

held on January 27, 1994 that the publication of documents which might identify the parties concerned would have the possibility to impair the confidential or friendly relationship of the parties concerned, so that there was a danger of not attaining the purpose of affairs of negotiation. Since the First Petty Bench's decision concerned the social expenses of the Governor of Osaka Prefecture, one may suppose that the Court may have thought that the Prefectural Waterworks Bureau had narrower discretion to use its expenses for the social gatherings and receptions than the Governor of the Prefecture had. However, is it possible to distinguish the character of the expenses merely by who used them? Is it persuasive? And even if it is so, may this lead to a difference in proof and in concluding about the propriety of the publication of the documents in question? It seems that there is still room for further inquiry.

Finally, it is strongly desirable to establish a system for the publication of official documents at both local and national levels immediately. In addition, from the viewpoint of the citizens' right to know, once the system is developed, it is also desirable that the grounds for enabling an entity to have official documents closed should be specified as a general rule and narrowly interpreted in application.

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## **2. Law of Property and Obligations**

- 1. A case in which it was held that the damages caused by fire from a television should be compensated by its manufacturer.**

Decision by the Osaka District Court on March 29, 1994. Case No. (wa) 4761 of 1992. A case claiming damages, 842 *Hanrei Tai-muzu* 69.

***[Facts]***

On May 8, 1988, a fire broke out at the plaintiff's office. It was obvious that this fire was caused by a television manufactured by the defendant. The plaintiff claimed damages caused by the television burning by reason of product liability, grounded in breach of contract or alternatively in tort.

***[Opinions of the Court]***

The defendant is liable for damages in tort.

A manufacturer should bear a high degree of duty of care for its products not injuring the user because of dangerous design production and distribution. Therefore, if the manufacturer breached this duty and puts product that lacked safety into distribution, he would be liable to compensate for damages caused by it. This duty means a duty to all persons to protect their lives and safety and it could be grounded in tort law.

A product is defective when it lacks a normal degree of reasonable safety and it has unreasonable risks. Whether the product is defective or not depends on common sense, taking into account the quality and purpose of the product, the degree of duty of care when using it, and technology and so on. Each product or type of product should be examined individually.

The Court cannot adopt strict liability or liability without fault immediately, because no special legislation has been passed, and therefore the plaintiff must prove the malice or fault of the defendant. If the plaintiff is able to prove the defect, it is presumed that the manufacturer is at fault. So, in order to be exempt from liability, the manufacturer must rebut this presumption by proving any facts that prove his non-liability.

As a product, a television is required to have absolute safety for reasonable use. In this case, the television caught fire during reasonable use and so had unreasonable risk. Therefore this television is defective and the defendant is liable to compensate for damages caused by the fire based on tort.

**[Comment]**

This case was decided before promulgation of the new Product Liability Act. In product liability suits, it has been difficult to hold the manufacturer liable because of the burden of proof on the part of the plaintiff. This case, although decided under traditional tort theories, took into account the idea of the new legislation and affirmed the liability of the manufacturer. In a normal tort case, the plaintiff must prove the malice or fault of the defendant, but in this case malice and fault were replaced by the product defect and the plaintiff was required only to prove defect. It is easy to prove the defect because it required only proof of a lack of normal safety. This theory is analogous to the liability of the possessor of a structure, which imposes liability on the possessor or the owner of the structure for damages caused by its defect in the course of construction or maintenance without fault (Civil Code, Article 717).

Now, although the Product Liability Act has been promulgated, the basic scheme is still unchanged. The plaintiff must prove all requirements of tort except for fault. This case is an illustration of a decision concerning product liability, taking into consideration the new Act.

**2. A Case concerning Invasion of Privacy.**

Decision by the Third Petty Bench of the Supreme Court on February 8, 1994. Case No. (o) 1649 of 1989. A case claiming damages. 48 *Minshū* 149. (See **Case a** in the part of Constitutional and Administrative Law. *Supra.*)

**[Facts]**

X (plaintiff) had been convicted of manslaughter, sentenced to imprisonment and served his sentence. Y (defendant) wrote nonfiction discussing X and others' cases. Y used their true names without their approval. This publication became well-known, and X feared having his secret past exposed. So X filed a suit against Y to compensate him for damages resulting from emotional pain. Both the court of first instance and the High Court held Y liable. Y appealed

to the Supreme Court.

***[Opinions of the Court]***

The fact that one has been accused or especially convicted and served his sentence involves his reputation or confidentiality, so he has a legal interest in not having these facts disclosed. This applies to any disclosure, whether made by a public organization or a private individual. A person who has completed his sentence is expected to be rehabilitated and therefore has an interest not to have his personal privacy and reputation harmed by another person disclosing his past. There are some exceptions that justify disclosure; for example, it may be meaningful to publish the case itself for historic or social purposes, or when the fact is used for judging a person's conduct when that person's past has been disclosed and the person has certain social standing, or when the person is placed in a public position which is a matter of social concern. Under these circumstances, the disclosure may be justified.

Y had no reason to justify his disclosure, and he could expect that if he used the real names in nonfiction, X and other persons would have their secret past disclosed. Therefore, Y was found liable for damages in tort.

***[Comment]***

This is the first Supreme Court case concerning invasion of privacy. Invasion of privacy is closely related to defamation. They are different in that defamation requires injury to the reputation of a person, but invasion of privacy only requires the disclosure of private facts. As there exists a conflict between freedom of expression and the legitimate desire to keep out of public view certain aspects of one's private life, it is difficult to recognize and define invasion of privacy. In this case, the lower courts have used the word "privacy" and defined it as a matter concerning one's private life which one wished to hide, and recognized the right to protect these matters as the right to privacy. The fact that the Supreme Court did not use these words shows the sensitivity of this problem, but it may be correct to conclude that the Court recognizes a sort of right of privacy.

The defendant may be justified by proving the public interest in the matters disclosed. This indicates the importance of freedom of expression. In this case, the Supreme Court decided the case by balancing many factors. Among them, the nature of fact disclosed was conclusive. The fact that a person has been convicted concerns the judiciary and usually constitutes a public matter. So it could be imagined that this fact was regarded as in the public interest and the disclosure could be justified. However, the Supreme Court rejected this idea, recognizing an interest in having been rehabilitated and in enjoying a quiet social life. This is a useful way to protect privacy that also relates to public matters, and the decision should be followed in this regard.

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### **3. Family Law**

#### **1. The constitutionality of the differential treatment of illegitimate children in the statutory share of succession.**

Order by the Grand Bench of the Supreme Court on July 7, 1995.  
Case No. (ku) 143. 885 *Hanrei Taimuzu* 83, 1540 *Hanrei Jihō* 3.  
[Reference: Civil Code, Article 900(iv)]

#### **[Facts]**

“A” (female, deceased) was born in the days before females could legally represent a family. She, therefore, entered into several marriages aimed at conceiving the proper successor of the “*Iye*” (house) under the old family system of law.

Eventually she had seven legitimate children and one illegitimate child in the course of three marriages. Illegitimate child “C” was born during first marriage.

After A’s death, “X”, who is a child of A’s illegitimate child