

Lecture on Tort law

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■ Introduction

Frequency of the application of tort law by Japanese courts

Two types of tort law in the world

A metaphor of an electric circuit

Tort in general

Special torts

Self-introduction

- I am a professor of Meijigakuin University in Tokyo.
- 12years ago, however, I was a professor of Nagoya University.
 - During these periods I was going to Asian countries, State of Mongolia, Vietnam, Cambodia, Laos, Uzbekistan and China to cooperate development of civil law.
 - Fortunately, these activities were evaluated from this university, I became to an emeritus professor of Nagoya University in 2008.
- So, I am both a professor of Meijigakuin University and an emeritus professor of Nagoya University because emeritus professor is life long post.

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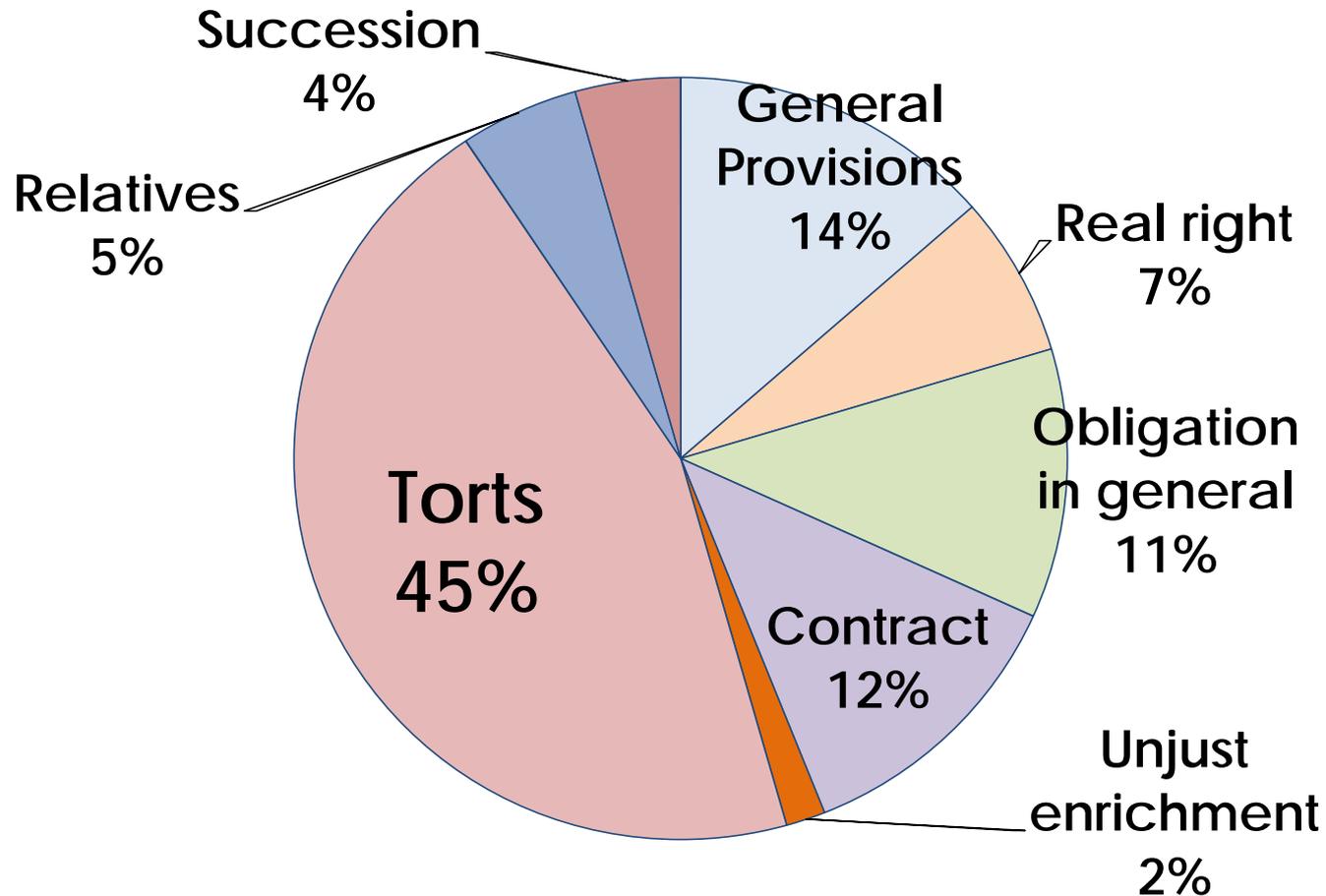
- [Introduction](#)
 - 2 types of tort law system
 - [French type](#)(since1804)
 - [German type](#)(since 1900)
 - [Structure of tort law](#)
- General tort law
 - Single tort
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Schedule of lecture

Evaluation by presentation

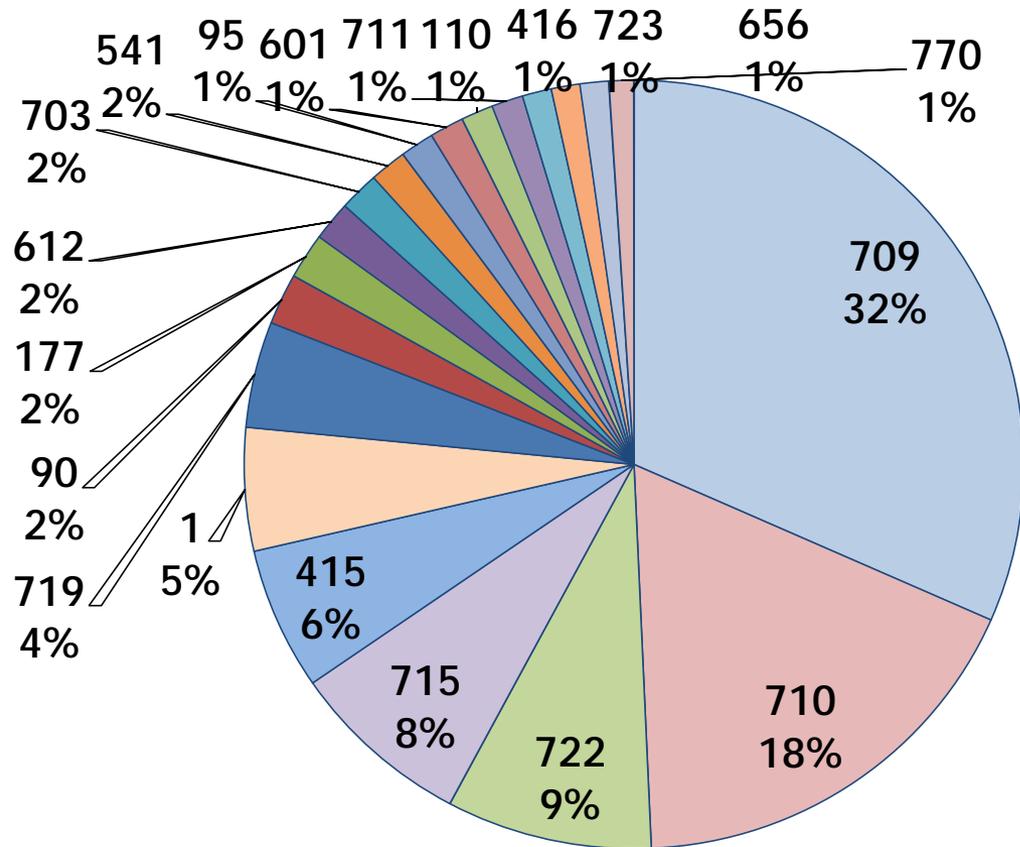
	1 st day	2 nd day	3 rd day	4 th day
1 st period 10:00-11:00	Introduction	Joint and several liability	Presentation of Team1:Myanmar	Presentation of Team 4: Ethiopia
2 nd period 11:00-12:00	General tort	Exercise 1	Presentation of Team2 :Bulgaria	Discussion and Comment
Lunch(12:00-14:00)				
3 rd period 14:00-15:00	Factual and Legal causation	Exercise 2	Presentation of Team3: Vietnam	Supplemental lecture
4 th period 15:00-16:00	Special tots	Summary	Discussion and Comment	Close(Coffee and Cakes)

Frequency of application of the tort law by Japanese courts



Best 20 articles of Civil Code of Japan

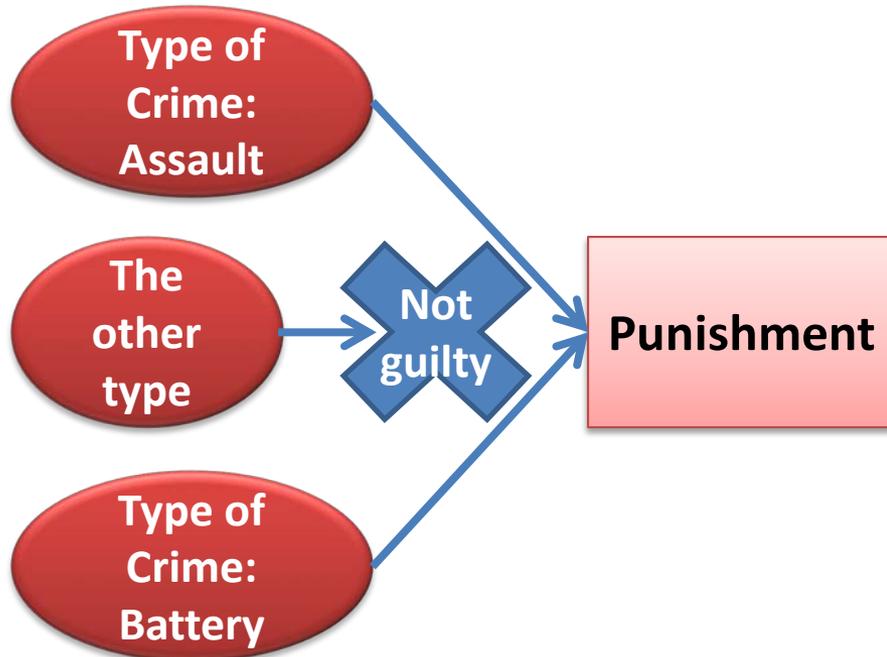
from the view point of frequency of application(1945-2013)



Difference between Criminal law and Tort law

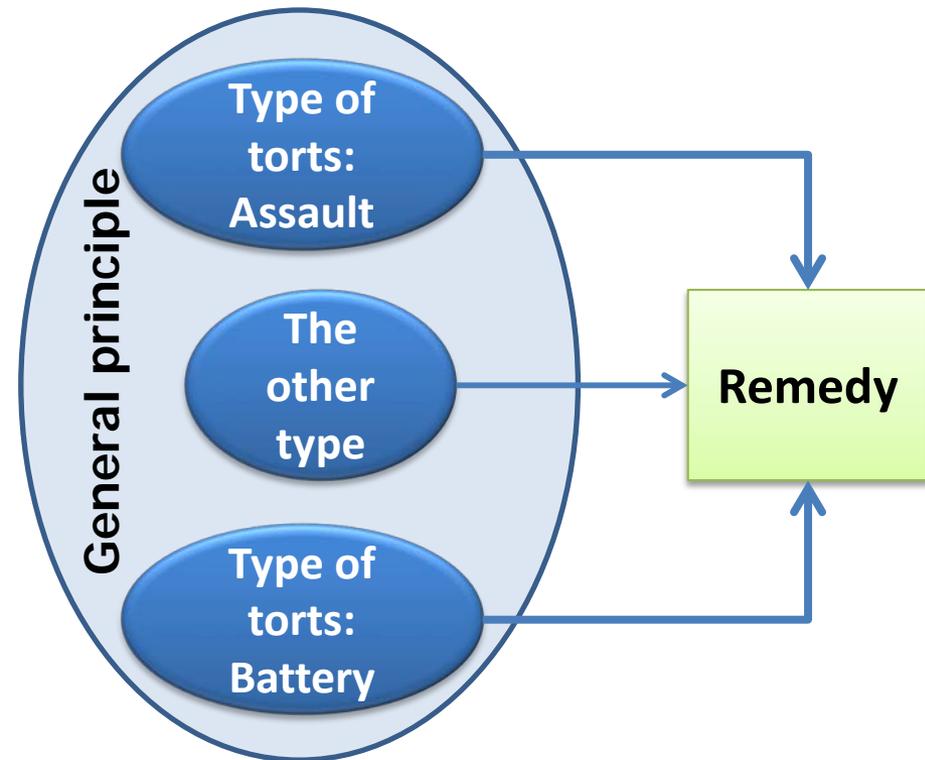
Criminal law

(Legality principle: nul poena sine lege)



Typology

Civil law (Remedy)



General principle

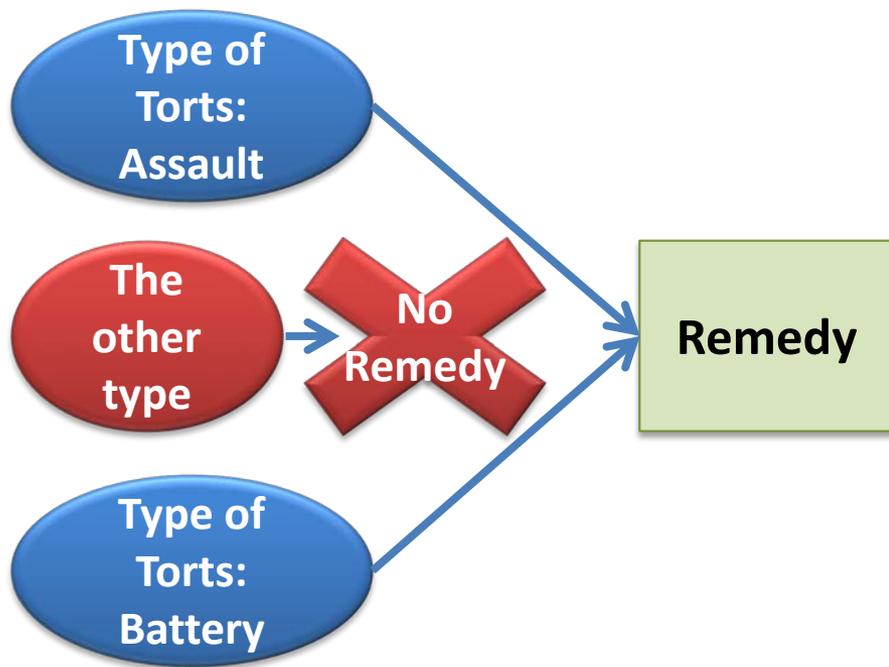
Function of Law

- What is function of law?
 - Making Justice (Good work will be rewarded and bad work punished.)
 - Freedom
 - Do anything whatever you want, if it is not prohibited.
 - Responsibility
 - Minimize damage or social cost which will be caused by your act.

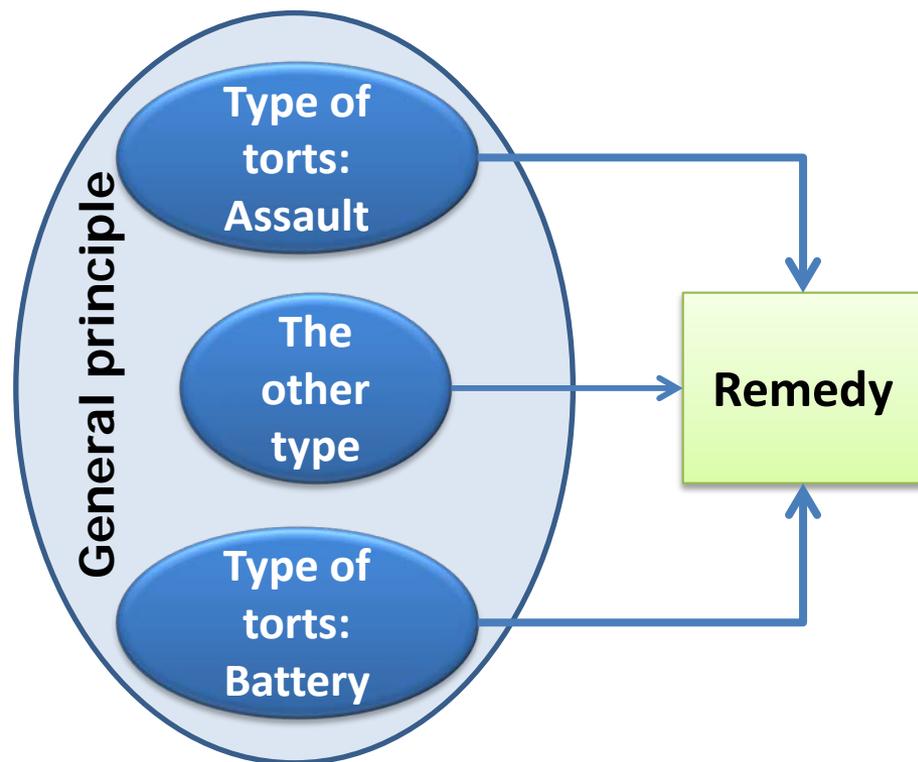
Types of tort law in the world

Roman or German type

French type



Typology



General principle

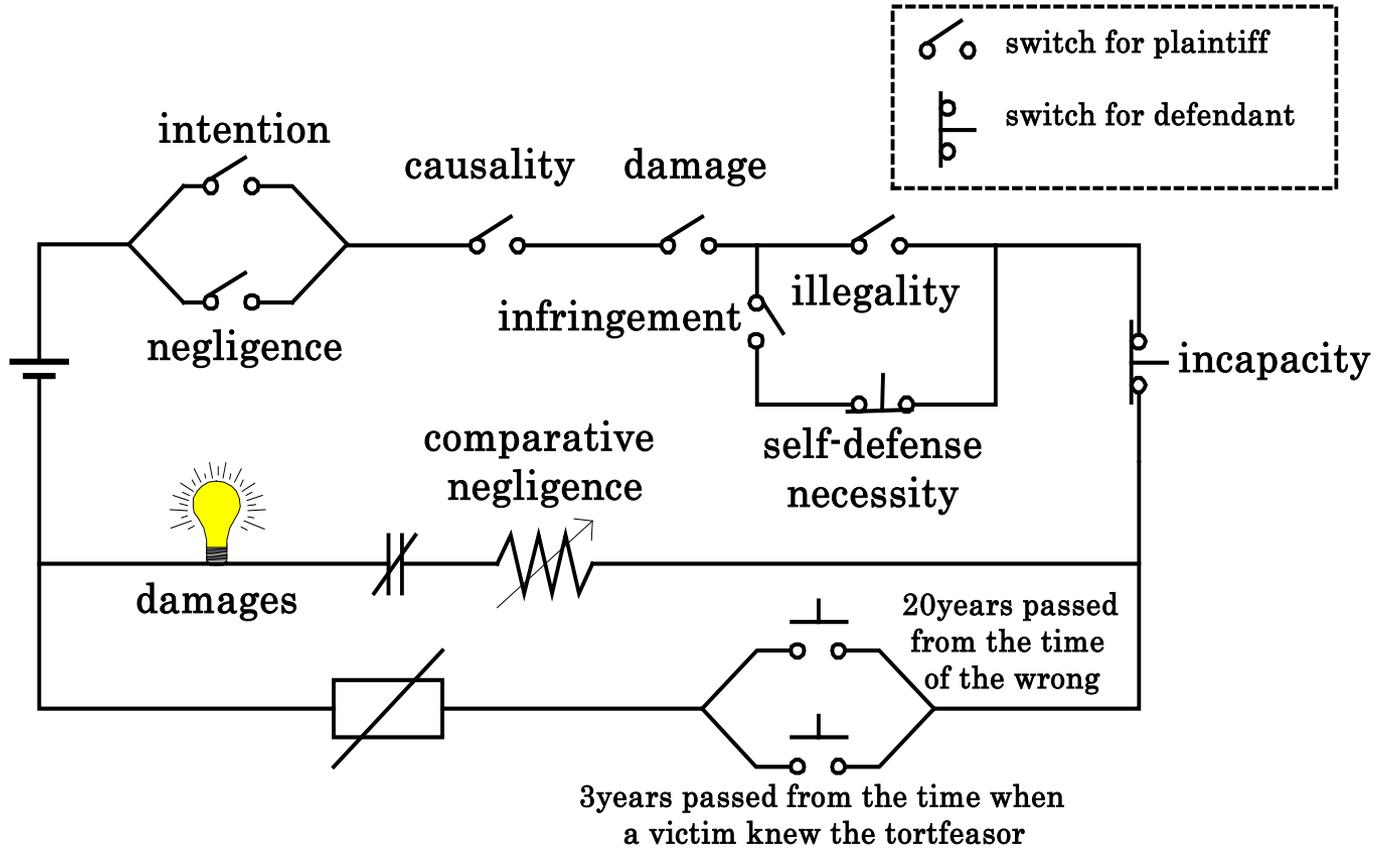
French Civil Code(1804)

- Art. 1382 (Civil responsibility in general)
 - Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.
 - Tout fait quelconque de l'homme, qui cause a autrui un dommage, oblige celui par la faute duquel il est arrivé, a le réparer.
- Characteristics
 - There is no term of right in this provision.
 - It means that all of rights and legal interests can be compensated.
 - Prerequisite is only 3: fault, damage, and causation between fault and damage.

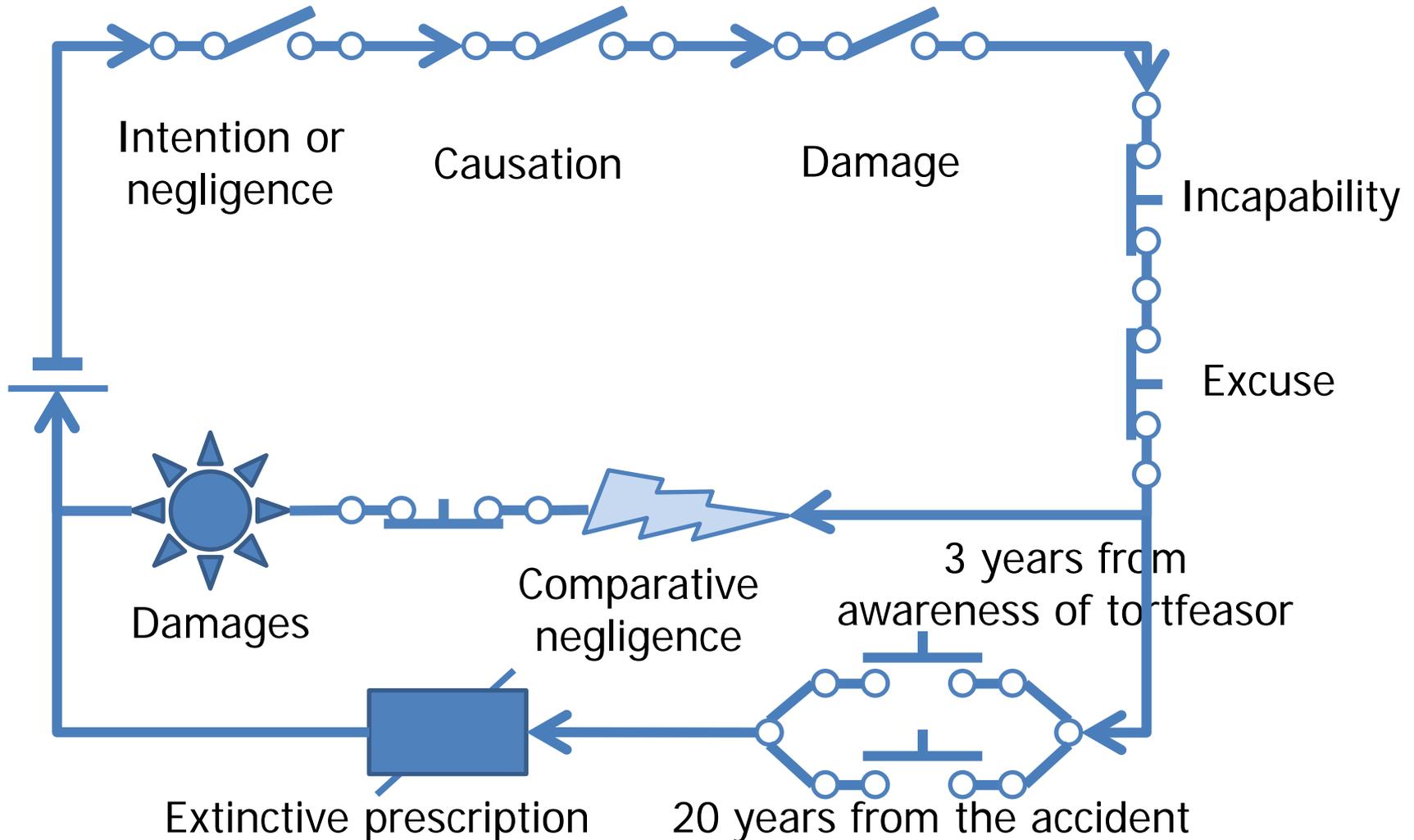
German Civil Code(1900)

- § 823 (Duty to compensate for damage)
 - (1) A person who, wilfully or negligently, unlawfully injures the life, body, health, freedom, property or other right of another is bound to compensate him for any damage arising therefrom.
 - (1) Wer vorsätzlich oder fahrlässig das Leben, den Körper, die Gesundheit, die Freiheit, das Eigentum oder ein sonstiges Recht eines anderen widerrechtlich verletzt, ist dem anderen zum Ersatz des daraus entstehenden Schadens verpflichtet.
- Characteristics
 - Limited list of rights: Pure economic loss is excluded

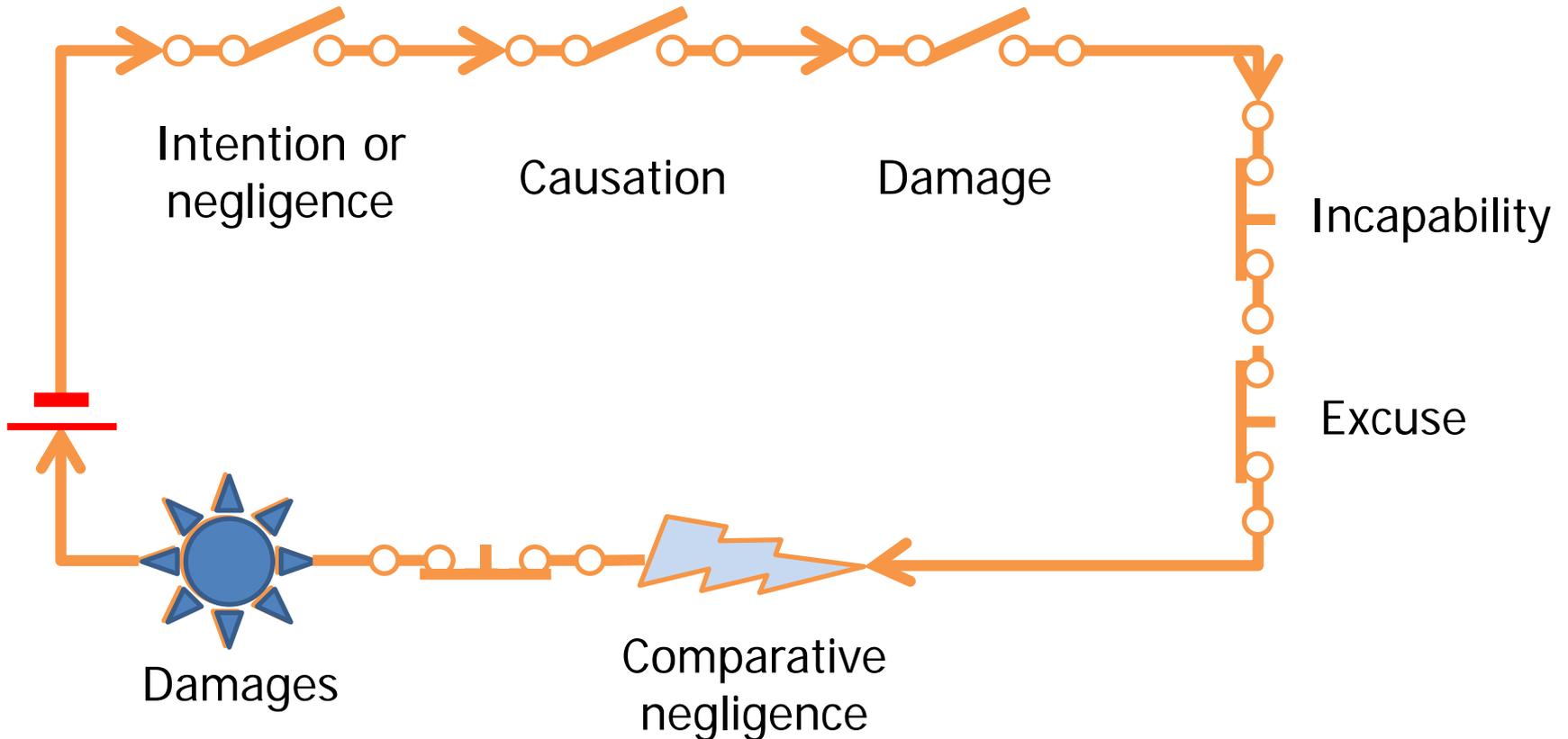
Structure of the general tort law in Japan



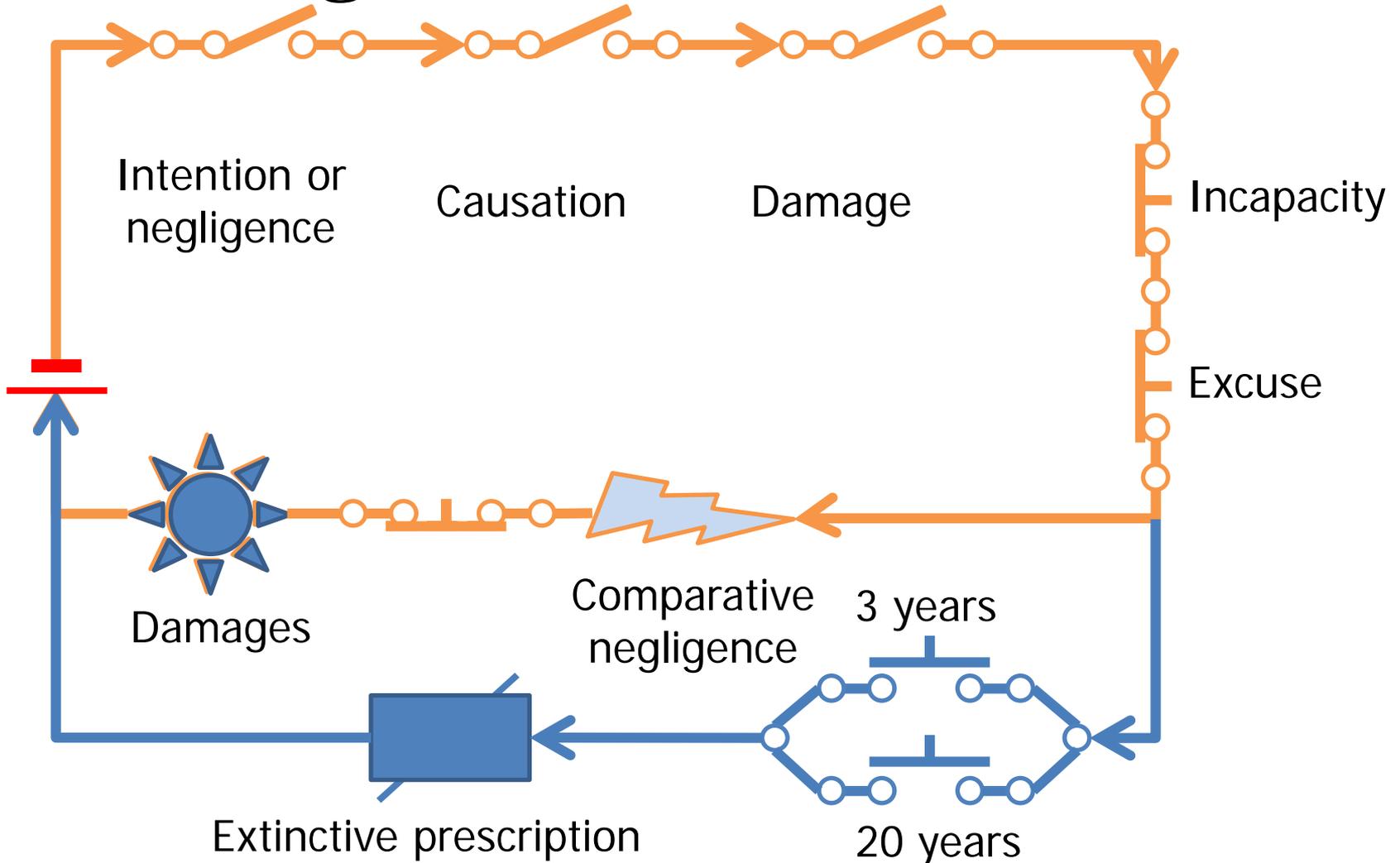
Dynamic understanding of general tort law (1/3)



Dynamic understanding of general tort law (2/3)



Dynamic understanding of general tort law (3/3)



General principle of the tort law in Japan

- Article 709 (Tort in general - compensation for damage)
 - A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

Function of general provision of tort

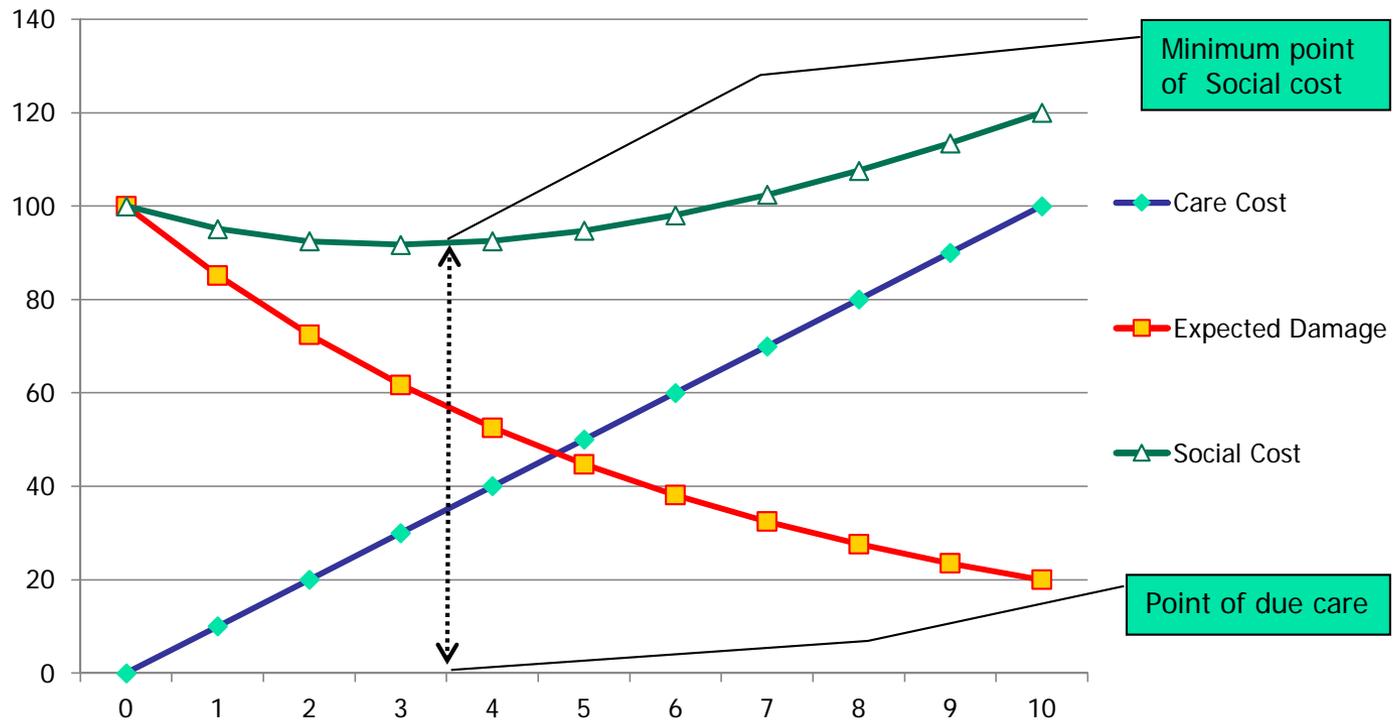
- The general provision of Article 709, were made intentionally abstract in order to give sufficient discretion to the courts in their interpretation.
- This enabled the courts to cope with newly emerging problems such as pollution or products liability cases.
- After the judge-made-law, many specific laws came out.
 - Law on the compensation of loss arising from car accidents (1955) → reducing burden of proof, introducing the system of compulsory insurance
 - Remedies of harm caused to human health by pollution (1973) → strict liability, reducing burden of proof
 - Law on Products liability (1994) → strict liability, reducing burden of proof

Theory of fault

(intention or negligence)

- A. Breach of the duty of foreseeability
 - A person should be considered negligent for his/her failure to foresee the loss which is likely to occur from his/her act.
- B. Breach of the duty of avoidability
 - A person is negligent if he fails to take measures needed to avoid and prevent the loss.
 - Foreseeability is required, but in addition to the breach of the duty to foresee the outcome of his/her act. There should be a breach of the duty to avoid the outcome.
- C. Breach of the duty to avoid foreseeable loss
 - A person is negligent if he fails to take measures needed to avoid and prevent the loss which he/she have to foresee.

Illustration of Point of Due Care



What is fault?

- Retinal disease case

■ Facts

- A premature baby suffered from retinal disease caused by oxygen treatment.

■ Judgment (Sup. C. Nov. 13 1979)

- The doctor is not liable, since his treatment was in accordance with the current standard of academic opinion and surgical knowledge.

■ However in a similar case 10 years later, the Supreme Court held that the hospital was liable, presumably taking into account the advances made by medicine in the mean time (Sup.C. March 26, 1985).

Tort in general -illegality

- Article 720 (Self-defense, necessity)
 - (1) A person who, in order to protect his own right or that of a third person against the unlawful act of another, unavoidably commits a harmful act is not liable in compensation for damages; however this shall not preclude a demand of compensation for damages by the injured party against the person who committed the unlawful act.
 - (2) The provisions of the preceding paragraph shall apply mutatis mutandis in cases where a thing belonging to another is damaged in order to avert an imminent danger which has arisen from such thing.

Tort in general - causation

■ Two types of causation

■ Factual causation

■ Test of "sine qua non"

- If there is not A (cause), B (result) would be occurred or not?
- If the answer is "no" then there is **factual causation** between A and B.

■ Adequate causation

■ Test of "enhancement of probability(foreseeability)"

- A(cause) increases probability of occurrence of B (result) or not?
- If the answer is "yes" then there is **adequate causation** between A and B.

Tort in general – Compensation and contributory negligence

- Article 722 (Manner of compensation, fault in common)
 - 1. The provisions of Article 417 shall apply mutatis mutandis to the compensation to be made for the damage which has arisen from an unlawful act.
 - 2. If there is any fault on the part of the injured party. The Court may take it into account in assessing the amount of the damages.

Tort in general -extinction

- Article 724 (Extinctive prescription)
 - The right to demand compensation for the damage which has arisen from an unlawful act shall lapse by prescription if not exercised within three years from the time when the injured party or his legal representative became aware of such damage and of the identity of the person who caused it, the same shall apply if twenty years have elapsed from the time when the unlawful act was committed.

General principle of the tort law in case of multiple tortfeasors

■ Article 719

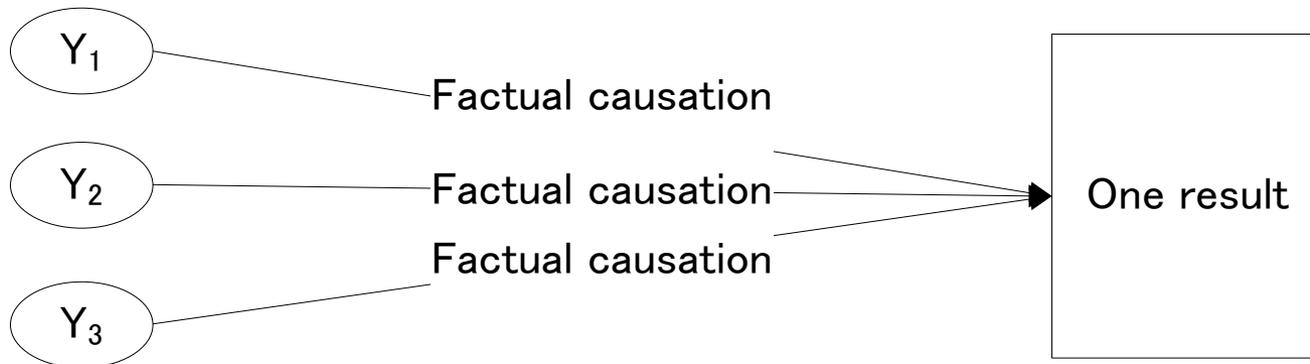
- If two or more persons have by their joint unlawful act caused damage to another, they are jointly and severally liable to make compensation for such damage; the same shall apply if it is impossible to ascertain which of the joint participants has caused the damage.
- 2. Instigators and accomplices are deemed to be joint participants.

Yokkaichi Pollution Case

- (Judgment of the **Tsu**District Court, **Yokkaichi** Division, **July 24, 1967** (Hanji 672-30)).
- **Facts:** Several factories discharged polluted air and caused local inhabitants serious bronchial problems. These factories formed an industrial complex.
- **Judgment:** It was ascertained that without each party's act the loss would not have been caused and that the defendants, who formed an industrial complex, were sufficiently related to be made jointly liable. Even when the act of each tortfeasor did not by itself cause loss, if it caused loss in concurrence with other tortfeasors' act, all of them were liable.

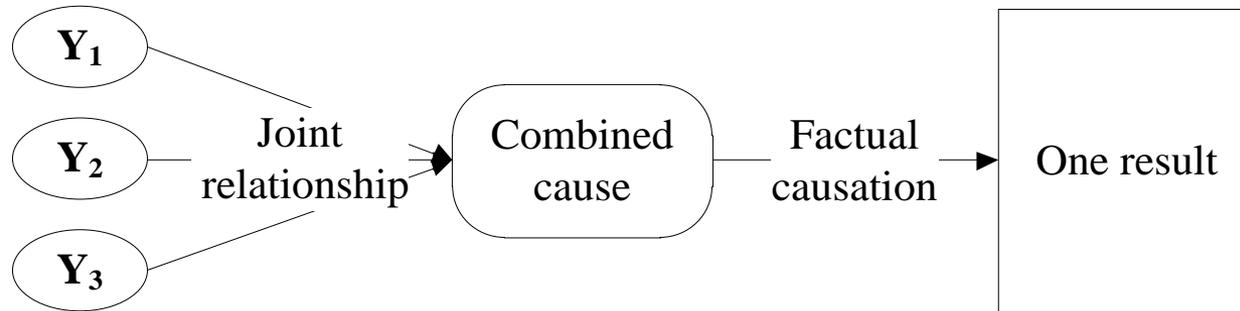
Joint torts and factual causation are contradictory to each other

- Case1: Each of Y_1, Y_2, Y_3 poured 4mg of poison into X's wine glass.
 - LD(lethal dose: fatal dose) of the poison is 10mg.
- Case2: Each of Y_1, Y_2, Y_3 poured 5mg of poison into X's wine glass.

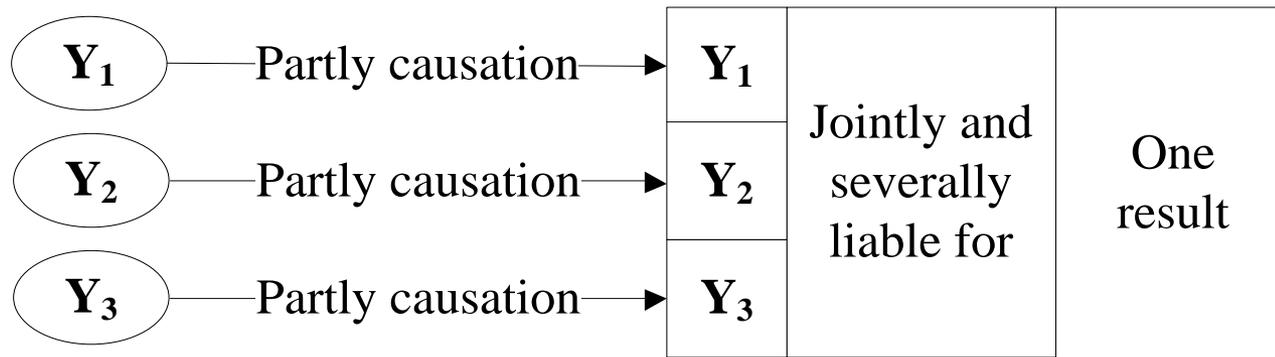


Theories on joint tortfeasor in Japan

■ Current theory



■ New theory (Kagayama)



Aim of several and joint liability of joint tortfeasors

- A joint tortfeasor is responsible for all damage of victim, even if one of the joint tortfeasors' contribution is small.
- The reason why joint and several responsibility has been imposed to each of them is to rescue the victims.
- The nature of the joint and several liability in tort, however, has been, for a long time, the subject of the controversy or fierce debate.

Fact of the “wine glass case”

- Suppose there is poison of which fatal dose is 10mg.
- "A" poured poison of 5mg, "B" poured poison of 4mg, and "C" poured poison of 3mg into a victim's glass of wine and then killed the victim.
- It caused damage of 12 million yen to the bereaved family (i.e. "10 mg fatal dose case" or "wine glass case").

“Wine glass case”

No use of “sine qua non” theory

Logical Type of cases	A	B	C	Total Fatal dose: 10mg
$A \wedge B \wedge C$	5mg	4mg	3mg	12mg
$(A \wedge B) \vee (B \wedge C) \vee (C \wedge A)$	7mg	6mg	5mg	18mg
$A \vee B \vee C$	10mg	10mg	10mg	30mg

Combination between joint tort and pseudo joint and several liability

- In the past, it has been considered one of three tortfeasors is responsible for the entire damages of 12 million yen.
- If one of tortfeasor's act was removed, then the results of victim's death did not occur.
- It was reason why each of tortfeasors was responsible for all damages.
- And this responsibility has been referred to as a "pseudo (non-genuine) joint and several liability".

Unfair result of pseudo joint and several liability

- In the pseudo joint and several liability case, even if one of the tortfeasors paid the total damages of ¥ 12 million for the bereaved family of the victim, it has been impossible to obtain reimbursement for the other two tortfeasors because his/her payment has been considered as a responsibility of his/her own.
- This result is, however, unfair. Because two of tortfeasors are completely acquitted, and then, there is no the joint and several liability, after all.

Joint and several liability of joint tort

- Therefore, at present, even in the pseudo joint and several liability case, when one of tortfeasors "A" paid ¥ 12 million against the bereaved family of the victim, "A" obtain reimbursement ¥ 4 million from B and ¥ 3 million from C.
- The result is the same as the case which A, B and C was borrowed ¥ 12 million in solidarity from creditors.

Combination of joint tort and pseudo joint and several liability still exists

- Indeed, looking at the current state of the world, the liability of the joint tortfeasors is believed not a genuine collective responsibility, but a pseudo several and joint liability.
- The reason is that, the deep-rooted concept "sine qua non" theory is even now, believed to be applicable to the case of joint tortfeasors.
- Once again, let us go back to "10 mg fatal dose case". In this case, it is believed that the theory of "sine qua non" is applied and there is a causal relationship between act of each tortfeasors and the death of the victim, therefore, "A" is liable for all damages of ¥ 12 million.

Logical calculation proved that “sine qua non” theory felt into contradiction

- Alone “A”, however, it is impossible to kill the victim.
- If “B” and “C” act jointly with “A”, then the result of victim's death occurs (“A, B and C \Rightarrow Result” case).
- In other words, in a joint tort, the theory of “sine qua non” causes the serious error.
- Because, if “sine qua non” theory is applied to the joint tortfeasors case, the phenomenon “A, B and C \Rightarrow R” case changes into the phenomenon “A , B or C \Rightarrow R” case.

History of theory of causation

from factual and adequate to partial causation

- First, in "Thalidomide case" and "SMON case", these problems solved with theory of factual causation "sine qua non".
- Second, "the birth of the incident killer case", or "wagoner case", adequate causation theory, have played a role in limiting the theory of factual causation. At this stage, however, the theory of factual causation have still survived.
- Third, in "the wine glass case", it became clear that the theory of factual causation committed a serious mistake, and theory of "partial causation" led the correct result.

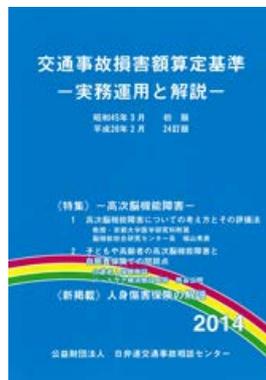
Theory of partial causation by supported by Bayesian statistics

- Indeed, the trend of the world has been dominated by not only the theory of factual causation, but also by the theory of pseudo joint and several liability.
- However, from now on, all the problems of joint tortfeasors will be resolved by the theory of partial causation combined with the theory of joint and several liability.
- Bayesian theory or Bayesian statistics theory will help the theory of partial causation with calculating the partial rate of causation or partial contribution of tortfeasors.

Calculation of comparative negligence in case bicycle and motorcar(1/6)

Blue book

- “ Damages calculation standard of the traffic accidents” for citizens



Red book

- “ Damages calculation standard of the traffic accidents” for professionals.

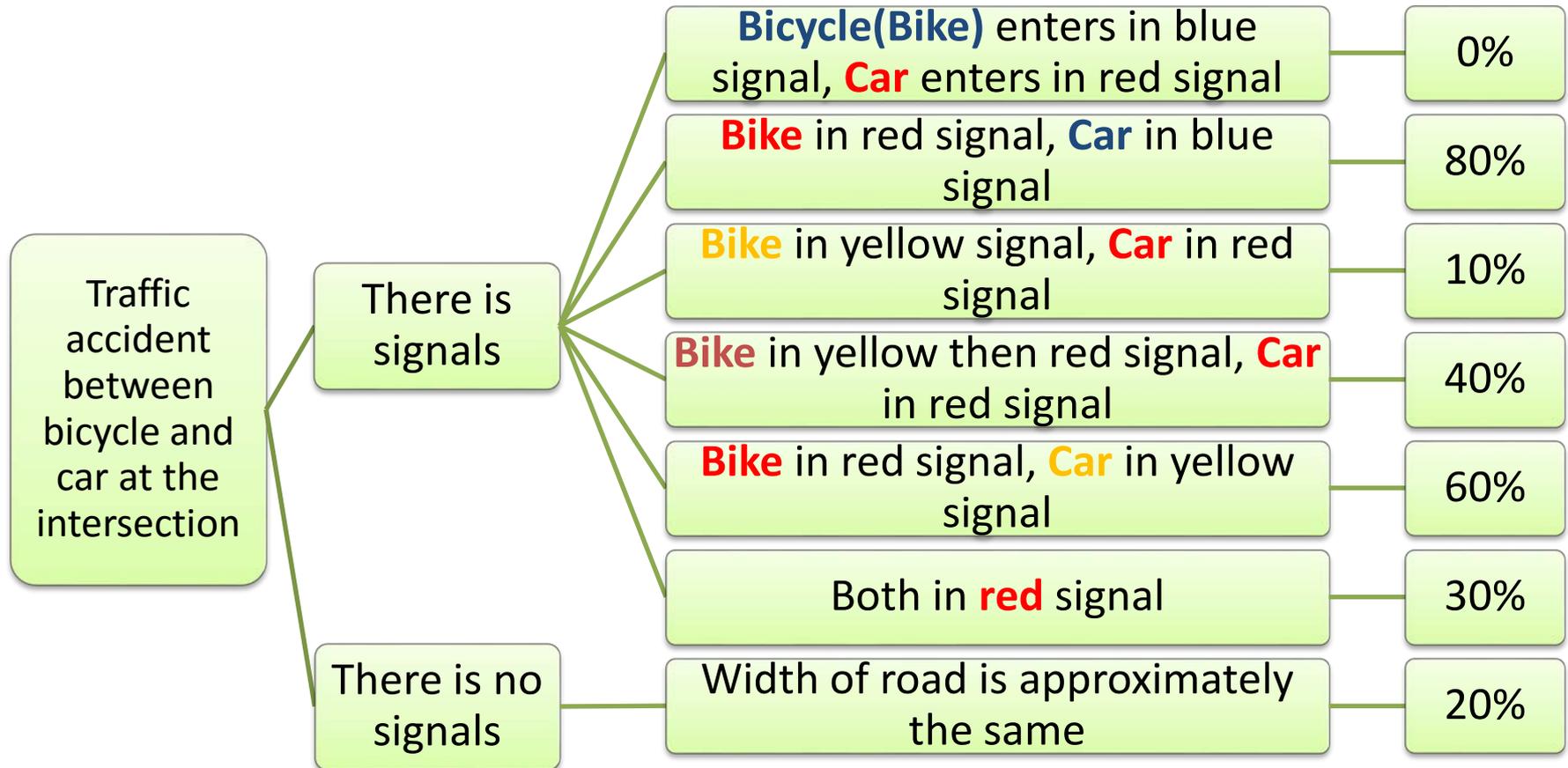


Published by “Nichibenren Traffic Accident Consultation Center”
(Japan Federation of Bar Associations)

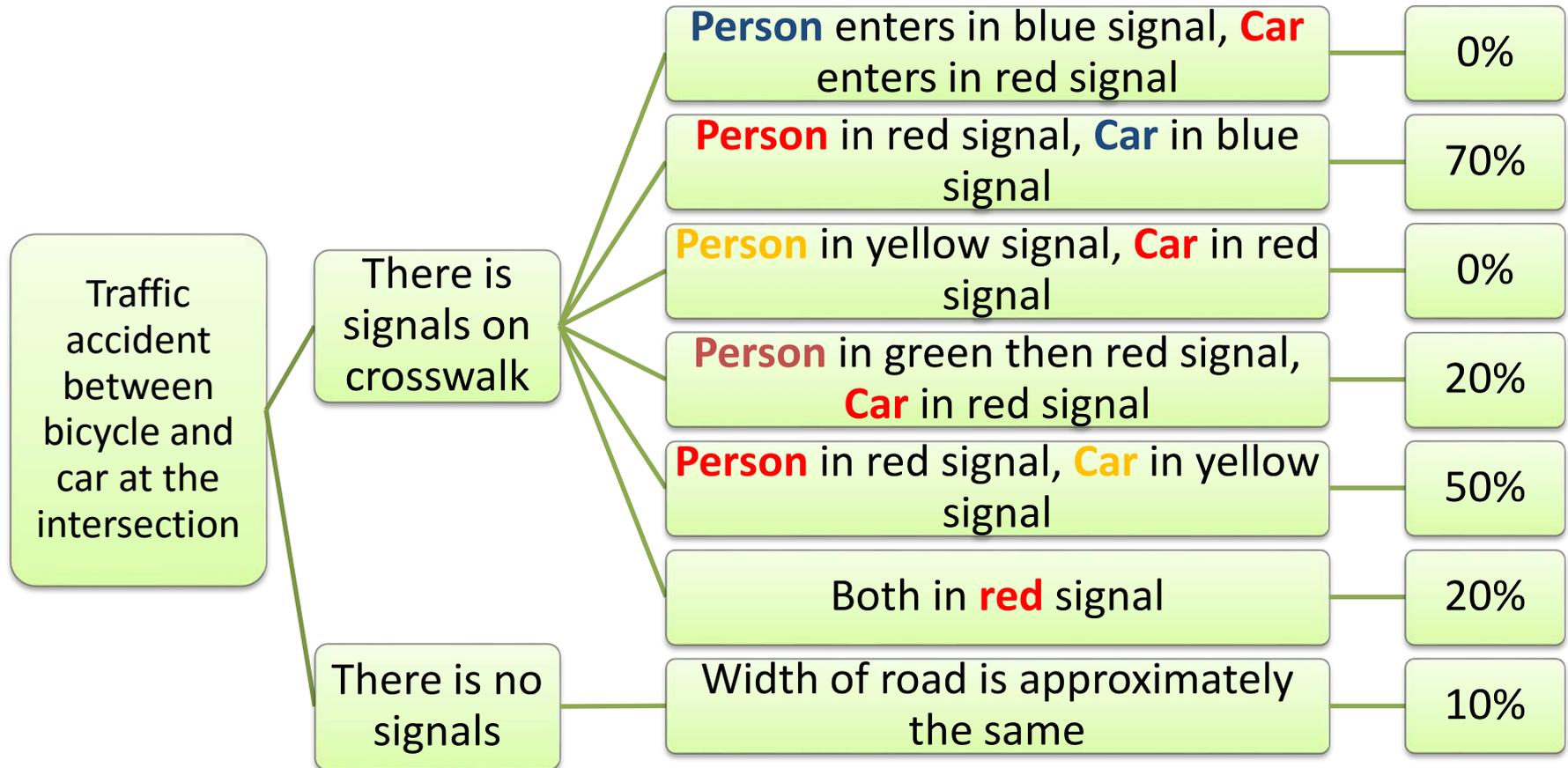
Calculation of comparative negligence in case bicycle and motorcar(2/6)

- Nichibenren (Japan Federation of Bar Associations) Traffic Accident Consultation Center
 - Incorporate foundation established with the permission of Minister of Transport (at the time) in 1967. Since April 2012, it has changed to the public benefit corporation with certification from the Cabinet Office.
 - Aim of the corporation is to contribute to promote the rapid and proper processing to solve the dispute (ADR) of car accident by lawyers.

Calculation of comparative negligence in case **bicycle** and motorcar(3/6) → person

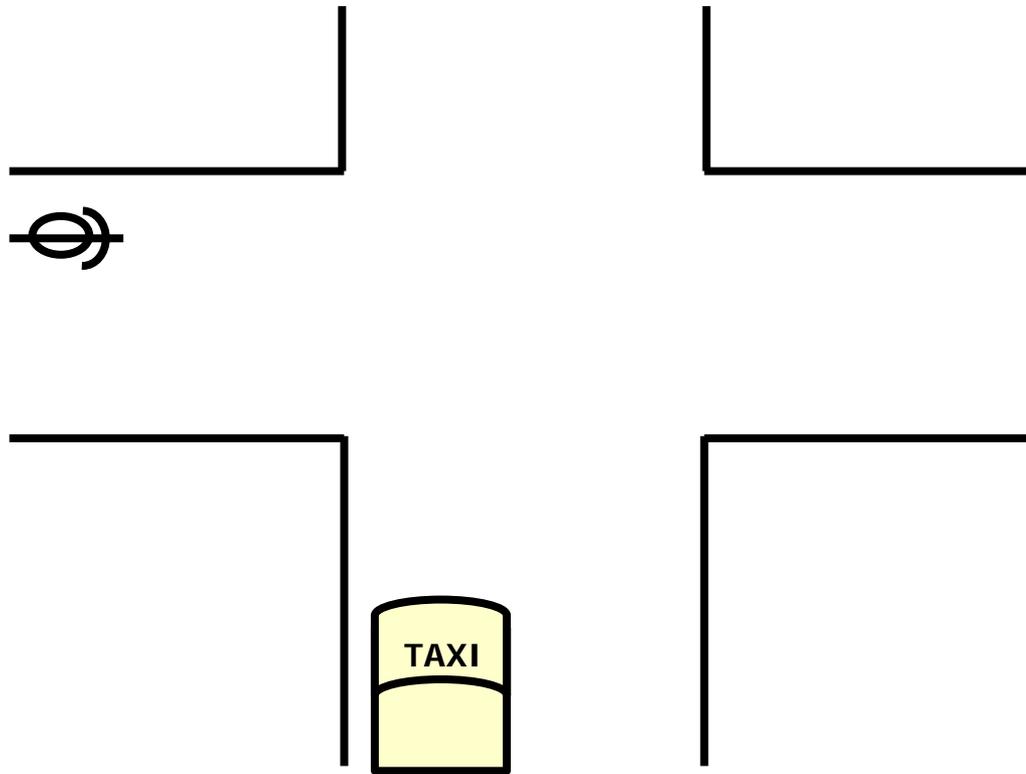


Calculation of comparative negligence in case **person** and motorcar(4/6) ←bike



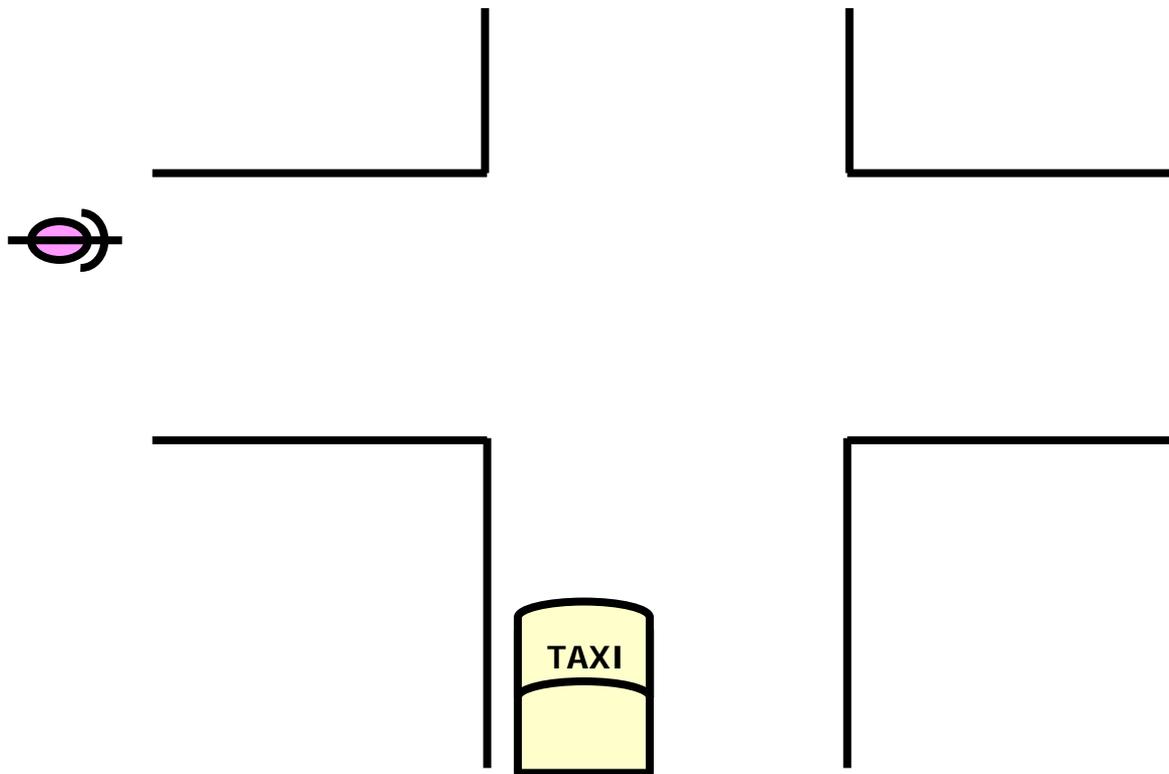
Calculation of comparative negligence in case bicycle and motorcar(5/6)

Comparative negligence of bicycle is 20%
in case there is no excess of speed of bicycle



Calculation of comparative negligence in case bicycle and motorcar(6/6)

Comparative negligence of bicycle is 30%
in case there is excess of speed of bicycle



Structure of Civil Code of Japan

- Part I General Provisions
- Part II Real Rights
- Part III **Claims and Obligations**
 - Chapter 1 **General provisions**
 - Section III [Claims and Obligations of Multiple-Parties](#)
 - Subsection III [Joint and Several Obligations, Reimbursement](#)
 - Subsection IV [Guarantee Obligation, Reimbursement](#)
 - Chapter 2 Contracts
 - Chapter 3 Management of Business
 - Chapter 4 [Unjust enrichment](#)
 - Chapter 5 **Tort** [Joint and several liability in tort, Reimbursement](#)

Position of unjust enrichment in the Civil Code of Japan → str

- Article 703 (Obligation to Return Unjust Enrichment)
 - A person who has benefited (hereinafter in this Chapter referred to as "beneficiary") from the property or labor of others **without legal cause** and has thereby caused loss to others shall assume an obligation to return that benefit, to the extent the benefit exists.

General principle of obligations of multiple-parties → str

- Article 427 (Divisible Claims and Divisible Obligations)
 - In cases there are more than one obligee or obligor, unless any other intention is manifested, **each obligee or each obligor shall have the equally proportionate rights or obligations.**

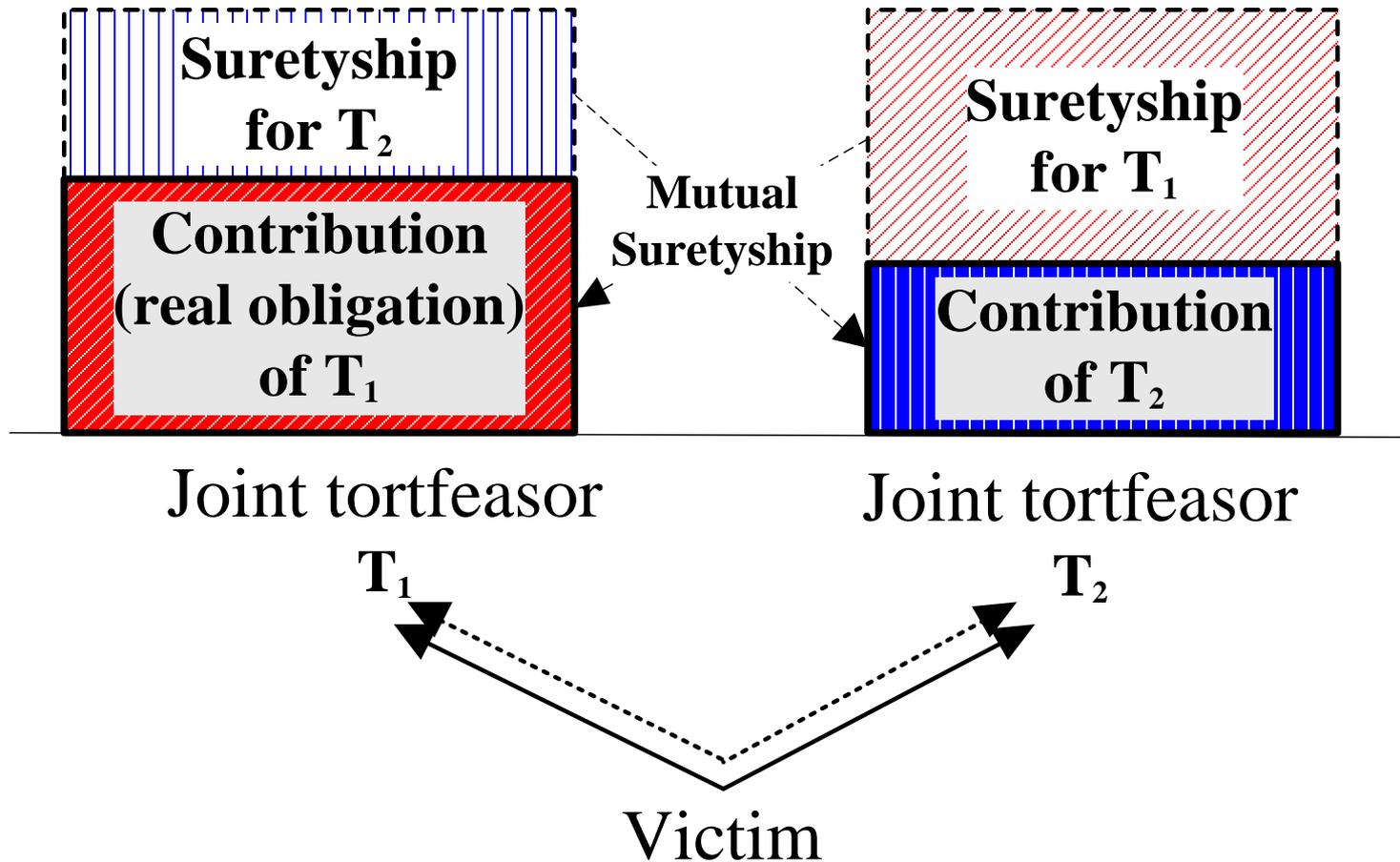
Joint and several liability in tort → str

- Article 719 (Joint unlawful act)
 - If two or more persons have by their joint unlawful act caused damage to another, they are **jointly and severally liable** to make compensation for such damage; the same shall apply if it is impossible to ascertain which of the joint participants has caused the damage.
 - 2. Instigators and accomplices are deemed to be joint participants.

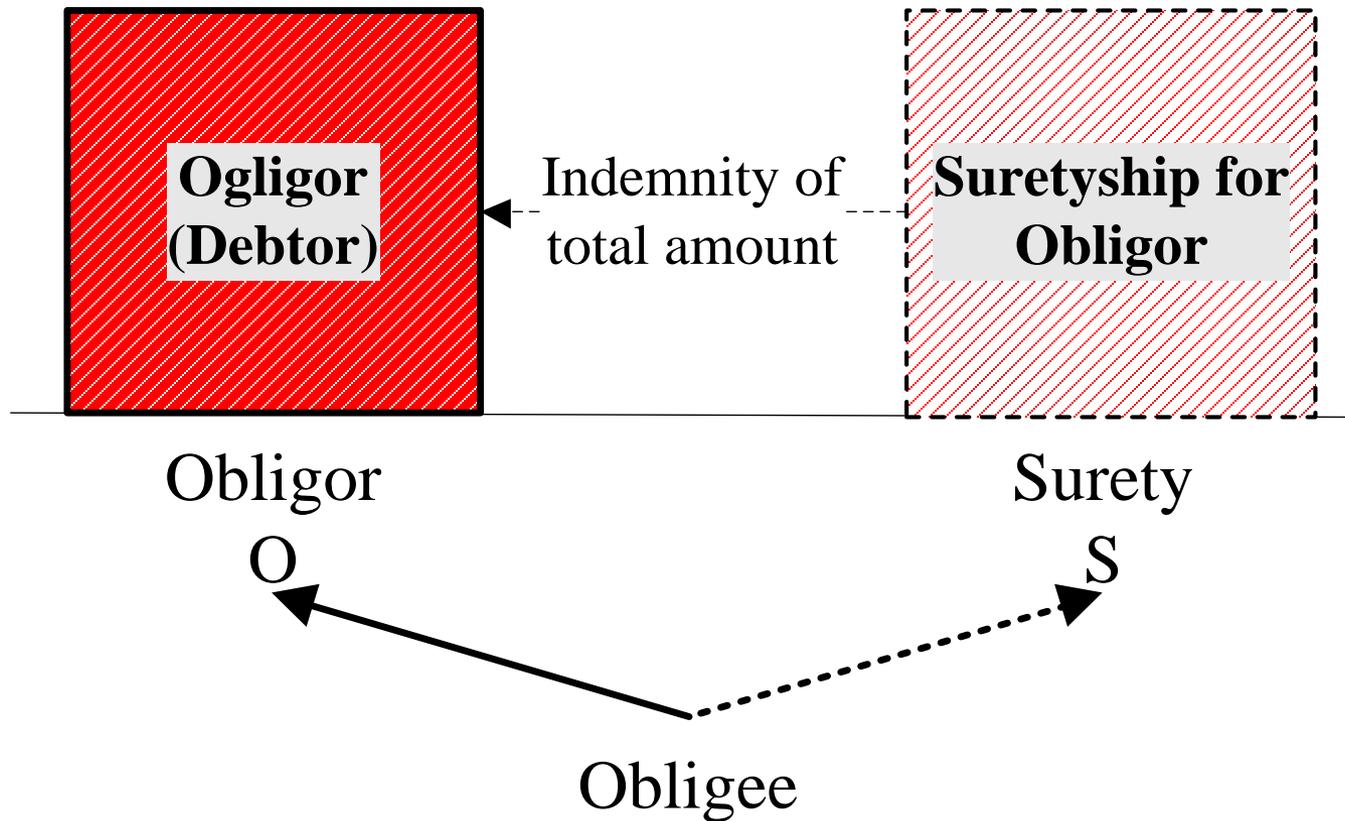
Joint and Several Obligations in Japan(1/2) → [str](#)

- Definition and function of “**Joint and several obligation**”
 - Article 432(Request for Performance)
 - If more than one person bears a **joint and several obligation**, the obligee may request **one of the joint and several obligors, or all of such joint and several obligors, simultaneously or successively**, to perform the obligation, in whole or in part.

General structure of liability of joint tortfeasors



Relationship between Obligation and Suretyship



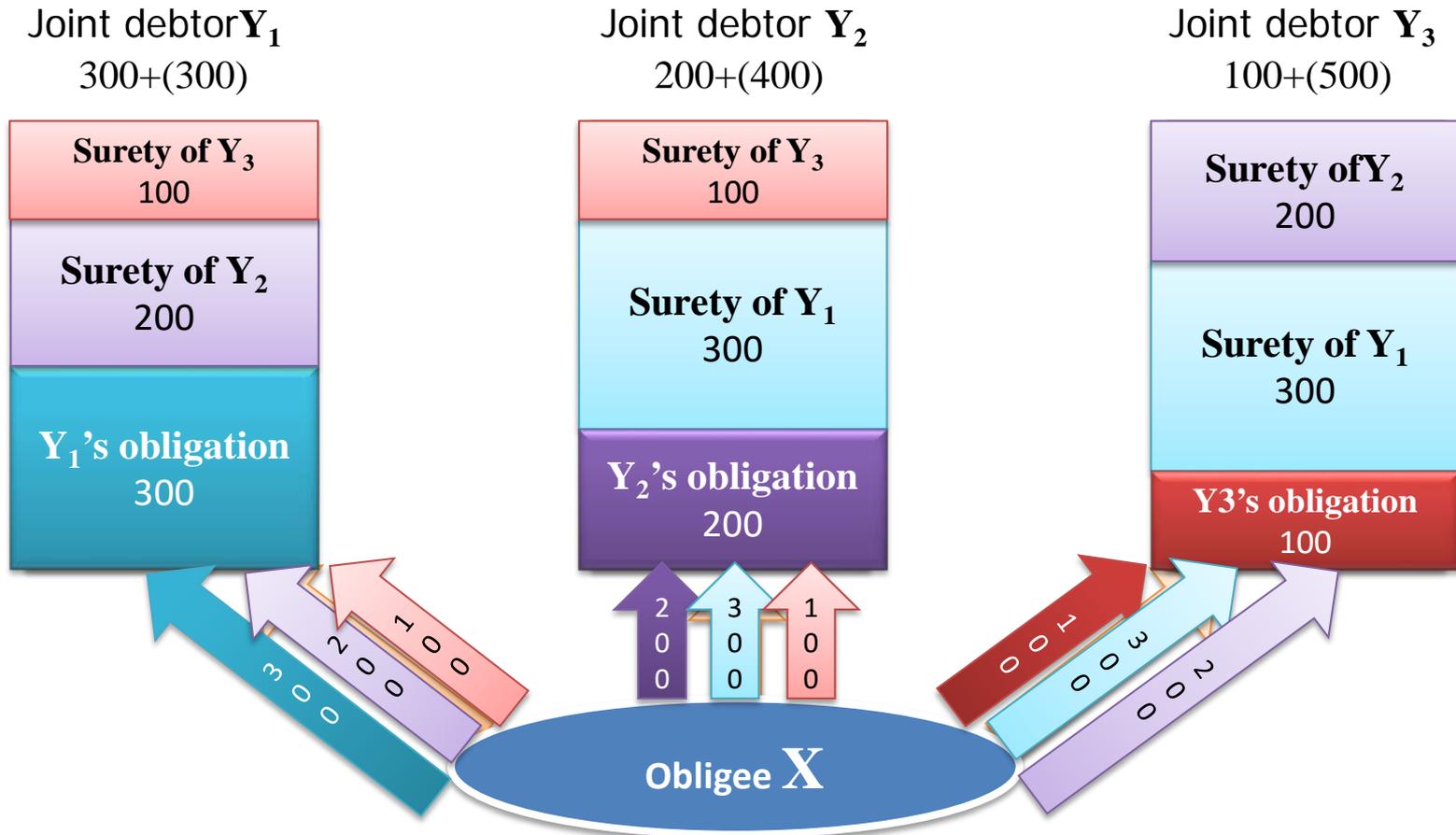
Guarantee Obligation in Japan(1/2) → [str](#)

- Definition and nature of Guarantee obligation
 - Article 446(Responsibility of Guarantor)
 - (1) A guarantor shall have **the responsibility to perform the obligation of the principal obligor** when the latter fails to perform such obligation.
 - Article 448(Cases where Burden of Guarantor is More Onerous than That of the Principal Obligor)
 - If the burden of a guarantor is more onerous than that of the principal obligor as to either its subject or its terms, **it shall be reduced to the extent of the principal obligation.**

Guarantee Obligation in Japan(2/2) → str

- Article 459(Right to Obtain Reimbursement of Guarantor Entrusted by the Principal Obligor)
 - (1) In cases where a guarantor has given a guarantee as entrusted by the principal obligor, if he/she has, without negligence, had a judgment ordering him/her to perform the obligation to the obligee, or has performed the obligation on behalf of the principal obligor, or has otherwise in exchange for his/her own property performed any other act intended to cause the obligation to be extinguished, such **guarantor shall have a right to obtain reimbursement from the principal obligor.**

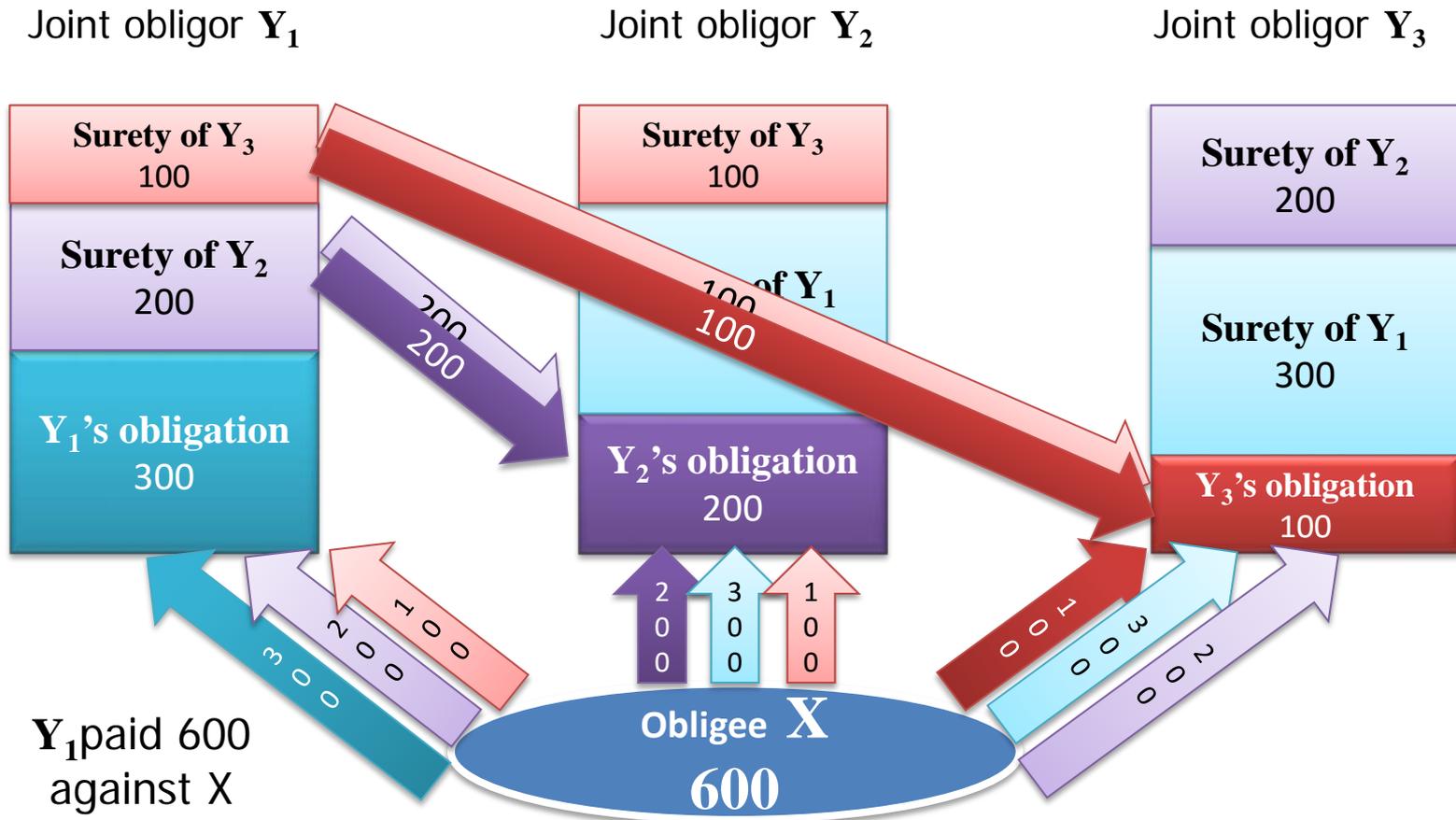
Structure of several and joint liability



Joint and Several Obligations in Japan(1/2) → [str](#)

- Definition and function of “Joint and several obligation”
 - Article 432(Request for Performance)
 - If more than one person bears a joint and several obligation, the obligee may request one of the joint and several obligors, or all of such joint and several obligors, simultaneously or successively, to perform the obligation, in whole or in part.

Subrogation of joint obligor by total payment



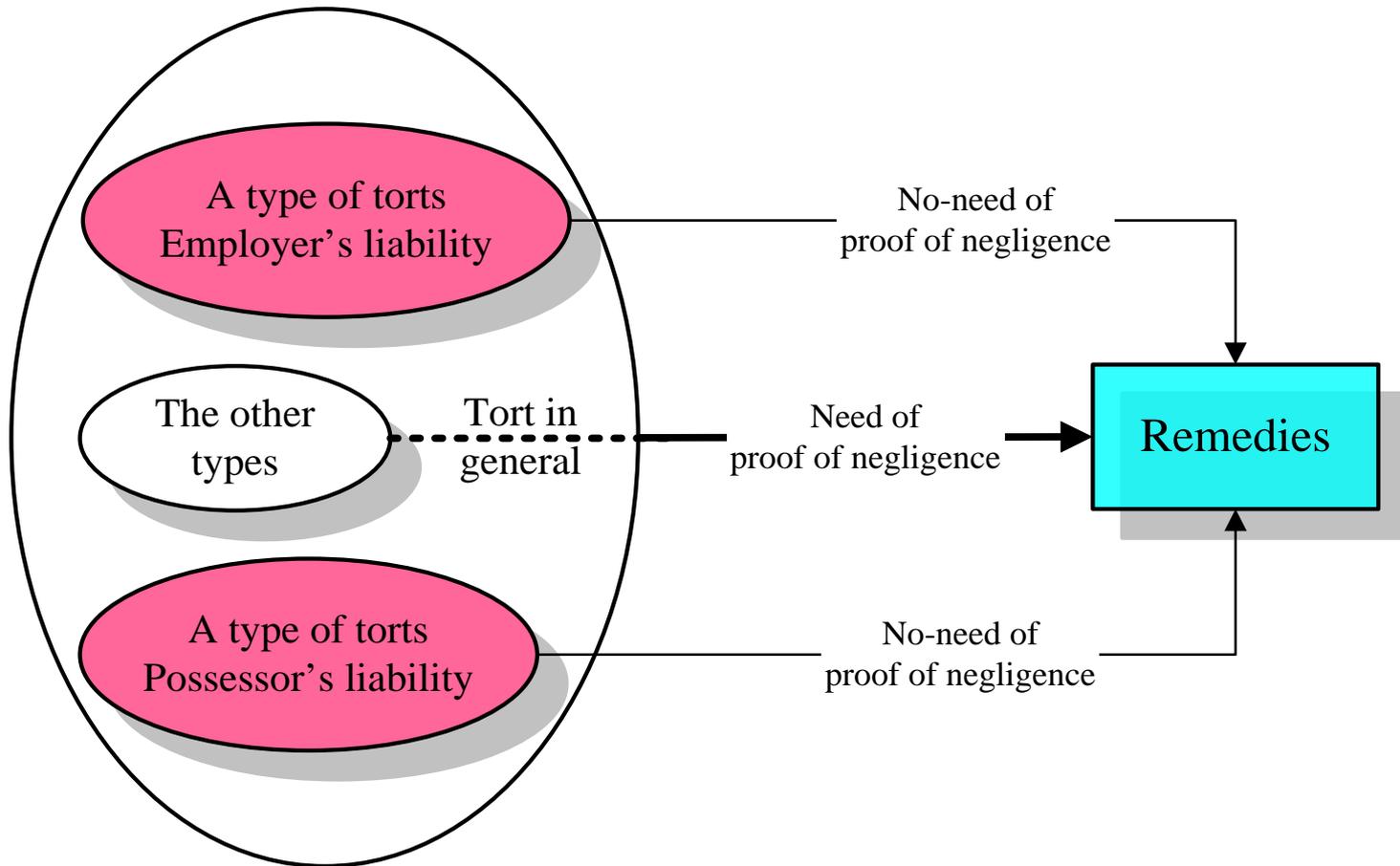
Joint and Several Obligations in Japan(2/2) → str

- Article 442(Right to Obtain Reimbursement among Joint and Several Obligors)
 - (1) If one joint and several obligor performs the obligation, or has otherwise acquired any common discharge in exchange for his/her own property, such joint and several obligor shall have **right to obtain reimbursement from other joint and several obligors** to the extent of the respective portion of the obligations which is borne by each of other joint and several obligors.

Special torts

- Art. 714: Liability of person with duty to supervise person
- Art. 715: Liability of employer
- Art. 716: Liability of person who ordered work
- Art. 717: Liability of possessor and owner for defect in structure on land
- Art. 718: Liability of possessor of animal
- Art. 719: Liability of joint tortfeasors

Function of special torts

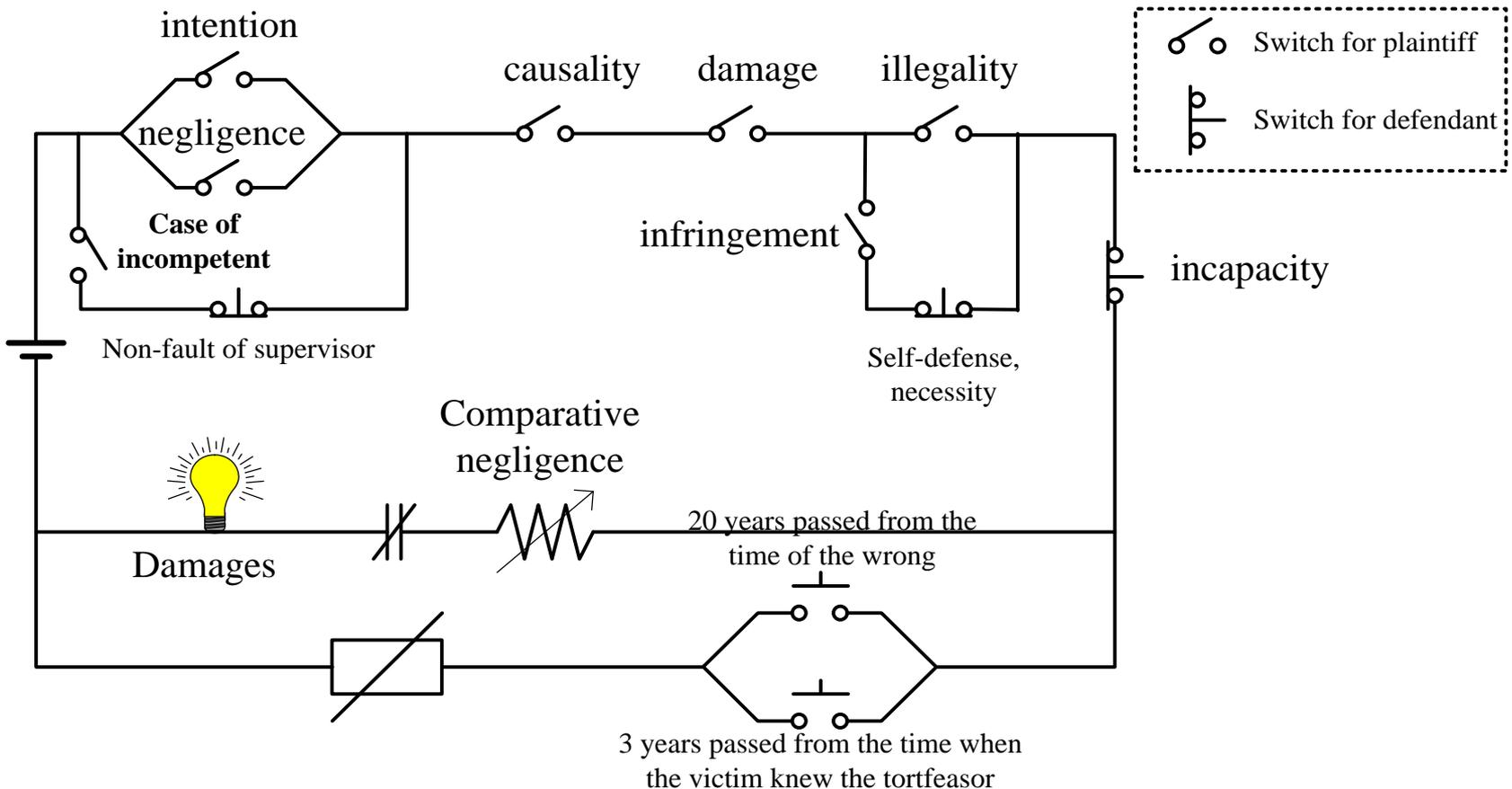


Liability of a supervisor of an incompetent

■ Article 714

- A person who is under a legal duty to supervise a person under disability is, in cases where the latter is not responsible in accordance with the preceding two Articles, bound to make compensation for any damage which the person under disability has caused to a third person; however, this shall not apply, if the person who is under a duty of supervision has not neglected his duty.
- 2. A person who has supervision over a person under disability in place of the person who is under a duty to supervise shall also assume the responsibility mentioned in the preceding paragraph.

Structure of Art. 714(Liability of a supervisor of an incompetent)



Paperboy case (Sup.C. March 22, 1974(Minshu 28-2-347))

■ Facts

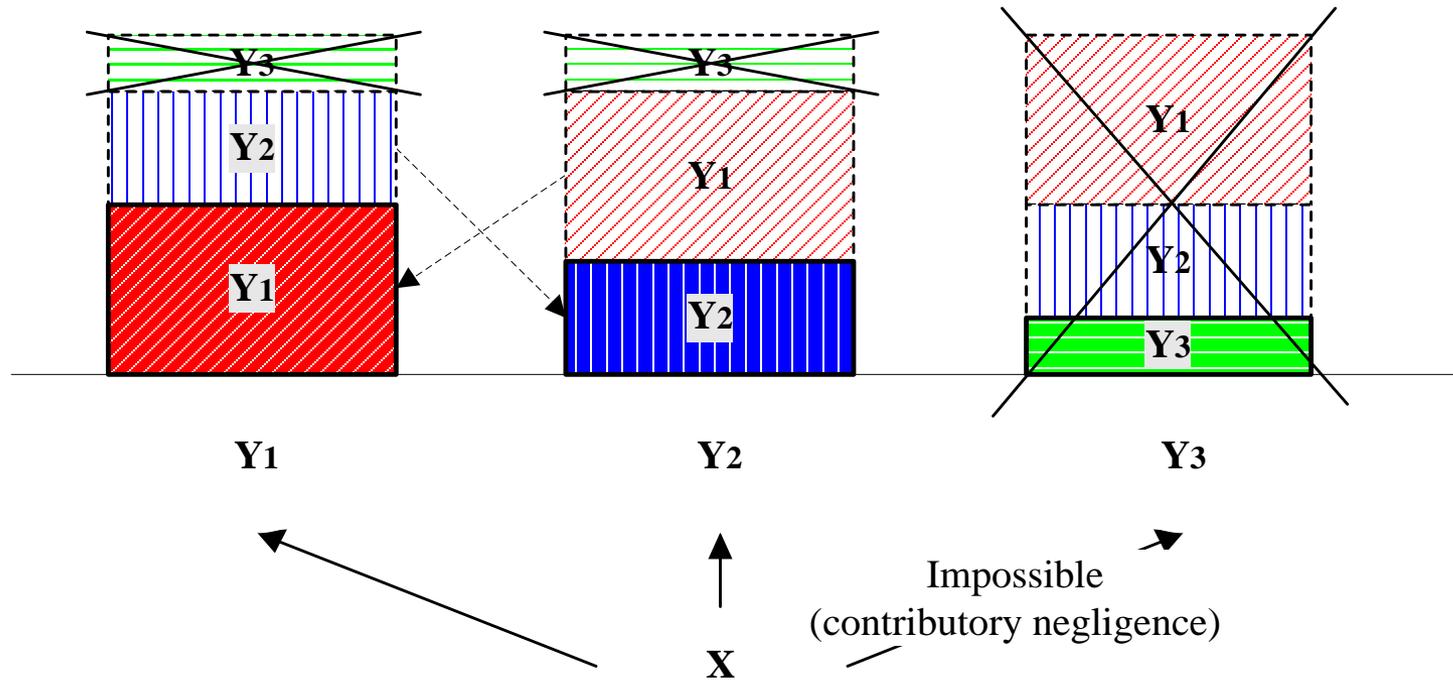
- A paperboy A(13 years old) was killed by a minor B(15 years old), and robbed of the money which A had collected.
- The mother of A sued the minor B and his parents as co-tortfeasors, and claimed damages for future anticipated earnings and non-pecuniary loss.
- In this case the tortfeasor B's parents had failed to teach him the basic rules of social life and allegedly taught him to take evasive action when he was caught for shoplifting.

■ Judgment

- Even where the minor can be held liable (Art. 712, 714), if there is 'adequate causality' between the loss on one hand and the neglect of duty on the part those overseeing him on the other hand, they are liable on the general ground of tort liability (Art. 709).

Case study on torts

- Basic structure of joint torts and contributory negligence



Three type of several causes

1. In case there are **several wrongdoers** and they contribute to a total damage, it will become problem of joint tortfeasor, and according to Art. 719 Code Civil of Japan, wrongdoers bear **joint and several liability**.
2. In case when **a victim himself** has made a kind of contribution for the occurrence of damage, **the amount of compensation will be reduced** from the liability of the wrongdoers (according to the para. 2 of Art. 722 Code Civil of Japan) because there is no fault of wrongdoers in this part.
3. In case of **force majeure(act of God)** causes damages, this part also, as there is no causation in wrongdoer's act, and as wrongdoer can not be responsible for act of God, wrongdoer's **amount of compensation of damage will be reduced**.

Case1

- A case where a medical accident followed a traffic accident.
 - [Judgment of Supreme Court, 13 March, 2001 Minshu Vol. 55, No. 2, at 328](#)
 - Judgment upon
 - (1) whether it is allowed to limit the amount of damage for which each tortfeasor is liable in cases where a medical accident followed a traffic accident and the act of driving and the act of medical treatment comprise a joint tort;
 - (2) calculation of contributory negligence between each tortfeasor and the victim in cases where a medical accident followed a traffic accident and the act of driving and the act of medical treatment comprise a joint tort.

Facts of Case1 1/5

- (1) A(Yusaku TANAKA), the eldest son of the jokoku appellants (born January 13, 1982) proceeded onto an uncontrolled crossing at 2-1-8, Kamifukuoka City, Saitama Prefecture around 03:40 pm on September 12, 1988 at a speed of 15km/ph without stopping and had a contact with a passenger car driven by B(Junichi Akazawa), an employee of the Kawagoe Motors which is a auxiliary participant in the jokoku appeal and fell (hereinafter, 'the Traffic Accident').

Facts of Case1 2/5

- (2) After the Traffic Accident, A(Yusaku) was immediately transported by an ambulance to the Kamifukuoka Second Hospital which is run by the jokoku appellee (hereinafter, the 'jokoku appellee-hospital'). Doctor C(Toshiiti Inoue), who is the representative and the head of the jokoku appellee-hospital (hereinafter, 'Dr.C'), observed A and recognised a spot haemorrhage(bleeding) by slight injury under the skin on the left side of the head and light injury on the surface of the facial skin, but because A was clearly conscious and no abnormality could be observed from outside and A told him that he had hit the taxi lightly and claimed mere pain on the above parts, thought that it was a minor accident which happened while A was walking.

Facts of Case1 3/5

- Dr.C examined the x-ray photograph of the front and left side of A's head and did not find any fracture of the scull. Therefore, he decided that it was not necessary to scan A's head by CT(Computed Tomography), or to keep him in hospital for a certain period for observation, and after cleaning the above parts and giving him antibiotics, gave A and the jokoku appellant D(Hitomi, A's mother) a general instruction to the effect that A could go to school the next day but should not do athletics, to come to the hospital again the next day, and if something happened, he should come to the hospital, and subsequently let A go home.

Facts of Case1 4/5

- (3) Jokoku appellant D(Hitomi, A's mother) returned home with A(Yusaku) around 05:30pm. Immediately after returning home, A vomited and claimed that he was sleepy. She thought it was because of exhaustion and took him to bed. A did not want dinner, and around 06:30pm, fell asleep. Around 07:00pm, A started to snore and droop and profusely perspired, but the jokoku appellants(A's parents), since A often slept with snoring and drooping, although they sensed some abnormality, did not consider this state as serious, and around 07:30pm, put an ice pillow under him, but left him as he was.

Facts of Case1 5/5

- However, A's temperature rose to 39 Celsius and became convulsive around 11pm and by 11:50pm, he stopped snoring, and for the first time, the jokoku appellants came to suspect that the condition of A was serious and around 00:17am on September 13, called an ambulance. The ambulance arrived at the jokoku appellants' home around 00:25 am, but A had no pulse and had stopped breathing. A was transported to Miyoshi Welfare Hospital at 00:44 am, but died at 00:45 am (hereinafter, 'the Medical Accident').

Analyzing facts of Case1 1/4

- Epidural hematoma may occur without a skull fracture, and at the beginning, there is a period in which the patient is fully conscious for some time, and this is later followed by a headache, vomiting, sleeping, loss of consciousness, and after the brain rigidity, the rate of survival substantially decreases, and even if the patient survives, there is a high possibility of serious after-effects, while if the blood tumour is removed at an early stage, the condition would improve and there is a high probability of survival.

Analyzing facts of Case1 2/4

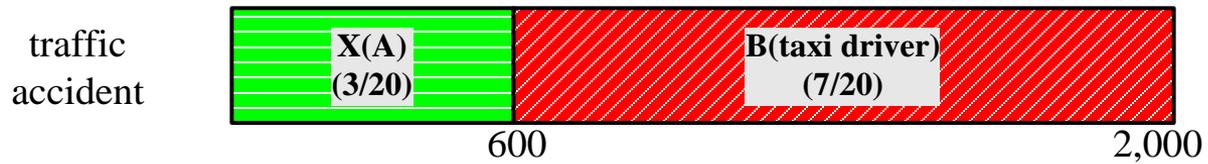
- Therefore, Dr.C, after examining A, who had possibly had a strong impact on the head by a traffic accident, should have approached the patient or his custodians to let him stay in the hospital for observation, or even if because of unavoidable reasons, he had to let him go home, should have explained to them that even if, at the beginning, the patient's consciousness is clear, later, brain haemorrhage may progress by the emergence of blood tumour in the dura mater and explained its typical symptoms in a specific manner, regardless of the extent of the apparent damage, and he was also under an obligation to explain and instruct them to observe the patient carefully for at least 6 hours after the accident, and if such symptoms were suspected, should take him to the doctor immediately. Dr.C was negligent in fulfilling this duty.

Analyzing facts of Case1 3/4

- (5) On the other hand, the jokoku appellants were negligent in failing to fulfill the duty of observing and taking care of A, i.e. for the failure to notice that A was in a serious state until the brain stiffening occurred and stopped breathing, and to take necessary measures.

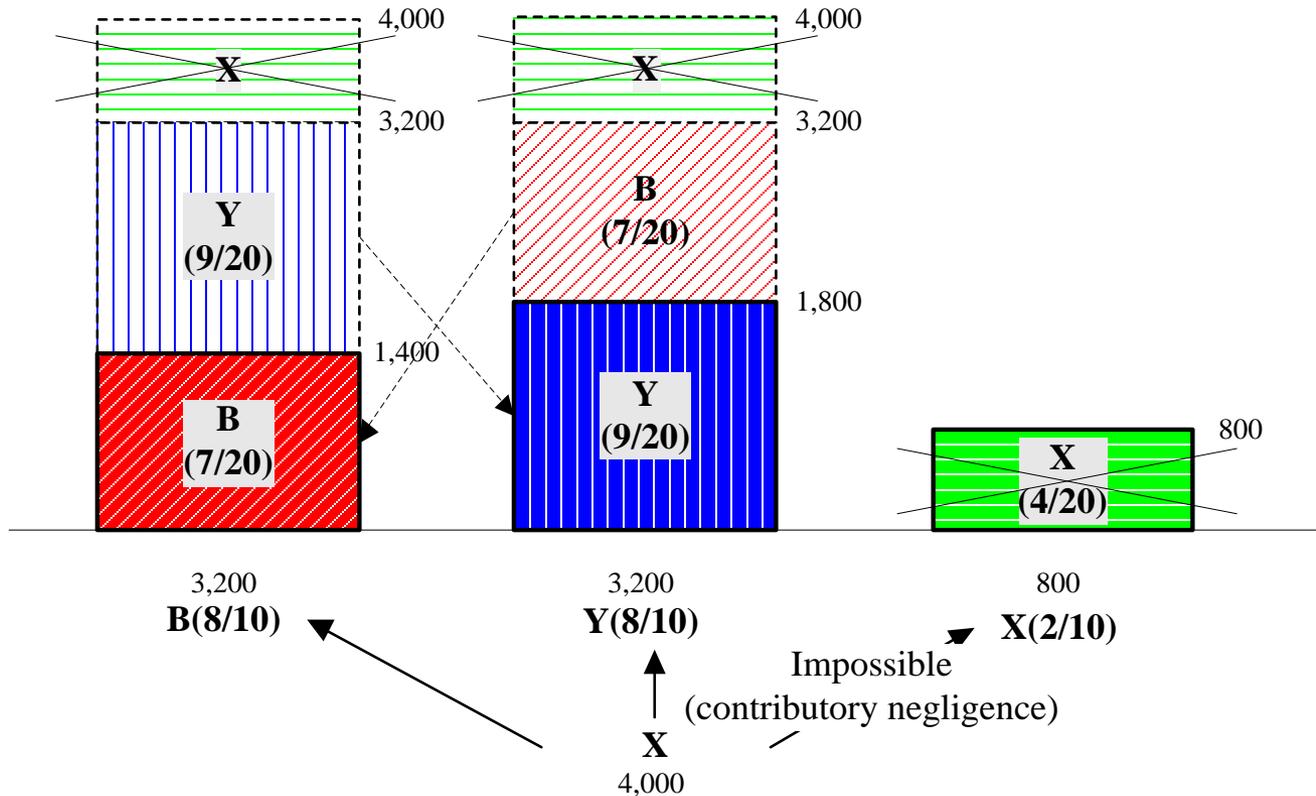
Analyzing facts of Case1 4/4

- A's proportion of negligence against JA(taxi driver) shall be regarded to be 30%.
- The proportion of X's (the jokoku appellants') negligence against Y (the jokoku appellee-hospital) shall be regarded as 10%.



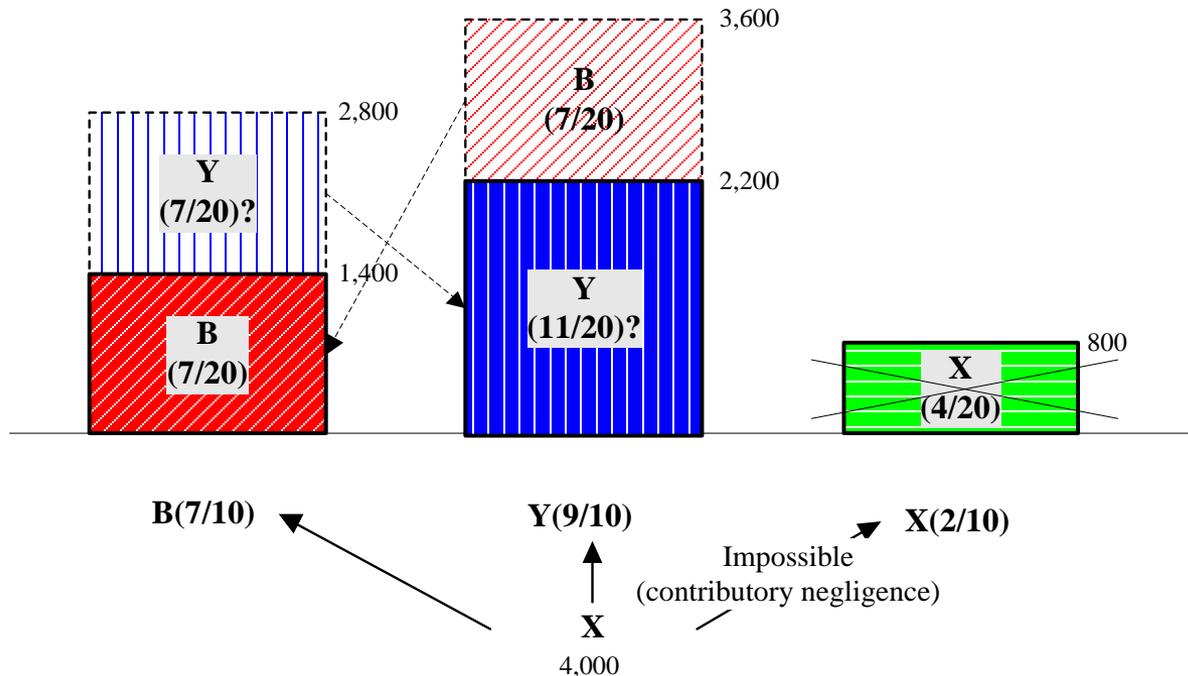
1st solution for case 1

■ Joint and several liability



2nd solution for case1

- Judgment of Supreme court, 13 March, 2001 Minshu 55-2-328



Judgment of Supreme court

1/2

- 1. In cases where a medical accident followed a traffic accident and both accidents concurrently resulted in the death of the victim and have adequate causal relation with the death of the victim and therefore, the act of driving and the act of medical treatment comprise a joint tort, the tortfeasors are jointly and severally liable for the total damage incurred by the victim.
- It is not allowed to divide the total damage in accordance with the proportion of contribution and limit the amount of damage for which each tortfeasor is liable.

Judgment of Supreme court

2/2

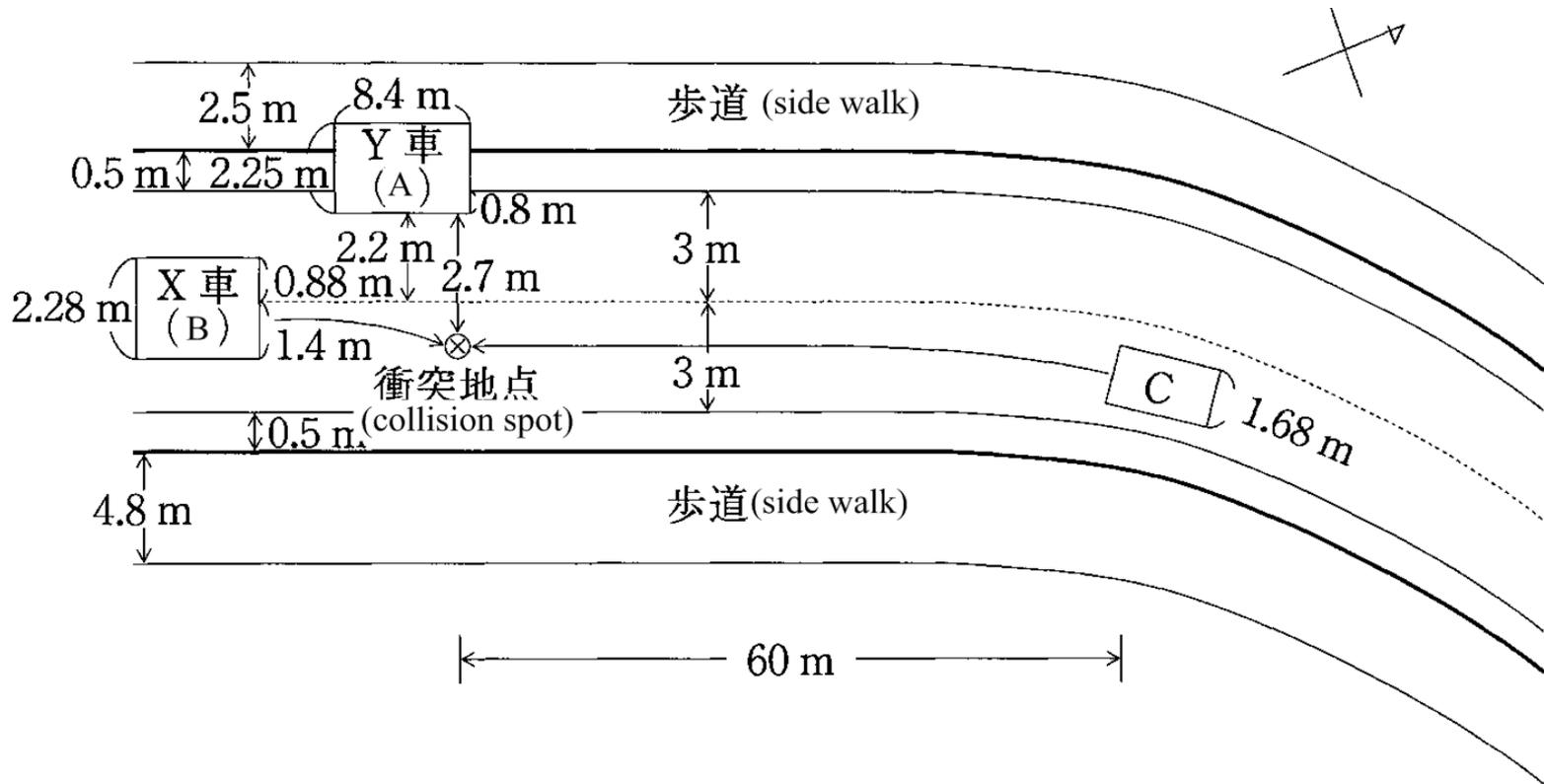
- 2. In cases where a medical accident followed a traffic accident and both accidents concurrently resulted in the death of the victim and have adequate causal relation with the death of the victim and therefore, the act of driving and the act of medical treatment comprise a joint tort, contributory negligence shall be calculated in accordance with the proportion of negligence between the tortfeasor and the victim and it is not allowed to take into account the proportion of negligence between the other tortfeasor and the victim.

Case 2

- Case where several traffic accidents occur simultaneously.
- [Judgment of Supreme Court, 11 July, 2003](#)
 - Judgment upon the method of comparative negligence and tortfeasor's liability for compensation in a traffic accident where negligence of several tortfeasors concurs with that of a victim and an absolute rate of negligence can be ascertained.

Facts of case2 1/5

1 The following is the summary of the facts determined legally by the second instance court.



Facts of case2 2/5

- (1) "A," an employee of the jokoku appellant(Y), parked an ordinary truck (hereinafter referred to as the "jokoku appellant's(Y's) car") on a road with one traffic lane for each direction in front of 1-1277 Gotanda-cho, Matsuzaka-shi, Mie (hereinafter referred to as the "road of this case") at around 2:25 a.m. on September 20, 1997, on the west road side over the traffic lane facing north, without using an emergency blinker.

Facts of case2 3/5

- "B" an employee of the jokoku appellee(X), Horiguchi Transportation Ltd., (hereinafter referred to as the "jokoku appellee company") was driving an ordinary truck belonging to the jokoku appellee company (hereinafter referred to as the "jokoku appellee's car"), heading north on the road of this case. In order to avoid the jokoku appellant's(Y's) car, B drove the car over the center line and crashed into C's car, which was traveling on the road of this case from the north heading south at 80 km/h or over, exceeding the speed limit of 40km/h (hereinafter referred to as the "traffic accident of this case").

Facts of case2 4/5

- The road of this case was under a twenty-four hour traffic control parking ban. However, there was no traffic control to ban passing on the right side. Going from north to south, the road of this case curves to the left around 60m before the site of the traffic accident of this case, and C saw the jokoku appellee's(Y's) car after negotiating this left-hand curve. In the vicinity of the site of the traffic accident of this case, there were no streetlights, and from the direction that C was traveling, it was not easy to see the jokoku appellee's(Y'a) car before the point where C passed the curve.

Facts of case2 5/5

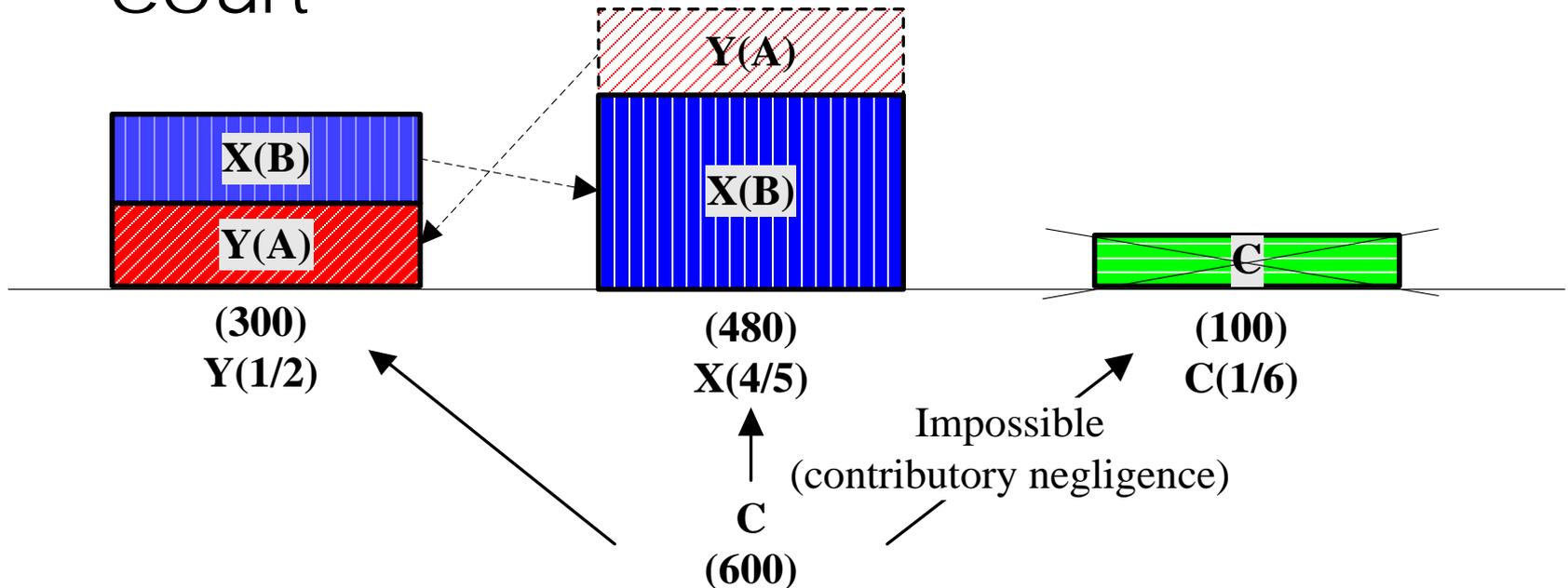
- (3) Due to the traffic accident of this case, the jokoku appellant company (X) suffered damages of 2,703,110 yen and C suffered damages of 5,811,400 yen.

Analyzing facts of Case2

- (2) Negligence can be seen in the case of A because he parked the jokoku appellant's car over a no-parking roadway without using an emergency blinker. Negligence can be seen in the case of B because he passed the jokoku appellee's car by crossing over a center line and into an oncoming traffic lane. Negligence can also be seen in the case of C because he violated the speed limit and the careful driving obligation. **The rate of negligence (A, B, C) is one to four to one (1:4:1) respectively.**

1st Solution for case2

- Judgment of the second instance court

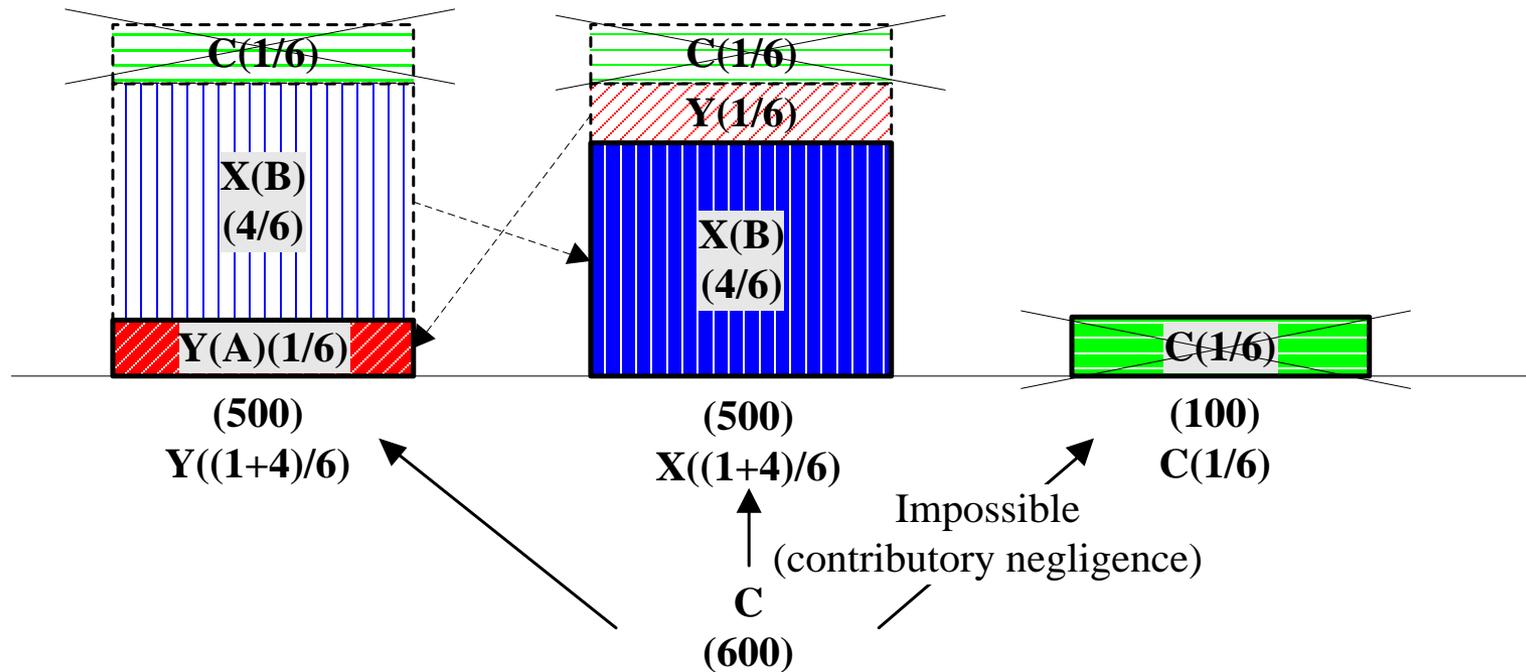


Judgment of appellate court

- With respect to the damages suffered by C, which was caused by the traffic accident of this case, C may seek damages against the jokoku appellee company and the jokoku appellant for up to five sixths of the damages that can be calculated by deducting one sixth, C's rate of negligence, from the total of the damages in accordance with the relative rate of negligence per party. Thus, C could seek damages against the jokoku appellee company to the limit of 4,842,833 yen, which is equivalent to five sixths of 5,811,400 yen and demand 4,649,120 yen after taking comparative negligence into account at the rate of C's negligence, one fifth, of 5,811,400 yen. Against the jokoku appellant, C could demand 2,905,700 yen after taking comparative negligence into account at the rate of C's negligence, one half.

2nd Solution for case2

- Judgment of Supreme Court, 11 July, 2003 Minshu 57-7-815.



Judgment of Supreme Court

1/2

- The jokoku appellee company and the jokoku appellant shall owe the quasi-joint and several responsibility to the limit of 4,842,833 yen (Any fractional sum less than one yen shall be rounded off. Hereinafter all calculations shall be treated as the same.) after carrying out comparative negligence of one sixth, which is the absolute rate of C's negligence to the damages of 5,811,400 yen.

Judgment of Supreme Court

2/2

- Of this amount the share of obligation owed by the jokoku appellee company, is 3,874,266 yen, which is equivalent to four fifths of the amount, and that owed by the jokoku appellant is 968,566 yen, which is equivalent to one fifth of the amount. The jokoku appellee association, which has paid C compensation for damages of 4,747,654 yen on behalf of the jokoku appellee company, is to be regarded as having obtained a right of indemnification to the amount of 873,388 yen, which exceeds the share of obligation, against the jokoku appellant based on the subrogation.

Summary of the lecture 1/3

■ Studying Law

■ The purpose of Study

- To solve difficult problems peacefully.
- To master legal way of thinking through solving cases on torts

■ How to achieve the purpose of study

- To master IRAC: typical way of thinking common in Lawyers.
- To plan the layout of Argument:
From Syllogistic to Toulmin Diagram

IRAC: The way of legal thinking

■ I: Issue

- Find legal issues among facts.

■ R: Rules

- Find applicable rules to facts.

■ A₁: Application

- Apply rules to facts and deduct tentative conclusions.

■ A₂: Argument (Most Important)

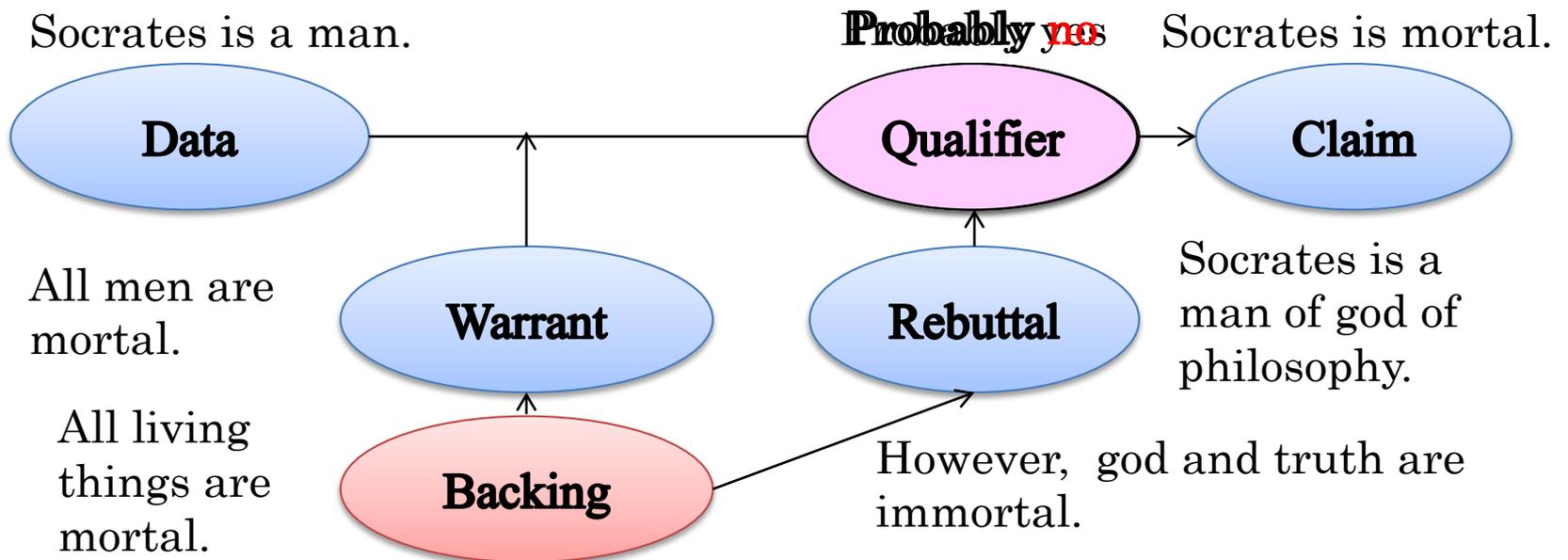
- Argue with tentative conclusion pro and con

■ C: Conclusion

- Draw final conclusion after rigorous argument.

From Syllogistic to Toulmin Diagram

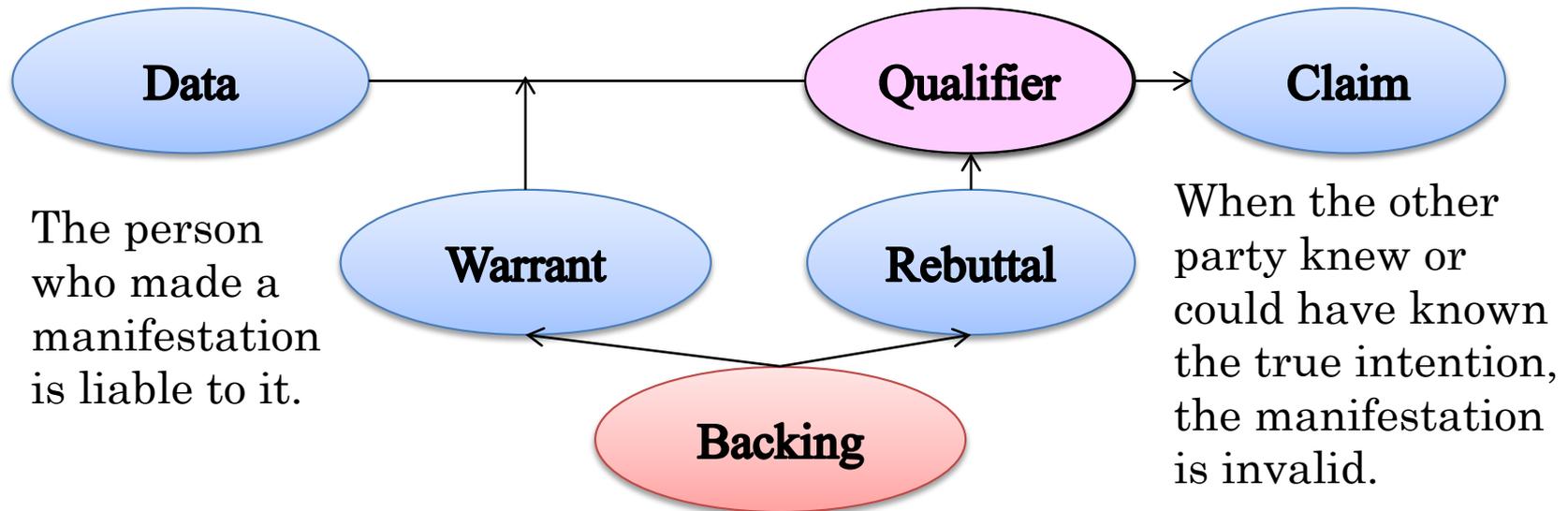
- **Syllogism (Admit of no exceptions)**
 - Major premise: All men are mortal.
 - Miner premise: Socrates is a man.
 - Conclusion: Socrates is mortal.
- **Toulmin Diagram (Admit of exceptions)**



Application of Toulmin Diagram to Joke

The person who made a manifestation knows that it does not reflect his/her true intention.

The manifestation is valid.



The manifestation of intention which is concealed the true intention:

It is invalid in case the other party knew or could have known.

It is valid in case the other party is didn't know and without negligence.

Summary of the lecture 2/3

■ Teaching Law

- Working out your Teaching Plan
- Reducing that plan by half
- On half for lecture and another half for practice (ex. Short test or Presentation)

■ Teaching is the best way for learning

- You have to study before teaching.
- Teaching is equal with learning and reporting before an audience.

Summary of the lecture 3/3

■ Conclusion

- Don't teach too much.
 - Let students more practice than teach.
 - Then they will learn by themselves.
- Teach basic idea through solving one of the most difficult problems.
- Try to become the most excellent teacher.
 - Imitate his/her methods first.
 - Create new methods after your experiences.

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Tort in general

- compensation for damage

■ Article 709

- A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

Non-pecuniary damage

■ Article 710

- A person who is liable in compensation for damages in accordance with the provisions of the preceding Article shall make compensation therefor even in respect of a non-pecuniary damage, irrespective of whether such injury was to the person, liberty or reputation of another or to his property rights.

Death of near relative

■ Article 711

- A person who has caused the death of another is liable in compensation for damages to the parents, the spouse and the children of the deceased, even in cases where no property right of theirs has been violated.

Responsibility of minor

■ Article 712

- If, in cases where a minor has caused damage to another, he was not in possession of sufficient intelligence to understand his responsibility for the act, he shall not be liable in compensation for damages in respect of such act.

Responsibility of mentally unsound person

■ Article 713

- A person who has, while in a state of mental unsoundness, caused damage to another is not liable in compensation for damages; however, this shall not apply, if he has brought upon himself a temporary mental unsoundness either intentionally or by his own negligence.

Responsibility of person under duty of supervising disable person

■ Article 714

- A person who is under a legal duty to supervise a person under disability is, in cases where the latter is not responsible in accordance with the preceding two Articles, bound to make compensation for any damage which the person under disability has caused to a third person; however, this shall not apply, if the person who is under a duty of supervision has not neglected his duty.
- 2. A person who has supervision over a person under disability in place of the person who is under a duty to supervise shall also assume the responsibility mentioned in the preceding paragraph.

Responsibility of employer

■ Article 715

- A person who employs another to carry out an undertaking is bound to make compensation for damage done to a third person by the employee in the course of the execution of the undertaking; however, this shall not apply, if the employer has exercised due care in the appointment of the employee and in the supervision of the undertaking or if the damage would have ensued even if due care had been exercised.
- 2. A person who supervises the undertaking in place of the employer shall also assume the responsibility mentioned in the preceding paragraph.
- 3. The provisions of the preceding two paragraphs shall not preclude the employer or the supervisor from demanding reimbursement from the employee.

Responsibility of person placing order

■ Article 716

- The person who placed the order for a work is not bound to make compensation for any damage caused to a third person by the contractor in the course of such work; however, this shall not apply if the person who placed the order was in fault in regard to the order or his instructions.

Responsibility of the possessor of structure

■ Article 717

- If any damage has been caused to another person by reason of any defect in the construction or maintenance of a structure on land, the person in possession of the structure shall be liable in compensation for damages to the injured party; however, if the person in possession has exercised due care in order to prevent the occurrence of such damage, compensation for the damage shall be made by the owner.
- 2. The provisions of the preceding paragraph shall apply mutatis mutandis in cases where any defect exists in the planting or the support of bamboos or of trees.
- 3. If, in the cases mentioned in the preceding two paragraphs, there exists any other person who is responsible for causing the damage, either the possessor or the owner may exercise the right to obtain reimbursement against such other person.

Responsibility of the possessor of animal

■ Article 718

- The possessor of an animal shall compensate any damage caused by it to another person; however, this shall not apply, if he has kept it with such care as is proper according to the species and nature of the animal.
- 2. A person who has the custody of an animal in place of the possessor shall also assume the responsibility mentioned in the preceding paragraph.

Joint unlawful act

■ Article 719

- If two or more persons have by their joint unlawful act caused damage to another, they are jointly and severally liable to make compensation for such damage; the same shall apply if it is impossible to ascertain which of the joint participants has caused the damage.
- 2. Instigators and accomplices are deemed to be joint participants.

Self-defense, necessity

■ Article 720

- A person who, in order to protect his own right or that of a third person against the unlawful act of another, unavoidably commits a harmful act is not liable in compensation for damages; however this shall not preclude a demand of compensation for damages by the injured party against the person who committed the unlawful act.
- 2. The provisions of the preceding paragraph shall apply mutatis mutandis in cases where a thing belonging to another is damaged in order to avert an imminent danger which has arisen from such thing.

Responsibility of unborn child

■ Article 721

- A child *en ventre sa mere* shall, in respect of his demand of compensation for damages be deemed to have been already born.

Manner of compensation, fault In common

■ Article 722

- 1. The provisions of Article 417 shall apply mutatis mutandis to the compensation to be made for the damage which has arisen from an unlawful act.
- 2. If there is any fault on the part of the injured party, the court may take it into account in assessing the amount of the damages.

Reputation injured

■ Article 723

- If a person has injured the reputation of another, the court may, on the application of the latter, make another requiring the former to take suitable measures for the restoration of the latter's reputation either in lieu of or together with compensation for damages.

Extinctive prescription

■ Article 724

- The right to demand compensation for the damage which has arisen from an unlawful act shall lapse by prescription if not exercised within three years from the time when the injured party or his legal representative became aware of such damage and of the identity of the person who caused it, the same shall apply if twenty years have elapsed from the time when the unlawful act was committed.

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The end of Presentation on torts

■ Assignment