
Wei Zhang*
Singapore Management University

Introduction
The formal legal rules governing tortious behaviors in post-Mao China can be traced back to the General Principles of the Civil Law (Minfa Tongze, hereinafter as “General Principles”) promulgated in 1986. Since then, tort disputes have become a main type of cases litigated in courts. In 2007, the number of tort cases accepted by Chinese courts totaled to about 863,000, and in 2008, this number rose further to 992,000 (Wang 2010, p.2). It is beyond doubt that tort law has been playing a significant role in carving out the incentives of businesses and individuals in China. During the same period of time, a large number of changes have occurred in the law of torts. The overall movement of this field of law is in a direction to expanding protection of tort victims. This paper is to outline these changes in Chinese tort law. Due to the limit on space, I will focus mainly on the formal rules, with only occasional reference to the positions taken by courts in practice. Moreover, my current work looks specifically to the alterations appearing in the law, but does not attempt to present an all-inclusive view of the Chinese tort law. For those who are interested in probing the Chinese tort law in a comparative perspective, this paper will provide essential information about the mutation of tort law in a society undergoing economic transition. More generally, students of modern China may also find useful clues in this paper for understanding of the concerns embedded in China’s formal institutions, as well as the interaction among different branches of government to address these concerns.

Part I will describe the sources of tort law in China so as to set the ambit for this paper. In this part, I will also display a brief legislative history of the law of torts in China. Part II will discuss with some detail the changes seen in the Chinese tort law that have strengthened victim protection in a variety of ways. Part III will make a rough assessment of the efficiency implications of the evolution of tort law in China. A short conclusion with suggestion for a future research agenda will follow Part III.

I. Sources of Law and a Brief History
In China, at the national level, three categories of laws1 are applied in tort litigations, general legislations, special legislations and judicial interpretations.

General legislations are comprehensive laws governing tortious behaviors. They set down the basic rules applicable to various types of torts. They are enacted either by the National People’s Congress (NPC) or by its Standing Committee, and officially titled as “law” (faliü), hence bearing the highest rank of effect in China’s formal sources of law. So far, there are two general legislations on torts, the General Principles and the Tort Liability Law (Qinquan Zeren Fa). Chapter 6 of the General Principles, and Section 3 in particular, set forth the rules of torts covering intentional and negligent tortious actions as well as several special types of torts often subject to

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1 Except otherwise specified, “law” in this paper is used in a broad sense, including any rules binding in courts’ adjudication.
strict liabilities. The Tort Liability Law, in some sense, is an extension of the rules established in the General Principles and inherited many of its substantive provisions.

Special legislations are laws related to specific types of torts that are usually referred to as “special torts” (teshu qinquan) by Chinese lawyers. In most cases, these special legislations do not deal with tort liabilities in particular, but are regulatory rules for some specific industries. Some of these special legislations are promulgated by the NPC Standing Committee, hence obtaining the status of “law”, while others are adopted by the State Council, which are administrative regulations (xingzheng fagui) one rank lower than laws in terms of legal effect, or by the ministries of the State Council as departmental rules (bumen guizhang) with a even lower rank as a source of law.2 There are more than 40 other laws, and probably even more administrative regulations and departmental rules, involving tort liabilities (Wang 2010, p.3). Most of these laws, regulations or rules belong to the special legislations described above. For instance, the Railway Law (Tielu Fa) and the Civil Aviation Law (Minyong Hangkong Fa) set down the liability and compensation rules for accidents arising in, respectively, rail and air transportations. And the Regulation on the Handling of Medical Accidents (Yiliao Shigu Chuli Tiaoli, hereinafter as Medical Accident Regulation) includes a chapter devoted specifically to dealing with tort claims of medical malpractices.

Besides the rules provided by the legislative and administrative institutions, the Supreme People’s Court (SPC) issues various judicial interpretations on adjudication of tort disputes. SPC interpretations either take the form of replies to lower courts’ requests for instructions pertaining to particular cases or adjudicative problems, or stand alone as general directions on trials of certain types of tort litigations or on certain issues in tort law cases. Whereas the former is usually short and written in an essay style, the latter is closer to laws and regulations in terms of format and generality. Although in principle judicial interpretations is not a formal source of law, in practice, they are routinely cited in judgments, especially the legislation-style general directions. SPC derives its authority to issue interpretations in relation to the application of laws and regulations in adjudications from a resolution passed by the NPC Standing Committee in 1981 (NPC Standing Committee 1981, Art.2). No statistics show the exact number of SPC judicial interpretations related to tortious actions, but two judicial interpretations are of particular importance in this respect, the SPC Interpretation on the Determination of Damages for Pain and Suffering Arising from Torts (Zuigao Renmin Fayuan Guanyu Qeding Minshi Qinquan Sunhai Peichang Zeren Ruogan Wenti De Jieshi, hereinafter as “Interpretation on Pain and Suffering”) effective since 2001, and the SPC Interpretation on Application of Law in Adjudication of Cases of Personal Injuries (Zuigao Renmin Fayuan Guanyu Shenli Renshen Sunhai Peichang Anjian Ruogan Wenti De Jieshi, hereinafter as “Interpretation on Personal Injuries”) effective since 2004. The former officially admits the award of damages for mental distress, which has been routinely claimed in tort actions involving personal injuries, whereas the latter not only spells out the details for calculation of damages for personal injuries but also lays down, for the first time, the rules in certain vital aspects of torts including employers’ vicarious liability and concurrent torts. No wonder both of these SPC interpretations appear as frequently as, if not more frequently than, the laws and regulations in court decisions on tort liabilities. In addition to these general provisions applicable to a wide variety

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2 For the official ranks of legislations, see the Legislation Law (Lifa Fa), Art.79.
of torts, SPC also issues occasionally judicial interpretations on some specific types of torts, e.g. traffic accidents.

Of the above sources of tort law, the oldest one is the General Principles. The SPC Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law (For Trial Implementation) (Zuigao Renmin Fayuan Guanche Zhixing “Zhonghua Renmin Gongheguo Minfa Tongze” Ruogan Wenti De Yijian (Shixing), hereinafter as “SPC Opinions”) was issued two years after this groundbreaking legislation took effect. Most of its contents can be considered as clarification of the provisions in the General Principles, but the SPC Opinions also added a few new elements to the tort liability system that are unseen in the General Principles, such as the liability of educational institutions. While the earliest special legislation pertaining to tort liabilities appeared soon after the promulgation of the General Principles, the boom of such legislations started in early 1990s. Judicial interpretations often follow the special legislations to elaborate, and sometimes modify, their rules pertaining to tort liabilities. With some rare exceptions like the judicial interpretation on railway accidents, the vast majority of SPC interpretations applicable to tort litigations were issued in the 21st century, especially in its early years. In addition, the SPC issued in 2001 the Some Provisions of the Supreme People’s Court on Evidence in Civil Procedures (Zuigao Renmin Fayuan Guanyu Minshi Susong Zhengju de Ruogan Guiding, hereinafter as “Interpretation on Evidence”) that exerts profound influence on tort litigations by demarcating the burdens of proof. Premised on all these previous legal documents, the Tort Liability Law was passed by the NPC Standing Committee 5 days before the end of 2009 after a drafting process spanning nearly a decade.3 The Tort Liability Law succeeds the framework of the General Principles and fleshes out many of its substantive rules. At the same time, the SPC interpretations, especially the Interpretation on Personal Injuries, also leave clear vestige in this newer general legislation.

In a nutshell, the law of torts in China started from the General Principles, inviting a wave of special legislations in 1990s, and followed by a series of judicial interpretations in 2000s, before they are consolidated in the Tort Liability Law taking effect in July 2010. However, it is noteworthy that many of the special legislations and judicial interpretations regarding tortious behaviors remain effective after the promulgation of the Tort Liability Law. Thus, where the different sources of law conflicts with each other, uncertainty still exists in terms of the choice of rules in tort adjudications. This uncertainty may be particularly pronounced when the special legislations differ from the Tort Liability Law since, among the special legislations, quite a few were also adopted by the NPC Standing Committee, hence bearing the same rank of effectiveness as the Tort Liability Law. Although the principle of “new laws superseding old ones” may point to the Tort Liability Law as the applicable source of law, the equally binding principle of “specific laws superseding general ones” can also point to the opposite direction. Indeed, some special statutes were adopted or amended even after the Tort Liability Law, thus they should trump the latter even under first principle based on the time of adoption.4

II. Expanding the Protection

3 The earliest draft of the Tort Liability Law was submitted to the NPC Standing Committee in Dec. 2002.
4 A case in this point is the Ocean Environment Protection Law (Haiyang Huanjing Baohu Fa) amended most recently in 2013.
When asked about the most salient change in adjudication of tort disputes in China in recent years, a senior judge of an intermediate court in Shanghai answered unhesitatingly, “expanding the protection of victims in torts”.

The feeling of a practitioner with rich experience in civil justice is resonant with the finding of an academician after perusal of Chinese tort law. Since the turn of the century, despite some minor exceptions, the law of torts exhibits a clear trend toward increasing the opportunities for tort victims to seek legal remedies. This can be observed in a variety of forms as elaborated below.

A. Expanding the Scope of Rights Under Protection

The General Principles broadly mentions in Article 106 that “property and personality” are protected against tortious behaviors. 10 sorts of rights over property and 7 sorts over personality are included in this general legislation. Given its general allusion to property and personality, together with specific enumerations of the various rights, it is unclear whether the General Principle is purported to set up an exclusive boundary for the rights protected by tort law. In practice, however, a wide variety of rights, especially those regarding personality, have been claimed and litigated after the adoption of the General Principles. Sometimes, these novel claims also win support in courtrooms. Indeed, Article 1 of the Interpretation on Pain and Suffering expanded the scope of personality rights by stipulating the rights of dignity (renge zunyan quan) and personal freedom (renshen ziyou quan), both of which are not seen in the General Principles.

The Tort Liability Law declares, in Article 2, its protection of “civil rights and interest”, followed by a laundry list of 18 sorts of civil rights. It contains nearly all the rights mentioned in the General Principles, with 4 additional sorts of civil rights. Although the add-on seems marginal, the scope of protected rights under the new law is apparently open-ended. Moreover, it extends the protection to civil interests beyond civil rights. Rights and interests are distinguished in the German law where the latter are protected less generously than the former (Wang 2010, p.22). A similar distinction was proposed in course of drafting (Civil Law Office 2010, pp. 153, 166), but the Tort Liability Law does not take the German approach eventually. Hence, it is better to tease out the rights not protected by the tort law, and any remaining rights or interests are likely to fall in its scope of protection. In general, two types of rights are outside this scope. The first is the rights conferred by administrative laws such as the citizens’ right to know (zhiqing quan). Remedies are to be sought for these rights through administrative litigations (Wang 2010, p.24). It is unclear though whether torts committed by public entities should be subject to the Tort Liability Law since a separate law of state compensation was adopted in 1994 (Wang 2010, p.28). The second type of rights excluded from tort law protection is contractual claims existing between the parties of a contract. Here, contract law is applicable to resolve the disputes. However, the third party interference with contracts might be regarded as an

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3 Interview with Judge Liu, July 4, 2013.
6 For instance, the right of giving birth (shengyu quan) was recognized by a court in Sichuan, see “The First Case on the “Right of Birth” in Sichuan Is Decided” (“Sichuan Shouli ‘Shengyu Quan’ Jifen An Shenjie”), http://www.people.com.cn/OJB/shehui/44/20010629/500442.html, whereas the right of chastity (zhencao quan) found its support in Guangdong, see “The First Case on the ‘Right of Chastity’ Is Adjudicated in Shenzhen; The Victim Is Awarded 80,000 Yuan” (“Woguo Shouzong ‘Zhencao Quan’ Zai Shenzhen Panjie; Shouhaizhe Huopei 8 Wan”), http://news.sina.com.cn/s/236836.html.
7 In particular, interests are said to be protected only when they are substantial, when the injurer acts with malice and when the causation is stronger between the tortious behavior and the harm (Civil Law Office 2010, pp.166-67).
infringement on the civil rights protected by the Tort Liability Law in spite of its silence on this point (Wang 2010, p.27). In short, under current tort law scheme, the scope of protection has enough flexibility to incorporate a wide range of novel claims when necessary.

B. Expanding the Scope of Liable Parties

The law also enlarges the scope of parties from whom tort victims can claim damages. In this respect, joint and several liability (liandai zeren), vicarious liability (tidai zeren) and complementary liability (buchong zeren) are more frequently allowed in the law of torts in China.

a. Extending the Joint and Several Liability

Under the Chinese tort law, joint and several liability is extended mainly through the enrichment of current torts (gongtong qinquan). The General Principles, in effect, only touches on the situation where several injurers, when conducting one tortious action, share the intent to injure, or are all in negligence, or have certain combination of intent and negligence (Wang 2010, p.58). The multiple tortfeasors are required to bear the joint and several liability to the victim in this situation. I will refer to this situation as the original type of concurrent torts below. The scope of concurrent torts was first extended by Article 148 of the SPC Opinions. It provides for the joint and several tort liability of the person who abets and assists another in committing a tortious action.

In the Interpretations on Personal Injuries, the rules of concurrent torts were further expanded to three other situations. Based on Article 3 of this interpretation, where some of the injurers do not share the intention or negligence in conducting torts, all the injurers can nevertheless be held liable jointly and severally if their actions are “connected directly” to cause one injury, but severally according to share of negligence or causality if their actions are “connected indirectly”. Moreover, Article 4 of the same judicial interpretation sets forth the rule, often referred to as “common risk” (gongtong weixian), that the several parties conducting activities potentially harmful to others should be liable jointly and severally if no specific injurer can be identified as the cause of the pertinent harm.

A few words are in order for the “direct connection” mentioned above. According to an eminent Chinese tort law scholar, it means that the actions of the several injurers are so closely linked that none of these actions is dispensable to the occurrence of the harm or differentiable in terms of the contribution to the harm (Zhang 2010, p.49). For instance, where the victim gets hurt in a traffic accident caused by multiple injurers, courts frequently treat the injurers’ actions as directly connected so that they are liable jointly and severally, e.g. Yang v. Cai et al. (2011浦民一(民）初字第40812号).

The Tort Liability Law has retained most of the above concurrent tort rules, but discarded the distinction between direct and indirect connections of actions. Instead, when multiple tortfeasors take tortious actions separately but cause one single injury, it looks to whether each individual tortfeasor’s action is sufficient to bring about the entire injury. The tortfeasors are liable jointly and severally under Article 11 if the answer is yes; otherwise, they will be liable severally under Article 12. While the

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8 To be more accurate, here one action does not necessarily mean one single physical behavior, but also includes a series of behaviors that can be regarded as steps of one scheme leading to certain results from the conventional perspective of our society. The typical example of the latter is the activities of gangsters belonging to the same gang.
effect of this first modification in the new law on the scope of joint and several liability might be ambiguous, the next one has unequivocally extended this scope. Under Article 4 of the Interpretation on Personal Injuries, in order to avoid liability in cases involving common risk, an alleged injurer only needs to prove that the injury was not caused by his action. Conversely, Article 10 of the Tort Liability Law requires the alleged injurer to produce sufficient evidence to identify the actual injurer who has caused the harm (Wang 2010, p.67). This is patently a much more restrictive condition. Should such evidence be available, there would be no common risk in the first place. Therefore, in case of common risk, victims now are more likely to hold the tortfeasors liable jointly and severally.

Joint and several liability is also extended in some specific contexts. For example, the SPC has dealt with a special type of traffic accidents where the owner of the vehicle causing injuries conducts business operation of the vehicle in name of another entity, usually a firm licensed to run a transportation business. This is called guakao (“hang and lean”) in Chinese. The vehicle owner using another’s business name mainly to bypass the regulatory requirements for the transportation industry while the firm allowing others to use its name is benefited from charging fees for such usage. Guakao is alleged to be the single largest source of serious traffic accidents. In 2008, for example, motor vehicles operating on guakao basis accounted for about 58% of the major traffic accidents claiming 10 lives or more (Civil Law Office 2010, p.711). SPC first made it clear in 2001 that the business entity allowing others to use its name for business operation in return for fee payments is liable for traffic accidents caused by motor vehicles conducting business in its name (SPC 2001). And in the latest SPC interpretation on traffic accident litigations issued in 2012, such a business entity is liable jointly and severally with the owner of the vehicle causing the accident (SPC 2012, Art. 3).

b. Extending the Vicarious Liability

Vicarious liability is understood here as the liability borne by one party for the actionable conduct of another, regardless of the former’s own fault or the relationship between the two parties. The tort law in China has developed an array of cases subject to vicarious liability over the years.

First, when a minor or legally incompetent person caused harm to others, the General Principles holds her guardian liable for the harm. Even if the guardian has fulfilled the duty of guardianship, his liability will still not be eliminated but merely reduced (General Principles, Art.133; SPC Opinions, Art.159). Article 32 of the Tort Liability Law succeeded this position. At the same time, both the General Principles and the Tort Liability Law require the minor or legally incompetent to compensate the victim first using her own assets if she does have own assets, and the deficiency is to be covered by the guardian. However, while the General Principles only requires the guardian to cover “appropriately”, the Tort Liability Law now demands a full coverage of any shortfall. Therefore, the guardian bears a heavier liability under the new law. In addition, the Tort Liability Law also abolished the exception for unit (danwei) guardians acknowledged by the General Principles so that they should also cover the deficiency in full.

Second, Article 121 of the General Principles requires firms and public entities to be liable vicariously for the harm to a third party caused by their employees’ intentional or negligent activities within the scope of employment. This rule is reaffirmed in the Interpretation on Personal Injuries and inherited by the Tort Liability

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9 In this sense, the term is used slightly more broadly than its traditional meaning.
Law. Whereas the previous rules cover only firm employers, the Tort Liability Law extends the strict liability to individual employers (Tort Liability Law, Art. 35). This latest change in law has echoed the recent development in Chinese job market, in particular, the surge in services delivered for family instead of firms such as maids, nannies and tutors (Wang 2010, p.175). It hence provides broader opportunities for tort victims to seek remedies under the law by meticulously filling a gap in the previous legal rules that can frustrate a legal recourse.

Third, as for injuries due to transmission of contaminated blood, Article 59 of the Tort Liability Law allows victims to choose to claim damages from medical institutions even when the latter are not at fault. Conversely, the previous Article 33 (4) of the Medical Accident Regulation immunizes medical institutions entirely in similar situations. Although medical institutions can seek indemnity from blood providers afterwards, in practice, such indemnity cannot be realized easily (Civil Law Office 2010, p.808).

Fourth, according to Article 127 of the General Principles, owners or keepers of domestic animals are not liable for harm resulting from a third party’s intentional or negligent behaviors, such as sounding a horn next to a horse. Instead, that third party should be liable on his own accord. In the Tort Liability Law, however, this rule is changed. Article 83 of the new law allows the victim to request compensation from the owner or keeper of the animal, and the latter need to pay compensation first and get indemnified later from the third party at fault.

c. Establishing Complementary Liability

Unlike vicarious liability, in China a party bearing a complementary liability needs to compensate the victim only if someone else who has directly caused the harm fails to pay damages. Usually, complementary liability is in proportion to the negligence of the party subject to this liability. Despite these restrictions, it nevertheless serves to increase potential sources of compensation. Complementary liability is not seen in the General Principles, but a creation of the judicial interpretation followed by the Tort Liability Law.

Complementary liability is mostly relevant to primary and secondary schools. According both to Article 7 of the Interpretation on Personal Injuries and Article 40 of the Tort Liability Law, educational institutions bear complementary liability, in proportion to their fault in managing campus, for injuries inflicted by external personnel on students who are minors. This essentially means that schools should be liable secondarily only if the external personnel causing the injury cannot bear the tort liability in full, i.e. judgment proof, and only to the extent of schools’ own negligence. In particular, courts are not supposed to compare the fault between external personnel and the school, and hold the latter to bear a certain proportion of the liability primarily. Instead, schools’ negligence is determined by looking to the shortfall in precaution compared to their own applicable standard. Consequently, schools are no longer liable after external personnel have paid damages completely. Neither do they have to cover the entire deficiency after external personnel’s payment (Wang 2010, p.217).

d. Adding Liable Parties to Regular Liability Cases

Apart from the changes in relation to the abovementioned special types of tort liabilities, the Chinese tort law also widens the pool of defendants from whom a tort victim can claim damages in certain cases involving regular tort liabilities.

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10 Here, negligence does not bear on inflicting harm on the victim, but on precluding a third party from inflicting such harm.

11 This means schools guarantee external personnel’s payment to the extent of (x*-x)/x* where x* is schools’ level of precaution required under the law while x represents schools’ actual precaution level.
When an injury happens due to the falloff of any part of a building or structure, or anything placed thereon or suspended therefrom, Article 126 of the General Principles originally held the owner or superintendent of the building liable unless the owner or superintendent could prove it was not at fault. The Interpretation on Personal Injuries took the same position in Article 16. The Tort Liability Law extends this liability to users, usually lessees, of the building in Article 85. Some lessees, especially those of commercial real estates, are wealthy business entities with a deep pocket, thus this extension conceivably improves victims’ chance to get compensated.

C. Tightening the Liability

Over the years, the Chinese law has tightened tort liabilities in various ways, including applying liability rules less favorable to injurers, reducing immunities and defenses to tort claims, as well as creating new categories of tort liabilities.

a. Moving Toward Liability Rules Less Favorable to Injurers

In some areas of torts, the negligence rule has been replaced with res ipsa loquitur (guocuo tuiding) under which the injurer is presumed as negligent unless he is able to prove otherwise. In particular, this change happens in relation to motorists, primary and secondary schools as well as medical institutions.

First, The State Council enacted the Measures to Handle Road Traffic Accidents (Daolu Jiaotong Shigu Chuli Banfa, hereinafter as “Traffic Accident Measures”) in 1991. Articles 17 and 19 of this administrative regulation essentially adopted the comparative negligence rule to handle accidents occurring not only between motorists, but also between motorists and pedestrians or non-motorized vehicle riders. The Standing Committee of NPC passed the Road Traffic Safety Law (Daolu Jiaotong Anquan Fa, hereinafter as “Safety Law”) in 2003. In Article 76, the law restricts the application of the comparative negligence rule to traffic accidents between motorists. As for accidents involving motor vehicles and pedestrians or non-motorized vehicle riders, the doctrine of res ipsa loquitur is applied so that the motorist will be liable unless he can prove that the pedestrian or non-motorized vehicle rider has violated the traffic rules and that he himself has taken “necessary and proper measures” to avoid the accident. But even when the motorist satisfies the burden of proof, his liability will only be “reduced” rather than eliminated. The Safety Law was amended in 2007 to tip the balance slightly back to motorists by reinstating, in Article 76, a 10% liability limit for motorists where accidents are between motorists and nonmotorists and the former are not at fault. But the res ipsa loquitur rule is kept unchanged. The Safety Law was amended in 2011, but Article 76 remains the same.

Article 48 of the Tort Liability Law simply refers to the revised Article 76 for determining the liability in traffic accidents.

Second, the General Principles does not mention schools’ liability for injuries arising on their premises to students who are minors. SPC first set forth a rule, SPC Opinions Article 160, requiring schools to “provide appropriate compensation” if they are at fault for the injuries suffered by minors of no legal competence. Then it expands such liability to cover all minors, whether legally incompetent or restrictively competent, in Article 7 of the Interpretation on Personal Injuries. Later on, the Ministry of Education also requires schools to be liable for students’ injuries when they are at fault, though with a good deal of immunities (Ministry of Education 2002, More accurately, the Traffic Accident Measures looked to the parties’ violations of the traffic rules and deemed such violations as negligence per se. The Safety Law was furthered amended in 2011, but Article 76 remains the same. In China, minors under 10 are legally incompetent whereas those aged between 10 and 18 are usually of restrictive legal competence (General Principles, Art.12).
Art. 8, 12, 13). All these previous laws use a negligence rule to determine educational institutions’ liabilities. These institutions will be liable only when they breach the duty of care in discharging their responsibilities of managing the campus, and protecting and educating the students. The Tort Liability Law, however, distinguishes injuries to students of complete incompetence from those to students of restrictive competence. Whereas the negligence rule maintains for the latter, res ipsa loquitur now applies to the former (Tort Liability Law, Art. 38, 39). Consequently, where completely incompetent, or younger, students are injured, schools will have to prove that they are not negligent in carrying out their duties.

Third, under the General Principles, medical malpractice is a regular tort, hence subject to the negligence rule. Therefore, plaintiffs are supposed to prove the negligence of medical institutions in order to claim damages for medical malpractices. This rule is inherited in the Medical Accident Regulation. However, according to Article 4(8) of the Interpretation on Evidence, the burden of proof is shifted to medical institutions in terms of the nonexistence of negligence or causation between medical treatment and injuries. In other words, SPC demands application of res ipsa loquitur to medical malpractices. The Tort Liability Law resumes the negligence rule in general medical malpractice cases, but keeps res ipsa loquitur for three exceptional situations: 1) violating the provisions of law, administrative regulations or other regulatory rules on medical practices; 2) concealing or declining to present medical records related to the dispute; or 3) faking, tampering with or destroying medical records (Tort Liability Law, Art. 54, 58).

b. Reducing Immunities and Defenses

Tort liabilities become heftier in China also because the immunities and defenses applicable to injurers have been restricted in a number of areas.

First, with respect to product liability, Article 122 of the General Principles holds producers and sellers liable for manufacturing or selling products inconsistent with quality standards adopted by the state or industry. Thus, it gives victims no legal basis to seek remedies for losses resulting from products not subject to any such standard. Under the Product Quality Law (chanpin zhiliang fa) of 1993, however, producers and sellers are liable for defective products including both the substandard products and products with unreasonable danger where no such standards exist (Product Liability Law, Art. 46). The Tort Liability Law does not define “defective products” explicitly, but drafters of the law believe that producers should be liable when their products contain certain features tending to cause harm even if the national or industrial standards set for this kind of product do not touch on these particular features (Wang 2010, p. 225). In effect, therefore, after the adoption of the Product Liability Law, lack of national or industrial standard no longer bars product liability.

Second, the tort liability for environment pollution is included in the General Principles and the strict liability rule has been applied ever since. However, the most significant change in rule happened again in relation to defenses. According to Article 124 of the General Principles, polluters are liable only when discharge violates the government standards. In other words, compliance with these standards could be used to immunize polluters under the original rule. But this is abandoned by Article 41 of the Environment Protection Law (Huanjing Baohu Fa) in 1989. The Tort Liability takes the same position in this respect. Polluters thus are liable even if the discharge complies with the government standards.

15 This department rule ceased to be effective in 2010.
Third, as for medical malpractice, the Medical Accident Regulation, as well as its predecessor, provides a variety of immunities to exempt medical institutions from liability. In particular, some of these immunities confined medical institutions’ liability to the most serious injuries of death, disability or functional disorders, whereas others allow health providers to avoid liabilities entirely once the patient is in delay or noncooperative otherwise no matter whether hospitals themselves are at fault. Although officially these are immunities to liabilities for medical accidents only, in reality, they are probably used to exempt medical institutions from negligence liabilities as well because the standard for medical accident appears to be the de facto standard for medical negligence in judicial practice. Not surprisingly, these immunities are criticized for their favoritism to medical institutions (Civil Law Office 2010, p.806-07). In contrast, the Tort Liability Law takes a more balanced position in this regard. According to Article 60, medical institutions’ liabilities are exempted where 1) patients or their close relatives do not cooperate to carry out diagnoses or treatments in compliance with the norms of medical practice, 2) medical staff have discharged their duty of reasonable diagnosis and treatment in emergency situations such as rescuing patients on the verge of death, and 3) the disease is difficult for diagnosis or treatment under the current condition of medical science. Moreover, when patients’ or their relatives are noncooperative, medical institutions are not immunized absolutely. If they are also at fault, hospitals are still liable in proportion to their own fault.

Fourth, immunities and defenses also shrink in certain torts associated with abnormally dangerous activities (gaodu weixian zuoye), which is most obvious in two areas: civil aircraft injuries and railway accidents. At first glance, under Article 123 of the General Principles, the strict liability rule is applicable uniformly, with the only immunity of victims’ intention, to all business operations of abnormal danger. As a matter of fact, however, abnormally dangerous activities are often conducted by certain special industries. In China, these are often state-owned or controlled businesses. Ministries of the central government are charged with both regulation and operation of these industries. Therefore, the ministries frequently sponsor special legislations bearing on tort liabilities. Though a blatant challenge to the strict liability rule is unusual, quite a few special legislations put in wide immunities and other defenses to bar the claims from tort victims.

In case of injuries resulting from civil aircrafts, the Civil Aviation Law passed in 1995 immunizes the airlines from liabilities for personal injuries purely due to passengers’ health conditions, and also allows their liabilities to be excused or alleviated if victims’ fault, both intention and negligence, caused or contributed to the injury. Victims’ fault is also a defense to claims for property damages during air transportation. Besides, the airlines are not liable for damages, roughly speaking, due to force majeure (Civil Aviation Law, Art.124, 125, 127). On the other hand, under Article 71 of the Tort Liability Law, civil aircrafts are considered as involving the highest level of riskiness, therefore, their operators’ sole defense under this law is victims’ intentional behaviors.

Similarly, under Article 58 of the Railway Law enacted in 1990, railway companies can avoid tort liability completely when personal injuries are caused for “victims’ own reason”. This clearly includes victims’ negligence, and probably even their health conditions or physical features.16 Furthermore, victims’ negligence also

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16 Article 58 also enumerates several kinds of victims’ actions as “victims’ own reasons” per se. These include crossing junctions against the traffic rules, walking, sitting or lying on rail tracks.
exempts railway companies from liabilities for property damages under Article 18 of the same law. The broad immunity available to railway companies has led to the cynical remarks that trains are permitted to “hit people for free” (Civil Law Office, p.252). In 2010, however, SPC adopted a new judicial interpretation on railway accidents, the SPC Interpretation on Several Issues Concerning the Application of Law in Adjudicating Cases Involving Disputes over Compensation for Personal Injuries in Railway Transport (Zuigao Renmin Fayuan Guanyu Shenni Tielu Yunshu Renshen Sunhai Peichang Jijiaen Anjian Shiying Fallü Ruogan Wenti De Jieshi, hereinafter as “Interpretation on Railway Personal Injuries”). SPC restricts the immunity to injuries caused by force majeure or victims’ certain intentional actions, namely lying on tracks or collision with trains (Interpretation on Railway Personal Injuries, Art.5(2)). As for victims’ other actions at fault conducted after unpermitted entry into railway working areas including tracks, stations and trains, railway companies usually are not allowed to avoid liabilities completely. Instead, they will bear 20% to 80% of the liability if railway companies have not fully discharge their duty of care, prevention and admonishment, or 10% to 20% of the liability when they have discharged the duty (Interpretation on Railway Personal Injuries, Art.6). Indeed, this SPC judicial interpretation issued after the adoption of the Tort Liability appears more restrictive on defenses compared to Article 73 of the Tort Liability Law, since the latter not only allows railway companies to be immunized when victims’ intentional actions or force majeure is the cause of injury, but their liabilities are also mitigated for victims’ ordinary negligence.

The last example of curtailment of injurers’ immunities or defenses relates to the keepers of domestic animals. While Article 127 of the General Principles exempts these keepers from tort liability when the victim’s fault has led to the injury, now the Tort Liability Law, under Article 78, excuses or reduces their liability only if the victim has caused the injury intentionally or with gross negligence (zhongda guoshi). In other words, victims’ ordinary negligence no longer immunizes domestic animal keepers or even mitigates their liabilities.

C. Creating New Liabilities

Since the enactment of the General Principles, several new duties have been created for some special entities or individuals, and breach of these duties will lead to tort liabilities.

The duty of operators of public accommodations to protect the safety of people entering their premises was first introduced by Article 6 of the Interpretation on Personal Injuries. Owners of public accommodations, such as hotels, shopping centers, or stations, are charged with a responsibility for the safety of the public on their premises.\(^{17}\) The Tort Liability Law, in Article 37, further requires the organizers of mass activities to bear a similar responsibility.\(^{18}\) Like schools, legal liabilities staying with public accommodations differ based on whether the injurer comes from inside or outside. The public accommodation will be primarily liable, when the injury is caused by its insiders, but complementarily when external personnel cause the injury. In both cases, the public accommodation is liable only if it has breached the

\(^{17}\) It is not clear from the law what is the scope of potential victims that should be protected by public accommodations as it uses a very general term, “another person”. Nevertheless, given the purpose of this article, at least the victim needs to be injured on the premises of public accommodations. But ambiguity exists pertaining to trespassers and temporary visitors not coming for public accommodation’s business services (Wang 2010, p.201).

\(^{18}\) Although the law says that managers of public accommodations shall assume the tort liability, this is not an individual liability, but an enterprise liability, as evinced in numerous court decisions.
duty of safety protection. In other words, negligence is necessary to hold the public accommodation liable, and the scope of liability corresponds with the extent of negligence.

Article 87 of the Tort Liability Law imposes a liability on every user of a building who is likely to commit a tort when objects thrown out of or falling off from a building has caused a personal injury and the particular tortfeasor cannot be determined. In order to avoid this liability, a user has to show that he is not the actual tortfeasor. Otherwise, all users will share proportionately the compensation to the victim. The users are liable severally so no contribution exists from other users, but they can seek indemnity from the actual tortfeasor if the latter is identified after the compensation (Wang 2010, p.429). This liability was unseen in any of the previous legislations or judicial interpretations. It is added as a response to a series of legal disputes in 2000s over injuries caused by anonymous objects falling off from buildings. Oftentimes, these cases involve deaths or other serious bodily injuries resulting in grave consequences on victims and chronic litigations or petitions (Wang 2010, pp.425-26).

Regarding product liability, producers are now required to prevent harm ex ante in addition to paying damages ex post. According to Article 46 of the Tort Liability Law, for defects found after the products were put into circulation, producers and sellers shall take such remedial measures as warning and recall in a timely manner. Thus, although the Product Quality Law immunizes producers from tort liability should defects not identifiable when products were put into circulation, they will nonetheless be liable if defects are found afterwards and timely warning or recall is not conducted. Warning and recall had been required before the Tort Liability Law was passed. But those were regulatory rules only imposing administrative sanctions for failures in proper recall whereas the Tort Liability Law first establishes the civil liability for such failures.

Finally, medical institutions’ duties are also aggravated in the Tort Liability Law. On the one hand, Article 55 of this law requires hospitals to seek informed consent in writing from patients, or their close relatives when it is inappropriate to inform patients, before performing operations or other special examinations or treatments. And violation of this obligation results in tort liabilities.19 Although prior rules also provided for medical doctors’ duty to inform patients and obtain their consents regarding certain medical procedures, it is again the Tort Liability Law that first imposes tort liabilities for breaching such a duty. On the other hand, with the increase in the proportion of examination fees as of the total medical expenses,20 excessive examinations are regarded as one crucial source of tension between patients and hospitals (Civil Law Office 2010, p.810). Against this backdrop, Article 63 of the Tort Liability Law places on hospitals a unique duty to abstain from unnecessary medical examinations.

D. Increasing Damages

The fourth approach in which the Chinese tort law has expanded protection for victims in past years is to raise the amount of awardable damages. In this regard, we have seen both the recognition of new types of damages and employment of more generous standards for assessment of damages.

a. Adding New Types of Damages

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19 Exceptions exist in emergency situations with the approval of authorized persons in charge (Tort Liability Law, Art.56).
20 This proportion rises from 28% in 1990 to 36.7% in 2002 (Wang 2010, p.319).
The scope of damages in personal injury cases has been continuously growing since the General Principles.\textsuperscript{21} The most noticeable change, however, pertains to the addition of two new types of damages.

First, damages for pain and suffering is not mentioned in the General Principles. But SPC adopted the Interpretation on Pain and Suffering that allows such compensation for personal injuries.\textsuperscript{22} Under Article 22 of the Tort Liability Law, victims or, in case of victims’ death, their family members can claim damages for pain and suffering, but this compensation is restricted to the cases with serious mental distress. Probably, this requirement for seriousness is too vague to provide meaningful reference for judicial practice. Moreover, when courts award or reject damages for pain and suffering, rarely do they spell out the reasons for their decisions. Another complication of damages for pain and suffering is its relationship with the disability or death indemnity awarded in cases involving disability or death. Under Article 9 of the Interpretation on Pain and Suffering, these are deemed as two forms of damages for pain and suffering. However, SPC might be contradicting itself on this point because the standards incorporated in its interpretation for assessment of the indemnities look purely to incomes so that they should be considered more appropriately as compensation for loss of income of disabled or deceased victims rather than for pain and suffering of victims or their surviving family members. Thus, in practice, courts routinely award the indemnity together with damages for pain and suffering in personal injury cases. Since the Tort Liability Law provides both in two articles not mutually exclusive, the disability or death indemnity should be viewed as distinct from damages for pain and suffering.

Second, following the civil law tradition, punitive damages are not allowed in China as a general rule, but exceptionally it can be awarded in product liability cases. Such punitive damages initially appeared in the Consumer Rights and Interests Protection Law (\textit{Xiaofeizhe Quanyi Baohu Fa}) passed in 1993. In Article 49, the law allows the court to award punitive damages equal to the price of the goods or service in addition to the compensatory damages to consumers where the seller or service provider engaged in fraudulent behaviors. In the latest version of the law amended in 2013, the punitive damages rise further to three times of the price.\textsuperscript{23} In the Food Safety Law (\textit{Shipin Anquan Fa}) promulgated in 2009, the amount of punitive damages is raised to ten times of the price where the producer manufactures food products not conforming to the food safety standard or where the seller sells such food products with the knowledge of nonconformance. The Tort Liability Law provides for the punitive damages in Article 47. It may affect the previous punitive damages scheme in two aspects. On the one hand, it expands the usage of punitive damages to cover all kinds of products besides foods, and non-consumer victims are also entitled to punitive damages. Moreover, producers and sellers can be required to pay such damages insofar as the product defects are known, even if no active fraud is involved. On the other, however, the new law limits the award of punitive damages to cases where defective products have brought about death or serious health injuries. This limit essentially bars the claims raised by consumer protection activists who purchase defective products on purpose to demand punitive damages but are not injured personally.

\textsuperscript{21} Due to the limit in space, I will not elaborate on the scope of damages for property loss, which is relatively stable over the years.

\textsuperscript{22} Pain and suffering can also be compensated for torts against personality rights including name, likeness, reputation, honor, dignity, personal freedom and privacy.

\textsuperscript{23} The relevant article number is changed to 55 in the revised law.
b. Raising the Amount of Damages

In terms of assessment of damages, thorny problems usually arise in relation to personal injuries. The SPC Interpretation on Personal Injuries serves as a roadmap in this regard, and is largely followed in judicial practice even after the promulgation of the Tort Liability Law. Compared to the previous standards used for damage assessment, those adopted by this judicial interpretation are more favorable to victims in general. Damages for medical malpractices and high voltage electric shocks are two good cases in this point.

As for medical malpractice, the Medical Accident Regulation set up a different set of rules on compensable damages separate from the Interpretation on Personal Injuries. The starkest differences between these two sets of rules exist with respect to the calculation of damages in cases involving death or disability. Where the victim died as a result of the medical malpractice, the Medical Accident Regulation does not include death indemnity as the Interpretation on Personal Injuries does, but, instead, allows damages for pain and suffering. Though the Interpretation of Personal Injuries does not provide for damages for pain and suffering itself, the SPC Interpretation on Pain and Suffering does recognize such damages. Courts frequently award both the death indemnity and the damages for pain and suffering in death cases when the Interpretation on Personal Injuries is applicable. The sum of these two items of compensation is much higher than the damages for pain and suffering acknowledged in the Medical Accident Regulation which is capped at the 6 years’ average annual living expenses of local residents. If the victim is disabled, both the Medical Accident Regulation and the Interpretation on Personal Injuries allow the award of disability indemnity, albeit the former uses a less generous calculation standard than the latter. The Medical Accident Regulation again sets the standard as the average annual living expenses of local residents while the SPC interpretation uses the average disposable income of urban residents or average net income of rural residents. In Shanghai, or example, the former usually is roughly 70% of the latter in recent years. With respect to the living expenses of victims’ dependents, the standard used in the Medical Accident Regulation is residents’ minimum subsistence allowance whereas in the judicial interpretation it is the average consumption expenses of urban residents or the average annual living expense of rural residents. Moreover, the dependent’s living expenses are paid until the dependent turns 16 under the Medical Accident Regulation but 18 under the SPC interpretation.

Before the implementation of the Tort Liability Law, the relatively generous standards embodied in the judicial interpretation was said to be applicable only to malpractices not amount to accidents, whereas the more serious malpractices ascertained as medical accidents were strangely subject to the grudging calculation in the Medical Accident Regulation (SPC 2003). This is referred to as the “dual-track”

24 In Shanghai, for instance, the death indemnity alone can be above 803,760 RMB yuan (about $133,900) for urban residents using the 2012 standard, but the 6 years’ average annual living expenses of Shanghai urban residents in 2012 is 157,518 RMB yuan (about $26,200).
25 Although the Medical Accident Regulation allows a maximum of 30 years’ compensation of disability indemnity for victims under 60, that does not need to be the actual number of years used for assessment. In contrast, the Interpretation on Personal Injury generally uses a uniform 20-year criterion to calculate disability indemnity for victims of the same age group. Based on the 2012 Shanghai income standards, therefore, any disability indemnity assessed according to the Medical Accident Regulation for urban residents, or for rural residents for a period shorter than 29 will be less than the assessment made under the judicial interpretation.
26 Again, using the 2012 Shanghai income numbers, we can see the minimum subsistence allowance is merely 26% of the average consumption expenses for urban residents.
of compensation (eryuanhua) in medical malpractice cases. The Tort Liability Law is supposed to end this anomalous phenomenon (Wang 2010, p.276). Despite the continuing ambiguity in rule selection since the Medical Accident Regulation has not been repealed so far, perhaps to most Chinese courts, elimination of the dual-track essentially means that, after the new law taking effect, assessment of damages in medical malpractice litigations should always follow the Interpretation on Personal Injuries.

The standards for damage calculation also turns more generous in cases associated with injuries from high voltage electric shocks. In 2000, SPC issued the SPC Interpretation on Several Issues in Adjudication of Cases Concerning Personal Injuries Caused by Electric Shocks (Zuigao Renmin Fayuan Guanyu Shenli Chudian Renshen Sunhai Peichang Anjian Ruogan Wenti De Jieshi). Article 4 of this interpretation set forth the scope of damages in electric shock cases, which was later replaced by the Interpretation on Personal Injuries. The pronounced difference between these two judicial interpretations is related to the standard for calculation of death and disability indemnities. The older one used the average living expenses as the standard for this calculation while the more recent SPC interpretation uses average disposable income of urban residents or average net income of rural residents instead. As aforementioned, the former is usually much lower than the latter.27

The amount of damages payable to tort victims has risen also because of the changes made to the compensation caps in some special types of torts.

In cases of civil aircraft injuries, special legislations limit the amount of damages payable to victims. For domestic flights, the cap for personal injuries per passenger started from 20,000 RMB yuan in 1989, and rose to 70,000 RMB yuan in 1993 and further to 400,000 RMB yuan (about $67,000) currently (State Council 1989, 1993; CAAC 2006). In spite of the repeated increase, these caps are substantially lower compared to the international standard.

The compensation limits for railway accidents had been even lower than those for aviation accidents. From 1994 to 2007, the limit was 40,000 RMB Yuan for personal injuries and 800 RMB yuan for luggage losses (Ministry of Railways 1994). In 2007, the caps were elevated to 150,000 RMB yuan (about $25,000) for personal injuries and 2,000 RMB yuan (about $333) per passenger for luggage losses (State Council 2007). These excessively low compensation limits were eventually repealed by State Council (2012) under the mounting pressure from the public, especially in the aftermath of the disastrous high-speed train collision claiming 40 lives in July 2011.

Finally, victims of traffic accidents also obtain higher compensations due to the rise in coverage of the compulsory traffic accident liability insurance. The Safety Law mandated a compulsory liability insurance to cover damages in traffic accidents, essentially a no-fault insurance system. Therefore, after most traffic accidents, the insurance company should compensate the victim first within the compensation limit, and any remaining damages then be handled according to the tort liability rules. The China Insurance Regulatory Commission (CIRC) is delegated with the power to determine the compensation limit of the liability insurance. CIRC initially set the limits very low. When the motorist is found liable, the limits were 50,000 RMB yuan for death and disability, 8,000 RMB yuan for medical expenses and 2,000 RMB yuan for property damages. When the motorist is not liable, these limits were even lower. Obviously, such low limits could barely cover victims’ losses in traffic accidents, thus

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27 Although it is a fair argument that the compensation standards in the Interpretation on Personal Injuries are more generous to victims as a whole, the previous interpretation did allow a greater multiplier when courts were calculating death indemnities for victims aged above 60.
had been subject to bitter criticism (Civil Law Office 2010, p.707). In 2008, CIRC adjusted the compensation limits, and the current limits are, when the motorist is liable, 110,000 RMB yuan (about $18,300) for death and disability, 10,000 RMB yuan (about $1,600) for medical expenses while the limit for property damages remains unchanged.

III. Evaluating the Efficiency

In this part, I will briefly evaluate the efficiency effects of the salient trend in the evolution of Chinese tort law to expand protection of victims. This evaluation, however, is by no means suggesting that efficiency has been a policy motivation underlying the change of law. I will explore the efficiency issue from three perspectives: deterrence effect, administrative cost, and risk allocation.

A. Deterrence Effect

In the realm of torts, efficiency requires a minimization of costs associated with tortious behaviors by optimally deter imprudent activities (Calabresi 1970, Brown 1973). Indeed, the main reason to award tort damages is to incentivize people not to take actions imposing costs on others (Friedman 2000, p.192). Generally speaking, where damages are below the level required for an optimal deterrence, an increase in damages creates better incentives for people to behave cautiously, hence lowering the costs of torts. Tort damages in China are very low traditionally, unlikely to be close to the optimal level needed for cost minimization. Therefore, the general movement toward higher protection of tort victims seems consistent with the efficiency requirement. However, a closer look at the efficiency effects entails a decomposition of a potential tortfeasor’s ex ante cost of committing a tort into two components: the probability of being held liable and the amount of damages to pay after being held liable.

Regarding the first component, the Chinese tort law has obviously opened a series of new sources of tort liability, as summarized in the previous part, hence growing the probability that a potential tortfeasor will be liable. But this change in law contributes to muffling inefficient tortious behaviors only when tort liability becomes more imminent for the party whose choice of action does affect the likelihood of harmful accidents. Conversely, when the probability of liability is raised for parties that do not have impact on the occurrence of accidents, the total cost of accidents is at best unchanged, and it may even rise if the murkier rules of liability allow externalizing costs by the real culprit of accidents. Although many of the rule changes fit this general proposition reasonably well, some of them do not appear mindful of upgrading the liability for the right party. As an illustration of this point, think about the extension of the joint and several liability. Whereas the joint and several liability usually does not sacrifice efficiency in cases of current torts (Posner 2003, p.189), inability to escape such a liability even when one has been proved itself not a cause of the injury, as provided by Article 10 of the Tort Liability Law, clearly does not help reduce the probability of accident to an optimal level. To make matters worse, it may well allow cost externalization by those who can really reduce the occurrence of accidents, leading to more injuries as a result. Similarly, it deteriorates the deterrence effect.

Ironically, the premium is higher for the compulsory insurance than for commercial insurance with a comparable coverage (Civil Law Office 2010, p.708).

On the other hand, when the motorist is not liable, although the new limit is slightly higher for death and disability, those for medical expenses and property damages are lower.
of victims’ incautious actions to insulate them from the harmful results of accidents when their precaution can decrease the probability of accidents indeed. And this seems to be what the rule change has done in relation to the injuries caused by domestic animals.

Efficient deterrence also counts on the right amount of damages awarded to tort victims. In general, efficiency requires complete internalization of the cost of actual harm by the injurer. Since the cost of accidental harm to the victim equals the damages that make the victim whole, optimal damages usually means full compensatory damages no matter whether the strict liability or the negligence rule is applied (Cooter and DePianto 2014). As stated above, the amount of damages awarded in tort cases rises in China on the whole. However, the absolute amount awarded in a typical case remains low, especially with regard to the compensation for personal injuries. The calculation of death indemnities, for instance, is pegged to the uniform and rather low standard of annual disposable income for urban residents and an even lower one for rural residents. If we use the income figures in Shanghai in 2012 as an illustration, the value of life for an urban resident in the most economically prosperous city in China would roughly be 853,760 RMB yuan (about $142,290). 30 Admittedly, the compensation for personal injuries would be lower in developing countries, such as China, than in the developed world due to the difference in subjective values individuals place on risks to themselves (Cooter and Schäfer 2012, pp.180-84). Nevertheless, the current level of compensation for personal injuries prevailing in China is much lower even when compared to other developing countries like India. Studies show that the value of a statistical life in India is approximately $1-1.5 million (in constant 2000 US dollar) (Viscusi and Aldy 2003, p.28). The lesson from law and economics research is straightforward: When the amount of damages is far below the cost of actual harm, injuries will occur too frequently. In a nutshell, then, although the increase in damages over the years has probably channeled to the tort law system in China closer to the efficient objective than before, there is still a far distance to that objective.

B. Administrative Cost

As the law becomes more favorable to victims, we would predict that the number of legal complaints filed will increase, at least where, like in China, the absolute amount of damages awarded is still relatively low (Cooter and Ulen 2012, pp.420-21). This seems to be borne out in China. Although the national level statistics are scanty, the courts in Jiangsu province reported that during the 18 months’ period immediately after the promulgation of the more pro-victim Tort Liability Law, the number of personal injury cases filed with the courts of first instance rose by 25.58% and that of property loss cases rose by 11.62%, compared to the same period immediately before the promulgation of the law (Gong 2012, p.372). Other things being equal, higher damage awards may also lead to more litigation costs per case due to the higher stakes to litigate over (Friedman 2000, p.209). Therefore, we might expect an increase in the total costs associated with the usage of the judicial system to resolve tort disputes as the tort law turns more favorable to victims. However, the standardization of the damage awards in personal injury cases pursued in the SPC interpretation has

30 The annual disposable income in 2012 was 40,188 RMB yuan, and the largest multiplier allowed to calculate death indemnity is 20. On top of that, the maximum damages for pain and suffering currently allowed in Shanghai is 50,000 RMB yuan. If the deceased has a dependent, usually his or her child, the maximum amount of awardable life support is 472,554 RMB yuan (about $78,750) if the dependent is normal, or 525,060 RMB yuan (about $87,510) if he or she is completely disabled in 2012.
streamlined the judicial decision on this issue, hence reducing the administrative costs per case. Article 17 of the Interpretation on Personal Injuries listed 15 types of damages claimable in personal injury cases, including, among others, medical expenses, loss in income, nursing expenses, disability and death indemnities. Relatively clear guidelines are spelled out to facilitate the calculation of these damages, either based on the actual costs incurred by the plaintiff or certain clear-cut formulae. In addition to easing the difficulty in damage calculation for Chinese judges of relatively little training, clear standards also help curb judicial corruption as it becomes harder to hide and easier to detect fraudulent court behaviors (Cooter and Ulen 2012, p.190). As a whole, therefore, it is unclear, without rigorous empirical studies, whether the evolution of Chinese tort law has generated higher administrative costs.

In any event, the rise in administrative cost should be weighed against the savings from elevated deterrence effect as a result of a more victim-friendly tort system. Eventually, an elastic supply of tortious behaviors supports more generous protection of victims from the efficiency perspective (Friedman 2000, p.209). In this regard, unfortunately, we can do no more than making an educated guess. To the extent that a potential tortfeasor’s incentive is consistent with the logic of market competition, it will be more sensitive to the price change related to its behaviors resulting from the change in tort law. Conversely, when the tortfeasor’s incentive is forged through non-market forces, such as bureaucratic control, the price signal will be a blunt tool to affect its behavior. Consequently, the higher expected damages payable to victims might bring about better welfare effects in such areas as traffic accidents where injurers are more likely to behave like market agents whereas efficiency benefit can be lower, considering the administrative cost, with respect to medical malpractice or railway accidents where the injurers are prone to follow a bureaucratic logic.

C. Risk Allocation

The tendency of Chinese tort law to expand victim protection probably can be best understood as an effort to reallocate the risk. As victims are more likely to win tort cases and get higher damages, the risk of accidents is reallocated from victims to injurers. In the Chinese context, however, the risk allocation achieved through tort compensation usually does not shift the risk completely from victims to injurers because of the generally low level of damages awarded by courts. Indeed, in many situations what the change of tort law in China has done is to initiate a small-scale loss spreading between victims and injurers, which slightly relaxed the risk concentration on victims, especially those suffering personal injuries. As detailed in the previous part, some of the changes in tort law affect mainly the injurers that are enterprises while others involve individual injurers. The efficiency benefit of loss spreading are more pronounced in the former case, but it can be achievable even in the latter because people feel they suffer less when a large loss is spread broadly (Calabresi 1961, p.517). This being said, when the risk is reallocated among individuals, the number of parties involved in such reallocation may have crucial bearing on its efficiency. Whereas a widely based loss spread tends to be in line with an efficient risk allocation, such as the rule applicable to objects falling off from buildings, it is more ambiguous in terms of efficiency when the risk is shifted merely to a few individuals like the guardians of minor injurers or individual employers. Besides, if loss spreading is a major concern, it could be handled more efficiently through the social insurance scheme which has a much broader basis to spread loss than the tort system (Calabresi 1961, p.529-30). The idea of social insurance has
recently appeared in the traffic accident law in China. The Safety Law of 2003 requires the establishment of social relief funds for road traffic accidents. However, the law tiptoed at best in this regard. For one thing, these funds are used to pay for victims’ losses only in limited situations. For another, the relief funds spend merely a very small proportion making these payments, and the average amount of each payment is usually rather low.

Using tort system to reallocate risk may be particularly meaningful in China where the private insurance market is in its nascent stage. Despite the fast growth in recent years, the development of insurance in China still lags far behind the average world standard both in terms of insurance density and penetration (Sun and Zheng 2013, p.2). In addition, the structure of the Chinese insurance market is biased against the insurance products spreading risks of accidents as indicated by the minuscule proportion of the premium income taken by the accidental personal injury insurance (Sun and Zheng 2013, p.4). The idea of relying on insurance for risk spreading is especially remote to the poor people in developing countries (Cooter and Schäfer 2012, pp.187-89). Indeed, the low standard of compensation for personal injuries might be deemed as sort of default insurance offered to the lower income groups of the population with the least access to the business insurance market. In any event, given the still low level of compensation, the alleged insurance crisis that motivated the tort reform in the U.S. (Priest 1987, 1991) is mostly irrelevant to China. In a country where the first-party insurance is sparse, and, in particular, to the population having little access to such insurance, a comparison between first-party insurance and tort system in terms of efficient risk allocation is far beside the point. In fact, even at places with a mature first-insurance market, tort system may nevertheless be a better choice, when accompanied with effective third-party insurance, due to less risk of adverse selection and ex post moral hazard (Baker and Siegelman 2014, pp.185-87).

**Conclusion**

In China, the law of torts presents a clear trend toward more generous protection of victim. This trend has manifested itself in a variety of ways as discussed in the paper. Many of these steps, including the expansion of joint and several liability and the increase of damages, appear to be in stark contrast to the tort reform prevailing in the U.S. (Dobbs 2000, pp.1071-75, 1085-87). Given the exceptionally low point where the increment of victim protection in tort law has started, the change of rules in China is, by and large, moving in the direction of cost internalization as required by efficiency. Moreover, the law also evolves to promote the spread of accident costs on a broader basis, which is desirable from the perspective of efficient risk allocation especially in a country with an underdeveloped insurance market.

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31 For details of these limited situations, see Article 53 of the Tort Liability Law.
32 For instance, in 2012, the relief fund in Shanghai only spent less than 0.06% of its financial resource on emergency medical expenses (Shanghai Municipal Finance Bureau 2013).
33 For instance, this number in the rich coastal city of Shenzhen is 47,189 RMB yuan (about $7,850) in 2013 (Shenzhen Municipal Government 2014), and 44,990 RMB yuan (about $7,480) in the less developed inland city of Yichun in Jiangxi Province in 2012 (Yichun Municipal Finance Bureau 2013).
34 In 2012, the insurance density and penetration in China were, respectively, 27% and 46% of the world average.
35 In 2012, this proportion was 2.5% of the total premium income of the Chinese insurance industry.
However, the potential improvement in efficiency is perhaps a byproduct of the development of tort law in China. The motivation behind the rule change is more likely to be loss redistribution rather than efficiency upgrade. This is evidenced by the lawmakers’ timidity in awarding damages equal to actual accident costs and their apparent inconsistency in holding the right party to internalize such costs. At the same time, a more serious concern about efficient risk distribution should have taken a more targeted approach toward enterprise liability rather than an across-the-board shift of risk to individual as well as enterprise tortfeasors.

This paper sketches the overall direction in which the formal law of torts in China has plodded in the past three decades, and outlines the efficiency implications of this evolution. The current work is mainly descriptive and does not attempt to explore in-depth the impetus underlying this change. But we also see traces from the above description defying a single-minded understanding of the rule change as a spontaneous convergence to efficiency. In light of the policy-implementing orientation of the Chinese legal system (Damaska 1991) and the collectivistic propensity embedded in the law of torts (Calabresi 1978), political and institutional perspectives might bring us better insights into the driving force of change of law, which can be an interesting agenda for future research.
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