

On the Establishment of the Tort for Infringing the Feeling of Honor

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Abstract

*This article examines the tort for infringing the feeling of honor within the context of expanding protection for subjective interests and explores the conditions under which such a tort may be established. Case law indicates that this tort requires the infringement to exceed “the tolerable limit in social life” or “socially acceptable limits.” While various factors are relevant to this assessment, this article focuses particularly on the necessity of *dolus directus* in the first degree, as well as the theoretical significance of the act’s public nature. This article further analyzes cases in which multiple actors collectively infringe an individual’s feeling of honor, and considers whether the doctrine of joint and several liability in cumulative concurrence offers a useful framework for resolving such cases.*

Keywords:

Tort, Honor, Defamation, Insult, Dolus

INTRODUCTION

In contemporary society, the expansion of information technology has significantly increased the likelihood that an individual's statements may infringe another person's legally protected personal rights or interests. Among these, the right to honor, which safeguards an individual's social evaluation, serves as a central example.

Recently, an increasing number of plaintiffs have sought damages on the grounds of an infringement of the feeling of honor.¹⁾ This legally protected interest pertains to a person's self-evaluation²⁾ and may be violated in a broad range of circumstances in which one individual expresses statements about another, causing the latter to experience discomfort.³⁾ The recognition of this interest reflects the growing public awareness of individual rights and is, in principle, a positive development.

However, an overly broad recognition of liability for infringing this interest could unduly restrict freedom of expression⁴⁾. This concern is particularly relevant in the context of social networking services, where citizens engage in discourse on equal footing across diverse topics in online

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- 1) For relatively recent judicial precedents, see Takayuki Matsuo and Yūichirō Yamada, *Saishin Hanrei ni Miru Internet-jō no Meiyō-kison no Riron to Jitsumu* [Theory and Practice of Defamation on the Internet as Seen in Recent Case Law], 2nd ed. (Tokyo: Keisō Shobō, 2019), 397-438. Claims for damages based on the infringement of the "feeling of honor" have long been recognized, and in some cases, the plaintiffs' claims have been upheld. For an overview of judicial trends from around 1970 to 2000, see Kiyoshi Igarashi, *Jinkakuken-hō Gaisetsu* [An Outline of the Law of Personal Rights] (Tokyo: Yūhikaku, 2003), 26.
 - 2) An early scholarly work advocating legal protection of the feeling of honor is Shinji Sōmiya, *Meiyōken-ron* [Theory of the Right to Honor] (Tokyo: Yūhikaku, 1939), 228, 236. Sōmiya positions the feeling of honor as a component of the general right of personality. See also Kiyoshi Igarashi, *Jinkakuken-ron* [Theory of Personality Rights] (Tokyo: Ichiryūsha, 1989), 14, which argues that, as the feeling of honor constitutes a personal interest, its unlawful infringement beyond a certain threshold should at least entitle the victim to compensation for emotional distress. Similarly, see Tōru Ikuyo and Shinichi Tokumoto, *Fuhōkōi-hō* [Law of Torts] (Tokyo: Yūhikaku, 1993), 89.
 - 3) The feeling of honor may also be infringed by conduct other than statements. In Tokyo District Court, August 7, 1971, *Hanrei Jihō* 640: 5, the court held that the forced removal of three lawyers from a police station, while they were present to meet a suspect, violated their "feeling of honor as lawyers." Moreover, Case 3 and Case 11 cited below also concern infringement of the feeling of honor arising from conduct other than statements.
 - 4) Takebe argues that strengthening liability for insult may have the effect of allowing the strong to silence the speech of others. Miyabi Tatebe, "Bujoku wo Riyū tosuru Fuhōkōi-sekinin no Kajū nitaisuru Hihanteki-kōsatsu" [A Critical Examination of Heightened Tort Liability for Insults], *Jurist* 1573 (2022): 50.

public spheres. Given the potential societal value of such discourse, it is crucial to delineate and clarify the circumstances under which liability for infringing the feeling of honor may arise.

This article examines the establishment of a tort for infringing this feeling of honor in light of these issues. The examination proceeds as follows. Section I clarifies the circumstances under which the feeling of honor is recognized as a legally protected interest, drawing on case law concerning subjective interests. Section II distinguishes between defamation and infringement of the feeling of honor, noting that their boundaries are not always clearly defined. Finally, Section III presents the author's views on the requirements establishing a tort for infringing the feeling of honor, based on the findings from Sections I and II.

I. FEELING OF HONOR AND PROTECTION OF SUBJECTIVE INTERESTS

Japanese tort law has traditionally recognized a wide range of rights and legally protected interests. Among these, interests relating to individual subjectivity—such as emotions and amenities in daily life—have gradually come under protection, reflecting the growing rights consciousness among citizens.⁵⁾ Unlike rights such as life, bodily integrity, and property, which have long been clearly protected under tort law, subjective interests are less precisely defined. Consequently, determining whether a tort has occurred in individual cases often requires subtle judicial judgment.⁶⁾ The following discussion examines two judicial precedents in which the protection of subjective interests was central.

1. Case 1: Grand Bench Decision, Supreme Court (June 1, 1988)⁷⁾

This case involved the wife X of a Self-Defense Forces (SDF) member A, who had died in a traffic accident. X sought damages from State Y, ar-

5) Yoshida identifies both the “publicization of protected interests” and the “subjectivization of protected interests” as trends in the expansion and transformation of legally protected interests in contemporary tort law. Katsumi Yoshida, “Gendai Fuhōkōi-hōgaku no Kadai” [Contemporary Issues in the Study of Tort Law], *Hō no Kagaku* 35 (2005): 143-144.

6) A nuanced judgment is required in determining whether a legal interest has been infringed in the first place. See Ryōichi Yoshimura, “Hōgo-hōeki no Tayōka to Fuhōkōi-hō no Kihon-yōken” [The Diversification of Protected Interests and the Basic Requirements of Tort Law], in *Shimin-hō to Fuhōkōi-hō no Riron* [The Theory of Civil Law and Tort Law] (Tokyo: Nihon Hyōronsha, 2016), 229-230.

7) *Saikō-saibansho Minji-hanrei-shū* (hereinafter *Minshū*) 42, no. 5: 277.

guing that A had been enshrined in the Prefectural Gokoku Shrine pursuant to an application submitted by the Ken-taiyū-kai.⁸⁾ The Hiroshima High Court upheld X's claim, reasoning that the joint act of the Ken-taiyū-kai and SDF personnel infringed X's "legal interest to live under a quiet religious atmosphere."

The Supreme Court, however, quashed the judgment and dismissed the claim, stating:

"[W]hen one's religious peacefulness is disturbed by religious activity of others, though it is natural for him to feel uncomfortable for that and to wish not to be disturbed any more, if we admit such a person to seek legal relief such as compensation or injunction on the ground of infringement of religious feelings, then, instead, it will obviously come to harm the religious freedom of others. The guarantee of freedom of religion requires tolerance for religious activities of others that are inconsistent with the religion that one believes in as long as such activity does not disturb his or her freedom of religion through compulsion or by giving rise to disadvantages."⁹⁾

The Court construed the interest protected by the Hiroshima High Court as a matter of "religious feelings," holding that, absent compulsion or imposed disadvantage, such feelings do not constitute a legally protected interest that justifies claims for damages or injunctive relief. The Court further emphasized that the enshrinement conducted by the Prefectural Gokoku Shrine was an act grounded in freedom of religion, supporting the conclusion that "religious feelings" per se do not create a legally protected interest.¹⁰⁾

8) The prefectural branch of the "Taiyū-kai," an organization composed of retired SDF personnel and others.

9) <https://www.courts.go.jp/english/Judgments/search/88/index.html>

10) Yoshimura criticizes framing the case as a conflict between the freedom of religion of the Prefectural Gokoku Shrine and the freedom of religion of X. Ryōichi Yoshimura, "Fuhōkōi-hōgaku niokeru Atarashii Jinkakuteki-kenri-rieki no Hogo" [Protection of New Personal Rights and New Interests in the Law of Torts], in *Shimin-hō to Fuhōkōi-hō no Riron* (Tokyo: Nihon Hyōronsha, 2016), 256-257.

2. Case 2: Supreme Court Decision (June 29, 2010) ¹¹⁾

In this case, X filed a claim against Y, the operator of a funeral hall, alleging that funeral ceremonies were visible from the second floor of X's residence. X sought to have the height of a fence raised and to obtain compensation for emotional distress. The Osaka High Court ordered Y to raise the fence by 1.2 meters and to pay 100,000 yen in damages.

The Supreme Court quashed this decision, considering factors such as the brief duration of coffin movements, and held:

“Even if X experiences severe stress from viewing attendees or coffins at the funeral hall, such distress constitutes subjective discomfort only. The operation of the funeral hall does not infringe X's interest in peaceful daily life beyond the tolerable limit in social life.” ¹²⁾

The Court implied, however, that if the act had exceeded the tolerable limit, legal remedies such as compensation or corrective measures might have been justified. ¹³⁾

3. Analysis

These cases illustrate that individual feelings and daily-life amenities, in isolation, generally do not constitute rights or legally protected interests. In Case 1, the Hiroshima High Court framed X's interest as a right of self-determination, ¹⁴⁾ connecting the protection of “religious feelings” to the individual's autonomy in observing religious practices. In Case 2, the Supreme Court emphasized that relief is warranted only when the

11) *Hanrei Jihō* 2089: 74.

12) *Hanrei Jihō* 2089: 77.

13) For cases similar to Case 2, see Mito District Court, July 31, 1990, *Hanrei Jihō* 1368: 110, in which plaintiffs receiving inpatient treatment claimed that the construction of a crematorium would impede their interest in treatment in an environment consistent with human dignity and sought an injunction. See also Kyoto District Court, December 18, 1998, *Hanrei Times* 1053: 164, in which plaintiffs sought an injunction and damages regarding the operation of a funeral hall. In both cases, the claims were dismissed on the ground that the harm did not exceed the socially tolerable limit.

14) Hoshino points out that the core interest at issue in this case was the interest of “not having the deceased husband commemorated through religious methods contrary to the surviving spouse's wishes.” Eiichi Hoshino, “Jeikan-gōshi-soshō no Minpō-jō no Shomondai” [Civil Law Issues in the SDF Member Enshrinement Lawsuit], *Hōgaku Kyōshitsu* 96 (1988): 19.

act exceeds “the tolerable limit in social life.”¹⁵⁾

Applying this framework to the feeling of honor, it is evident that, unlike historical concepts of honor (e.g., medieval European knights or Japanese samurai), modern citizens’ feelings of honor are not inherently entitled to special protection among human emotions.¹⁶⁾ The question arises: under what circumstances is the feeling of honor protected as a legal interest? Based on the cases above, two scenarios can be highlighted:

a) Infringement via Violation of Another Right or Legal Interest

When a person unlawfully infringes another person’s right or legal interest, the resultant impact on the latter’s feeling of honor may be protected. For example, if X is coerced into a sexual relationship by Y, this constitutes an infringement of X’s sexual autonomy.¹⁷⁾ Here, the violation of X’s feeling of honor may be legally recognized, although it can also be understood as mental harm stemming from the infringement of self-determination, potentially obviating the need to address the feeling of honor as a separate interest.¹⁸⁾

b) Exceeding Socially Tolerable Limits

The feeling of honor is protected when an act infringes it beyond socially tolerable limits. For example, in Case 3 (Supreme Court, No-

15) In addition, in Tokyo District Court, July 19, 1977, *Hanrei Jihō* 857: 65, the court held that a person who intentionally or negligently defames the honor of a deceased individual through false statements, thereby infringing upon the bereaved family’s “personal legal interests, such as affection and reverence toward the deceased” beyond the “socially acceptable limits of tolerance,” is liable to compensate for the resulting damages.

16) In contrast, Murata emphasizes that the feeling of honor should be accorded a high level of protection, arguing that “it is difficult to assert, in a stereotypical manner, that social evaluation should be more strongly protected than the feeling of honor.” Kensuke Murata, “Internet-jidai niokeru Meiyō-meiyokanjō-shingai” [Defamation and the Infringement of the Feeling of Honor in the Internet Age], *Hōgaku Kyōshitsu* 502 (2022): 13. Murata notes that self-esteem or the feeling of honor, as well as social evaluation, are indispensable for individuals’ participation in society. This view merits careful consideration.

17) Tokyo District Court, February 27, 2024, LEX/DB 25613675.

18) There are also cases in which the plaintiff’s right to self-determination is initially the central issue, but the feeling of honor is ultimately recognized as the infringed interest. For example, in Tokyo District Court, May 25, 2021, LEX/DB 25589798, the court held that a post on an internet bulletin board stating “Please do not have children, someone like that” could be regarded as “an expression denying the plaintiff’s right to self-determination,” and further constituted an “insult beyond the socially acceptable limits,” thereby infringing the plaintiff’s “personal interest (feeling of honor).”

vember 10, 2005),¹⁹⁾ a publisher, Y, published an illustration depicting X, a criminal defendant, restrained with handcuffs and a chain in a magazine article. The Court held that this act insulted X and infringed her feeling of honor, constituting a tort that violated her personal interest beyond “the tolerable limit in social life.” Similarly, in Case 4 (Supreme Court, April 13, 2010),²⁰⁾ the Court held that an infringement of one’s “feeling of dignity” constitutes a violation of moral value only when deemed an insult beyond “socially acceptable limits.”²¹⁾

II. INFRINGEMENT OF THE FEELING OF HONOR AND DEFAMATION

The Japanese Civil Code has recognized honor as a right protected under tort law since its enactment. Article 710, which governs compensation for non-pecuniary damages, cites cases involving the infringement of another person’s honor, while Article 723 provides for recovery in instances of infringement of the right to honor.

1. Definition of “Honor” in the Context of the Right to Honor

According to Case 5 (Supreme Court, December 18, 1970),²²⁾ the “honor” in Article 723 of the Civil Code denotes “social honor,” meaning the objective evaluation a person receives from society regarding their character, virtue, reputation, credit, and other personal values. Importantly, this definition does not include the “feeling of honor,” which is a subjective assessment of one’s own personal values.

In contemporary understanding, infringement of the right to honor pertains to acts that undermine an individual’s social evaluation and is distinguished from infringement of the feeling of honor.²³⁾ This distinction

19) *Minshū* 59, no. 9: 2428.

20) *Minshū* 64, no. 3: 758.

21) This expression appears in Kazuo Shinomiya, “Minpō 723 jō no ‘Meiyo’ no Igi” [The Meaning of “Honor” in Article 723 of the Civil Code], *Hōgaku Kyōkai Zasshi* 89, no. 9 (1972): 199, stating that at least compensation for emotional distress should be recognized where an insult exceeds “socially acceptable limits” and infringes the feeling of honor.

22) *Minshū* 24, no. 13: 2151.

23) While debate continues regarding whether “fictitious honor” should be protected, there is a shared understanding that the “honor” protected under the right to honor generally refers to social honor rather than the feeling of honor. See Miyabi Tatebe, *Fuhōkōi-hō niokeru Meiyo-gainen no Hensen* [The Evolution of the Concept of Honor in Tort Law] (Tokyo:

is reflected in English translations of the Civil Code: the infringement of “honor” under Article 710 is translated as infringement of “reputation,” and the heading of Article 723 is rendered as “recovery in defamation.”²⁴⁾ Consequently, in Japan, many cases involving a broad understanding of the infringement of honor are treated as matters of defamation, rather than as violations of the feeling of honor. For example, if a person is alleged to have committed murder, and their social evaluation is harmed as a result, the law generally considers the resulting mental distress as damage arising from defamation, rather than as issues related to the feeling of honor.²⁵⁾

2. Difficulty of Distinguishing between Defamation and Infringement of the Feeling of Honor

However, the boundary between defamation and infringement of the feeling of honor is not always clear-cut.²⁶⁾

2.1. Establishment of Defamation without Actual Decline in Social Evaluation

Defamation does not require that a person’s “evaluation in society” has actually been undermined.²⁷⁾ For instance, Case 6 (Supreme Court, May 27, 1997)²⁸⁾ held:

“In the case of defamation of a person by a newspaper article, a tort takes place when the newspaper containing an article that undermines the person’s evaluation in society is published and this causes

Yūhikaku, 2014), 17-19.

24) <https://www.japaneselawtranslation.go.jp/en/laws/view/4848>

25) Igarashi, *supra* note 1, 27. Igarashi argues that claims for infringement of the feeling of honor should be made as subsidiary to claims of defamation.

26) Hideki Ishibashi, “Meiyo-kison to Meiyo-Kanjō no Shingai” [Defamation and Infringement of the Feeling of Honor], *Ritsumeikan Hōgaku* 363-364 (2016): 29. See also Makoto Hashimoto, “Meiyo-kanjō-shingai to ‘Shakaiteki-hyōka no Teika’ (Part 4, Kan)” [Infringement of the Feeling of Honor and “Undermining of Social Evaluation” (Part 4, Final)], *Kumamoto Hōgaku* 147 (2019): 88-95.

27) Segawa observes that the Supreme Court recognizes defamation without requiring proof of actual reduction in social evaluation. Nobuhisa Segawa, “Minpō 709 jō (Fuhōkōi no Ippanteki-seiritsu-yōken)” [Article 709 of the Civil Code (General Requirements for the Establishment of Torts)], in *Minpō-ten no Hyakunen III* [One Hundred Years of the Civil Code III], eds. Toshio Hironaka and Eiichi Hoshino (Tokyo: Yūhikaku, 1998), 620-621.

28) *Minshū* 51, no. 5: 2009.

the risk that the person targeted in the article is likely to be evaluated as indicated in the article.”²⁹⁾

Thus, defamation is a tort that is premised on the creation of a risk of infringement rather than the result.³⁰⁾ The plaintiff need not prove that their social evaluation was definitively undermined, but must provide facts supporting the likelihood of such harm.³¹⁾ Furthermore, the rulings in Case 7 (Supreme Court, July 20, 1956)³²⁾ and Case 8 (Supreme Court, October 16, 2003)³³⁾ clarified that the existence of such risk is judged from the perspective of ordinary societal perception.

2.2. Defamation Despite Pre-existing Decline in Social Evaluation

Even if a plaintiff's social evaluation had already been compromised, defamation may still be established. In Case 9 (Supreme Court, September 9, 1997),³⁴⁾ a newspaper company Y published an article labeling X as “the Devil” and suggesting the death penalty. Despite widespread pre-existing reports on the alleged crime, the Supreme Court recognized defamation by Y, while also considering the doctrine of immunity.

However, given that civil liability in tort law fundamentally requires attribution of the harm to the actor,³⁵⁾ if X's social evaluation had already collapsed, Y's act may not have posed a concrete risk of further harm.³⁶⁾ In such scenarios, the case could alternatively be characterized as an infringement of X's feeling of honor; the insulting term (“the Devil”) primarily caused subjective distress.

29) <https://www.courts.go.jp/english/Judgments/search/345/index.html>

30) Ishibashi, *supra* note 26, 33-34; Fumihiko Nagano, “Kenri no Kitaika niyoru Fuhōkōisekinin (Part 1)” [Tort Liability for the Endangerment of Rights (Part 1)], *Hōgaku Kyōshitsu* 531 (2024): 58.

31) The determination of whether defamation has been established is ultimately a normative value judgment, and the results of survey research are merely a reference for that judgment. See Tokyo District Court, August 24, 2004, *Hanrei Jihō* 1871: 90.

32) *Minshū* 10, no. 8: 1059 (newspaper article case).

33) *Minshū* 57, no. 9: 1075 (television broadcast case).

34) *Minshū* 51, no. 8: 3804.

35) Defamation under criminal law (Japanese Penal Code, art. 230) is understood as an abstract endangerment offense. See Atsushi Yamaguchi, *Keihō Kakuron* [Criminal Law: Specific Crimes], 3rd ed. (Tokyo: Yūhikaku, 2024), 143.

36) Kubota notes that liability may be denied in this case because no harm from lowered social evaluation occurred. Atsumi Kubota, “Iken naishi Ronpyō no Hyōmei to Meiyo-kison” [Manifesting an Opinion or Criticism and Defamation], *Jurist* 1135 (1998): 84.

2.3. Defamation and Subjective Offense

In Case 10 (Supreme Court, July 15, 2004),³⁷⁾ university lecturer X used illustrations from cartoonist Y's work without Y's authorization in his own book and criticized Y's views on the so-called comfort women ("jūgun ianfu") issue, prompting Y to depict X as a thief in a satirical cartoon. While the Tokyo High Court found that Y's conduct could damage X's social reputation, the Supreme Court dismissed X's claim under the doctrine of immunity.

Here, it remains doubtful whether Y's conduct could genuinely undermine X's social evaluation, since X's social standing is unlikely to be affected by Y's legal view that X's action constituted copyright infringement, particularly given that Y was merely a cartoonist.³⁸⁾ The primary harm to X was subjective discomfort arising from ridicule, suggesting that this situation may have been better classified as an infringement of the feeling of honor.³⁹⁾

3. Analysis

These cases indicate that, under current Japanese law, matters that arguably should be addressed as infringements of the feeling of honor are often pursued under defamation. This tendency arises from the fact that the legal framework for the tort of infringing the feeling of honor remains underdeveloped, whereas the elements of defamation, including the doctrine of immunity, are well established in case law. In recent years, however, there has been a growing movement to pursue liability for infringement of the feeling of honor, driven by the proliferation of insults and harmful expressions on social networking platforms. In the next section, the requirements for establishing a tort for infringing the feeling of honor will be examined.

37) *Minshū* 58, no. 5: 1615.

38) Ishibashi, *supra* note 26, 42.

39) Mishima argues that among acts infringing honor, some should be viewed as pure infringements of the feeling of honor rather than infringements of objective honor. Munehiko Mishima, "Minpō 723 jō ni iu Meiyo no Igi" [The Meaning of Honor under Article 723 of the Civil Code], *Minshōhō Zasshi* 65, no. 6 (1972): 98. As an example, Mishima cites the statement, "That man has the mentality of a thief."

III. REQUIREMENTS FOR THE TORT FOR INFRINGING THE FEELING OF HONOR

As noted earlier, the Supreme Court in Case 3 referred to an infringement that exceeds “the tolerable limit in social life,” while in Case 4 it referred to an infringement that surpasses the “socially acceptable limits.” Determining whether a particular act crosses these thresholds is not always straightforward. For this reason, it is useful to examine Case 11, the Tokyo High Court judgment rendered on October 20, 2022,⁴⁰⁾ as it provides a more concrete basis for discussing this issue.

1. On the Necessity of Dolus Directus in the First Degree

This case concerned a claim for damages brought by journalist X against Y, a member of the National Diet, on the ground that Y infringed X’s feeling of honor by “liking” tweets posted by third parties on the social media platform Twitter. The background is as follows: X had filed a criminal complaint alleging sexual assault by A, but the Tokyo District Public Prosecutors Office chose not to prosecute. Subsequently, Y ridiculed X during an online broadcast and criticized X on a BBC program, suggesting that X was partly responsible. In this context, Y clicked “like” on 25 tweets that insulted X.

The Tokyo High Court held that Y’s conduct infringed X’s feeling of honor and constituted an insult exceeding the “socially acceptable limits,” thereby affirming Y’s liability. The court emphasized three points: (i) Given that Y’s conduct occurred 25 times in total and that Y had previously ridiculed X, it can be inferred that Y acted not merely with general intent but with the intent to infringe X’s feeling of honor; (ii) Y’s conduct was carried out on her Twitter account, which had approximately 110,000 followers; and (iii) as a member of the National Diet, Y’s statements carry a degree of social influence that cannot be equated with that of ordinary people’s statements.

In this way, the Tokyo High Court appears to have adopted the evaluative approach of Case 4, assessing whether the conduct in question constituted an insult that exceeded “socially acceptable limits.” In doing so, the court considered not only the nature and scale of the act itself, but also

40) *Hanrei Times* 1511: 138.

the intent of the actor and the social influence of their statements.⁴¹⁾

At this point, the question arises whether the intent to infringe a specific individual's feeling of honor (*dolus directus* in the first degree) should be regarded as a necessary element for establishing liability. To address this question, it is useful to consider Case 12, the Supreme Court judgment rendered on January 21, 2016.⁴²⁾

This case involved a claim brought by X against Y (NHK), alleging that a documentary describing the participation of the Paiwan people in the 1910 Japan–British Exhibition as a “human zoo” introduced X as the daughter of a participant who had been treated like an animal, thereby undermining X's social evaluation. The Supreme Court rejected X's defamation claim, reasoning that, based on the perception of an average viewer,⁴³⁾ such a portrayal was unlikely to diminish X's social evaluation.⁴⁴⁾ The Court further held that an infringement of the feeling of honor had likewise not been established.

However, this raises an important question: should legal protection be afforded to a specific individual's feeling of honor, even in the absence of the actor's intent to infringe it? When a broadcaster with substantial influence airs a program markedly lacking in due consideration toward the individual concerned, the resulting harm to the individual's feeling of honor may be significant, irrespective of whether the broadcaster acted with *dolus directus* in the first degree. Thus, it should be understood that the intent to infringe a specific individual's feeling of honor is not a requirement for determining that an act exceeds “socially acceptable limits.”⁴⁵⁾

41) Ishio argues that in a tort for infringing the feeling of honor, both the determination of whether an infringement has occurred and the assessment of whether it exceeds “socially acceptable limits” involve consideration of various factors, rather than merely the subjective feelings of the victim. Tomohisa Ishio, “Internet-jō no ‘line’ niyoru Meiyō-kanjō no Shingai” [Infringement of the Feeling of Honor by ‘Likes’ on Twitter], *Shihō-hanrei Remarks* 69 (2024): 53.

42) *Hanrei Jihō* 2305: 13.

43) *Minshū* 57, no. 9: 1085 (Case 8).

44) Ishibashi argues that it is unlikely that the social evaluation of the person treated like an animal would be undermined. Hideki Ishibashi, “Nihon no Taiwan-tōchi ni kansuru Terebi-bangumi to Meiyō-kison-tō no Seihi [Television Program on Japan's Rule over Taiwan and the Establishment of Defamation and Other Related Torts], *Minshōhō Zasshi* 152, no. 3 (2015): 82-83.

45) Tatebe interprets the court's emphasis on “intent to harm” in Case 11 as reflecting the relatively low level of harmfulness inherent in pressing a “like” on social media. Miyabi Tatebe, “Tasha no Tweet nitaishite ‘line’ wo Osu Kōi to Meiyō-kanjō-shingai wo Riyū tosuru

Rather, where an actor's conduct, when considered together with the actor's social influence and the nature of the medium employed, is objectively excessive, liability for infringing the feeling of honor may be established even in the absence of *dolus directus* in the first degree.

2. Theoretical Significance of the Act's Public Nature

In addition to the foregoing, a further issue arises concerning the requirements for the tort for infringing the feeling of honor. In the tort of defamation, liability may be exempted where the act in question relates to matters of public interest and is conducted solely for the purpose of serving the public good.⁴⁶⁾ A scholar argues that the same exemption framework should apply to cases involving the infringement of the feeling of honor.⁴⁷⁾ From the standpoint of ensuring consistency between the treatment of defamation and the infringement of the feeling of honor, this view has persuasive force, particularly in promoting the protection of speech that serves the public good.

However, it remains open to question whether the act's public nature should be conceptualized as a separate ground for exemption, in the same manner as in defamation. In cases involving infringement of the feeling of honor, various factors are already considered when determining whether the act exceeds "socially acceptable limits." These factors may either support or undermine the legal assessment that the conduct in question is excessive. Therefore, it is more appropriate to treat the act's public nature as one of the factors that mitigate the assessment that the act exceeds "socially acceptable limits," rather than as a distinct requirement for exemption. In other words, unlike defamation, there is no need to adopt a two-stage structure (establishment of liability followed by an exemption analysis). The question of liability may be resolved entirely within the evaluative framework used to determine whether the act exceeds "socially acceptable limits."⁴⁸⁾

Fuhōkōi no Seihi" [The Act of Pressing "Like" on Other People's Tweets and the Establishment of a Tort for Infringing the Feeling of Honor], *Gendai Shōhisha-hō* 63 (2024): 101.

46) For example, see Supreme Court, June 23, 1966, *Minshū* 20, no. 5: 1118; Supreme Court, April 24, 1987, *Minshū* 41, no. 3: 490; Supreme Court, December 21, 1989, *Minshū* 43, no. 12: 2252.

47) Murata, *supra* note 16, 13.

48) Matsuo introduces judicial trends concerning the defendant's "defense" in cases where an infringement of the feeling of honor exceeding the "socially acceptable limits" is recognized.

3. Infringement of the Feeling of Honor by Multiple Actors

Finally, this article turns to situations involving multiple actors. In online environments, particularly on social networking platforms, it is common for a single individual to be subjected to concentrated criticism or attacks by numerous actors, a phenomenon popularly known as “online flaming.”⁴⁹⁾ In such cases, the individual may experience severe emotional distress, and the infringement of their feeling of honor may be substantial. The normative issue is how liability should be structured to provide adequate relief.

Where multiple actors jointly infringe the plaintiff’s feeling of honor, they bear joint and several liability as joint tortfeasors pursuant to the first sentence of Article 719(1) of the Civil Code. Importantly, in such cases, each individual act does not need to exceed “socially acceptable limits”; rather, it suffices that the collective conduct does so.⁵⁰⁾

The more difficult problem arises where the acts of multiple individuals cannot be regarded as joint acts. One possible approach is to apply the second sentence of Article 719(1) of the Civil Code by analogy, as permitted in Case 13, the Supreme Court judgment of May 17, 2021,⁵¹⁾ which recognized joint and several liability in cases of cumulative concurrence. However, this approach requires that each individual act meet all requirements for tortious liability other than causation.⁵²⁾ Consequently, the plaintiff must identify multiple statements that independently exceed “socially acceptable limits” and demonstrate that each could have caused emotional distress. Although cases involving infringement of the feeling of honor generally do not present substantial evidentiary challenges in prov-

Matsuo and Yamada, *supra* note 1, 433-436. However, the content of the judgments cited there can also be understood within the broader legal assessment of whether the “socially acceptable limits” have been exceeded.

49) Atsuko Kariya, “Internet-jō no Bujoku” [Insults on the Internet], *Jurist* 1573 (2022): 56.

50) Murata, *supra* note 16, 15. Regarding requests for removal of online posts, see Internet-jō no Hibō Chūshō wo meguru Hōteki-mondai ni kansuru Yūshikisha Kentōkai [Expert Committee on Legal Issues Surrounding Defamation on the Internet] (hereinafter Kentōkai), *Torimatome* [Report] (Tokyo: Shōjihōmu Kenkyūkai, 2022), 67-70. In particular, “B” on p. 68 corresponds to the discussion in the main text. <https://www.shojihomu.or.jp/public/library/728/report202205.pdf>

51) *Minshū* 75, no. 5: 1359.

52) As the Supreme Court held in Case 13, the second sentence of Article 719(1) of the Civil Code merely shifts the burden of proof regarding causation to the defendants.

ing causation (i.e., that the plaintiff suffered emotional distress), it remains debatable whether the application of the liability rule articulated in Case 13 is suitable in such cases.⁵³⁾

In light of this, the more appropriate approach is to treat the situation as a concurrence of general torts under Article 709 of the Civil Code. Under this approach, liability would be determined for each wrongful act independently, and the allocation of liability among multiple actors would be governed by general rules regarding the scope of compensation under Article 416 of the Civil Code.⁵⁴⁾ This framework better reflects the nature of harm in cases involving the infringement of the feeling of honor and does not impose an unnecessarily heavy evidentiary burden on the plaintiff.

CONCLUSION

According to case law, a tort for infringing the feeling of honor is established when the infringement exceeds “the tolerable limit in social life” or, in other words, “socially acceptable limits.”⁵⁵⁾ However, what it means for conduct to exceed these limits remains insufficiently clarified. This article has addressed this issue and reached two principal findings.

First, specific intent to infringe the feeling of honor of a particular individual (*dolus directus* in the first degree) is not a necessary condition for concluding that conduct exceeds “socially acceptable limits.” Second, the act’s public nature should be considered not as a separate ground for exemption but as one of the factors that mitigate the legal assessment that the act in question exceeds “socially acceptable limits.” Accordingly, in cases involving the infringement of the feeling of honor, it is unnecessary to adopt a two-stage framework distinguishing between the establishment of

53) Murata affirms the application of this rule. Murata, *supra* note 16, 15.

54) For example, when multiple actors ought to have been aware of prior conduct or foreseen subsequent conduct, joint and several liability may arise among them.

55) The phrase “insult [...] beyond the socially acceptable limits” used in Case 4 has been widely adopted by lower courts. Case 11 is one such example. However, it should be noted that the relevant passage in Case 4 was *obiter dictum*. See Takebe, *supra* note 45, 101. Moreover, in the decision of July 15, 2011, *Minshū* 65, no. 5: 2362, the Supreme Court evaluated whether “the mental distress that the plaintiffs suffered [...] is beyond the tolerable limit under the generally accepted social standards.” It is notable that this case concerns the extent of the damage, rather than the manner of the infringing act. <https://www.courts.go.jp/english/Judgments/search/1113/index.html>

liability and exemption from liability.

However, further issues require examination. These include whether the tort may be established where *dolus eventualis* is not present and only negligence is found,⁵⁶⁾ and under what circumstances the tort may be recognized despite the acknowledgment that the act relates to matters of public interest and is conducted solely for the public benefit.

This article has also considered issues concerning cases involving multiple actors. Two conclusions were drawn. First, where multiple actors jointly infringe the plaintiff's feeling of honor, they bear joint and several liability as joint tortfeasors, and it is sufficient that the requirement of exceeding "socially acceptable limits" is satisfied with respect to their collective conduct as a whole. Second, where the infringement arises from multiple acts that do not constitute a joint act, the more appropriate approach is to treat the situation as a concurrence of general torts under Article 709 of the Civil Code, with the allocation of liability among multiple actors determined according to the general rules governing the scope of compensation under Article 416 of the Civil Code.

Nevertheless, further issues remain. These include how the concept of joint tortfeasorship under the first sentence of Article 719(1) of the Civil Code should be understood in cases where multiple actors infringe the feeling of honor,⁵⁷⁾ and how consolation money should be assessed when the number of actors is large.⁵⁸⁾

In conclusion, although this article has clarified several important points concerning the establishment of a tort for infringing the feeling of honor, significant theoretical and practical issues remain.⁵⁹⁾ These issues

56) Regarding the holding in Case 4, this can be understood as raising the question of whether an "insult" caused by negligence is possible. See, for example, Tokyo District Court Tachikawa Branch, January 27, 2016, LEX/DB 25542142, where the illegality of a negligent infringement of the feeling of honor was affirmed.

57) A related issue here is how to exclude lawful criticism from a joint act composed of multiple acts. On this point, see Kentōkai, *supra* note 50, 70.

58) This point arises regardless of whether the case is treated as a joint tort or as a concurrence of general torts.

59) Although it falls outside the scope of this article, the issue of whether remedies for the infringement of the feeling of honor should include measures for recovery, such as the publication of an apology, remains a point of contention. In Case 5, the Supreme Court adopts a negative position on this issue in its interpretation of Article 723 of the Civil Code. In contrast, Kamitsukue suggests that the possibility of recovery should also be considered as a remedy for the infringement of the feeling of honor. Miho Kamitsukue, "Twitter-jō no 'Iine' to Meiyo-kanjō-shingai" [The "Like" on Twitter and the Infringement of the Feeling of

are left for future research.

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