provisions" for loss allocation. This revision embodies legislators' value pursuit to curb judicial practices of "muddling through" rulings, aiming to limit discretionary space through statutory definition of equitable liability application and establish stricter judicial boundaries. However, tension persists between the ideal design of legal texts and the complex, ever-changing demands of reality. Recent judicial practice reveals a paradoxical coexistence of theoretical legalization and practical expansion in equitable liability application: while legislation explicitly confines equitable liability to statutory scenarios like emergency avoidance, acts of bravery, and high-altitude object throwing, numerous judgments still exceed statutory boundaries by directly invoking Article 1186. The core dilemma lies in balancing legal application contradictions, ineffective reversal of burden of proof, the "social securityization" of equitable liability, insufficient reasoning in judicial discretion, and lack of clear standards for application-resulting in both utilization and abuse. Based on these considerations, this paper analyzes cases involving Article 1186 citations over the past decade, explores the contradiction between statutory legalization and judicial expansion of equitable liability within the judicial framework, and proposes practical suggestions for improving applicable rules and mechanisms to optimize its implementation.

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2. Theoretical basis of fair responsibility

In legal jurisprudence, "equitable liability" constitutes a distinctive principle of civil responsibility attribution. Distinct from traditional fault-based liability (where liability is determined by the actor's fault) and strict liability that applies regardless of fault, its essence lies in allocating damages among parties under specific circumstances based on equitable principles. This liability mechanism emerges when statutory provisions for strict liability prove manifestly unfair, thus establishing a special responsibility framework where fault is not required and losses are reasonably shared between parties. The theoretical foundation of this concept is as follows [1]:

The moral foundation of justice principles and the concept of equity. The fundamental theoretical basis for fairness liability stems from universal ethical sentiments and requirements in human society, namely the principles of fairness and justice. When strict application of fault liability occurs after harm happens, it may result in victims (especially innocent and vulnerable individuals) bearing all losses alone while perpetrators or other parties remain exempt from responsibility-a situation widely deemed unjust under specific circumstances. The concept of equity reflects the law's pursuit of substantive justice rather than rigid adherence to formal logic or mere fault determination. As a regulator of social relations, the law must seek a balance of interests between parties to prevent manifestly unfair outcomes. In practical application, judges typically consider the following factors: 1. Nature and severity of harm; 2. Parties' financial status (particularly burden-bearing capacity); 3. Specific circumstances of harm occurrence (e.g., emergency avoidance or accidental incidents); 4. Relationship between parties and the source of harm (e.g., ownership, management, usage, or beneficiary status); 5. Victim's own negligence (negligence offset); 6. Public interest and good morals; 7. Flexibility and adaptability: Fair liability grants judges discretionary power to apply equity principles in adjudication based on case specifics, thereby enhancing legal adaptability and flexibility.

Secondly, risk-sharing forms the social foundation for maintaining harmony. The principle of equitable liability establishes a mechanism to appropriately distribute losses from adverse events among affected parties (including victims, perpetrators, and even beneficiaries), thereby preventing excessive concentration of damages on vulnerable individuals who might otherwise face dire living conditions. This demonstrates the legal system's role as a "lubricant" in social relations -its social function. Grounded in the "beneficiary-bearer" principle or compensation theory, this approach to loss distribution carries inherent rationality.

The third aspect addresses the legal rationale for compensating deficiencies in strict liability and fault-based liability. Under the fault-based liability framework, victims may receive no compensation if the actor is not at fault and does not meet statutory conditions for strict liability. This appears unreasonable in specific scenarios where neither party is at fault. In contrast, strict liability provides multiple avenues for liability exemption, making it difficult for wrongdoers to obtain remedies. By eliminating the requirement of fault and limiting defenses available to liable parties, strict liability facilitates easier liability establishment. This approach prioritizes compensation for creditors while maximizing the compensatory function of contractual obligations. Therefore, as a supplementary principle, equitable liability effectively addresses the shortcomings of traditional attribution principles.

3. The real dilemma of fair responsibility

An examination of judicial practice reveals that the specific application of the principle of fairness liability contradicts the original legislative intent. Specifically, it involves not only disputes over the

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fairness of substantive judgments, but also the lack of procedural justice, and more importantly, reflects deep structural problems such as power imbalance and inadequate institutional support.

3.1. Contradiction in the basis of legal application

The medical malpractice liability dispute between He Xiangbao, Wang Meiqun, and Chenzhou First People's Hospital in Hunan Province revealed contradictions in the legal basis for equitable liability [2]. In September 2008, He underwent surgery at Chenzhou First People's Hospital (hereinafter "First Hospital") after a car accident, receiving 3,000 milliliters of blood transfusion from Chenzhou Central Blood Station (hereinafter "Central Blood Station"). In March 2014, both He and his wife Wang were diagnosed with HIV infection. They sued the hospital and blood station, claiming the infection resulted from the blood transfusion. A technical appraisal of the medical incident indicated that the blood transfusion met clinical criteria, with legally sourced and properly tested blood. The HIV transmission route remained undetermined (potential sexual or blood-borne transmission), and no medical negligence was established. Based on the case details and appraisal findings, the court ruled as follows: First instance: In accordance with Article 132 of the General Principles of Civil Law (principle of equitable liability), both the hospital and blood station were ordered to compensate 50,000 yuan each. Second instance: The Chenzhou Intermediate Court adjusted the compensation amounts, ordering the blood station to pay 120,000 yuan and the hospital to pay 90,000 yuan (including the 50,000 yuan already paid).

In this case, the conflict between fairness liability and fault liability principles is evident. Article 54 of the Tort Liability Law (now Article 1218 of the Civil Code) stipulates that medical malpractice liability requires fault as a prerequisite. Although the appraisal has excluded any negligence from the medical institution, the court still ruled in favor of compensation under fairness liability, essentially breaking through the framework of fault liability and sparking legal disputes over "incurring liability without fault." The violation of the "legally prescribed liability" principle in special tort fields: Medical malpractice falls under the category of special torts, which should follow the "legally prescribed liability" principle (as stipulated in Article 49 of the Regulations on Handling Medical Accidents, which states "no compensation for non-medical accidents"). The application of fairness liability has been questioned as "undermining special laws" and confusing the attribution system.

In the health rights dispute case between Liu Mou and Zhang Moulian et al., Zhang, as a residential community owner, purchased a children's slide (including foot mats) at her own expense and installed it in a public area. The installation was approved by the property management company, which was responsible for cleaning and maintenance. Liu suffered a Grade 10 disability after tripping on the slippery foot mats and sued Zhang and the property management company for 200,000 yuan in compensation. The court ruled Zhang was not liable, stating her donation was legally justified, had no causal connection to the injury, and aligned with public order and good morals. The property management company bore 80% liability (120,000 yuan) for failing to fulfill its duty of cleaning and warning. Liu was found partially responsible, bearing 20% liability for failing to ensure proper safety precautions.

The retrial case of medical malpractice liability between Shi Hua and the PLA 254th Hospital stands as a landmark example of applying the principle of equitable liability in such disputes. Patient Li Shilun died after sudden deterioration following hospitalization for heart disease. A Medical Association appraisal concluded that the hospital's treatment complied with clinical standards, excluded medical negligence, and ruled that forged medical records bore no causal connection to the fatal outcome. The court ruled that while the hospital had committed no diagnostic errors, its actions violated patients' right to informed consent (through forged family signatures) and involved

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procedural flaws. Given the emotional distress inflicted on the bereaved family, the court ordered the hospital to compensate under Article 24 of the Tort Liability Law (now Article 1186 of the Civil Code), citing equitable liability. Medical liability traditionally prioritizes fault-based attribution (Article 1218 of the Civil Code), whereas equitable liability essentially treats non-causal procedural defects as grounds for compensation, effectively shifting medical institutions 'liability onto unforeseeable risks. When procedural flaws don't impair treatment, they bear no responsibility; when they do, fault liability prevails over equitable liability. In Shi Hua's case, the court failed to distinguish this legal divide, resulting in logically inconsistent liability determinations.

The Tort Liability Law contains multiple provisions establishing equitable liability. These liabilities cannot be categorized within the binary framework of fault-based and strict liability systems. The legal structure of the Tort Liability Law is constructed according to imputation principles, while the aforementioned loss-sharing provisions are grounded in the common principle of shared responsibility. This integration under the equitable principle undermines the fundamental "no fault, no liability" doctrine by consolidating previously fragmented regulations. The equitable liability principle lacks a legitimate basis for imputation, fails to establish judicial standards, and erodes the foundation of fault-based liability. To address this, the Civil Code achieves regulatory alignment through three measures: downplaying the systemic prominence of Article 1186, imposing stricter application conditions, and introducing the voluntary assumption of risk rule.

3.2. The failure of the reversal of burden of proof and the "social security" of fair responsibility

China's current legal system provides detailed regulations on the reversal of burden of proof and its specific scenarios. Article 1218 of the Civil Code stipulates: "If a patient suffers harm during medical treatment and the medical institution or its staff is at fault, the medical institution shall bear compensation liability." In tort lawsuits arising from medical practices, the medical institution must prove that there is no causal relationship between the medical actions and the harm, as well as that no medical negligence occurred.

In the aforementioned He Moumou case, a judicial dilemma arose when causation could not be proven. According to Article 1218 of the Civil Code, patients must initially demonstrate the connection between harm and medical procedures. In this case, He Moumou failed to prove that the infection originated from blood transfusion (with a six-year interval and multiple infection pathways), while the blood bank couldn't provide conclusive evidence of blood quality compliance (due to missing subsequent donor records). Additionally, when both parties reached a deadlock in evidence presentation, the court opted to substitute causation determination with equitable liability compensation. Against the backdrop of prominent doctor-patient conflicts, courts may employ equitable liability as a means to resolve social tensions. For instance, the second-instance ruling increased compensation partly due to the patient's "debt-ridden" financial situation rather than purely legal logic.

In the Shi Mou case, while the court ruled that the hospital's treatment was faultless, it identified procedural flaws that lacked causal connection to the injury. Guided by "humanitarian considerations" and "stability maintenance needs," the court applied equitable liability compensation. The 2017 Zhejiang man's sudden death on a shared bike case involved the deceased using Alipay QR code to activate a "ofo bike-sharing" (commonly called yellow bikes) deployed by defendant Baike Company in Hangzhou. While riding near the Moganshan Road-Shixiang Road intersection, the victim fell off the bike, lost consciousness, and died despite emergency efforts. The medical certificate recorded the cause as "sudden death with unknown causes." Forensic

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examination revealed no obvious fatal trauma. However, due to the family's refusal for autopsy, the insurance company denied compensation citing "inability to prove accidental circumstances." Contrary to legal criticism of the insurer's denial (lawyers argued it was unlawful), the court shifted focus to corporate accountability, exposing dual deficiencies in both social security systems and commercial insurance mechanisms.

3.3. There is insufficient reasoning and lack of judicial application standards for the judicial discretion of fairness liability

In the case of He Moumou, where infection occurred due to blood transfusion and the causal relationship between the damages and medical institutions or blood supply providers remained unclear, the court applied the principle of equitable liability. However, the court failed to adequately explain why this principle was applied when causation was ambiguous, nor did it provide sufficient elaboration on how compensation amounts were determined based on factors such as the severity of the parties' losses and their financial circumstances. The ruling merely mentioned compensation under the equitable liability principle without detailing the reasoning process or legal basis for its determination, resulting in insufficient judicial reasoning.

In the Shi Mou case, the Hebei District People's Court of Tianjin City ruled that while the medical malpractice technical appraisal concluded the case did not qualify as a medical accident and acknowledged certain deficiencies in the medical records, it appropriately ordered the hospital to provide financial compensation to the patient's family under the principle of equitable liability. However, the court failed to clarify the connection between the medical record deficiencies and the application of equitable liability, nor establish clear criteria for determining compensation amounts. The appellate court upheld the original judgment without further elaboration on the applicability of equitable liability or the reasonableness of the compensation amount. The retrial court similarly avoided addressing these critical issues, resulting in insufficient reasoning and ambiguous standards for applying equitable liability. These shortcomings make it difficult to uphold the fairness and rationality of the judicial decision.

In the "2017 Zhejiang Man 's deat involving a Yellow Bike", the Gongshu District People's Court in Hangzhou ruled that Xiaohuangche Company bore no fault in Mr.Yao's death. However, since Mr.Yao had supported the company's business operations and benefited from them, the court applied the principle of equitable liability to order appropriate economic compensation. The court merely cited the company's profit gains as grounds for applying equitable liability, yet failed to thoroughly analyze or justify critical issues: the degree of connection between operational profits and damages, why such circumstances warranted corporate compensation, and how the compensation amount of 150,000 yuan was determined. Moreover, without clear standards, judicial discretion became arbitrary-different judges might render inconsistent rulings based on similar facts, undermining the uniformity and stability of the legal system.

Through the analysis of the above three cases, it can be seen that in the judicial discretion of equitable liability, there are widespread problems such as insufficient reasons for the application of equitable liability and lack of clear standards for determining the proportion of responsibility sharing and compensation amount, which fully demonstrates the view that there is insufficient reasoning and lack of standards in the judicial discretion of equitable liability

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4. Optimizing the path of fair responsibility

4.1. Optimize the logic of the liability system and limit the application boundary of fair liability

4.1.1. Strictly define the applicable premise of fairness liability

According to Article 1186 of the Civil Code, which requires "no fault on either party regarding the occurrence of damage," a dual negative review mechanism must be established. First, comprehensive evidence collection and judicial appraisal should confirm the absence of intentional or negligent acts by the responsible party, avoiding presuming mutual innocence when facts remain ambiguous (such as the flawed logic of applying equitable liability simply because fault cannot be determined). For instance, in medical disputes where an appraisal concludes no medical malpractice exists but there are formal flaws in medical records, the principle of fault liability should take precedence to examine breaches of medical obligations, rather than directly initiating equitable compensation. Second, minimal relevance between the act and the damage outcome must be ensured (e.g., when the act merely creates conditions for harm or significantly increases risks), preventing humanitarian relief from interfering with judicial liability determination (e.g., equitable liability should not apply when there's no causal link between smoking advice and sudden illness-related death). Finally, Article 1186 should only be invoked as a last resort when all statutory liability rules-including fault liability, strict liability, emergency avoidance (Article 182), and guardianship liability (Article 1188)-have been exhausted.

4.1.2. Distinguish the application scenarios of fault exemption and equitable liability

The principle of equitable liability addresses the issue of "no-fault loss allocation" rather than "fault-based compensation reduction". In judicial practice, common cases where victims 'fault is conflated with equitable liability (such as equal liability in some traffic accident cases) should be strictly corrected under the following circumstances: When damage results from the victim's own fault, compensation ratios should be adjusted according to Article 1173 (negligence offset), not redistributed based on "equity"; When there exists a fundamental difference between partial fault liability (e.g., security providers failing to exercise due diligence) and the "no-fault allocation" under equitable liability in legal theory, the mixed application of "good faith principle + equitable liability" to replace fault-based review must be prohibited.

4.2. Strengthening the procedure guarantee and risk sharing mechanism

4.2.1. Improve the procedural guarantee of the failure of the reversal of the burden of proof

To strengthen judicial investigation authority, when victims face difficulties in providing preliminary evidence under reversed rules (such as inability to obtain original medical records in medical disputes), courts should proactively collect key evidence or order the opposing party to cooperate with expert appraisal. This prevents direct shift to equitable liability allocation for losses due to insufficient evidence. Establish alternative proof rules: Allow inference of fault or causation through indirect evidence chains (e.g., industry practices, expert witness opinions) to reduce abuse of equitable liability caused by "evidence vacuum." For instance, if a medical institution refuses to provide medical records, Article 16 of the Medical Dispute Prevention and Handling Regulations can be cited to presume its negligence, rather than merely compensating superficially.

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4.2.2. Limit the abuse of the backstop function

Fair liability is not a universal solution to all infringement ambiguities. Through legislative interpretations or guiding cases, the following negative lists should be clarified: First, exclude the application of fair liability in purely accidental events (such as damages caused by force majeure), self-risk-taking behaviors (exempted under Article 1176's assumption of risk rule), and completely unrelated benefit-seeking actions (e.g., the ambiguous connection in the "Xiaohuangche sudden death case" where "supporting business operations requires compensation"). Second, prohibit the distortion of fair liability into social relief for victims' poverty status, strictly distinguishing between judicial adjudication and social security functions.

4.3. Establishing transparent and predictable adjudication rules

4.3.1. Judicial interpretation of the list of factors for discretion

The Judicial Interpretation of Tort Liability in the Civil Code clarifies the mandatory consideration dimensions of fairness liability [3]:

First, conduct a comparative analysis of economic capabilities by evaluating objective criteria such as assets, income, and insurance coverage (to prevent "robbing the rich to help the poor" type of discretion). Next, assess the severity of damages through quantified evaluation of personal injuries (e.g., disability compensation base), types of property losses, and lasting impacts. Then determine the correlation between the act and damage, including whether it was a necessary condition for the occurrence of harm and the degree of risk amplification (as seen in blood transfusion infection cases where differences exist between blood providers and medical institutions 'risk contributions). Finally, compare the beneficiaries' benefits with their risk-bearing capacity, ensuring that beneficiaries (such as corporate profits) bear proportionally greater responsibility without absolute liability (requiring reasonable proportionality).

4.3.2. Implement guidance on the proportion calculation formula

Article 829 of the German Civil Code on equitable liability stipulates: "A person who is not liable for damages under Articles 827 and 828, as defined in Articles 823 to 826, shall still be liable for damages within the limits required by fairness, particularly based on the circumstances of the parties, and without depriving them of funds necessary for maintaining an adequate livelihood and fulfilling their legal obligations."

Scholars such as Gierke, Larenz, and Canaris from Germany have identified three progressive conditions for applying this provision: 1. Meeting the objective elements of an infringement act; 2. The actor lacking tort capacity, including mentally ill individuals or minors under Articles 827 and 828; 3. Inability to obtain compensation from a third party with guardianship responsibility, where equitable damages require consideration of the party's economic status and necessary needs in the case, avoiding the sole reliance on financial circumstances. For instance, medical compensation may be determined by referencing the ratio between the victim's actual loss and the medical institution's annual revenue range [4].

5. Conclusion

As a unique mechanism balancing formal and substantive justice within the tort liability framework, the standardized application of equitable liability not only determines the credibility of individual

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case adjudications but also profoundly shapes societal perceptions of "fairness" and boundaries of behavioral freedom. From conflicts in legal basis to the socialization tendency caused by ineffective reversal of burden of proof, and further to practical dilemmas like insufficient reasoning and lack of standards in judicial discretion, these challenges fundamentally reflect the tension between legal stability and social complexity, rigid rules and case-specific justice. This paper analyzes the core issues in judicial application of equitable liability and proposes an optimization path centered on "boundary purification, procedural reinforcement, and standard hardening": At the legal application level, strict adherence to the principle of "no fault and exhaustion of other liability principles" is essential to prevent equitable liability from being distorted into tools for evading evidentiary obligations or compensating for social security gaps; In procedural operations, refined allocation of burden of proof and socialized risk-sharing mechanisms should clarify the functional boundaries between judicial rulings and social security systems, avoiding improper transfer of social risks through personal liabilities; Regarding discretion norms, judicial interpretations should detail element lists, establish proportionality calculation models, and strengthen judicial reasoning obligations, transforming the application of equitable liability from "vague equity" to "transparent discretion." [5]

The value of these optimization mechanisms lies not only in providing actionable guidance for judicial practice, but more importantly in returning to the fundamental purpose of fairness liability. It is neither a "universal clause" overriding fault-based and strict liability, nor merely a "complementary regulator" to compensate for the inadequacies of strict rules in specific scenarios. Only through this approach can substantive justice be achieved in individual cases while maintaining the logical coherence of tort liability systems. Ultimately, it establishes a dynamic balance between behavioral freedom and rights protection within the legal framework, injecting stronger legitimacy into judicial decisions and offering stable behavioral expectations for society. This represents both the direction for improving the fairness liability system and an essential requirement for building a new-era legal framework that ensures "the people feel fairness and justice in every judicial case."

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