

INTRODUCTION TO NON- CONTRACTUAL LIABILITY UNDER SPANISH LAW

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Non-contractual liability

A person who by an act or omission causes damage to another, concurring fault or negligence, is bound to repair the damage caused (art. 1.902 CC)

Examples of non-contractual liability

Different systems of non-contractual liability

Harmonization: European Principles of Tort Law / Draft Common Frame of Reference

Requirements for non-contractual liability

- Unlawful act or omission
- Fault or negligence
- Damage
- Causation

Unlawful act or omission

- Unlawful act or omission:

Breach of a general rule of conduct:

alterum non laedere


+ Positive action

+ Negative conduct

Fault or negligence

- Also fraud or dolus → normally criminal liability
- Fault or negligence: any careless or imprudent act or omission that produces a damage which could have been foreseen by a prudent person
- Standard of conduct: circumstances of the person, time and place

Fault or negligence

- General rule: there is no liability without fault.
- Interpretation of fault by Spanish Supreme Court:
 - Increase of the standard of diligence
 - Reversal of the burden of proof
- Special cases of liability without fault (strict liability)  social consideration of damage: product liability; nuclear damages, motor vehicles; animals, etc.

Damage

Obligation to compensate when the negligent conduct of the agent produces a damage

- Damage: harm to a person or loss or diminution of what a person owns caused by the fault of another person
- **Elements**: a) value of the loss; b) loss of profit
- **Requirements of damage**: a) exist; b) certain; c) valuable (road traffic accident tables)
- **Types of damage**: a) personal (physical or emotional injuries); b) patrimonial

Causation

- Causation: relation between the conduct of the agent and the damage
- Theories to determine causation:
 - a) *conditio sine qua non*
 - b) proximity of cause
 - c) adequate causation
- Interferences in the causation:
 - a) Act of God or force majeure
 - b) intervention of a third party
 - c) contributory negligence
 - d) fault of the victim

Liability for others

- Liability for own acts (art. 1.902 CC)
- Liability for others (art. 1.903 CC): the obligation in art. 1.902 CC is enforceable not only for personal acts or omissions, but also for those of persons for whom someone is responsible. The agent of the damage is different from the person liable for it.
- Cases:
 - a) Parents or tutors for children, minors or incapable persons
 - b) Owners or managers of schools for damages caused by students during school time
 - c) Employers for damages caused by employees in the performance of their duties