Principles of Civil Law

Lecture Title: Law of Obligations Part 2; Quasi-Contracts, Torts and Quasi-Torts

Diploma in Law (Malta)

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2. Quasi-Contracts

A quasi-contract is a lawful and voluntary act which creates an obligation towards a third party, or a reciprocal obligation between the parties.

Quasi-contracts where approximated to contracts from the aspect of the agreement between the wills of the parties; and therefore the obligations arising from quasi-contracts, were based on the certain will of one of the parties and on the presumed will of the other. This theory is now obsolete, because it does not correspond to reality: the person interested in a negotrium gestio finds himself bound without having done anything and the person who receives something which is not due certainty has no intention of binding himself to return it.

- Two forms of quasi-contracts are:

i. Negotorium gestio i.e. the management of one or more affairs of another person assumed by a person without being bound to and without a mandate

ii. Indebiti Solutio – this is an erroneous payment of debt

- This quasi-contract comes into being when a person, through mistake, pays what is not due by him under any civil or natural obligation either because:

i. There was never any obligation

ii. Because something different from what which is due but not by him

iii. Or because he pays that which is due but not to the person who receives it

- The conditions for the existence of this quasi-contract are:

1. The payment: i.e. the giving of something to a person with the intent of fulfilling an obligation which is believed to exist. It is indifferent whether the object of the payment be a sum of money or something else.
2. The indebitum i.e. the absence of a cause of payment. The cause of every payment is necessarily a debt; therefore there is an "indebiti solutio" only of there has been no debt. Even the payment of a conditional debt, during the pendency of the condition is an indebiti solutio because until the consideration verifies itself there is no debt. On the contrary the performance of an obligation before the lapse of the term to which it is subject is not an indebiti solutio in order to talk to of an indebitum solutio the payment must not be due, not only civilly, but also naturally.
3. Mistake in the solutio i.e. the person must have paid under the mistaken belief that such debt was due by him. If on the other hand he pays the indebitum knowingly that there is no quasi-contract and no right for the recovery of what he has paid because it is to be held that he wanted to make a donation

In order that there be a right of recovery it is necessary that a person has paid a debt believing himself to be the debtor, whilst in fact he was not: because if he pays the debt to the creditor with the knowledge that it is not he who owes the debt, he has no right to reclaim it, saving his right of resort against the actual debtor.

3. Torts and Quasi-Torts

- Torts and quasi-torts: an unjust act, whether positive or negative, whether due to *dolus* or *culpa*, which causes damage to the person or to the property of another individual. This is a cause of obligations based on natural law principles.

- The concept of tort (or delict) is different from that of crime. A crime is a violation of the law which is provided with a penal sanction and to the damage caused to society while tort is damage caused to the individual. When the crime is also a tort, the two actions remain separate.

- The notion of torts derives from Roman law but in Roman law it had a narrower application while today it is more generic.

There is a distinction between:

1. Direct responsibility: responsibility for one's own acts, which includes torts (*dolus*) and *quasi-torts* (culpa)

2. Indirect responsibility: responsibility for acts done by others, animals or other objects for which the person is responsible

The Maltese Civil code, in the section, "Of Torts and Quasi-Torts" deals both with direct responsibility, i.e. the responsibility of one's own act and with indirect responsibility i.e. the responsibility for acts caused by other persons.

So what is the distinction between Tort and Quasi-Tort?

The distinction is present in our code, however, there is no definition. Various commentators suggested various criteria for distinguishing torts from quasi-torts:

- A tort is an act of commission irrespective of whether it was committed through dolus or culpa, while a quasi-tort is an act of omission.
- The most widely accepted doctrine is that of Pothier – tort consist in an act, whether one of commission or one of omission committed through dolus through which an unjust damage to the victim ensues. A quasi-tort is a similar act but this is committed through culpa.

In the lack of distinction, the Court has followed Pothier's criterion of distinction:

G.Davision v. J. Azzopardi, the court in explaining the requisites of tortuous responsibility held that, in delict there is a free voluntary intention to cause the damage, thus there is dolus, while in quasi-delict there is culpa. This moral element, i.e. the dolus in delict and culpa in qausi-delict marks the difference between the two.

In C. Micallef v. R. Avallone, the Court explained that when the legislator speaks of the damage caused by negligence or imprudence, the basis of the responsabilit is extra-contractual culpa, i.e. what the Romans termed as "il-kolpa Akwiljana".

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Direct Responsibility

There are 4 requisites of direct responsibility which are (Caruana Galizia)

- The act must be imputable to the person committing it
- The act must be unjust
- 2. The act must cause damage
- 3.
- 4. The act must have been committed through dolus or culpa

Direct Responsibility is dealt with in Article 1031 of the Civil Code:

1031. Every person, however, shall be liable for the damage which occurs through his fault.

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The 4 elements of Direct Responsibility:

A. An act which is imputable to the person: an act is imputable to the person when committed by one who knows what he is doing and is doing so freely. The following persons are not responsible:

- Persons of unsound mind, whether interdicted or not
- Children under 9 years of age
- Children 9 – 14, there is a juris tantum presumption that they are not responsible but one may bring proof that they acted with mischievous discretion

- However, the injured party may sue these indirectly. However there is an exception where the Court may order the damages to be made good, wholly or in part, out of the property of the minor or of the person of unsound mind; where:

1. The injured party cannot recover damages from other persons because they are not liable or because they have no means; AND

2. The damage did not occur due to the negligence, want of attention or imprudence of the injured party

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For instance:

Drunkenness does not exempt one from responsibility because a person may get drunk with the specific intent of committing the unlawful act, in which case he is guilty of *dolus*; or he may have gotten drunk without such specific intent, in which case he is guilty of culpa because a reasonable person knows that in such a state there is a risk of committing unlawful acts.

The same act, can lead:

1. Civil responsibility (as dolus / culpa);
2. Criminal responsibility

B. Which is unjust: this means unlawful i.e. any act or omission constituting a breach of duty imposed by law. If an act, although it causes damage, is not unlawful, there is no tort or quasi-tort.

Our courts have interpreted an unjust act as not necessarily requiring that the act be illegal in itself. It must only be illegal in the sense that it violates the victim's rights. In *C. Garcin v. F.Borg* it was pointed out that, any act of man even if it is not illegal in itself, but which causes damages to others is sufficient to be the basis for tortuous responsibility.

Examples of acts which are not unjust and therefore there is no action for damages:

1. If the act was committed with the approval of the injured party
2. If the act was committed with the proper limits of the exercise of one's rights
3. If the act was committed in lawful self-defense
4. If the act was committed by a person in virtue of a duty imposed upon him by law

Lawful self-defence

Pacifici Mazzoni maintained that a person who acted in the lawful self-defense does not commit an unjust act and is therefore not responsible for tort, and therefore not liable to make good any damage. This is due to the fact that in self-defense, the element of unjust is lacking. The Maltese civil code has no explicit provision declaring that a person acting in self-defense is exempt from tortuous responsibility. Such exemption is inferred from article 1033.

Legal theory suggests that six conditions need to be concur so that a person may benefit from the exemption:

1. There must be actual danger
2. The danger must be to a right self-guarded by law whether pertaining to the person acting in self-defense or to another person. It may be a right of a proprietary nature.
3. The defense must be a reaction to an unjust attack
4. The defense must be necessary and inevitable
5. The act of self-defense must be directed solely against the aggressor
6. The defense must be proportionate to the attack

- If the agent had a duty to act

There are cases where the person committing an act had a duty imposed on him by law. As there is the requirement by law the element of injustice would be lacking, e.g. the act of the executioner executing a death sentence.

Possible use of force by Police officials during arrest which is Lawful

There are judgments that held that the fact that an act is in itself illegal is not a conclusive proof that its agent is responsible for tort. In order that responsibility may arise, it must be proved that all the elements of responsibility arise.

In J. Vassallo v. J. Galea which dealt with a collision during the night. The court held that the mere fact that the defendant was not carrying the lights required by the Police Laws does not provide conclusive proof of his responsibility. In fact, there must be a conclusive proof of the link of causation between the such inobservance of regulations and the ensuing harm.

C. Which causes damage: it is for this reason that it becomes a source of obligations; damage may be either to the person or to the property.

This is what we refer to as the causal link or the link of cause and effect

In *G. Thomas Davison v. J.Azzopardi*, The Court explained that, it is naturally not sufficient that the guilt is constituted, but it is important that the guilt had caused damage which is actual, valuable, and proved in some way.

- In order that the agent of the act may be held responsible for tort, it is not only necessary that the such damage ensued, but it is also necessary that such damage ensued as a consequence of the agent’s unjust act.

- In Ellul v. Mamo it was held that in order to assert who is responsible for damage, it is necessary that there is a link between the tortious act and the result.

- Our courts have repeatedly held that the onus of proving the existence of this link of casualty between the unjust act committed by the agent and the damage suffered by the victim lies on the person alleging responsibility, i.e. the plaintiff. In Vella v. Stafford, the Court held that in an action for the recovery of damages, it is not enough to prove that there was a specific damage on the property but one also needs to show that the damage was caused though the fault of the person who is being sued for damages.

In G. Cassar v. S. Chetcuti it was held that in order for a conduct to lead to responsibility, the damage must be connected to the act. In this case, the defendant had violated the police laws as the he hired a car from the plaintiff, while the defendant's license was not renewed. Meanwhile, another car collided in the car whish the defendant had hired from the plaintiff, and the plaintiff claimed damaged from the defendant.

The Court held that although Chetcuti had violated the police laws, it could not be said that he was the juridical cause of the damage sustained. The fact, that the defendant failed to renew his driving license did not necessarily mean that he did not know how to drive. In this case, the Court held that the person responsible for the collision would be responsible for the damage, as the casual link between the conduct leading to damage and the plaintiff had been minimized.

In *P. Zammit v. Nutar O. Azzopardi*, the plaintiff and her husband entered into a marriage contract published by the defendant. Plaintiff's husband was a trader and the defendant failed to enter the marriage contract in the Registry of the Commercial Court, as he was bound by law to do. The Plaintiff sued for damages. However the court said that although the defendant was bound by law to enter the contract in the Registry and he was liable to a penalty in default, the defendant could not be declared responsible for tort, as the plaintiff had suffered no damage.

- The Link of Causality is interrupted in the case of Fortotious Event/Irresistable Force:

- 1. Bonnici v. Phoenicia Hotel – fortoutious event must be unusual and disproportionate
- 2. Cilia v. Vella – defining culpa and diligence – there is fortious event when the result coudl not have been forseen by the prudent and diligent ordinary man
- 3. Bonnici v. Ellul - the prior fault of the victim, followed by fortous event, does not remove the responsability of the defendant

Characteristics of Damage in General

Giorgi maintains that the requirement of damage is fulfilled if:

- 1. **The damage is certain** – i.e. it is inevitable, either because it has already happened or because the causes exist which will inevitably produce it. It is important to do a distinction between

  Future damage – this is a type of damage which though not already verified, it will inevitably do so. This type of damage is sufficient to found the basis of tortuous responsibility. Thus the lucrum cessans which is recoverable (e.g. future earnings) through the Civil Code always refers to future damage.

- 2. **The damage must be proved**

- 3. **The damage may be of patrimonial or moral nature** – in our case moral damages took long to be contemplated and included in our legislation. In the case A. Sailer v. G. Muscat, the Court explained that the act on the person caused negligence, imprudence or lack of attention is not in itself considered quantifiable, but one must look at the real losses of the victim as a direct result of the offence.

- D. Through dolus or culpa:

Dolus: the knowledge that one's act is contrary to a provision of the law, or that one's omission constitutes a breach of a duty imposed by law and that such act or omission will cause damage to others.

A person can only be held responsible for tort if he committed the act complained through dolus or culpa. One cannot talk of dolus or culpa, if the person concerned is not in the full enjoyment of his faculties of free will and understanding. One cannot talk of fault where the free will or understanding is missing, thus the illegal acts of a child cannot be imputable.

Culpa: omission of due diligence on account of which one is not aware that one's act is contrary to a provision of the law or that one's omission constitutes the breach of a duty imposed by law. From this want of diligence, responsibility arises because every person is bound to be diligent when others have an interest. The level of diligence required is that of a *bonus paterfamilias*, thus no one is responsible for damages occasioned through want of prudence, diligence or attention in a higher degree than normal, unless there is a specific provision of the law. Unskillfullness i.e. incapacity in performing work or services required is equivalent to culpa.

- **1032.** (1) A person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and attention of a *bonus paterfamilias.*
- (2) No person shall, in the absence of an express provision of the law, be liable for any damage caused by want of prudence, diligence, or attention in a higher degree.

- **1033.** Any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.

- **1038.** Any person who without the necessary skill undertakes any work or service shall be liable for any damage which, through his unskillfulness, he may cause to others.

Thus there are the following 2 rules:

- He who by an unlawful act or omission, or through unskillfulness causes injury to another, whether through dolus or culpa, is bound to make good such damage, and it is indifferent whether he had the intention of causing injury or not.
- The damage occurring to a person owing to a fortuitous event or force majeure or culpa laevissima is suffered by such a person, notwithstanding that the act of another has intervened, provided such act was not the effect of *dolus* or *culpa*.

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Indirect Responsibility

- This makes a person responsible for acts done by other persons or for damages caused by animals or other things for which such person is responsible. The basis of this responsibility is the omission of due vigilance in preventing acts done by others or in preventing the damage which may be caused by an animal or any other thing for which one should be responsible. Thus rather than a responsibility for acts done by others as such, it is more responsibility for one's own omission.

- Indirect responsibility makes a person answerable for acts done by other persons, or damage done by animals or things for whom such person is responsible by reason of some special relationship between the person responsible and such person, animal or thing. This is necessary to safeguard the principle of neminem laedere. The basis of indirect responsibility is the culpa in vigilando or the culpa in eligendo of the person declared by law to be responsible, sometimes this is presumed jure et de jure, sometimes it is presumed juris tantum and sometimes it is not presumed and so the onus lies on the victim.

The Civil Code however, recognizes six instances of indirect responsibility:

1. The responsibility of the person having the charge of a minor or of a person of unsound mind
2. The responsibility of the employer
3. The hotel-keeper's responsibility
4. The responsibility of the owner or user of an animal
5. The responsibility of the owner of a building
6. The responsibility of the occupier of a building

The list is exhaustive and the cases of indirect responsibility cannot be extended beyond that which is indicated in the law and analogy cannot be used in this respect

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1. Liability of a person having the charge of a minor or a person of unsound mind, for the acts of such person (S. 1034)

1034. Any person having the charge of a minor or of a person of unsound mind shall be liable for any damage caused by such minor or person of unsound mind, if he fails to exercise the care of a *bonus paterfamilias* in order to prevent the act.

1035. Persons of unsound mind, children under nine years of age, and, unless it is proved that they have acted with a mischievous discretion, children who have not attained the age of fourteen years, shall not be bound to make good the damage caused by them; saving, where competent, any action of the party injured against such persons as may be liable for such damage, under the provisions of the last preceding article.

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Calleja v. Gauci: It is not the material presence of the father that renders him responsible, but it is the direction and care that by law he should provide that binds him; even if the father leaves the minor children under the care of the mother, his responsibility subsists as long as there is patria potestas.

Prof. Caruana Galizia maintains that the responsibility is vested in those persons who have the actual custody of the minor or person of unsound mind, during the commission of the act complained of

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Zerafa v. Gauci

The 9 year old son of the defendant, on his way to school, threw a lid into a field which landed on the plaintiff's foot, preventing him from working for 2 weeks. **The court decided that the father was not guilty of culpa** on this basis:

There was no proof that the defendant failed in supervising his son. Before the incident, the defendant had never received any complaints regarding his son's behavior that could have implied that closer supervision than ordinary is necessary. The father went to work as usual, leaving the son with his mother who sent him to school. The accident could not seem to have been prevented because the son saw the lid in the road and to prevent it being stepped on, and not to put it on the pavement, he threw it in the field. The son checked to see whether there was somebody in the field, and the plaintiff himself admitted that he could not be seen from the street. Moreover, it was the wind which blew the lid onto the plaintiff's foot and a coincidence that the plaintiff was not wearing his usual sandals.

The court also referred to Calleja v. Gauci and said that: *the father has charge of the minors, and it is not his material presence that makes him responsible, but the direction and care that according to law he should give to his children. Even if the father leaves his minor children in the custody of their mother, the father's responsibility does not end as long as he is exercising patria potestas.*

The Court considered that given these circumstances, the incident was not one which could have been foreseen by a good father. The Court also referred to Baudry who says that responsibility applies to those acts of minor children which parental supervision can prevent. In this case one cannot say that the father failed to exercise ordinary vigilance, taken into consideration his social class and condition.

There have been various cases where the court considered that the person having care of the child did not exercise sufficient care over the child and so declared him responsible:

Calleja v. Gauci: the court considered the fact that children are left running about in the streets to amount to culpa

Sciberras v. Scerri: if a father failed to prevent his son from playing rough games whereby he could injure other children, he would be guilty of culpa

Zammit v. Cutajar: the fact that the child has *evil* tendencies does not exonerate the father, but rather means that more supervision was necessary. The court ruled out the fact that the father was at work as a justification for his lack of vigilance.

Gorg Borg v. Anthony Borg 20th October 2008

Children were playing in a play area of a restaurant while their parents were eating. In the same area, there was a flower box which was not bolted as it had previously fallen before. The children were playing with this and an accident happened with the consequence of the child having lost three of her fingers.

The First Hall Civil Court held that the defendant, as the manager of the restaurant, was liable for the injury since he was meant to ensure that the restaurant proved to be a safe environment.. However the court went on to say that the plaintiffs, who were the parents of the victim had not supervised their daughter adequately because they should have periodically checked on the children. Thus the court said that they had failed to exercise the supervision according to a bonus paterfamilias according 1034. Thus the damages which the Court apportioned were lessened due to their shortcoming.

2. Employer's Responsibility

1037. Where a person for any work or service whatsoever employs another person who is incompetent, or whom he has not reasonable grounds to consider competent, he shall be liable for any damage which such other person may, through incompetence in the performance of such work or service, cause to others.

One must note that this section applies only to torts and quasi-torts and does not govern contractual relationships which are regulated by different principles.

The employer's liability is restricted to cases where the harm caused can be linked to some kind of fault made by the employer in choosing the employee

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Maistre v. Testaferrata Bonnici: the defendant had employed a person to repair his tenement, the employee was incompetent and did not carry out the work properly, causing the floor to cave in, thus causing damage to the plaintiff's underlying tenement. With regards to reasonable suspicion as to employee's incompetence, the defendant raised the plea that he was not acquainted with the art of building and so could not suspect incompetence of his employee. The court rejected this defense: the defendant has an obligation to find help in choosing a competent employee if he was not in a position to make an informed decision.

Case-law has evolved various criteria to determine the competence of the employee:

- The fact that the employee had undertaken successful examinations in his line of work is sufficient proof of his competence (Azzopardi v. Vaudry)
- The fact that a person employed as a chauffeure had a driving license was enough proof of his competence (Mizzi v. Zimmermann)
- The mere fact that a person driving a car does not possess a driving license is not in itself conclusive proof of incompetence to drive if his competence can be otherwise determined (Azzopardi v. Vaudry)

3. Liability of Hotel Keeper

1039. (1) A hotel-keeper shall be liable up to an amount not exceeding one hundred and seventy-four euro and seventy cents (174.70) for any damage to or destruction or loss of property brought to the hotel by any guest.

(2) The liability of a hotel-keeper shall be unlimited -

(*a*) if the property has been deposited with him; or

(*b*) if he has refused to receive the deposit of property which he is bound under the provision of the next following sub-article to receive for safe custody; or

(*c*) in any case in which the damage to, or destruction or loss of, property has been caused, voluntarily or through negligence or lack of skill, even in a slight degree, by him or by a person in his employment or by any person for whose actions he is responsible.

(3) A hotel-keeper shall be bound to receive for safe custody securities, money and valuable articles except dangerous articles and such articles as having regard to the size or standard of the hotel are cumbersome or have an excessive value.

(4) A hotel-keeper shall have the right to require that any articles delivered to him for safe custody shall be in a fastened or sealed container.

This article which deals with the responsability of the hotel-keeper traditionally originated from a mistrust of hotel-keepers but today there are 2 main reasons:

- The guest relies on the vigilance of the hotel-keeper for the safety of the property that he brings to the hotel
- The hotel-keeper assumes a professional risk

In *Vella v. Dragonara Resort* case, the Court studied what level of proof the victim needs to bring forward. If the thing is deposited or there is a refusal of deposit, there is a de jure liability, BUT, if there is no deposit, under paragraph c, the victim must proof the liability of the hotel-keeper or the employee.

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4. Liability on the part of the owner or user of an animal

1040. The owner of an animal, or any person using an animal during such time as such person is using it, shall be liable for any damage caused by it, whether the animal was under his charge or had strayed or escaped.

So: who is liable, the owner or user?

- If owner of animal manages to prove that not he but another person was using the animal at the time of the injury then he is exempt from liability
- Christian von Bar: "All European laws now apply the same 3 criteria to identify the keeper of an animal: he must have *actual control* over the animal which he is *using* with the *intention of obtaining benefit from it.*"

Mark Anthony Amato versus Charles Spagnol et. PA: 5/10/2001

- Spagnol was a friend of the owner, Albert Howard & allowed him to graze his horse in his field. On the day of the injury, the horse leapt over the wall and into a public road, colliding with Amato's vehicle and harming it.

- Court endorsed legal expert's report, which claimed that what matters in order to determine use of the horse is whether it is of service to Spagnol, not whether it was in his charge but whether he obtained any benefit from it.

Pacifico Fenech vs William Ronald Murphy : Crt of Appeal: 3/11/2006

Mr Murphy’s Alsation dog attacked plaintiff as he was loading rubbish onto his “scammel” truck just outside Murphy’s home. Dog had not been kept in check

MR Murphy, as the owner of the dog, was held responsible although he alleged that he had taken all necessary meabsures to avoid such incidents. It was alleged that he had locked the door in the safety of his garage, but that his daughter had opened the door. Court held:

- Din ir-responsabbilta` tista' tigi eskluza bil-prova li l-fatt kien dovut ghall-forza magguri jew ghall-htija tad-danneggjat stess.

- Fil-kawza fl-ismijiet **Nazzareno Scicluna vs Paolo Zahra** deciza minn din il-Qorti fil-21 ta‘ Frar 1967 (Vol. LI.ii.804) intqal *inter alia*: "Li, pero`, ma jistax jigi eskluz li **dina r-responsabbilta`obbjettiva tigi nieqsa meta jirrizulta li l-incident li fih kien involut annimal, kien dovut ghall-kaz fortuwitu, jew forza maggiore; jew ghall-htija tad-danneggjat** (App. Toma, 3 Agosto 1927; La Giustizia, art. 1928, 8; Cassaz. Torino, 27 Maggio 1911, in re 'Contini vs An. Momnibus', Ital.1911, 1, 1, 1206).

- Li, meta jaghti l-kaz li annimal jipprovoka dannu lil haddiehor 'per proprio impulso' ('secondum natura'); dana jimplika r-responsabbilta` tas-sid, **minghajr dana ma jista‘ jigi ammess jipprova l-assenza tal-htija tieghu, billi r-responsabbilta` tieghu hija prezunta mil-ligi**.

Save exceptional circumstances:

Lorenzo Mercieca vs Salvatore Zammit 4/3/1963: FHCC

Defendant’s son was in his garage together with plaintiff’s son. Defendant’s dog was in the garage and tied with a leash to the wall. As the children were emerging from the garage, defendant’s dog bit plaintiff’s son.

Court accepted that in exceptional circumstances the owner of the animal would not be held responsible for damages caused by that animal, but these must be really exceptional circumstances which must be proved by the owner. Otherwise he/she is presumed to be liable.

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5. Responsibility of the Owner of the Building

- **1041.** The owner of a building shall be liable for any damage which may be caused by its fall, if such fall is due to want of repairs, or to a defect in its construction, provided the owner was aware of such defect or had reasonable grounds to believe that it existed.

A case where 1041 was applied, related to an apartment which was unoccupied and there were problems with the water tank, which was not switched off properly with the result that water cascaded on the underlying tenement, causing severe damage to the business underneath. The court said that the owner of the overlying tenement should have been aware that you cannot just abandon a building and so he was presumed to be at fault.

Indirect Liability under this article necessitates that the person is the owner of the building and not the mere occupier.

6. Responsibility of the Occupier of the Building

1042. Where any damage is caused to any person by the fall of a thing suspended or placed in a dangerous position, or by a thing or matter thrown or poured from any building, the occupier of such building, provided he himself has not committed the act, and has not in any way contributed thereto, shall not be liable except in so far as the provisions contained in this Title relating to the liability of a person for damage caused by another, are applicable to him.

- The occupier is only responsible in 3 cases:
- If he himself has committed the act
- If he has contributed to the commission of the act
- If he is responsible by virtue of some other case of indirect responsibility for the act of another

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Effects of torts and quasi-torts and of indirect responsibility:

- The general effect is the liability of making good the damages caused. This must be made good by:
  - Person/s who commit the tort or quasi-tort
  - Person who contributes to the tort or quasi-tort with advice, threats or commands
  - Persons who are indirectly responsible

- Where there are more than one person liable, the law distinguished whether they acted through *dolus* or *culpa*:
- If they acted maliciously, they are liable in solidum (the injured party may claim the whole damage from any of them)
- If they acted negligently, each is liable for the part of the damage caused by him
- If some have acted with malice and others without malice, those acting with malice are liable in solidum while those not acting with malice are liable just for the damage that they cause.

If the part of the damage that each has caused cannot be ascertained, respondents are all bound in solidum with regard to the injured person, even if some have acted maliciously and others have not, saving the saving the defendant's right to demand that the others are also called into the suit. Then the court will assess and apportion the damages in equal or unequal shares according to circumstances, as it sees fit. However, this only affects the internal relations between the parties who are liable, the injured party's right to demand the whole sum from any of the parties is not prejudiced.

- The object of the obligation is to make good the damage. There are 2 types of damages:
- *Damnum emergens*: actual losses of what the injured party already owns; expenses which the injured party may have been compelled to incur in consequence of the damage thus resulting in a diminution fo the injured party's estate
- *Lucrum cessans*: the loss of future earnings; relates to the fact that the actual estate of the injured party has not increased
- Both a person causing damage maliciously and negligently is liable. Before 1962, with regards to the sum that was awarded in case of permanent incapacity, a distinction was made whether the damage was caused negligently or maliciously. If the damage was caused negligently, then the sum awarded could not exceed £1200. However the 1962 amendment removed this capping so that now the court may award any amount it deems reasonable.

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- Extinction of the action for claiming damages

Apart from the general causes of extinction, the action for a claim of damages is extinguished by:

A. Prescription: this is of 2 years, unless the tort or quasi-tort is a crime, in which case the prescription is the same as that laid down for the criminal action. This rule applies to the action of claiming of damages .

B. Contributory negligence: if the injured party has by his imprudence, negligence and want of attention, contributed or given occasion to the damage. In such case part of the damage remains at the injured party’s charged. In this case it is at the court’s discretion to apportion the damages between the injured party and the other party, as it sees fit.

Diploma in Law (Malta)

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