A Dual-Dimensional Analysis and Tripartite Model of Joint and Several Liability vs. Proportional Liability in Securities Misrepresentation Cases

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Abstract. In securities markets with high information obliquity and numerous securities traders, mutiple mass tort actions routinely arise, bringing complex infringers, interlocking behavior, and inscrutable chains of causation into play — thus creating significant challenges for liability determination. While the joint and several liability and liability by shares systems have been set out in the Chinese Civil Code and Securities Law respectively, problems such as the vagueness of the standards and the inconsistency of the court practice still exist, which can severely telescope the fairness and operability of the system. Some attention is paid to the mechanics of liability for mass tort claims in the securities industry. This article examines the practical issues and limitations associated with joint and several liability versus proportional liability in practice cases. It puts forward a modified body of system of liability as “causal link + subjective link” and quantitative model of “behaviour-fault-gain” within a tri- dimension. Based on institutional experiences in the U.S. and Germany in connection with liability typology and proportional liability assessment mechanisms, this project examines whether and how liability typology and proportional liability assessment mechanisms are possible. Its purpose is to supply a theoretical underpinning and practical guidance for the improvement of the liability rules in China securities market's mass tort.

Keywords: Securities Market, Liability Determination, Joint Liability, Proportional Liability, Comparative Law.

1. Introduction

In recent years, securities misrepresentation cases have proliferated in China's capital markets, often involving multiple parties such as listed company executives, intermediaries, and securities firms, forming a typical pattern of mass tort liability. Although the Civil Code and Securities Law provide a legal basis for joint and several liability and pro rata liability, issues persist in securities misrepresentation cases characterized by high technical complexity and intricate causal chains. These include unclear application standards, divergent judicial interpretations, and imbalanced liability allocation. Numerous cases reveal challenges such as inconsistent liability determinations, excessive expansion of joint liability, or ambiguous standards for proportional liability [1]. Based on this, this paper proposes a "dual-dimensional analysis approach" and a "tripartite quantitative model" after reviewing existing regulations, academic debates, and analyzing typical cases. It aims to provide more refined tools for selecting liability types and allocating proportions through cross-evaluation of causal strength and subjective state, as well as comprehensive quantification of behavioral contribution, degree of fault, and direct profits. The feasibility of these approaches is validated by drawing on experiences from the United States and Germany.

2. Synopsis of Normative, Doctrinal, and Practical Controversies

2.1. Regulations and Doctrines

China's current legal framework provides preliminary provisions for multiple-perpetrator tort liability. Article 1176 of the Civil Code serves as the foundational basis for determining such liability. This provision stipulates that where two or more persons jointly commit a tortious act causing harm to another, they shall bear joint and several liability. This applies even without prior agreement, provided their combined actions sufficiently cause the entire harm. If the harm can be apportioned, liability shall be shared according to the degree of fault or equally. This rule establishes a preliminary three-pronged standard of conspiracy, result, and fault, providing fundamental norms for liability relationships among multiple tortfeasors in securities matters. It lacks detailed provisions on liability application elements for various scenarios, omitting quantitative standards for fault allocation, causation strength, and subjective intent, resulting in broad applicability. The Securities Law provides more specific provisions for cases involving false statements. Article 85 of the Securities Law, revised in 2019, stipulates that information disclosure obligors shall bear strict liability for damages. Controlling shareholders, actual controllers, intermediaries, and others shall bear joint and several liability with the issuer, though they retain the right to exempt or mitigate liability through evidence [2]. Article 163 requires securities service providers to exercise due diligence; institutions violating this obligation shall bear civil liability for damages alongside their clients. Thus, the Securities Law has gradually formed an attribution framework centered on strict liability combined with a presumption of fault [3]. This approach more effectively protects investor rights, but current challenges remain: the criteria for applying liability forms are relatively unclear, judicial discretion varies, and no unified judgment mechanism has been established regarding whether intermediaries are automatically subject to joint liability or how liability should be reasonably allocated. This regulatory ambiguity leads to complex and uncertain liability determinations in practice.

Academic discourse also maintains an ongoing debate regarding these two liability approaches. Current scholarly controversy in the study of mass tort liability can be divided into two layers. The lens of the first layer is essentially with respect to the extension of joint and several liability, containing competing paradigms for extension and limitation of joint and several liability. The expansionist camp in favour of joint and several liability defends that the priority should be to reinforce investor protection and this way to guarantee the right of the victims to achieve appropriate compensation; the rule of law on compensation also includes the idea that compensation can be truly reached. On the contrary, scholars of the restrictionist school advocate circumspection in the application of joint liability so as to guard against problems such as liability leakages and asymmetrical risk distribution. In some cases, the degree of joint responsibility is not commensurate with individual fault and even includes those who are not at fault, such as small and micro enterprises to undertake compensation responsibility [4]. Therefore, the core of the dispute is to strike a balance between safeguarding the interests of the victims and dealing with the wrongdoing party impartially. If we do not want to apply joint liability universally, the inquiry is concerned with how that is to be worked out in a fair way with pro rata liability and other forms of liabilities.

Current judicial practice shows a trend toward exploring pro rata liability, "quasi-joint liability," or "proportional joint liability" to reflect individualized and equitable liability allocation [5]. However, this shift faces significant skepticism. The main controversies center on whether courts can objectively and consistently allocate liability proportions in the absence of clear quantitative standards and uniform application criteria, and whether investors can effectively prove the degree of fault of each liable party. This not only affects the consistency and credibility of judgments but also relates to the practical efficiency of investor remedies and litigation costs.

2.2. Judicial and Practical Dilemmas

2.2.1 Determination of Joint and Several Liability

Regarding the application of joint and several liability, the Civil Code narrows the grounds for its establishment and the scope of its application. This inevitably leads to an expansion of quasi-joint liability, yet numerous issues remain unresolved concerning the differences between quasi-joint liability and joint and several liability in terms of constitutive elements and rule application. Take the 2021 Kangmei Pharmaceutical case as an example. The Guangzhou Intermediate People's Court ruled that multiple responsible parties, including the company's actual controller, should bear joint and several liability for investors' losses. The court's judgment stated that relevant responsible parties would not be exempt from liability even if they claimed to have exercised due diligence, provided they had "substantial involvement or gross negligence." This case reinforced the liability boundaries of the so-called "gatekeeper" role in securities market fraud [6]. The court deemed these actions as gross negligence, holding that formal compliance with procedures does not absolve responsibility for the authenticity of disclosed information. This imposes higher standards on intermediaries and responsible parties regarding their duty of care, reminding them to account for their substantive actions. However, an excessive emphasis on joint liability also creates significant pressure. In some cases, entities involved—even those with limited participation in the tort chain or lacking evident subjective malice—were still included in the scope of joint liability, required to compensate for the entire loss. This approach risks causing "liability spillover" and "unequal burden of risk," sparking renewed debate in judicial practice about the boundaries of joint liability application [7]. For instance, in the Wuyang Bond case, Dagong Global Credit Rating Co., Ltd., as a credit rating agency, was found to have failed in its duty of care. Despite not directly participating in false statements or information disclosure, the court ultimately ordered it to bear joint and several liability alongside the issuer and other intermediaries [8]. This judicial logic of incorporating "non-core responsible parties" into a full liability framework has drawn academic attention to the upper limits of risk bearing for intermediaries. In this case, when establishing the substantive causal link between the rating agency's failure to exercise due diligence and the false statements, the court departed from the traditional strict requirement of proving "collusion or substantial coordination." Instead, it based its determination of joint liability on the agency's negligent supervisory failure. The court held that, as key participants in the information disclosure process, rating agencies failed to exercise due diligence, resulting in untimely detection and correction of false information and indirectly causing investor losses. Though lacking subjective malice, such negligent conduct sufficiently established their liability. Academic circles widely express concern that the scope of joint liability may be overly broadened. This could not only impose unfair burdens on non-core parties with minor or no malicious intent by making them bear full losses, but also potentially restrict the normal business development of intermediaries, even triggering exit risks that undermine the overall vitality of the securities market.

2.2.2 Determination of Proportional Liability

Judicial practice has gradually shifted from absolute joint liability toward exploring pro rata liability, advancing the investigation of specific forms of quasi-joint or proportional liability to address the individualization and fairness of liability allocation [9]. For instance, the 2024 Lanshan Technology case serves as a typical example. The Beijing Financial Court ruled that the sponsor representative should bear 40% of the joint liability for compensation in a false statement infringement case. While formally employing joint liability terminology, the court effectively introduced the logic of apportioned liability through a specified proportion [10]. This approach challenges the traditional perception that joint liability equates to full liability, attempting to reflect varying degrees of involvement within a unified liability framework. However, this ruling remains ambiguous at the theoretical and institutional levels of pro rata liability. The court failed to clearly delineate the boundary between joint liability and pro rata liability. Investors face challenges in accurately asserting and proving the proportion of fault attributable to each liable party during litigation. This reflects the immaturity of the standard system for applying pro rata liability mechanisms in practice. Currently, the ST Xintong false statement series of cases remains under adjudication. In some rulings, courts have allocated different compensation shares based on the degree of fault of each infringing party. This raises new questions: How can liability allocation ensure objectivity and consistency without uniform quantitative standards? Case evidence is often highly complex, requiring technical analysis for professional judgments. Implementing pro rata liability may increase the adjudication burden on judicial authorities. Additionally, case processing cycles may be prolonged, affecting the efficiency of investor remedies. Therefore, while apportioned liability reflects a more nuanced judicial approach, it requires clear application criteria at the regulatory level and the support of quantifiable rules.

3. Typology of Mass Tort Actions and Analysis of Liability Attribution Pathways

3.1. Cross-Analysis of Causal and Subjective Dimensions

In most tort cases, the traditional approach often focuses solely on whether the actor possessed subjective intent or collusion, while overlooking the actual role each party's actions played in causing the harm and the differences in their mental states. Therefore, this paper advocates using the “strength of causation” to evaluate the actual contributory role each party plays in the tortious outcome—assessing not only whether a particular act was a necessary prerequisite for the harm or could have caused it alone, but also whether it served as a “substantive contributing factor” with critical influence on the overall result. Taking securities misrepresentation as an example, issuers typically constitute the core contributing force due to their dominant role in information disclosure. Intermediaries, however, require a weighting of their specific role within the causal chain based on their duties and degree of negligence. Simultaneously, attention must be paid to the subjective connections among actors: whether through explicit collusion, knowingly aiding, or negligence resulting from gross or ordinary fault, these factors influence the depth of liability. If they do not have a written agreement, the failure to collectively correct errors within a pattern of habitually working together, sharing information, or mutual interests can imply "cooperative behavior." Jointly considering causal contribution and subjective intention can more accurate stratify liability. This method ensures that liability is not too low and, at the same time, the market vigour will not be stifled via too much joint (guarantor type of) liability.

3.2. Establishing a Three-Dimensional Evaluation Model of Conduct-Fault-Profit

This paper proposes establishing a quantitative assessment system comprising three dimensions: "Behavioral Contribution," "Degree of Subjective Fault," and "Scale of Direct Profit." This system enables more precise and equitable allocation of liability in most tort cases. "Behavioral Contribution" measures each party's role in facilitating the harm. It assesses whether the behavior was a necessary precondition for the harm, whether it could have caused the harm independently, and the intensity of the behavior as a "substantive contributing factor." Issuers, as the direct producers of false information, bear the highest contribution. Intermediaries receive varying weights based on their functional roles and degree of negligence. Subsequently, "degree of subjective fault" is assigned tiered values, starting with explicit fraudulent conduct (highest weighting), followed by gross negligence, then ordinary negligence, and finally slight negligence (lowest weighting). This reflects the actor's internal motivation and the extent to which they breached their duty of care. The "direct profit scale" calculates the unjust enrichment derived from the infringement, such as inflating the offering price through false statements or illegally collecting fees. When the entity did not profit or even incurred losses, the weight of this dimension is reduced. Further consideration is given to behavioral contribution and subjective malice. This framework avoids simple weighted averages. In cases of joint intent or other high-priority scenarios, joint liability is maintained. For minor participants with ordinary negligence and limited gains, liability tends toward pro rata allocation. By flexibly adjusting factor weights, it provides judges with relatively objective and actionable standards for liability apportionment. This approach prevents liability spillover and low-level risk shifting while promoting judicial consistency and healthy market order development.

3.3. Quantification and Weighting Design

For operational convenience, this paper employs a dual-score quantitative framework for evaluation (0–5 scale, where higher scores indicate greater liability).

3.3.1 Dimension Scoring (0–5 points per dimension)

To achieve quantitative assessment, three major dimension scoring standards are established, as shown in Table 1.

Table 1. Three-Dimensional Scoring Criteria

Dimension	Weight	Scoring Range	Description
Behavioral Contribution	0.4	0-5	0 = No substantial impact; 5 = Directly caused the harmful outcome
Degree of Subjective Fault	0.4	0-5	0 = No fault; 5 = Intentional
Degree of Direct Benefit	0.2	0-5	0 = No profit or loss; 5 = Significant profit

3.3.2 Two Sets of Score Calculation Methods

Based on the scoring framework, this paper proposes two calculation methods: unweighted and weighted, as shown in Table 2.

Table 2. Score Calculation Methods

Calculation Method	Score Range	Calculation Rule
Unweighted Total Score	0–15 points	Direct summation of three-dimensional scores
Weighted Total Score	0–5 points	(Behavioral Contribution * 0.4) + (Degree of Subjective Fault * 0.4) + (Scale of Direct Profit * 0.2)

3.3.3 Recommendations for Liability Type Determination

To facilitate judicial application, liability ranges may be established based on the unweighted total score, with adjustments made by reference to the weighted total score, as shown in Table 3.

Table 3. Liability Classification Model

Unweighted Total Score (0-15)	Weighted Total Score (0-5)	Recommended Liability Form	Determination Logic
≥8 and (Behavioral Contribution ≥4 and Subjective Fault ≥4)	≥2.7	Joint Liability	High scores in at least two core dimensions indicate high involvement + high fault
5–7.9	1.7–2.6	Limited or Proportional Liability	High in one dimension but moderate in others, or significant profit with limited causation/fault
<5	<1.7	Proportional liability	Low involvement + low fault, preventing liability spillover

3.3.4 Basis for Threshold Setting

Under the 15-point system, 8 points represent approximately 53% of the maximum score. This implies that at least two dimensions must achieve high scores of around 4 points to enter the high liability range. This setting effectively avoids unreasonable joint liability arising from extreme values in a single dimension, such as high profits coupled with low participation. The threshold is not fixed and can be dynamically adjusted based on judicial practice and legislative guidance cases, ranging between 7 and 9 points.

3.4. Comparative Law Support

3.4.1 U.S. Approach – Dual-Pronged Test Aligns with Model

In U.S. securities law, judicial practice under Section 10(b) of the Securities Exchange Act and SEC Rule 10B-5 emphasizes a dual-recognition mechanism focusing on participation level and fraudulent intent. Liability determination under U.S. securities law centers on identifying the actor's subjective malice and the substantive role their actions played in causing harm. Under Section 10(b) and Rule 10b-5, courts typically require two conditions to be satisfied concurrently: First, the defendant must possess subjective fraudulent intent; second, their conduct must have a "materially contributing effect" on investor losses. The case Securities & Exchange Comm'n v. Luckin Coffee exemplifies this logic: courts held executives liable while exempting ancillary intermediaries from joint liability, emphasizing precise attribution of responsibility [11]. This approach aligns closely with the "dual-dimensional analysis framework" proposed herein—examining not only the strength of causal links but also refining the hierarchy of subjective intent assessments to avoid formalistic liability.

3.4.2 Germany—The Boundary Between Causal Strength and Subjective Conspiracy

Germany, also part of the civil law tradition, emphasizes individual liability in tort law under its Civil Code. In cases involving multiple tortfeasors, if the causal chain linking each act to the harm can be identified, liability is allocated proportionately. Joint and several liability applies only when causal attribution is impossible and intentional co-ry is present. For instance, in the Wirecard financial fraud case, the German Federal Court of Justice ruled that despite collusive fraud among Wirecard executives, the auditing firm EY was not held jointly liable. The reasoning was that EY lacked subjective complicity and there was no substantial causal link between its actions and the fraudulent outcome [12]. This case exemplifies the distinction between "subjective connection" and "causal intensity." Germany's approach demonstrates a strict distinction between "causal intensity" and "subjective malice," supporting the logic of the classification rules proposed in this paper. Furthermore, its refined liability pathways offer valuable insights for establishing a proportional liability system in China.

3.4.3 International Trends and Their Applicability to China

Although the American and German legal systems follow different paths, both demonstrate precise identification of causal chains and subjective states. This aligns closely with the rule logic of causal association and subjective connection proposed in this paper, providing a theoretical foundation and corroboration for constructing a tripartite quantitative model of conduct-fault-gain. Specifically, the American emphasis on substantive contributing factors and subjective intent corresponds well with the conduct contribution and degree of subjective malice in the proposed model. Germany's emphasis on delineating liability through causal chains and subjective complicity provides clear boundaries for applying joint and several liability versus proportional liability. Neither system mechanically holds auxiliary intermediaries accountable; instead, they emphasize stratifying liability based on actual impact and subjective fault, offering exemplary models for limiting intermediary liability.

4. Conclusion

This paper focuses on the scope of application of joint and several liability versus proportional liability in securities misrepresentation cases, revealing issues such as ambiguous standards, inconsistent judicial discretion, and imbalanced liability allocation in existing judicial practice. Theoretically, it proposes a dual-dimensional liability framework centered on "causal connection + subjective link," complemented by a three-dimensional quantitative model measuring "contribution to conduct—degree of subjective fault—scale of direct profit." This aims to provide a more objective, flexible, and practical tool for liability allocation. Analysis of landmark cases such as Kangmei Pharmaceutical, Wuyang Bond, and Lanshan Technology reveals that unclear liability forms, overuse of joint liability, and lack of clear standards for proportional liability all adversely impact judicial efficiency, fairness, and market vitality. This paper advocates adopting typified liability logic and a tiered liability assessment model to protect investor rights while accommodating intermediaries' reasonable expectations. Comparative legal research indicates that current measures in the United States and Germany support and validate the dual-dimensional, tripartite model proposed herein, offering valuable insights for China's institutional refinement. Consequently, China should: - Refine legislative criteria for establishing majority tort liability, clarify liability forms under different subjective states, and institutionalize the liability assessment model through regulatory provisions or judicial interpretations; At the practical level, China should promote the reasonable application of pro rata liability and the implementation of internal recourse mechanisms, forming a closed-loop system of "unified external compensation—internal liability allocation" based on existing frameworks. This approach will safeguard investors' right to relief while establishing a fair and efficient securities tort liability system, thereby fostering the development of capital markets.

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