

# Civil Liability for Mudslide Disaster

October 29, 2021

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## 1. Introduction

In recent years, floods caused by the heaviest rains and typhoons in recorded history have been occurring every year. This year, too, there was a mudslide in Atami in July, and in August, long rains caused by a linear precipitation belt caused flooding damage in many areas. In such natural disasters, there are cases where the victims have no choice but to accept the damage as force majeure, while there are also disasters where the cause of the damage seems to be man-made problems such as inappropriate embankment or delay in river improvement. In this paper, I would like to summarize the location of civil legal responsibility for disasters that are not caused by force majeure due to natural disasters but are man-made disasters.

## 2. Where the legal responsibility lies

### (1) Case study

When a disaster caused by a mudslide occurs in a developed area, the entities responsible include the current landowner, the contractor who ordered the development work (the landowner at that time who applied for a development permit from the government), the development contractor, and the government who granted the development permit.



For example, let us consider the legal responsibility in the case of inappropriate construction of an embankment.

### (2) Responsibility of current landowners

Since the mudslide occurred on the land that the landowner owns, the landowner will be held liable for the work (Article 717 of the Civil Code) because of the defective installation or preservation of the embankment, which is the work of the land. (In some cases, if the land is natural and untouched by humans, it is not considered a "structure" and the landowner is not liable for a landslide. This is a no-fault liability (liability without negligence) that arises even when the landowner has purchased the land without knowing about the defective construction of the embankment. Therefore, when you purchase land, you are assuming the potential risk of the land, and you should be aware that you may be held responsible for a great deal depending on the nature of the land. If the owner of the land is the government, the government is liable for the construction of public structures (Article 2 of the State Liability Law) for defects in the installation or management of public structures.

### **(3) Responsibility of the landowner at the time of embankment**

The owner of the land at the time of the embankment is not liable for the land work because he is not the owner now, but he is liable in tort (Article 709 of the Civil Code) if he ordered the construction of the embankment and instructed the construction of the embankment improperly, or if he was aware or could have been aware of the improper construction of the embankment and failed to take countermeasures. In this case, they are liable for tort (Article 709 of the Civil Code). If the orderer of the construction work is the government, the government is liable for the construction work (Article 2 of the State Liability Law), because there was a defect in the installation of public structures in the design process of determining the specifications and construction method of the embankment.

### **(4) Responsibilities of the land development contractor**

The contractor who performed the inappropriate embankment work is considered to be negligent and liable in tort (Article 709 of the Civil Code) for performing the embankment work without sufficiently performing the steps, compaction, and installation of drainage facilities with appropriate drainage capacity, as stipulated in the technical guidelines for embankment work. In this case, it is not enough to prove that the construction was done improperly, but it is also required to prove the causal relationship that the landslide was caused by the improper construction. Therefore, it is too early to assume that the victims can win the case just because they were able to grasp the inappropriate construction. It is necessary to clarify the technical mechanism that caused the landslide.

### **(5) Government Responsibility**

If the government that issued the development permit overlooked any illegal points in the permit application, it will be liable for state compensation (Article 1 of the State Compensation Law). However, this does not mean that the government is immediately liable for any inadequacies or illegalities in the application documents, but they must be caused by the occurrence of the landslide. Although there are few cases where the government is found to be negligent at the permission stage, there are many cases where the government's response to the discovery of illegal construction after the completion of the development work is considered to be problematic. The reason for this is that when the government finds out about the illegality of the construction work, even if the permission is not granted at the stage of application for permission when the construction work has not yet started, the actual situation will remain unchanged just by exchanging the application documents, whereas when the government orders the correction of the illegal situation after the completion of the construction work, it is necessary to force the contractor to take new corrective actions to change the current situation. The reason for this may be that the government is hesitant to do so.



### **3. Disaster prevention**

It is out of the question for the contractor to carry out illegal construction work, but it does not mean that the contractor or landowner is not responsible for the construction just because they did not carry out the work. In the first place, before assuming responsibility or not, we should be aware that we are involved in a risky construction project and not leave it to the contractor to prevent irreparable damage to third parties caused by illegal construction.

Since the government has the most important mission of protecting the safety of the residents, it should actively exercise its regulatory authority to order the parties concerned to take corrective measures as soon as possible if there is any illegal situation that may harm the residents, and make efforts to improve the situation as soon as possible. In the face of the frequent natural disasters that are occurring across the country, I would like the government to keep this in mind once again.

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