

## Analysis on Responsibility of Apology

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Received 26 May 2016; accepted 19 July 2016  
Published online 26 September 2016

### Abstract

Responsibility of apology originates from moral responsibility and bases on it, in which responsibility of apology uses the law enforcement as the remedy in the modern society. It is always a controversy issue for people that whether there should be moral responsibility or applicable law to be used for a sincere apology. Sincere apology helps people by eliminating disputes, and which is only rooted from the real heart of the person who should analogize. Apology under law enforcement is apparently unable to avoid disputes with the moral reflection to calm down the disputes. Both *General Civil Law* and *Tort Liability Law* state that apology is one way of legal liability, which is an acceptance for the solution of China's traditional civil disputes and demonstration of the history and culture. It plays an important role for the execution of apology in moral aspects so as to promote social harmony and maintain social stability. Because of the lack of effective implementation of sincere apology, the execution with law enforcement is difficult to achieve the expected social effect.

**Key words:** Apology; Legal liability; Execution

Long, Z. T., & Qiu, S. X. (2016). Analysis on Responsibility of Apology. *Higher Education of Social Science*, 11(2), 28-31. Available from: URL: <http://www.cscanada.net/index.php/hess/article/view/8774>  
DOI: <http://dx.doi.org/10.3968/8774>

### 1. WHAT IS THE DEFINITION OF AN APOLOGY LIABILITY

Apology liability in the traditional civil law is originally derived from and belonged to the moral responsibility,

which means that one people hurts or violates the rights of the other's body or personal properties in the course of social activities and social communications, the people realizes that he is wrong for his improper words or deeds and wants to ask for forgiveness with his sincere apology deep in heart for his wrongs. It's no doubt that this kind of behavior of sincere apology shows the social virtue and should be highly evaluated and carried forward. Thus, the apology shall base on the deep heart of the infringing party and the regrets and shames for his improper words or deeds. Moreover, the apology shall also show the personality of the infringing party for his generosity, and his correction for the mistakes once he has made any.

From the sociology perspective, people shall conduct to the promotion of social interpersonal harmony and promote the formation of nice social customs with sincere and honest. Application Rule and Understanding on Article state that... apology<sup>1</sup> of *General Civil Law* in 1986. After 23 years, the nation approved the *Tort Liability Law* in 2009 and stated that the main methods for tort liabilities are:... apology<sup>2</sup> ...Both laws states that apology is a statutory responsibility for legal liability, ... Which can be a separate application or can be applied in combination. Hereby the methods of apology liability shall be executed by the infringing party to express his sincere regret and apology to the infringed party either in public or private so as to let the infringed party gain his spiritual consolation, thus the infringing party shall be forgiven with his sincere sorry and apology (Huang, 2008). When the disputes happen in daily life, the apology or the sincere expressions from both parties shall settle the disputes with the one party accepting the other party's apology and can bring good social effects (Gu, 2000, p.245). And it is inherited by and included in the Tort Liability Law which highlights the necessity of existing of apology for infringing party

<sup>1</sup> See Clause 134. General Civil Law of People's Republic of China.

<sup>2</sup> See Clause 15 Tort Liability Law of People's Republic of China.

to respond for his liabilities in civil liability made by the lawmakers.

Mably, the French famous statesman and legal scholar in Eighteenth Century, said that “if I’m the one to punish, the punishment should be fought against the soul, but the body.” (Volker, 1999) Apology is mainly the penitence way for soul on moral aspects, which are regarded as rights remedy methods on legal aspects for the name of national force under legislation. The so-called civil liability refers to the civil legal consequences of infringement or breach of contract, which is the civil legal consequences of the law. It is the liability of the tort, the breach of contract or other responsible persons in accordance with the provisions of the civil law.<sup>3</sup> In judicial practice, there is always such circumstance existing that some infringed who shall not claim for damages, but only ask for an apology. The unique clause of apology liability in *General Civil Law* is regarded as one suitable condition as per the practical situation of China, and also the heritage of Chinese culture.

## 2. ANALYSIS OF THE APOLOGY LIABILITIES ON TYPICAL CASES

The lawsuit between Zhuang Yu and Guo Jingming on “intellectual property infringement case” was sentenced for its final decision in the Beijing Municipal Higher People’s Court in May 22<sup>nd</sup>, 2006, but the losing party Guo Jingming refused to apologize.<sup>4</sup> In a similar case of “Li Zhensheng v. Feng Jicai for the usage of photography without authorization in the case, the plaintiff issued a statement in the media and said that he would withdrawal of the lawsuit with the sincere apology from the defendant. However, the fact is that the defendant refused to apologize as per the judgment after the judgment, either.<sup>5</sup> The reason why the plaintiff insists that the defendant must fulfill their legal obligations to apologize maybe because he/she hope to save face and defeat against the defendant in spirit, or maybe want to seek some comfort and inner psychological balance from his/her side. And the defendant insists that he/she shall pay for by cash but an apology because he/she regards the morality of apology and law enforcement of apology as two separate cases, which means that the infringing party lost in the legal level, but he did not think he lost in the moral level, either. Because of the pluralism of moral in China, people

<sup>3</sup> The law itself is the result of moral legalization. There is an statement of apology clause in the law practice of Qing Dynasty in China. See Liang, Z. P. (Ed.). (1996). *Ustoms of Qing Dynasty: Society and state* (pp.158-162). China University of Political Science and Law Press.

<sup>4</sup> See Guangzhou “Southern Weekend”, Veision 27, July 13, 2006.

<sup>5</sup> See statement from Beijing Second Intermediate of People’s Court on “Li Zhensheng v. Jicai Feng for his infringement usage of Li’s photography without authorization case” on newspaper “published an apology to Li Zhensheng’s” news, China Press, Dec. 17<sup>th</sup>, 2004.

have different understandings on morality and law, most of them can not regard both sides equally at the same time. Especially for the cases of copyright infringement, a lot of people do not think they lost reputation and dignity for the use of pirated works, on the contrary, they think they will lose face and lose dignity once they will make an apology, and even some infringed people also think that the apology is unnecessary.

In judicial practice, the judgment is that the guilty party should apologize personally face to face or make an apology statement in media or published newspapers. However, some scholars believe that the apology originates from moral responsibility, which means that the infringing party realizes his wrongs and feels guilty based the theology of “the introversion behavior” leads to “outside behavior”. Therefore, the result of judgment shall not bring good effect for an apology even based on legal enforcement (Fu, 2008). The court should think carefully in the judgment of apology liability under current legal terms and conditions (Li, 1988, p.604). However, apology liability is stated clearly in *General Civil Law* during the long period of construction of the socialist legal system and was stated and continued in *Tort Liability Law* after 20 years. This shows that apology liability is still approved and accepted by the legislators that the infringing party should apologize for his infringement to the infringed party, and which is stated as the negative evaluation of the performance of the infringement from the state and society, which helps to protect the rights of victims, to solve the conflicts properly, which can improve the people’s concept of law-abiding and strengthen the socialist moral values, which plays an important role. On November 9, 2011, the court of Shihe River district executed a reputation infringement case, on which they posted the judgment and the notice publicly on internet, from which it shows that by the way of news release and judgment posted on internet the court shall carry out the case, eliminate the side-effects, recover the reputation of the infringed party so as to maintain the application executor right, which is also a way to achieve its intrinsic value in the operation process of law enforcement.

## 3. APPLICATION SCOPE & METHODS OF APOLOGY LIABILITY

### 3.1 The Scope of Apology Liability

According to the statement of current law and the relevant judicial interpretation, the apology can be used for the citizen’s right of name, portrait, reputation, honor and copyright infringement, and the name, reputation and

honor of the legal rights.<sup>6</sup> It is not difficult to see that the scope of apology mainly focused on the damage and compensation of personal rights, i.e. “apology is a kind of spiritual liability.” (Yang, 2010, pp.85-86) Because in legislation side, property damage can be measured by the loss of property, and can be compensated accordingly, which does not need to solve by apology in spiritual way, and only spiritual damage or intangible property damage shall need an apology for its legal liability. For example, in the judicial practice of the apology applied to the adjacent relationship, which goal is to help the two sides to “make up” again judicial means. It is researched and analyzed that sincere apology can change the attitude of the victim to the infringing party (Robbenolt, 2003). However, the legislator’s main purpose is to help people to recognize their mistakes through tort law enforcement, to have feelings of guilty and shame, then they will obtain the forgiveness from the infringed party with sincere apology at the same time, thus the two parties can “shake hands” to solve the problem. In fact, some civil disputes is just for “face saving”, which can be solved by apology, from which we can find that the legislator states the apology as legal terms to solve the practical problems existing in the direction of reconciliation or mediation to calm both parties down by the means of forcing the infringing party to make apology to the infringed party with legal pressure (Gu, Wang, & Jiang, 2000, p.245; Zheng, Jiang, & Sun, 2006). We can infer that the “apology” can “solve” the case method, should not only limited to actions of hurts to the spirit and personality right, but also the sincere sorry and intention to make up the relationships or the care and sincerity from the infringing party for their own sincere regrets and guilt, which shall decrease the uncomfortable feelings or the hostility, which should be encouraged and supported and which is of great significance to restore and build a harmonious social. Therefore, we should not approach every issue with the same remedy, it depends on practical situation. If the infringed party accepts positive apology, whether it is part of the property losses or spiritual damage, it should be affirmed by legislative means rather than the negative regulation. We should state the reasons for the infringed party refusing to accept the apology so as to avoid the continuous fighting between two parties on emotional disputes and the further mutual harm. Under the premise of ensuring the fairness of both parties, the legislators expect to maintain social stability, which is the goal of them. The scope of the apology should focus on “fair” and “order” of the whole society, and which cannot just be a legal instrumentalism, the revenge tool from one party to the other party.

<sup>6</sup> See Clause 120 of General Civil Law and Clause 8 of “*The Supreme People’s Court on the Explanation of the Mental of Tort Liability for Damages*”, Clause 10 of *The Supreme People’s Court on Several Issues Concerning the Trial of the Case of the Right of Reputation Solutions*, Clause 30 of *The State Compensation Law*, Clause 43 of *Consumer Protection Law* and Clause 46 and Clause 47 of *Works Right Law* of the relevant provisions.

### 3.2 Application Method on Apology Liability

Generally speaking, there is always a contradiction for the mandatory liability undertaking with the infringing party from voluntary and sincerity of the heart based on the situation that an apology rises from the moral responsibility to the legal liability. In common, the “mandatory” and “voluntary” cannot coexist at the same time. Generally, the apology can be made through the behavior of oral, written or other methods to the infringed party to apologize so as to get the infringed party’s understanding and forgiveness. Apology can be made in public or private, which can be expressed orally or in writing. A verbal apology is expressed by the infringing party himself to the infringed party directly, which is not open to the public basically. Written apology is stated in documents and published in newspapers or posted on the premises. In judicial practice, if the infringing party refused to fulfill the apology of legal responsibility, the court may determine that the court shall execute the same as replacement on behalf of the infringing party as per the judgment and regulations and the total cost of performance for the apology should be burdened by the infringing party.

Apology liability is the legalization of moral responsibility. The apology liability is based on the behavior of the guilt and repentance of the infringing party and the apology must be based on sincerity and real heart in moral level. The infringed party requests for the apology liability from infringing party because they were hurt mentally with the words or deeds of infringing party, with which infringing party should apologize with his true meaning for the infringement once being asked to apologize. A perfunctory apology, unwilling to apologize, which can not really play the role of trauma infringed party. As a kind of civil liability, apology is legal punishment as it is executed by the force of the country, of which the purpose is to safeguard the social order and stability and to protect the benefit of the relative person. If the plaintiff did not request an apology, the court can not take the initiative to apply according to their powers, otherwise it will violate the principle of “not trial without complaint” policy. The purpose of apology is to ease hostilities between the infringing party and the infringed party with the sincere apology and mistakes admits from the infringing party, which is also conducive to social harmony. There is no doubt that laws and legal measurements promote the development of moral and culture, which stimulate the construction of socialist spiritual, too. It is noted that the apology is different from eliminating the impact of rehabilitation and reputation recovering. It is no need to eliminate the impact of consequences in public, only can the related person take measures to explain to the public clearly with the sincere from the deep heart of the infringing party, which means that the elimination of impact of rehabilitation measures must be open to the public. The premise of the apology is

sincere not publicly. In particular, some scholars believe that the apology is punitive in nature, and with which it can not be used widely. The author believes that punitive apology will definitely lead to the lack of sincerity and cannot be executed by the infringing party because of lacking in initiative and sincerely sorry for the law enforcement under the apology which is certainly not true "apology". Moreover, this kind of "apology" is easily used as a "legitimate retaliation" method for the revenging from one party being infringed to the other party.

Compulsory execution in the judicial practice of the apology is mainly executed in the following steps: a) The debtor refuses to perform the judgment, the court persuades the debtor to execute with willingness; b) The debtor refuses to publish an apology, the court executed for replacement and the newspaper cost shall be borne by the debtor; c) Times of education are invalid, the court shall fine, execute, detain or prosecute (Li, 2012). However, today the implementation method of apology is difficult to obtain a good social effect. For the debtor, the court made alternative performance and the debtor suffered a loss in economy for a certain punishment, but which deepened the conflicts between the applicant and the debtor. To the applicant, he prefers more the debtor's sincere apology than a passive acceptance being executed by court without other choices to balance the inner psychological gap. Apology, as a kind of moral expression driven by psychological behavior, which should be a voluntary act but is facing challenges to the execution for law enforcement.

Furthermore, the court is unable to control the debtor's mental state, the execution is only a short-term Palliative measures under law enforcement execution circumstances. In addition, the apology is originated from Chinese Civil field experience, and with Chinese characteristic, which is lack of relevant experience abroad, on which the court is confused for the applications and executions for apology liability in some certain degree.

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## CONCLUSION

Because "apology" itself is a kind of moral responsibility, moral responsibility cannot be executed accordingly. The legalization of moral is to use the modern legal means to fulfill the moral responsibilities, and to strengthen moral responsibilities so as to promote social harmony. However, the legalization of moral responsibilities should not be alienated as "revenge" tool with modern legal means in reality. Since the legalization of moral responsibility and moral character can not achieve the goal to adjust the social order, the legalization of moral responsibilities shall lose its intention and meaning. The construction of a harmonious society needs the rule of legal culture, but it is prohibited that one party forces the other party to restore the original balance of his or her

heart, even the vanity of the heart. The legalization of morality is to realize moral with legal measures and social conscience. And, the moralization of legal law is built by the social integrity culture, legal and the rule of faith of legalization. Thus the apology can be used for conditions excluded in the specific adaptations of outside conditions, and should not be executed as per the wordings stated in law automatically. Both the implementation of the law and the realization of fairness and justice need to promote the law execution and fairness. And the more important thing is that it may stable the social order, to promote the solution of apology case, then which can be combined with the applicable conditions, reduced damages, which is equivalent to forgive the infringing party for the acceptance of his sincere apology. Once there is no actual performance for apology, and the apology is not deemed from heart and cannot make up for compensation of mental loss, also the apology does no help no the elimination of disputes, on which cases the application for an apology is improper and unnecessary. Furtherance, the plaintiff can manage to seek other solutions of the remedy with the court dismissing of the claim of him.

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