

# Jurisprudential Analysis of the Application of the Main Legal Provisions in China's Campus Sports Injury Litigation Cases

Wunian Wang<sup>1</sup> Yuan Jiang<sup>2</sup>

<sup>1,2</sup> Jiangsu University, Zhenjiang, Jiangsu, P.R China

<sup>2</sup> Corresponding author. Email: jiangyuan@ujs.edu.cn

## ABSTRACT

At present, the construction of the rule of law in education in China is relatively lagging especially on the issue of personal injury and tort in school sports, there is a lack of relevant laws and regulations, and the conflicts in the field of school sports injury accidents in judicial practice are becoming increasingly prominent. This study analyzes in depth the legal provisions, the application of liability principles, the determination of tort liability and the application of the "risk taking" principle from the legal and jurisprudential aspects of civil tort. On the basis of the jurisprudential analysis, the problems and shortcomings of the legal provisions invoked by courts in the process of litigation of campus sports personal injury accidents in China are discussed to provide legal basis and practical ideas for the proper resolution of campus sports personal injury accidents.

**Keywords:** *Campus sports, Injury lawsuit, Legal provisions, Jurisprudence.*

## 1. INTRODUCTION

In recent years, China's campus student sports injuries are more frequent, many cases of personal injury or even death caused by students participating in sports activities on campus have received wide attention from all walks of life, and the negative impact of the accident goes beyond the scope of school education, evolving into a painful and difficult issue in the development of China's education industry. Guo Jingping, a member of the Zhejiang Provincial Committee of the Chinese People's Political Consultative Conference (CPPCC), mentioned in his proposal to the CPPCC National Committee in 2017, "Proposal on Establishing a Protection Mechanism for Handling School Sports Injuries," that nearly 14,000 students in schools and colleges nationwide suffer different degrees of accidental injuries every year due to their participation in school sports activities. A survey shows that 61.5% of physical education teachers' schools have experienced more serious sports injuries, 35.5% of students have suffered sports injuries or sports injuries while participating in school sports activities, and the survey shows that more than 30% of school sports injuries have

resulted in more serious injury consequences for students.[1] It can be seen that the incidence of personal injury accidents in school sports in China is still relatively high.

For the disposal of campus sports personal injury accidents, there are no laws and regulations directly regulating campus sports personal injury in China. For a long time, the relevant provisions of the General Principles of Civil Law and the Tort Liability Law have been the main basis for courts at all levels to try campus sports personal injury lawsuits. However, in judicial practice, there are differences between different courts in dealing with campus sports personal injury accidents, involving how to apply the law, how to divide the responsibility and other jurisprudential cognition, and the relevant legal provisions are too broad, there is often the abuse of discretionary power of judges, some of the same case but there are different verdict results. Therefore, an examination of the jurisprudence on the application of the main legal provisions in campus sports injury litigation cases in China will help courts at all levels to make decisions objectively and fairly in order to effectively protect the legitimate rights and interests of students, teachers and schools. On May 28, 2020,

the Third Session of the 13th National People's Congress voted to adopt the Civil Code of the People's Republic of China, which came into effect on January 1, 2021, while China's General Principles of Civil Law, "Tort Liability Law" and nine other laws and regulations are repealed at the same time. It should be noted that the relevant provisions of the General Principles of the Civil Law and the Tort Liability Law, which are the main laws related to the disposal of personal injury accidents in school sports, are not repealed, but integrated into the Civil Code, and there are no major changes in the jurisprudential expression of the relevant provisions. In view of the fact that the courts at all levels in China were mainly based on the General Principles of Civil Law and the Tort Liability Law when hearing campus sports injury cases in the past, the jurisprudential analysis and examination of the application of the main legal provisions in campus sports injury litigation cases in China, this paper still develops on the relevant provisions of the General Principles of Civil Law and the Tort Liability Law in China.

## **2. JURISPRUDENTIAL ANALYSIS OF THE APPLICATION OF ARTICLES 38 AND 39 OF THE TORT LIABILITY LAW**

The legal provisions invoked by courts at all levels in China in the trial process mainly include procedural provisions and substantive provisions, and the substantive provisions are used to resolve the rights and obligations of the parties in the trial process. The substantive legal provisions for the disposal of campus sports personal injury accidents mainly involve the relevant provisions of the General Principles of Civil Law, the Tort Liability Law and the two judicial interpretations on compensation for personal injury and compensation for moral damage. In campus sports personal injury, there are significant differences in the ability of students of different ages to recognize the risks of sports and self-protection awareness. Therefore, the Tort Liability Law fully takes into account the large age span of school students and uses civil capacity as the differentiation standard, and makes provisions in two different articles, namely, Articles 38 and 39. Article 38 of the Tort Liability Law stipulates that "if a person without civil capacity suffers personal injury while studying or living in a kindergarten, school or other educational institution, the kindergarten, school or other educational institution shall be liable, but shall not be liable if it can prove that it has fulfilled its

educational and management responsibilities." Article 39 provides that "persons with limited civil capacity in schools or other educational institutions during the study, life, personal injury, schools or other educational institutions shall be responsible for failure to fulfill their educational and management responsibilities."

In campus sports personal injury accidents, Article 38 of the Tort Liability Law adopts the principle of presumption of fault, in which the court can presume the school is at fault from the fact of damage as long as the plaintiff can prove the three elements of damage, illegal acts and causation; if the school cannot prove that it is not at fault, the court can order the school to bear the tort liability. Article 39 of the Tort Liability Law adopts the principle of fault liability, in which the plaintiff must prove the four elements of damage, illegal acts, causation and subjective fault before the court can order the school to bear the tort liability. In short, in the case of injury to an incapacitated person, the school must prove that it "fulfilled its duty" in order to avoid liability; in the case of injury to a person with limited civil capacity, the student and his or her representative must prove that the school "failed to fulfill its duty. In the case of injury to a person with limited civil capacity, the student and his or her representative should prove that the school "failed to do its duty" in order to achieve liability.[2]

In the judicial practice of campus sports personal injury accidents, the combination of Article 6 of the Tort Liability Law and Articles 38 and 39 is sufficient to determine whether the school is liable due to its fault. Article 6 of China's Tort Liability Law provides that "an actor who infringes upon the civil rights and interests of others through fault shall bear tort liability." In terms of the application of the law of the case, if the school is at fault in the sports injury accident, the court mainly relies on Articles 38 and 39 of the Tort Liability Law to order the school to bear the corresponding responsibility, which is in line with the legislative purpose; if the school is not at fault, the idea of sharing responsibility is often the judge's first choice under the current established tendency of judicial adjudication, resulting in the school's responsibility being monstrously heavy and the school bearing an excessive risk, which is not appropriate in terms of jurisprudence. A research report from the Beijing First Intermediate People's Court shows that in 28 sports injury lawsuits adjudicated by two trials, although the form of liability assumed varied, schools had to bear the

relevant compensation costs on their own in over 90% of the cases. This is due to the problems in the safety of school sports activities, but also because it is difficult for schools to prove that they are not at fault when students are involved in sports personal injury accidents.[3] The "superior law is superior to the inferior law". The courts at all levels should first determine the school's liability according to Articles 38 and 39 of the Tort Liability Law, and mostly adopt the General Principles of the Civil Law and the two judicial interpretations when the Tort Liability Law does not provide for it or the provisions are not clear. In addition, Article 12 of the Measures for Handling Student Injuries, implemented in China on September 1, 2002, provides that if an accidental injury occurs during a rivalry or risky sports competition, the school has fulfilled its corresponding duties and has not acted improperly, there is no legal responsibility. However, the promulgating authority of this provision is the Ministry of Education, which is only a departmental regulation in China's legislative level, and its legislative purpose is mainly to clarify and regulate the management responsibilities of educational authorities and educational institutions from the perspective of administrative management, and cannot be the basis for judicial decisions of the court.[4]

### **3. JURISPRUDENTIAL ANALYSES OF THE APPLICATION OF ARTICLE 24 OF THE TORT LIABILITY LAW AND ARTICLE 132 OF THE GENERAL PRINCIPLES OF THE CIVIL LAW**

After the promulgation of China's Tort Liability Law, its Article 24 is a continuation of Article 132 of the General Principles of the Civil Law. Article 132 of the General Principles of the Civil Law provides that "If none of the parties is at fault for causing the damage, the parties may share the civil liability according to the actual situation." Article 24 of the Tort Liability Law provides that "If neither the victim nor the perpetrator is at fault for the occurrence of the damage, the loss may be shared by both parties according to the actual situation." These two statutes are the basis for the application of the principle of equitable liability, but also give the court a great deal of discretionary power. According to Article 24 of the Tort Liability Law and Article 132 of the General Principles of Civil Law, judges in campus sports personal injury accidents often simply regard the word "share" as

synonymous with "fair", and judicial decisions will not prudently determine whether the parties involved. Instead, they abuse the clause based on convenience, fairness, human feelings or other factors, resulting in fault liability and no-fault liability not playing their proper regulatory functions, which is contrary to the spirit of the rule of law of "fairness and justice" pursued by the law. Therefore, Article 24 of the Tort Liability Law or Article 132 of the General Principles of Civil Law cannot be simply interpreted as "fair liability" alongside with fault liability and no-fault liability. Professor Yang Lixin pointed out clearly: "the scope of application of fair sharing of losses should be limited to both parties are not at fault, and does not belong to the principle of fault liability, the principle of presumption of fault and the principle of no-fault liability to adjust the part of the legal relationship of tort damages. Beyond this scope, the provisions of Article 24 of the Tort Liability Law cannot be applied." [5]

Before the implementation of China's Tort Liability Law, due to the ambiguous boundary of Article 132 of the General Principles of Civil Law, our courts in such cases, whether using fair liability to adjudicate or applying the theory of common dangerous acts, would lead to the same legal application dilemma, which is caused by the law's own defects and China's imperfect legislation on sports tort liability. 2009 China promulgated the Tort Article 24 of the Tort Liability Law was amended in response to the judicial dilemma of Article 132 of the General Principles of Civil Law. The loss-sharing mechanism established in Article 24 of the Tort Liability Law effectively solved the problem of the narrow scope of Article 132 of the General Principles of Civil Law. According to the legislature's note: China's tort liability system implements the principle of combining fault liability and no-fault liability. It can be seen that China's Tort Liability Law holds mainly the dualistic principle of imputation, i.e., the principle of fault liability and no-fault liability are stipulated in Article 6 and Article 7 respectively, and there is no provision for fair liability.

The reason for the excessive use of the principle of equitable liability in judicial practice cannot be excluded from the subjective cognitive reasons of the judges' own pursuit of fairness in courts at all levels. Therefore, it is generally believed that Article 24 of the Tort Liability Law is not a provision of fair liability, but a mechanism of loss sharing when both parties are not at fault. The National People's Congress Law Commission Civil

Law Office of the legislative background of this article is explained: "In real life, some damage occurred by the perpetrator although no fault, but after all caused by it, if strictly in accordance with the principle of no-fault that is no responsibility, the victim will have to bear their own losses, which is not only unfair, but also not conducive to the establishment of harmonious human relations." However, this statement is not correct, this seems fair, but in fact is the spirit of legal fairness, justice and the spirit of the legal system, and sports "willing to take risks" principle, as long as you participate in collective confrontational sports, not only to face their own risk of injury, but also to bear the risk of accidental injury to others to bear their own The risk of liability. Sports, as a necessary part of normal physical activity of human beings, have the risk of injury, and the principle of fairness in adjusting the rare cases of accidental injury should not be applied to the risk burden of daily sports activities, otherwise it will destroy the existing rules of tort liability law, and substantially produce another kind of unfairness. Therefore, in view of the excessive use of the equitable liability principle by judges in our judicial practice, effective measures must be taken to prevent the abuse of the equitable principle in dealing with campus sports personal injury accidents.

Participants in sports should have a duty of care for the risk of sports injuries, thus constituting a common dangerous act under Article 130 of the General Principles of Civil Law. Some decisions in campus sports personal injury cases have failed to recognize the special nature of sports torts and thus have gone astray in the application of the law. There are cases in which our courts have adopted "risk taking" or fair liability to adjudicate similar cases, but they are also caught in the dilemma of conflict between formal justice and substantive justice. After the implementation of the Tort Liability Law, the rules of allocation of damages stipulated in Article 24 of the Law can remedy the shortcomings of the aforementioned provisions and help alleviate conflicts and promote harmony.[6] In China, both Article 24 of the Tort Liability Law and Article 132 of the General Principles of Civil Law stipulate that "if neither of them is at fault, the liability shall be shared according to the actual situation", which is in conflict with the principle of "willingness to take risks" in sports activities advocated by European and American countries. To a certain extent, it is a disregard and weakening of the principle of "willingness to take risks" for people to participate in sports activities. Mandatory

provisions by the no-fault party to bear certain responsibilities and losses, which not only artificially increased the risk of loss of normal participation in sports, but also with the rule of law construction "fair and just" spirit of deviation. This should be a serious shortcoming of the current law on the handling of personal injury accidents in school sports in China, and should be corrected. It is suggested that the use of the principle of no-fault expression to "no fault, the parties to adopt the principle of voluntary compensation based on humanitarianism" seems more appropriate.

#### **4. ANALYSIS OF JURISPRUDENCE ON THE APPLICATION OF THE PRINCIPLE OF "RISK TAKING" IN THE JUDICIAL FIELD IN CHINA**

China's "General Principles of Civil Law" and "Tort Liability Law" do not take the risk as a defense for sports injuries. Article 12 of the Measures for Handling Student Injuries stipulates that "if an accidental injury occurs during a rivalry or risky sports competition, the school has fulfilled its corresponding duties and has not acted improperly, and has no legal responsibility." This is the first time that the principle of willingness to take risks has been clearly reflected in the regulatory documents of China's departments. Risk taking is a special characteristic of sports and is accepted as a reasonable defense in the legislation of many countries. The function of the risk is to reduce or eliminate the responsibility of participating in sports, which is not contradictory to the principle of fair liability to prevent conflicts and maintain social stability, so although both are based on the premise of no-fault, but because of the different roles played and the space for each application. For voluntary participation in sports resulting in personal accidental injury, the parties are not at fault, should give priority to the principle of willingness to take risks, exempting the parties from liability. If the victim is held responsible, it will increase their duty of care in sports activities, which is contradictory to the inevitable danger of sports activities. In addition, it is unfair to let the person who caused the injury bear the principle of fair liability, because the fierce physical confrontation in sports activities is prone to injury accidents, and both parties are not at fault in the occurrence of injury accidents. If the principle of fair liability is applied, it often leads to another kind of injustice. If a student is injured by participating

in an athletic contest for the benefit of the school, or if the consequences of the damage are severe, the injured student should not be held liable for the loss, and the school should share the loss based on equitable principles. Even if the student is aware of the risk, it does not relieve the school of its responsibility for failing to exercise reasonable care in relation to the student's age and maturity.

Article 7 of the Explanation of Compensation for Personal Damage states: "Schools, kindergartens or other educational institutions that are obligated by law to educate, manage and protect minors shall bear the liability for personal damage caused to minors, or for personal damage caused to others by minors, if they fail to fulfill their duties." It can be seen that China adopts the standard of duty of care, that is, whether the school violated the duty of education, management and protection to determine whether the school was at fault in the student injury accident. The problem is that the law, which is the direct basis for the court's decision, does not clearly state the specific content of the school's education, management, and protection obligations, resulting in widely varying court decisions in the same or similar cases, and the problem of generalizing and expanding the understanding of the school's education, management, and protection obligations.[7] The tendency to avoid harm is the instinctive drive of human behavior, and the uneven constraint strength and policy orientation of safety management and sports work in school education are bound to make schools' sports work give way more to safety management, and ensure no sports injury accidents at the cost of abnormal development of school sports and sacrificing students' physical health. Such institutional arrangements and responsibility pressures naturally make school sports, which are only strengthened through their own surface efforts, produce the end of a long cure.[8]

Sports itself is intense physical activity, physical confrontation and contact in the process of activities prone to injury, participation in sports activities should recognize the dangers of sports, participation itself is a voluntary risk-taking behavior, voluntary risk-taking can also be called the victim's consent, the victim can be exempt from liability, not tort. At the same time, the main purpose of carrying out sports activities is to strengthen the body and enhance the physique of Chinese people through exercise. If the perpetrators are always held accountable, no one dares to participate in sports activities, which will cause greater harm to social development and national

interests.[9][10][11] Taking risks has a broad application space and theoretical basis in the field of sports. It is stipulated in Article 1176 of the Civil Code of the People's Republic of China implemented since 2021, "If a person voluntarily participates in cultural and sports activities with certain risks and suffers damage due to the acts of other participants, the victim shall not request the other participants to bear tort liability, except if the other participants are intentional or grossly negligent for the occurrence of the damage." This is the first time that China has incorporated taking risks as a defense into the legal provisions. The new regulations on taking risks have filled the legal gap in China, for the future judicial practice to establish the legal grounds for tort immunity, to clarify the legal scope of the responsibility of the parties to the accident in sports and cultural activities. Compared with the principle of fair liability, the risk of taking the risk appears to be fairer. However, risk-bearing also has its own limitations, and the consequences of damage by the victim often make the victim's injury "worse", so it is still necessary to work together with other risk-sharing mechanisms. For example, the victim's harm can be mitigated by strengthening the insurance and social security sectors.

## 5. CONCLUSION

Through the analysis and examination of the jurisprudence of the application of the main legal provisions in the campus sports injury litigation cases in China, it is believed that the liability for campus sports injury accidents should be based on the principle of fault liability, that the liability for campus sports injury accidents should be based on the principle of fault liability, supplemented by the principle of fair liability, and that the excessive use of the principle of fair liability should be resolutely avoided. Article 24 of China's Tort Liability Law, Article 132 of the General Principles of Civil Law and the principle of willingness to take risks in sports activities advocated by European and American countries contradict each other, which is a disregard and weakening of the principle of willingness to take risks when people participate in sports activities. If the school is not at fault, the idea of apportionment of responsibility is often the first choice of judges under the established tendency of judicial adjudication today, resulting in an abnormally heavy responsibility of the school, which bears an excessive risk for sports injuries, which is not appropriate in terms of jurisprudence. The mandatory stipulation that the no-fault party

bears a certain amount of responsibility and loss not only artificially increases the risk of loss for normal participation in sports, but also contradicts the spirit of "fairness and justice" in the construction of the rule of law. This is a great progress in the construction of the rule of law in China in the field of protecting the legitimate rights and interests of sports participants. In the participation of people in sports, risk is more reflective of the spirit of the rule of law of "fairness and justice", which seems fairer.

### AUTHORS' CONTRIBUTIONS

Wunian Wang designed and wrote the manuscript; Yuan Jiang contributed to revising and editing.

### ACKNOWLEDGMENTS

This work was supported by the National Social Science Foundation of China [15BTY017].

### REFERENCES

- [1] Wei G X. Research on legal basis of school sports injury and construction of early warning intervention system [J]. Journal of xi 'an university of physical education, Vol.35 No.5,2018.
- [2] Tang Y. Judicial practice and jurisprudence analysis of School sports injury cases in China — Based on statistical analysis of 91 civil judgment documents [J]. Journal of wuhan university of physical education, Vol.50 No.4,2016.
- [3] Beijing No. 1 Intermediate People's Court juvenile Case Comprehensive tribunal. Investigation report on personal Injury Liability of Minors in Campus Sports Activities [EB/OL].[2014-07-20]. HTTP; //www.chinachild.org/b/yj/4621.html.
- [4] Feng W J. Essence explanation of injury behavior in adversarial competitive Sports -- Based on critical positive criminal law legislation perspective [J]. Journal of tianjin institute of physical education, Vol.35 No.5,2020.
- [5] Yang L X. Tort Liability Law [M]. Beijing: Law Press, 2011:192.
- [6] Zhao Y, Wang Y. Research on the construction of diversified campus sports injury relief model [J] Journal of Chengdu Institute of physical education, Vol.43 No.6,2017.
- [7] Lin Q H, Guo X J. Legal Analysis of School sports Injury Accidents: From the perspective of Judicial practice [J]. Modern Education Management, Vol.33 No.4,2014.
- [8] Wang J, YU S X. Causes and treatment of sports injury accident retarding normal development of school physical education [J]. Journal of capital university of physical education, Vol.26 No.5,2014.
- [9] Tan X Y. Judicial value and challenge of applying self-acceptance risk rule to infringement of school sports injury [J]. Journal of Shanghai university of physical education, Vol.44 No.12,2020.
- [10] Yu T T. A survey of the legal issues of sports injury in Colleges and universities [J] Journal of Xi'an Institute of physical education, Vol.35 No.6,2018.
- [11] Liu Y P. Present situation, characteristics and Enlightenment of judicial proceedings in elderly sports injury cases — An Empirical Study Based on 54 civil judgment documents [J] Journal of physical education, Vol.27 No.6,2020.