

物受侵害之損害賠償

About the Compensation Responsibility when Things Damaged

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中文摘要

物受侵害時，被害人除得依民法第一百九十六條請求賠償外，並不排除民法第二百十三條至第二百五條之適用。因此，被害人得請求賠償義務人回复原狀或賠償其物因毀損所減少之價額。實務上見解認為修理材料以新品換舊品時，應依固定資產耐用年數表予折舊。以致被害人於物受侵害時，必須負擔部分修理材料之費用，實不公平。本文認為物受侵害時，即使修理材料以新品換舊品，只是讓受侵害之物得以回復原本應有之狀態而已，並不會導致該物之整體價值增加，因此並不會有受害人因侵權行為之損害賠償而更受有利益之情形，不應令被害人負擔材料折舊之費用。至於，當事人間同意以新品換舊品(例如以使用 2 年之車輛賠償使用 5 年之車輛之情形)作為損害賠償時，本文認為此屬代物清償，雙方當事人間是否實施清算機制，應委由當事人自行合意。

關於寵物受侵害而死亡時，寵物之所有人得否主張慰撫金之損害賠償，近年雖有正反不同意見。本文見解主張，依現行之法律制度，寵物仍屬於權利客體之物，寵物受侵害而死亡時，係飼主之所有權被侵害。而所有權被侵害時，即使權利人有產生精神上痛苦，但因不符民法第十八條，第一九四條及第一九五條之規定，難以肯認飼主慰撫金請求權之存在，是否要肯定寵物於法律上之特殊地位應由立法機關立法解決。

關鍵字：物 損害賠償 回復原狀 金錢賠償 以新換舊 折舊 寵物 動物

Abstract

When the property is infringed, in addition to claiming compensation in accordance with Article 196 of the Civil Law, the application of Articles 213 to 215 of the Civil Law is not excluded. Therefore, the victim may request the obligor of compensation to restore the injured party to the status quo before the injury or for the diminution of the value of the thing. In practice, it is believed that when the repair materials are replaced with new ones, they should be depreciated according to the table of durability years of fixed assets. As a result, the victim must bear part of the cost of repairing materials, which is really unfair.

This article believes that when the object is infringed, even if the repair material is replaced with a new product, it will only restore the damaged object to its original state, and will not increase the overall value of the object. Therefore, there will be no situation where the victim will be more profitable due to the damages of the tort. In the case of compensation for the damages of the tort, the victim should not bear the cost of material depreciation.

As for when the parties agree to exchange a new product for an old one (for example, a vehicle that has been used for 2 years is compensated for a vehicle that has been used for 5 years) as compensation for damages, this article believes that this is a substitute performance. Whether a liquidation mechanism is implemented between the two parties should be entrusted to the parties agree on their own.

Keywords: compensation, restoration of the status quo ante, monetary compensation, substitute performance, depreciation