

## 2. Law of Property and Obligations

### **Death of an employee on night duty battered by a third party and the safety care liability of the employer.**

Decision by the Second Petty Bench of the Supreme Court on April 10, 1984. Case No. (o) 152 of 1983. A case claiming damages. 38 *Minshū* 557.

#### *[Facts]*

When A, an apprentice of Y Corporation, was on night duty, B, a former employee of Y, trespassed onto Y's building with the intention to commit a theft. As A knew of B's everyday dissolute behavior, when A met B, A ordered B to leave the building. However, B ignored A's order, strangled him and battered his head with a bat, resulting in A's death.

X, parents of A, filed a claim for damages based on the breach of the safety care liability of Y as the employer, alleging (1) imperfect facilities for the prevention of crimes, (2) inappropriateness of night duty for a newly employed apprentice A, and (3) incomplete training and safety education of employees.

At first and second instances, the courts awarded damages to X. Y submitted a *jokoku* appeal.

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

*Jokoku* appeal dismissed.

An employer has a duty to protect his employee from hazards to his life and body in establishing and administering a place, facility, instrument or anything else that the employer ought to establish for execution or administration of business when the employee is acting under directions of the employer. (Such duty shall be referred to as "the safety care liability" hereafter.)

Applying this doctrine to this particular case, Y has a duty

to protect his employee from hazards to his life and body, in establishing facilities that prevent a thief and others from trespassing easily into the buildings of his company where there is the employee on night duty, and in establishing facilities that prevent physical assault to the employee which might be caused by a thief or others in case of their trespassing into buildings, and where there is any difficulty in maintaining such facilities, then the company should increase the number of people on night duty and give safety education and training to people on night duty, as well as establish better facilities.

As many expensive goods had been displayed and stored in Y's building, there had been many incidents of missing and stolen goods, and Y had often received suspicious telephone calls, but nonetheless, Y had not provided facilities to prevent trespassing such as an observation window, an intercom, or a burglar preventive chain, and did not increase the number of people on night duty nor give safety education to people on night duty, so the court could not help but conclude that there was a fault in the safety care liability of Y to the employee A.

If Y had fulfilled his safety care liability as an employer, Y could have prevented the occurrence of an incident like A's murder; thus the murder in this case resulted from the breach of the safety care liability of the employer Y.

*[Comment]*

The safety care liability, which is recognized as an incidental contractual liability arising out of the concept of good faith, imposes various obligations on the parties to particular legal relations such as employment relations.

Nowadays, there are many actions concerning default in the safety care standard of the employer, which are brought by those employees or relatives of employees who were injured or died while on the job. The number of such actions has become especially apparent since the leading judgment of the Supreme Court decision (on Feb. 25, 1975, 29 *Minshū* 143) which affirmed the

existence of the safety care liability.

The present case also found liability based on the breach of the safety care liability. At the same time, the precedential value of this judgment lies in the fact that the Supreme Court recognized the liability of an employer to pay damages to employees in the case of injury and death caused intentionally by third parties.

By Prof. TERUAKI TAYAMA

Prof. KATSUICHI UCHIDA

NAOYA SUZUKI

### 3. Family Law

#### 1. A case in which the date for commencement of the limitation period for renunciation of a succession was at issue.

Decision by the Second Petty Bench of the Supreme Court on April 27, 1984. *Jokoku* appeal dismissed. Case No.(o) 82 of 1982. A case demanding money lent, etc. 38 *Minshū* 698. 1116 *Hanrei Jihō* 29. 528 *Hanrei Taimuzu* 81.

#### [Facts]

As A stood guarantor for quasi-loan for consumption worth ten million yen between B and X (plaintiff, *koso* respondent, *jokoku* appellant), it was claimed that A had incurred a debt by guaranty. On Feb. 22, 1980, the court at first instance passed a judgment upholding the plaintiff's claim. But because, on Mar. 5, 1980, A died, X moved for a revival of the action. The court at first instance granted the motion, and served a copy of the judgment on Y<sub>1</sub>, Y<sub>2</sub> and Y<sub>3</sub> who were A's heirs (defendants, *koso* appellants, *jokoku* appellees). But having run away from home in 1966, A had had no connection with Y<sub>1</sub> and the others.