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**RESEARCH ARTICLE**

## Tort Law and its Effects on Modern Chinese Society

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**ABSTRACT**

This paper takes a detailed look at the tort principles used in China and compares them to their American counterparts. The emergence of the Tort Liability Law of the People's Republic of China, which went into effect in July 2010, has been an important and necessary milestone in China's legal development, especially in the area of civil law. China is a land defined by many cultural, historical and societal constructs that vary immensely from its Western counterparts, and much of these differences have woven itself into the creation, evolution and practical applications of its legal principles and doctrines. The new tort law will undoubtedly have a lasting impact on Chinese society and invariably influence the way Chinese citizens behave in everyday life, as extra emphasis and clarification will be placed on their societal duties and legal liabilities owed towards fellow citizens.

**KEYWORDS**

Chinese tort law, fault, no-fault, negligence, duty, standard of care

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**1. Introduction**

There is no denying the fact that as time marches forward, mankind is living in an increasingly smaller world – smaller in the sense that large distances do not seem to be as significant a barrier anymore. With the onset of various technological advances, we are becoming more accessible to one another and more interdependent than ever. We truly have transformed from a world of local communities to one global society. This notion applies not only to people but to countries as well. One move by one country can have vast and consequential results for another country.

When one thinks of China in today's global, political and economic arena, the immediate reactions and thoughts that permeate the consensus are that China is an imminent superpower-in-waiting, an economic powerhouse with the world's second largest economy and a military juggernaut with the world's largest standing army. As the world's most populous country, with a population of over 1.3 billion people, China has been on a meteoric rise in recent years to become the world's fastest-growing major economy. This has largely been a result of China being the world's largest exporter and second-largest importer of goods, evidenced by the fact that nearly every product in today's society, both big and small, advanced and simple, is emblazoned with the "Made in China" stamp. In fact, China's rise is symbolized and mirrored by some of its fastest-growing metropolitan cities like Beijing and Shanghai, which boast some of the world's tallest and most aesthetically modern skyscrapers. With a new luxury apartment building, office tower and architectural wonder rising seemingly around the clock, China has become the beacon of capitalism and economic success, and its march towards modernity sees no signs of slowing down. Likewise, China's modern day legal system has also been continuously developing and reforming to adapt and mirror the international community. Such is the case with the Tort Liability Law of the People's Republic of China, which went into effect in July 2010.<sup>1</sup>

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<sup>1</sup> Tort Liability Law of the People's Republic of China

## 2. Legislative History and the Evolution of Tort Law in China

The development and history of the concept of tort law in China has a rich and long history and can indeed be traced all the way back to Ancient China in the Qin Dynasty (221-206 B.C.) and the Han Dynasty (206 B.C. – 201 A.D.). Since then, the rules and regulations concerning tortious conduct in The Middle Kingdom have steadily changed, adapted, and evolved in accordance with the times and needs of its citizenry even as an Imperial China became a Republic and later became the present day the People's Republic of China. The basic and inherent meaning of tort, which means "fault" in French, is a notion that virtually everybody understands and tries to avoid. In fact, often times, people not only go out of their way to avoid fault but will actually and actively try to deflect fault and pass it onto someone else. The fault, which can be synonymous with blame, which inevitably leads to liability, is indeed a huge and unsavory pariah for most people. After all, this wretched fault can sometimes lead to a hefty monetary price tag in a civil setting. In a criminal setting, this fault can sometimes lead to something even worse than an exorbitant damages verdict—it might even lead to a loss of liberty, freedom and, at the very worst, life itself. As such, it is fundamentally in one's best interest to know exactly what the lawful rights and interests of an individual are and, moreover, what personal and property rights an individual has. Even more important, perhaps, is knowing how **not** to infringe and impose upon the personal and property rights of someone else and what standards and norms an individual must adhere and conform to in order to avoid liability and harming another member of society.<sup>2</sup> Now, in a country of over 1.4 billion people, any such legal and moral ambiguities would need to be cleared up expeditiously, and the urgency to do this in an ever growing China against the backdrop of an ever shrinking world can not be greater. With China taking center stage internationally with more and more countries investing in China while many more have steadily become dependent on China, it is more important than ever for China to have a uniform set of rules and regulations regarding its tort system. This will not only give peace of mind and a sense of relief and security to China's populace but will afford a sense of clarity and assurance for foreign actors who may choose to live and/or invest in China to know that there will be a sound system of laws put in place to protect their property and personal rights should an unforeseen or intentionally tortious conduct arise.<sup>3</sup>

The Tort Liability Law of the People's Republic of China ("Tort Law") was adopted at the 12<sup>th</sup> session of the Standing Committee of the Eleventh National People's Congress on December 26, 2009, and officially came into effect on July 1, 2010. The monumental passage of this comprehensive set of laws marked a huge milestone for China and its legal system. The development, passage and implementation of this keystone legislation were a long time coming and required years of assiduous effort and careful planning. In fact, the ultimate adoption of the Chinese Tort Law came more than seven years after the standing committee released the first draft copy of the comprehensive law to be reviewed by the National People's Congress (NPC) back in 2002. The law was then revised and submitted to the NPC again in December 2008 and finally in the fall of 2009, which led to its final promulgation, adoption and enactment.<sup>4</sup>

Before the passage of the Chinese Tort Law, there was no single piece of legislation that dealt primarily and solely with tortious issues in China. In fact, relevant protection provisions and regulations were scattered throughout more than 40 different pieces of legislation. For example, legal rules that addressed and provided for civil remedies in rights infringement cases were spread among several PRC laws, such as the General Principles of the Civil Law, the Law on Protection of Consumer Rights and Interests (Consumer Rights Protection Law), the Product Quality Law, and the Food Safety Law. Long before the adoption and enactment of the final version of the Tort Law in 2010, there was an increasing urgency and awareness among lawmakers and policymakers of the need to consolidate the basic underlying principles behind Chinese tort law and shore up all these scattered regulations into a single unitary legislative work. Aside from the obvious and practical reasons for wanting a national tort law that clearly defined various tort-based causes of action, distinctly laid out the specific liabilities of private and public actors in a range of situations and the types of remedies and damages available to an aggrieved party, there was also a myriad of factors in play that expedited the need and adequate development of a national tort law.<sup>5</sup> Firstly, national tort law is fundamental to preserving and securing the property and privacy rights of Chinese citizens. The Chinese citizenry, from individuals and manufacturers to conglomerate corporations, needs to know exactly what their rights are and what liabilities each owe to one another. In order to promote a harmonious society and a commitment to the rule of law, such legal obligations and standards need to be carefully defined in an effort to not only protect individual rights and encourage a basic standard of conduct but also to deter bad actions and negligent behavior. Over the years, there have been increasing incidents and news of a number of cases ranging from motor vehicle accidents and food safety violations to building code violations, medical malpractice and environmental pollution that really brought to light the urgent need for uniform tort legislation.<sup>6</sup> With litigation in China rising in record numbers every year, it had never been more

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<sup>2</sup> "The Rule of Law and Enforcement of Chinese Tort Law", Law 34 T. Jefferson L. Rev. 43 2011-2012

<sup>3</sup> "The Codification of Chinese Tort Law", 5 UCLA Pac. Basin L.J. 172 (1986)

<sup>4</sup> "Tort Liabilities and Torts Law: The New Frontier of Chinese Legal Horizon", 10 Rich. J. Global L. & Bus. 415 (2010-2011)

<sup>5</sup> Ibid

<sup>6</sup> Ibid

crucial for a national tort law to be produced. In fact, right before the enactment of the Chinese Tort Law, Chinese courts reportedly heard 980,000 new tort cases in 2007 and more than a million in 2008. Furthermore, it has been reported that the infamous 2008 Sanlu melamine-tainted milk incident, which reportedly claimed the lives of at least six infants with approximately 300,000 others suffering from lingering and residual health problems, was one of the main catalysts or perhaps the tipping point which prompted the eventual enactment of the comprehensive tort legislation.<sup>7</sup> The widespread publicity of this case, no doubt brought about by the increasingly potent power of social media and netizens, really struck a nerve with the Chinese populace. This was a case that crossed gender, class, occupational and generational divides because this was a case that literally could have affected anyone. Every single person in China had the potential to be a parent or a grandparent, and the mere thought of one's new born baby and family jewel being poisoned and even dying from tainted milk really hit home and united virtually all Chinese against such abhorrent malfeasance and negligence. Nobody wanted something like this to happen to their own offspring—even and perhaps, especially government officials.<sup>8</sup>

Secondly, with China's growing status and sphere of influence on the rise in the international scene, comprehensive tort legislation was needed, not only to showcase China's legal system to an increasingly attentive world but also to assure the international community that China aims to protect the individual and property rights of all who seek to deal with China on both a short and long term basis. Ever since China opened up its markets and economy to the world in December of 1978 at the behest of Deng Xiaoping, both foreign individuals and capital have been pouring into the Chinese terrain and economy.<sup>9</sup> Those that live in China and those that invest in China want to know that they will indeed have rights and that there will be legal remedies and solutions that are afforded to them in the case of mental and physical injury or should any monetary damages arise in the course of financial and business dealings. China is well aware of the fact that much of its economic prosperity and continued growth stems from foreign investment and capital, and in order to continue attracting foreign interest in investing in China, there needs to be a sound set of unified tort laws put in place to protect the rights and properties of foreigners that China seeks to attract. This notion is especially crucial in light of the numerous complaints that foreign investors and companies have in terms of intellectual property, trademark and copyright infringements that are perpetrated against them by certain Chinese companies and actors. In order to continue investing in China or even do business in China, foreign companies will want some sort of reassurance that their intellectual property and trademark will be protected and if need be, there will be a legal structure and guidelines for determining appropriate remedies and damages in place for them to utilize should some sort of infringement occur.<sup>10</sup>

Most importantly, though, the main motivation for China to have a complete and unified tort law in place is to further complete its legal system in a way that allows China to retain its unique Chinese characteristics while conforming to international standards but at the same time, abiding by the rule of law. China is, by and large, a civil code country and the completion of the Chinese Tort Law marks an important milestone in the continued development and modernization of its civil code. Furthermore, by having complete tort legislation in place, Chinese judges, lawyers, scholars, policymakers and citizens will have, for the first time, a clear cut set of regulations and guidelines from which to rely and interpret law from.<sup>11</sup> Although the interpretations may differ from person to person and from judge to judge, Chinese Tort Law presents a significant body of law that serves to further clarify and solidify the foundation of China's overall civil code. Indeed, the enactment of the Chinese Tort Law is a major accomplishment in the continued advancement and development of the Chinese legal system as a whole. Lastly, the enactment of the Chinese Tort Law serves to reassure China's current and potential foreign investors and friends that they, too, have rights that will be vigilantly protected and remedied and signals to the rest of the world that China is indeed here to play and here to stay.<sup>12</sup>

### **3 The Significance of Tort Law in the United States**

Tort law is one of the most important and fundamental pillars of the legal system in The United States. In fact, one can say that tort law is essentially the most important aspect of the legal system because, more often than not, this area of law deals with the very safety and wellbeing of individuals. To go even further, tort law deals with the law of life. Whereas other areas of law, such as property law, may deal with the rights and responsibilities associated with personal property and corporate law may deal with the rights and responsibilities regarding a corporate entity and its duties to its shareholders, no other area of law can be said to deal with the subject of life on a more personal and intimate basis. Obviously, criminal law is an area that, in many regards, deals specifically with life. However, when it comes to criminal law, it is the duty of the state to enforce criminal statutes and bring forth

<sup>7</sup> The Sanlu tainted milk incident was a major catalyst in reforming and shaping China's modern day Tort Law.

<sup>8</sup> "Liability for Environmental Pollution within the Framework of the New Chinese Tort Law", 19 *Eur. Rev. Private L.* 87 (2011)

<sup>9</sup> "Punitive Damages, Chinese Tort Law, and the American Experience", 9 *Frontiers L. China* 321 (2014)

<sup>10</sup> "Medical Malpractice Case – Chinese Style", 32 *Res Gestae* 547 (1988-1989)

<sup>11</sup> *Ibid*

<sup>12</sup> "Tort Reform with Chinese Characteristics: Towards a Harmonious Society in the People's Republic of China", 10 *San Diego Int'l L.J.* 121 (2008-2009)

charges where appropriate. Tort law is unique in that it gives the individual citizen the right to bring forth a claim. Furthermore, in tort law, the individual has the power to seek justice or compensation in scenarios where he or she may feel left out or wronged by the justice system.<sup>13</sup>

Often times, when a victim feels betrayed by justice in a criminal proceeding, he or she may have a "second" chance at justice in a civil trial by bringing forth a tort action against the perpetrator. Such was the case in the highly publicized O.J. Simpson trial. In that case, the defendant, Simpson, was acquitted of homicide in the criminal trial brought forth by the state. However, the family of the victim, namely, the Goldman family, was able to bring forth a civil action against O.J. Simpson, where they ultimately prevailed. So although the defendant, Simpson, was able to avoid prison time, he nevertheless was liable in the civil suit and had to pay millions to the Goldman family. This is a prime example of when tort law and an individual civil suit can recover some form of solace and justice in a situation where the state's prosecution cannot. Aside from serving as a potent option for aggrieved individuals to consider, tort law also has the added effect of acting as a deterrent for negligent or grossly irresponsible behavior. Tort law serves as a guideline for the actions of a reasonably prudent person and sets the standards and duties that everyday individuals are held accountable to and should abide by. The intended end result is that if everybody knows that he or she is owed a duty of reasonable care and vice-versa in any given activity or situation, then most people will be less inclined to act negligently and therefore be liable for someone else's damages. In a cynical way, tort law can be seen as society's moral compass because although theoretically, the difference between right and wrong ought to be abundantly clear to most individuals, sometimes, unfortunately, this assumption is taken for granted. Luckily though, when that happens, it is reassuring to know that there are tort laws in place to remind society exactly what those duties and obligations are.

### **3.1 A Comparative Analysis of the Application of Tort Law in the United States and China**

Tort law plays an important role in American society, as well as in most nations in the world, including China. Over the years, China's legal system has developed and advanced at an exponential rate, with constant reforms and revisions being adopted. China has often times modeled its laws according to international standards with influences from both the American and German legal systems. But despite its Western influences, Chinese law has also strived to retain its own unique Chinese characteristics. Due to the extensive nature of tort law and the multitude of specific areas it covers, the crux of this paper will focus on the similarities and differences between American and Chinese tort law as it pertains to the area of strict liability.<sup>14</sup>

In the United States, tort law essentially lays out the types of legal duties one owes to another in any given situation, profession or relationship. The most common standard of care is that of a reasonably prudent person.<sup>15</sup> So, for example, an individual who is washing his car would owe anybody who passes by duty, and that duty would be that of a reasonably prudent person in the midst of washing his or her car. As such, if an individual were walking past someone washing his car and was injured by the person washing the car in any way possible, the courts would see if that car washing individual acted in a way that was outside the norm of other reasonably prudent people who were also washing their cars. Of course, there are special duties that arise by virtue of the relationship that exists between two people. For instance, some of the special relationships that would create a specific duty are school/student, common carrier/passenger, innkeeper/guests, landlord/tenant, law enforcement/prisoner, hospitals/patients, employer/employee, parent/child, business/customer and social host/guest. Furthermore, there is no duty to aid someone in need of help unless one of the special relationships listed above exists in the first place.<sup>16</sup> Moreover, doctors have no duty to aid others if there is no special relationship. However, although there is overall, no duty to rescue, the Good Samaritan law states that if one begins to help someone, one has to complete the help with reasonable care and cannot put the person in a worse off position; otherwise, the person who is helping will be liable.<sup>17</sup>

In China, there are stories of individuals falling to the ground after being hurt, and often times, other bystanders or onlookers simply continue to carry on their own business and do not stop to help the person in need.<sup>18</sup> When these stories emerge, the first instinct of foreigners is to criticize the Chinese populace for being somewhat callous, uncaring and plain selfish. However, many people forget that this is actually the tort law of the U.S. and many other Western and developed countries as well.<sup>19</sup> The fact of the matter is that there is no duty to rescue in The United States unless one of the above relationships exists. As such, the fact that many Chinese are not willing to help a stranger in need is nothing out of the ordinary and, actually, within the legal norms of both America and China. But perhaps this issue is compounded more in China by the fact that usually, medical attention in China is

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<sup>13</sup> Ibid

<sup>14</sup> "Tort Liability Law of the People's Republic of China", 43 Chinese L. & Gov't 82 (2010)

<sup>15</sup> John C.P. Goldberg & Benjamin C. Zipursky, *The Restatement (Third) and the Place of Duty in Negligence Law*, 54 VAND. L. REV. 657, 658 (2001).

<sup>16</sup> Ibid.

<sup>17</sup> Id.

<sup>18</sup> In 2014, an acquaintance of mine detailed her plight when she fainted on a metro in Shanghai. After around thirty minutes, she was able to regain consciousness but was nevertheless surprised that during this period, no one had come to her aid.

<sup>19</sup> "Persons in Chinese Law", 2 China L. Rev. 257 (1924-1926)

often only administered once payment is rendered. As such, many would-be good Samaritans are hesitant to pay out-of-pocket for the medical expenses of a complete stranger if he or she does indeed decide to call for an ambulance or medical aid to assist the injured individual. In The United States, medical aid is usually given first before payment is made, even if the injured party does not have insurance. Therefore, perhaps this issue in China is not so much a problem with its citizens or its tort law as it is with its medical practice standards and health insurance system. Perhaps if reforms were made which made treatment first and payment second, then more Chinese citizens would be willing to lend a helping hand and become the good Samaritan to the distressed or injured individual in need.<sup>20</sup>

In terms of strict liability, this is a legal concept in tort law that says that a person is responsible for the damage and loss caused by his or her acts and omissions regardless of his or her duties and actions. In other words, there are some activities or situations so dangerous and harmful that if an individual is involved in those activities or situations and another party gets injured as a result of such activity or situation, the individual who is involved in said activity or situation is liable regardless of whether or not a duty existed. Strict liability applies to abnormally dangerous or ultra-hazardous activities. An activity is deemed to be abnormally dangerous if the activity is not usual for the area and cannot be performed without risk of serious harm. Such activities include radiation, storing explosives or inflammable liquids, blasting and pile driving with excessive vibrations. The individual engaged in such ultra-hazardous activities is liable even if the harm is caused by the unexpected conduct of a third person, animal or an act of God.<sup>21</sup> It is important to note that fireworks are usually not included in the list of ultra-hazardous activities. In addition, strict liability also applies to product liability and wild animals. In the case of wild animals, the owner of the wild animal is liable for harm to others and their property. A wild animal is defined as an animal that can never be tamed or domesticated. The owner is also strictly liable for the injuries caused to another person, even when that person is in the process of fleeing from the wild animal. The only defense that a defendant can have against the plaintiff in a strict liability suit is the assumption of the risk by the defendant, which is a subjective test. The plaintiff must be aware of the danger and voluntarily assume the risk. The defendant cannot use foreseeable intended use as a defense since there is a duty to warn about foreseeable unintended uses.

The laws and provisions regarding China's tort law concerning liability for ultra-hazardous activities are listed below:

"Chapter IX Liability for Ultra hazardous Activity

Article 69 One who causes any harm to another person while engaging in any ultra-hazardous operation shall assume the tort liability.

Article 70 Where a nuclear accident occurs in a civil nuclear facility and causes any harm to another person, the operator of the civil nuclear facility shall assume the tort liability unless it can prove that the harm is caused by a situation such as war or by the victim intentionally.

Article 71 Where a civil aircraft causes any harm to another person, the operator of the civil aircraft shall assume the tort liability unless it can prove that the harm is caused by the victim intentionally.

Article 72 Where the possession or use of inflammable, explosive, acutely toxic, radioactive or any other ultra-hazardous materials causes any harm to another person, the possessor or user shall assume the tort liability unless it can prove that the harm is caused by the victim intentionally or by a force majeure. If the victim is grossly negligent for the occurrence of the harm, the liability of the possessor or user may be mitigated.

Article 73 Where any harm is caused to another person by an aerial, high pressure or underground excavation activity or by the use of high speed rail transport vehicle, the operator shall assume the tort liability unless it can prove that the harm is caused by the victim intentionally or by a force majeure. If the victim is negligent for the occurrence of the harm, the liability of the operator may be mitigated.

Article 74 Where any harm is caused to another person by the loss or abandonment of ultra-hazardous materials, the owner shall assume the tort liability. If the owner has delivered the ultra-hazardous materials to another person for management, the person who manages the materials shall assume the tort liability, and if the owner is at fault, he shall be liable jointly and severally with the person who manages the materials.

Article 75 Where any harm to another person is caused by the illegal possession of ultra-hazardous materials, the illegal possessor shall assume the tort liability. If the owner and the managing person cannot prove that it has fulfilled their duty of a high degree of care in preventing others from illegal possession, it shall be liable jointly and severally with the illegal possessor.

Article 76 Where any harm is caused by the entry into an area of ultra-hazardous activities or an area of storing ultra hazardous

<sup>20</sup> "Liability for Defective Chinese Products under the Alien Tort Claims Act", 7 Wash. U. Global Stud. L. Rev. 519 (2008)

<sup>21</sup> Ibid

materials if the managing person has taken safety measures and fulfilled its duty of warning, its liability may be mitigated, or it may assume no liability.

Article 77 Where any legal provision prescribes a limit of compensation for liability for an ultra hazardous activity, such a provision shall apply.”<sup>22</sup>

When comparing the tort law regarding liability for ultra-hazardous activities between America and China, there are indeed many similarities both in language and meaning behind the stated laws. For the most part, Chinese law in this area is nearly identical to U.S. law. However, when it comes to defenses that can be raised, the Chinese statute often states that the defendant will be excused from liability if he or she can prove that the harm was caused by the victim intentionally. This seems in line with the American defense of the assumption of risk. Though not labeled as an “assumption of risk”, the overall meaning, wording and understanding of this language essentially equate to the same basic principle. However, one key difference between American law versus the Chinese law is that in certain sections of Chinese law, it states activities such as war or force majeure (Act of God) as valid defenses. This is in stark contrast to the American approach since force majeure or acts of God are not included as possible defenses. So in this sense, strict liability regarding ultra-hazardous activities is held to a much stricter standard in The United States than in China.<sup>23</sup>

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In The United States, as it pertains to domestic animals, the defendant is not strictly liable unless the defendant has knowledge of the animal's dangerous propensities that are not common to the species. So, for example, if an owner of a golden retriever, which is a commonly owned breed of dog and usually does not attack people, knows that for whatever reason, his/her particular golden retriever likes to attack small children but fails to take proper and adequate precautions to warn the public, then that owner will be liable. Golden retrievers do not usually attack small children, and as such, this type of dangerous propensity is not common to the species. As such, if a small child is attacked, then the owner is strictly liable for the child's damages. The section regarding liability for harm caused by domestic animals in Chinese tort law is listed below:

“Chapter X Liability for Harm Caused by Domestic Animal

Article 78 Where a domestic animal causes any harm to another person, the keeper or manager of the animal shall assume the tort liability but may assume no liability or assume mitigated liability if it can prove that the harm is caused by the victim intentionally or by the gross negligence of the victim.

Article 79 Where any harm is caused to another person by a failure to take safety measures against an animal in violation of management rules, the keeper or manager of the animal shall assume the tort liability.

Article 80 Where any dangerous animal, such as a fierce dog that is prohibited from keeping, causes any harm to another person, the keeper or manager of the animal shall assume the tort liability.

Article 81 Where any animal of a zoo causes any harm to another person, the zoo shall assume the tort liability unless it can prove that it has fulfilled its duties of management.

Article 82 Where an abandoned or fleeing animal causes any harm to another person during the time period of its abandonment or fleeing, the original keeper or manager of the animal shall assume the tort liability.

Article 83 Where any harm is caused to another person by an animal for the fault of a third party, the victim may require compensation from the keeper or manager of the animal or require compensation from the third party. After making compensation, the keeper or manager of the animal shall be entitled to be reimbursed by the third party.

Article 84 Animals shall be kept in accordance with the law, in the manner of respecting the social morals, and without interference with the life of others.”<sup>25</sup>

Here, it seems that the Chinese law regarding liability for harm caused by domestic animals is pretty much in line with the American legal standard. Strict liability does not seem to apply here, which is consistent with American law. As mentioned earlier, strict liability only pertains to domestic animals in the U.S. when the situation involves an unknown dangerous propensity that the animal possesses. In terms of wild or dangerous animals, American and Chinese law both seem to say that strict liability will apply. Under

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<sup>22</sup> Tort Law of the People's Republic of China, Chapter IX Liability for Ultra hazardous Activity

<sup>23</sup> Ibid.

<sup>24</sup> “Balancing the Interest of Enacting the Tort Liability Law”, 2 China Legal Sci. 3 (2014)

<sup>25</sup> Tort Law of the People's Republic of China, Chapter X Liability for Harm Caused by Domestic Animal

this section, there does not seem to be any defense or excuse that a Chinese defendant may use to try to mitigate the charges brought against him or her.<sup>26</sup>

#### 4 Conclusion

Overall, tort law serves an important function in both The United States and China. Broadly speaking, tort law serves a monumental function in leveling the playing field in the eyes of the law. Tort law makes it possible for an aggrieved party to seek some form of justice or compensation in cases and situations where the state cannot.<sup>27</sup> Tort law allows the plaintiff to have a second chance at justice and, in many cases, allows an average person to take on multi-national corporations in a sort of “David vs. Goliath” scenario, and in some of these instances, David has been able to slay Goliath and show the world that justice can still be won and achieved by the smaller, weaker and underfunded party.<sup>28</sup> In essence, tort law brings both the rich and powerful back down to earth and makes it very clear that we are all equal in the eyes of the law.<sup>29</sup> For the most part, the tort laws and regulations of China are quite similar to that of The United States, and hopefully, with time, any parts of China’s tort law which may seem inadequate or lacking will be duly revised and reformed for good and the benefit of the Chinese citizenry.

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<sup>26</sup> Ibid.

<sup>27</sup> KENNETH S. ABRAHAM, THE FORMS AND FUNCTIONS OF TORT LAW 46 (2d ed. 2002);

<sup>28</sup> Ibid.

<sup>29</sup> Id.