Principles of Civil Law

Law of Obligations Part 2

Quasi-Contracts, Torts and Quasi-Torts

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Diploma in Law (Malta)

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Quasi-Contracts, Torts and Quasi-Torts

Quasi-Contracts, Torts and Quasi-Torts are dealt with in Sub-Title 2, Title IV of Book II of the Civil Code in Articles 1012 – 1051A. They are part of Title IV dealing with Obligations because each is a source of obligations

Quasi Contracts

- **Negotiorium Gestio**
- **Indebiti Solutio**
- **Actio de In Rem Verso**
- **Action for Services Rendered**

Torts

Quasi-Tort

- **Responsibility for Minors**
- **Responsibility of Employers**
- **Responsibility Hotel Keepers**
- **Responsibility for Animals**
- **Responsibility of Building Owners**
- **Responsibility of Building Occupiers**

2. Quasi-Contracts

Article 1012 defines a quasi-contract as *"... a lawful and voluntary act which creates an obligation towards a third party, or a reciprocal obligation between the parties"*

Quasi-contracts are so referred to since they were originally approximated to contracts with reference to the element of consent, consent being in such cases presumed, *viz* the obligations arising from quasi-contracts were deemed to be based on the consent of one of the parties and on the presumed consent of the other. This theory was not much favoured.

So, the *dominus negotii* finds himself bound without his consent whereas the person who receives a thing which was not due has no intention of binding himself to return it.

The obligation is thus created by operation of law rather than the consent of the parties.

The Civil Code contemplates two forms of quasi-contracts:

i. **Negotorium Gestio** (Art. 1013): the obligations of the person who has voluntary taken up the management of another person's affairs

ii. **Indebiti Solutio** (Art. 1021): the obligation to restore a thing unduly received

Two other quasi-contracts developed through jurisprudence are:

i. actio de in rem verso

ii. action for compensation for services rendered

The basis of each of these actions is based on equity.

Negotorium Gestio

Art. 1013: "*Where a person, being of age and capable of contracting, voluntarily undertakes the management of the affairs of another person, he shall be bound to continue the management which he has begun and to carry it out until the person on whose behalf he has acted is in a position to take charge of such management himself, and to do everything which is incidental to or dependent upon those affairs, and he shall be liable to all the obligations which would arise from a mandate*"

Negotorium Gestio

Duties of the Gestor

The rules relating to this institute are similar to those of mandate. The voluntary agent:

- must continue the work he has begun until such time as the interested party is in a position to take charge of such management himself (Art. 1013). Or, in the case of the death of the interested party, until the heirs are in position to take up the management of such affairs (Art. 1014).
- is also bound to everything which is incidental or dependent upon those affairs (Art. 1013).
- is bound to use the diligence of a bonus paterfamilias (Art. 1015), and hence unlike mandate were the mandatory is bound to use the same diligence as when managing his own affairs.
- A greater degree of diligence applies where the gestor intermeddles not withstanding a prohibition, and, as a consequence, the management not been undertaken by a more competent person whose skill the gestor does not possess (Art. 1016).
- is liable to all obligations arising out of mandate (Art. 1013; Art. 1873 *et seq.*)

Negotorium Gestio

Duties of the Interested Party

- To compensate the gestor even though he may have derived no benefit. The business should have been well managed by the gestor (Art. 1018)

- To indemnify the gestor and to reimburse all necessary and useful expenses incurred (Art. 1018)

- If the gestor though he was acting on his behalf and not on behalf of another, he is only entitled to compensation if the interest party has derived some benefit and to the extent of such benefit (Art. 1019)

- Not entitled to compensation if he has intermeddled despite a probibition (Art. 1020)

Indebiti Solutio (Art. 1021 – 1028)

Art. 1021: *"A person who receives, whether knowingly or by mistake, a thing which is not due to him under any civil or natural obligation, shall be bound to restore it to the person from whom he has unduly received it"*

This quasi-contract comes into being when a person, through mistake, receives from another something that was not due to him under any civil or natural obligation either because:

i. there was no obligation or the obligation was already extinguished;
ii. the person paying is not the debtor, despite the person receiving being a creditor
iii. or because he pays that which is due but not to the person who receives it

For the action to subsist, the following must concur:

- **Payment, in other words**the giving of something to a someone 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.

- **Indebitum**, jn other words the absence of a cause for the payment so made. The cause of every payment is necessarily a debt; therefore there is an "*indebiti solutio*" only if there has been no debt. Even the payment of a conditional debt, during the pendency of the condition is an *indebiti solutio* because no consideration is due until such time and the condition verifies itself. On the contrary the performance of an obligation before the lapse of the term to which it is subject is not an *indebiti solutio*.

- **Mistake in the solution**, that is that payment was made 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.

The prescriptive period is of 2 years.

Actio De in Rem Verso

Article 1028A: "*Whosoever, without a just cause, enriches himself to the detriment of others shall, to the limits of such enrichment, reimburse and compensate any patrimonial loss which such other person may have suffered*"

This quasi-contract is adopted from Roman Law, the basis of the action being the advantage one receives *sine causa*. Since 2007, the right of action has been introduced in our Code.

The action is subsidiary and can only be exercised in the absence of another remedy

- The consent of the defendant need not be proved
- The defendant need not be capable at law and may also be exercised against a minor

Actio De in Rem Verso

Elements for the exercise of the action:

- **Enrichment:** defendant must have achieved some advantage, which need not necessarily be monetary

- **Nexus Between Cause & Effect**: the acts of one person has derived an advantage to another person

- **Unjust Character of the Advantage:** the right does not subsist if the defendant has a right to the advantage

- **Not Otherwise Actionable** (Art. 1028B)

- Prescription is of 5 years

Compensation for Services Rendered

This action is an offshoot of the action de in rem verso but is classified separately on the basis of the different criteria adopted by the courts.

The action is also based on equity on the presumption that services rendered are presumed to be carried out with the prospect of gain in the absence of clear evidence to the contrary.

The prescriptive period for the action is of five years

3. Torts and Quasi-Torts

- Torts and Quasi-Torts are distinguished from Contract and Quasi-Contract on the basis of the fact that there is no previous agreement or relationship between the parties.

- Torts and quasi-torts may be defined as an unjust act, whether of commission or of omission, 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 principles of natural law.

- Article 1031 of the Civil Code provides that: *"Every person, however, shall be liable for damage which occurs through his fault"*

- The concept of tort (or delict) should be distinguished from that of crime. A crime is a violation of law sanctioned with punishment and addressed the damage caused to society at large, whereas the law of tort is concerned with the damage caused by one person to another. When the crime is also a tort, each can be actioned separately.

The fundamental distinction is between

1. **Direct responsibility**: or the responsibility for one's own acts

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

Direct Responsibility is dealt with in Article 1031 et seq. of the Civil Code

Art. 1030. *Any person who makes use, within the proper limits, of a right competent to him, shall not be liable for any damage which may result there from.*

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

Art. 1032 *"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"*

Art. 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"*

Direct Responsibility

The **four** requisites of direct responsibility are:

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

Imputable to the Tortfeasor

Liability only attaches if the perpetrator has full enjoyment of the faculties of will and understanding. For these reasons the following classes are considered incapable of causing harm and are therefore exempt from liability:

- Persons of unsound mind, whether interdicted or not
- Children under the age of 9
- Children between the ages of 9 and 14, unless proven that they acted with mischievous discretion

- An indirect responsibility attaches to the person under whose care they fall if they have failed to prevent the act by the exercise of a bonus paterfamilias, this however that if the injured cannot recover from such persons or because they have no means, he may recover out of the property of the minor or a person of unsound mind **and** if the damage did not occur due to the negligence, want of attention or imprudence of the injured party.

The Act must cause Damage

It is for this reason that the commission of a tort or quasi-tort becomes a source of obligations.

The injured party must prove a link between the cause and effect.

Damages must be certain, proven and of a patrimonial nature.

Unjust

That is any act or omission constituting a breach of duty imposed bylaw. No liability attaches if the act is lawful, despite the fact that damages have ensued.

Our courts have interpreted unjust acts as not necessarily requiring the act to be illegal in itself. It is sufficient it it violates the rights of the injured party.

In C. Garcin v. F. Borg it was pointed out that act of man, even if it is not illegal in itself, but which causes damage, is a sufficient ground for tortous responsibility.

Examples of acts which are not unjust and hence not actionable :

An act committed with the approval of the injured party

An act committed with the proper limits of the exercise of one's rights

An act committed in lawful self-defense

An act was by a person in virtue of a duty imposed upon him by law

- 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 tortous 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 a fortiutous event or irresistable force:

- 1. Bonnici v. Phoenicia Hotel – fortoutious event must be unusual and disproportionate

- 2. Cilia v. Vella – defining culpa and diligence – there is fortuitous event when the result could not have been forseen by the prudent and diligent ordinary man

- 3. Bonnici v. Ellul - the prior fault of the victim, followed by the fortuitous event, does exonerate defendant from responsibility

Characteristics of Damage in General

Giorgi maintains that damage must be :

- 1. **CERTAIN,** that is that damages have ensued (damnum emergens) or will inevitable ensue (lucrum cessans).

  Damages which though they have not verified themselves will inevitable verify themselves constitute sufficient ground for tortuous responsibility. A classical example is that of lucrum cessans, or the loss of future earnings.

- 2. **PROVEN.** It is for the plaintiff to prove the nexus between cause and effect and the value of the damages claimed

- 3. **PATRIMONIAL or MORAL**

- 4. 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.

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.

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Indirect Responsibility

- Indirect responsibility refers to the responsibility of an individual for the acts of those whose for whom or for which he is responsible.

- The basis of this responsibility is the omission of due vigilance in preventing acts done by those for whom of which he is responsible. For these reasons, the source of the responsibility is not strictly the responsibility for acts done by others but rather the responsibility arising out of one's own omission.

- Distinguish between culpa in vigilando and culpa in eligendo

- Responsibility arises as a result of the special relationship between the person responsible and such other person, animal or thing.

- In some instances, culpa is presumed on a jure et de jure basis, in other instance on a juris tantum basis and in other instances not presumed at all and hence must be proven

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

1. The responsibility of persons having the charge of a minor
2. The responsibility of the employer
3. The responsibility of the hotel keeper
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

Responsibility for Minors or Persons of Unsound Mind

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.

The test is not whether the minor acted negligently or otherwise, but whether the persons in charge exercised the duty of care imposed upon them as a *bonus paterfamilias*

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

Minors under the age of 9 can never be held responsible for this acts, whereas minors between the age of 9 and 14 can be held liable if mischievous discretion if proved.

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.

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.

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.

It is presumed that the employee had employed an incompetent person if it is shown that the employee was incompetent at the time of the injury.

It need not be proved that the employer knew the employee was incompetent at the time of his engagement.

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 defence: the defendant has an obligation to find help in choosing a competent employee if he was not himself 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 constituted sufficient 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)

Liability of Hotel Keepers

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.

The hotel keeper is automatically responsible for the first Euro 174.40 without the need to prove any fault on the part of the hotel-keeper.

The hotel-keeper assumes unlimited responsibility if it is show that:

- The thing was deposited with the hotel-keeper; or
- The hotel kepper refused to accept what he ougt to have have accepted on deposit; or
- If fault on the part of the hotel keeper or the employee is proven

A number of defences may be raised:

- Failure to inform the hotel-keeper without undue delay
- Evidence that loss was due to a fortious event or irresistible force
- Loss or damage is due to a reason inherent to the nature of the property damaged
- The loss or damage was due to an or omission on the part of the guest

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.

Responsibility for Animals

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.

Liability can be exempted if dolo or culpa are not proven, that is to say where the owner or user proves that he used due diligence.

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 measures 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.

Responsibility of the Owner of a 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.

The basis of liability is culpa in eligendo.

- Liability under this provision extends only to the owner, and hence not a temporary possessor
- Fall has been widely interpreted to include not only the fall of the building or parts of it, but also accessories to the building such as surrounding walls and gates
- Damage must result from the ordinary use of the building – Attard v. Farrugia exempted the owner from liability when the gate which crushed a child to death was used as a swing.

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.

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

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.

- 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.

21 ACADEMY

Diploma in Law (Malta)

CAMILLERI PREZIOSI