

The Boundaries of Strict Liability in European Tort Law

The Common Core of European Private Law

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The Boundaries of Strict Liability in European Tort Law

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Edited by
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and
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The Common Core of European Private Law

For the transnational lawyer the present European situation is equivalent to that of a traveler compelled to cross legal Europe using a number of different local maps. To assist lawyers in the journey beyond their own locality the Common Core project was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger.

The aim of this collective enterprise is to unearth what is already common to the legal systems of European Union member states. Case studies widely circulated and discussed between lawyers of different traditions are employed to draw at least the main lines of a reliable map of the law of Europe.

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Relevant statutory and codified provisions (*In translation*)

Austria

Civil Code

Article 364

(1) In general, the exercise of an owner's rights is permitted only insofar as the rights of a third party are not thereby encroached upon or insofar as the limits thereof, established by the laws concerning the preservation and furtherance of the public welfare, are not violated.

(2) An owner of real property may prevent a neighbor from issuing from the latter's ground waste water, smoke, gases, heat, odors, noise, explosions and other nuisances insofar as they exceed the usual issuance according to local standards and are essentially prejudicial to the usual local use of his real property. Direct conduct upon the property of another without a special legal title is not permissible under any circumstances.

Article 364a

If, however, the encroachment is caused by a mine or another installation duly licensed upon the neighbor's ground which exceeds the issuance set forth above, the owner of the affected real estate is entitled to demand in court only compensatory damages, even if the damage originates from factors which were not mentioned during the administrative license proceedings.

Article 364b

A lot must not be excavated in such a manner that a neighbor's soil or house loses thereby necessary support, unless the owner of the lot procures another sufficient support.

Article 1041

Where property has been used for the benefit of another, not in the management of a business, the owner can demand the return thereof in kind or, if such return can no longer be made, the value thereof at the time of its use, even though no advantage was received therefrom.

Article 1293

Damage is every detriment which has been caused to any person in regard to his property, his rights or his person. The loss of profits which a person expects according to the usual course of his affairs is to be distinguished therefrom.

Article 1295

(1) A person is entitled to demand indemnification for the damage from a person causing an injury by his fault; the damage may have been caused either by the violation of a contractual duty or without regard to a contract. (2) A person who intentionally injures another in a manner in violation of public morals is liable therefore; however, if the injury was caused in the exercise of legal rights, the person causing it shall be liable therefor only when the exercise of this right obviously has the purpose to cause damage to the other.

Article 1298

A person who asserts that he has been prevented from the performance of a contractual or legal obligation without any fault on his part must bear the burden of proof thereof.

Article 1299

A person who claims publicly an office, art, trade or handicraft, or who assumes voluntarily without necessity a business which demands specialized knowledge or extraordinary diligence, warrants thereby that he trusts himself to possess the necessary diligence and extraordinary knowledge; therefore, such person is liable for the lack thereof. However, if the person who entrusted the business to him knew of his inexperience, or could have known thereof by applying the usual attention, such person is also guilty of negligence.

Article 1306-a

If in a case of emergency a person causes damages in order to avoid an immediately threatening danger to himself or another, a court must decide whether and in what amount such damage should be satisfied; in making such a determination the judge must take into consideration: whether or not the injured person himself has desisted from avoiding the danger out of regard to an injury which might occur to another person; the relation between the severity of damage and the danger; and, the amount of property owned by the injuring and the injured party.

Article 1307

If a person has put himself into a condition of mental disorder or distress by his own fault, any damages caused by him during such conditions are to be attributed to his fault. The same rule applies also to a third person who through his fault has caused such a condition to exist in a party causing injury.

Article 1309

With the exception of the situation set forth above, compensation is due to such an injured party from those to whom the damage can be attributed because of their neglect of surveillance over such persons in their care.

Article 1310

If the person injured cannot obtain any satisfaction in such a manner, a court must award either full compensation or a reasonable part thereof by taking into consideration: whether the person who has caused the injury, notwithstanding his general mental incapacity, is nevertheless at fault in the particular circumstances; whether the injured person failed to defend himself out of consideration for the person causing the damage; and, lastly, the amounts of property of the person causing the injury and the person injured.

Article 1313

A person is not generally liable for the illegal acts of another in which he has not participated. In cases where the laws determine the contrary, such person may claim redress from the person at fault.

Article 1315

A person who employs an unfit person for the care of his own affairs, or who knowingly uses a dangerous person therefor, is liable for any damage caused by such persons acting in such capacity to third persons.

Article 1319

If a person is injured by the collapse of a building or other construction erected on a lot, or by the breaking away of the portion thereof, or if some other damage has been caused thereby, the possessor of the building or construction is liable therefor, provided that the injury occurred as a result of the defective condition of the structure and he cannot prove that he had applied every means for the prevention of the damage.

Article 1320

If a person is injured by an animal, the person is liable therefor who has incited or irritated the animal thereto or who has neglected to keep it well guarded. The possessor of the animal is liable if he does not prove that he took precautions to ensure that the animal was properly guarded and kept.

Article 1325

A person who harms another person bodily shall bear the expenses of the cure of the person injured, compensate him for lost profits, or where the injured person is made incapable of earning a livelihood for the lost future gains, and moreover pay him at his request a compensation for his suffering, in accordance with the particular circumstances of the case.

Article 1409

(1) If a person acquires an estate or an enterprise, he becomes thereby directly liable for debts connected with the estate or the enterprise of which he knew or should have known at the time of the transfer, without prejudice to the liability of the seller to his creditors. However, he shall be released from further liability if he pays an amount of these debts equal to the value of the acquired estate or enterprise. (2) Inconsistent agreements between seller and purchaser which would prejudice creditors shall not be effective with respect to such creditors.

Finland

Tort Liability Act

Chapter 2, Section 1

(1) A person who deliberately or negligently causes injury or damage to another shall be liable for damages, unless otherwise follows from the provisions of the Act.

(2) The damages may be adjusted if the liability is deemed unreasonably onerous in view of the financial status of the person causing the injury or damage and the person suffering the same, and the other circumstances. However, if the injury or damage has been caused deliberately, full damages shall be awarded unless it is deemed that there are special reasons for a reduction in the damages.

Chapter 2, Section 2

If the injury or damage has been caused by a person under eighteen years of age, he/she shall be liable for damages to an amount that is deemed reasonable in view of his/her age and maturity, the nature of the act, the financial status of the person causing the injury or damage and the person suffering the same, and the other circumstances.

Chapter 2, Section 3

An insane, retarded or mentally disturbed person shall be liable for damages for injury or damage that he/she has caused to an amount that is deemed reasonable in view of his/her condition, the nature of the act, the financial status of the person causing the injury or damage and the person suffering the same, and the other circumstances. However, a temporary, self-inflicted mental disturbance of the person causing the injury or damage shall not in itself be deemed a reason for reducing his/her liability for damages.

Chapter 3, Section 1

- (1) An employer shall be vicariously liable in damages for injury or damage caused by an employee through an error or negligence at work. A person shall also be deemed to be an employer where he/she assigns work to an independent entrepreneur who in view of the permanent nature of the assignment, the nature of the work and the other circumstances is to be paralleled an employee.
 - (2) The provisions in paragraph (1) on an employer apply correspondingly to the state, a municipality and another public corporation or institution where the injury or damage has arisen through an error or negligence on the part of an employee of the public corporation, a public official or person in a comparable service relationship with the public corporation in activities that are not to be deemed the exercise of public authority.
 - (3) If a person who on orders of the authorities, as an elected official or on assignment for another, is performing a statutory task or a task in employment-like circumstances, and not as independent entrepreneur, causes injury or damage through an error or negligence, the party on whose behalf the task is being performed shall be liable for damages. If a student in an educational establishment causes injury or damage through an error or negligence while at work pertaining to the instruction, or if a patient in an institution causes comparable injury or damage while at work therapy, the party on whose behalf the work was being performed shall likewise be liable for damages.
- (1423/1991)

Chapter 3, Section 6

If the liability in damages referred to in this chapter is deemed manifestly unreasonable or if, in view of the extent of the injury or damage and the other circumstances, there is a special reason for the same, the damages may be adjusted.

France

Civil Code

Article 1382

Any act whatever of man which causes damage to another obliges him by whose fault it occurred to make reparation.

Article 1383

Each one is liable for the damage which he causes not only by his own act but also by his negligence or imprudence.

Article 1384

He is liable not only for the damage which he caused by his own act, but also for that which is caused by the act of persons for whom he is responsible or by things which he has in his keeping.

Law of 7 Nov. 1922. However, he who possesses by whatever right all or part of a building or of personal property in which a fire occurs is liable vis-à-vis third person for damage caused by such fire only if it is proved that it should be attributed to his fault or to the fault of persons for whom he is responsible.

Law of 22 Nov. 1922. This provision does not apply to relations between owners and tenants, which remain regulated by Articles 1733 and 1734 of the Civil Code.

Article 1385

The owner of an animal or he who avails himself of it while it is being put to his use is liable for the damage which the animal causes, whether the animal was in his keeping or whether it had strayed or escaped.

Article 1386

The owner of a building is liable for the damage caused by its collapse when it happens as a result of default of maintenance or through a defect in its construction.

Germany

Civil Code

Article 253

For an injury which is not an injury to property, compensation in money may be demanded only as provided by law.

Article 254

(1) If any fault of the injured party has contributed to causing the damage, the obligation to compensate the injured party and the extent of the compensation to be made depends upon the circumstances, especially upon how far the injury had been caused predominantly by the one or the other party.

(2) This applies also even if the fault of the injured party consisted only in an omission to call the attention of the debtor to the danger of unusually high damage which the debtor neither knew nor should have known, or in an omission to avert or mitigate the damage. The provision of §278 applies *mutatis mutandis*.

Article 618

(1) An employer has to fit up and maintain rooms, equipment and apparatus which he has to provide for the performance of the service, and so to regulate services which are to be performed under his orders or his direction, that the employee is protected against danger to life and health as far as the nature of the service permits.

(2) If the employee is taken into the household, the employer shall make such arrangements and regulations with regard to living and sleeping rooms, sustenance, and time for labor and for recreation as are necessary, having regard to the health, morality and religion of the employee.

(3) If the employer does not fulfill the obligations imposed upon him in regard to the safety and health of the employee, the provisions of §§842 to 846 applicable to delict apply *mutatis mutandis* to his obligation to make compensation.

Article 823

(1) A person who, wilfully or negligently, unlawfully injures the life, body, health, freedom, property or other right of another is bound to compensate him for any damage arising therefrom.

(2) The same obligation is placed upon a person who infringes a statute intended for the protection of others. If, according to the provisions of the

statute, an infringement of this is possible even without fault, the duty to make compensation arises only in the event of fault.

Article 827

A person who causes damage to another person when the former is unconscious or when he is suffering from a mental disturbance preventing the free exercise of his will, is not responsible for the damage. If he has brought himself into a temporary condition of this kind by alcoholic drinks or similar means, he is responsible for any damage which he in this condition unlawfully causes in the same manner as if negligence were imputable to him; the responsibility does not arise if he has been brought into this condition without fault.

Article 828

- (1) A person who has not completed his seventh year of age is not responsible for any damage which he causes to another.
- (2) A person who has completed his seventh but not his eighteenth year of age is not responsible for any damage which he causes to another, if he, at the time of committing the damaging act, did not have the understanding necessary for realizing his responsibility. The same applies to a deaf mute.

Article 829

A person who in one of the cases specified in §§823 to 826, is not responsible, by virtue of §§827, 828, for any damage caused by him, shall, nevertheless, where compensation cannot be obtained from a third party charged with the duty of supervision, make compensation for the damage as is reasonable under the circumstances; in particular where, according to the relative positions of the parties, equity requires compensation, and he is not deprived of the means which he needs for his own reasonable maintenance and for the fulfilment of the obligations imposed upon him by law to furnish maintenance to others.

Article 831

- (1) A person who employs another to do any work is bound to compensate for any damage which the other unlawfully causes to a third party in the performance of his work. The duty to compensate does not arise if the employer had exercised necessary care in the selection of the employee, and, where he has to supply apparatus or equipment or to supervise the work, has also ex-

exercised ordinary care as regards such supply or supervision, or if the damage would have arisen notwithstanding the exercise of such care.

(2) The same responsibility attaches to a person who, by contract with the employer, undertakes to take charge of any of the matter specified in (1) sent.2.

Article 832

(1) A person who is bound by law to exercise supervision over a person who needs supervision by reason of minority, or by reason of his mental or physical condition, is bound to make compensation for any damage which the latter unlawfully causes to a third party. The duty to make compensation does not arise if he fulfils his duty of supervision, or if the damage would have occurred notwithstanding the exercise of proper supervision.

(2) The same responsibility attaches to a person who undertakes the supervision by contract.

Article 833

If a person is killed, or the body or health of a person is injured, or a thing is damaged, by an animal, the person who keeps the animal is bound to compensate the injured party for any damage arising therefrom. The duty to make compensation does not arise if the damage is caused by a domestic animal which aids the business, the earnings or the prosperity of the keeper of the animal, and if the keeper of the animal has either exercised necessary care in supervising the animal or if the damage would have occurred notwithstanding the exercise of such care.

Article 834

A person who undertakes to supervise an animal under a contract with the keeper of the animal is responsible for any damage which the animal causes to a third party in the manner specified in §833. The responsibility does not arise if he has exercised necessary care in the supervision, or if the damage would have occurred notwithstanding the exercise of such care.

Article 836

(1) If, by the collapse of a building or other structure attached to a piece of land, or by the detachment of parts of the building or structure, a person is killed, or the body or health of person is injured, or a thing is damaged, and if the collapse or the detachment was caused by defective construction or in-

adequate maintenance, the possessor of the land is bound to compensate the injured party for any damage arising therefrom. The duty to make compensation does not arise if the possessor has exercised necessary care for the purpose of averting the danger.

(2) A former possessor of the land is responsible for the damage, if the collapse or the detachment occurs within one year after the termination of his possession, unless during his possession he exercised necessary care, or unless a subsequent possessor could have averted the danger by the exercise of such care.

(3) The possessor within the meaning of these provisions in the proprietary possessor.

Article 904

The owner of a thing is not entitled to prohibit the interference of another with the thing, if the interference is necessary for the avoidance of a present danger and the damage threatened is disproportionately great compared to the damage caused to the owner by the interference. The owner may demand compensation for the loss suffered by him.

Article 906

(1) The owner of a piece of land is not entitled to prohibit the intrusion of gases, vapors, smells, smoke, soot, heat, noises, shocks and similar interferences emanating from another piece of land to the extent that the interference does not or only immaterially prejudices the use of his piece of land.

(2) The same applies insofar as a substantial prejudice is caused by the use of another piece of land in conformity with local custom and it cannot be prevented by measures, the financing of which can be reasonably expected of users of this kind. If by virtue of this, the owner must tolerate an interference, he may demand from the user of the other piece of land an appropriate settlement in money, if by the interference in conformity with local custom the use of, or income from, his piece of land is prejudiced over and above the expected degree.

(3) The causing of intrusion through a special conduit is not permissible.

Article 909

A piece of land shall not be excavated in such a manner that the ground of the adjacent piece loses its necessary support, unless sufficient support of another kind is provided.

Greece

Civil Code

Section 249-Twenty year prescription.

Unless provided otherwise claims are prescribed after twenty years.

Section 253

The term of prescription regarding the claims set forth in section 250 begins to run as from the expiration of the year in the course of which occurs the starting point of the term of prescription as determined in the two preceding sections.

Section 285-State of necessity.

The destruction of a thing belonging to another shall not constitute an unlawful act to the extent that such destruction became necessary in order to avert an imminent danger threatening with a disproportionately greater prejudice the person who caused the destruction or another.

Section 286

A person who caused destruction within the meaning of the previous section shall be liable for damages if he had provoked the danger by his fault. In any other case such person may according to the circumstances be condemned to pay reasonable damages. After paying damages he shall have a right of recourse pursuant to the provisions governing voluntary agency as against the person who has profited by his action.

Section 335-Impossibility of performance.

If at the time of furnishing of the performance such performance is in whole or in part impossible for reasons either of general nature of relating to the debtor the latter shall be bound to compensate the prejudice resulting therefrom for the creditor.

Section 363

Unless the law provides differently a debtor shall be liberated from any obligation following a promise to furnish an impossible performance if at the time of the conclusion of the contract the debtor ignored without this being im-

putable to his fault that the performance was impossible. However the debtor shall be bound as soon as he has had knowledge of the impossibility to perform to notify accordingly the creditor. The provisions of section 338 are also applicable in the case by analogy.

Section 914-Meaning.

A person who has caused illegally and through his fault prejudice to another shall be liable for compensation.

Section 915-Cases of non responsibility.

A person who acted without being conscious of his acts or while being in a state of physical or mental disturbance that limited decisively the functioning of his reason and will shall not be liable for prejudice caused to another.

If at the time that prejudice was caused such person had put himself in such condition through the use of alcoholic beverages or other similar means he shall be liable for the prejudice except if he was reduced to the condition without fault on his part.

Section 916

A person who has not completed ten years of age shall not be liable for the prejudice he has caused.

Section 917

A person who has completed ten years but not fourteen years of age shall be liable for the prejudice he has caused except if he acted without discretion. The same rule shall apply in regard to deaf-mutes.

Section 918

A person who caused prejudice may where he is not held responsible pursuant to the provisions of sections 915 to 917 inclusive be condemned by the Court in its appreciation of the parties' respective situations to pay a reasonable compensation if the prejudice cannot be made good in some other way.

Section 922

A master or a person who has assigned to another the task of performing a service shall be liable for the prejudice caused illegally to a third party by the servant or the person assigned while performing his service.

Section 923

The person who has been entrusted by the law with the supervision of a person under age or of a person placed under judicial assistance shall be liable for the prejudice that such person has caused illegally to a third party except if the person in charge can prove that he performed properly in duty of supervision or that the avoidance of the prejudice was not possible.

Section 924

The possessor of an animal shall be liable for the prejudice caused by such animal to a third party.

If the prejudice has been caused by a domestic animal utilised in connection with the exercise of a profession or for guarding the house or for the nourishment of his possessor the latter shall not be liable if he can show that no fault may be imputed to him in relation to the guarding and supervision of the animal.

Section 925

The owner or possessor of a building or other work attached to the ground shall be liable for the prejudice caused to a third party by reason of its collapse whether in whole or in part except if he can show that the collapse is not due to a defective construction or to a faulty maintenance of the building or the work.

Section 967

Things of common use are in particular waters flowing freely and perpetually, roads, squares, shores, ports and roadsteads, the banks of navigable rivers, the great lakes and the shores thereof.

Section 989

A possessor who has been disturbed illegally shall have the right to demand the cessation as well as the avoidance in future of the disturbance. A claim for damages in accordance with the provisions governing unlawful acts shall not be excluded.

Section 1004.

The owner of an immovable shall have the right to prohibit the building or the maintaining of installations on a neighbouring immovable in so far as it

xxxiv relevant statutory and codified provisions

can be foreseen with certainty that their existence or use shall entail illegal side effects as regards the owner's immovable.

Section 1005

In the case contemplated in the preceding section if the installation is attempted following the issue of an authorization as required by law or with due observance of special conditions laid down in the law a removal of the installation may only be demanded after the harmful side effects resulting from such installation have actually materialised in regard to the immovable affected.

Section 1007

An immovable may not be dug up to such depth as to deprive the soil of a neighbouring immovable of the required support except if precautions have been taken to secure an appropriate consolidation of the soil in some other way.

Section 1107

The claim for compensation or for removal on account of the disbursements incurred by a possessor shall be extinguished as regards movables at the lapse of one month and as regards immovables at the lapse of six months as from the restitution of the thing.

Italy

Civil Code

Article 1223

The measure of damages arising from non-performance or delay shall include the loss sustained by the creditor and the lost profits insofar as they are a direct and immediate consequence of the non-performance or delay.

Article 1276.

If the obligation assumed by the new debtor toward the creditor is declared void or is annulled, and the creditor had released the original debtor, the obligation of the latter revives, but the creditor cannot avail himself of the guarantees furnished by third persons.

Article 2043

Any fraudulent, malicious, or negligent act that causes an unjustified injury to another obliges the person who has committed the act to pay damages.

Article 2044.

A person who causes injury in the exercise of self-defense or the legitimate defense of another is not liable for the injury.

Article 2045.

If a person who commits an act which causes injury was compelled by the necessity of saving himself or others from a present danger of serious personal injury, and the danger was neither voluntarily caused by him nor otherwise avoidable, the person injured is entitled to compensation in an amount equitably established by the court.

Article 2046

A person who was incapable of understanding or intending at the time he committed the act causing injury is not liable for its consequences, unless the state of incapacity was caused by his own fault.

Article 2047

If an injury is caused by a person incapable of understanding or intending, compensation is due from those who were charged with the custody of such person, unless they prove that the act could not have been prevented.

If the person injured is unable to secure compensation from the person charged with the custody of the person lacking capacity, the court, considering the financial conditions of the parties, can order the person who caused the injury to pay an equitable compensation.

Article 2048

The father and mother, or the guardian, are liable for the damage occasioned by an unlawful act of their minor emancipated children, or of persons subject to their guardianship who reside with them. The same provision applies to a parent by affiliation.

Teachers and others who teach an art, trade, or profession are liable for the damage occasioned by the unlawful act of their pupils or apprentices while they are under their supervision.

The persons mentioned in the preceding paragraphs are only relieved of liability if they prove that they were unable to prevent the act.

Article 2049

Masters and employers are liable for the damage caused by an unlawful act of their servants and employees in the exercise of the functions to which they are assigned.

Article 2050

Whoever causes injury to another in the performance of an activity dangerous by its nature or by reason of the instrumentalities employed, is liable for damages, unless he proves that he has taken all suitable measures to avoid the injury.

Article 2051.

Everyone is liable for injuries caused by things in his custody, unless he proves that the injuries were the result of a fortuitous event.

Article 2052

The owner of an animal or one who makes use of it, for the period of such use, is liable for damage caused by the animal, regardless of whether the animal was in his custody or strayed or escaped, unless he proves that the damage was the result of a fortuitous event.

Article 2053.

The owner of a building or other structure is liable for damages caused by its collapse, unless he proves that such damages were not caused by defective maintenance, or by a defect in construction.

Article 2054.

The operator of a vehicle which is not guided by rails is liable for the damage caused to persons or to property by operation of the vehicle unless he proves that he did all that was possible in order to avoid the damage.

In the case of collision of vehicles, it is presumed, until proof to the contrary is offered, that each operator contributed equally toward causing the damage suffered by each vehicle.

The owner of the vehicle, or in his place usufructuary or purchaser with reservation of ownership, is liable *in solido* with the operator of the vehicle, unless he proves that the vehicle was being operated against his will.

In any case, the persons indicated in the preceding paragraphs are liable for damage arising from defects in the manufacture or maintenance of the vehicle.

Article 2087

The enterpriser is required to adopt, in the operation of the enterprise, all measures which, depending on the particular nature of the work, on experience, and on technical knowledge, are necessary to assure protection of the physical integrity and moral welfare of the employees.

Netherlands

Civil Code

Book 6

Article 75

A failure in performance cannot be attributed to the obligor if it is neither due to his fault nor for his account pursuant to the law, a juridical act or generally accepted principles

Article 76

Where, in the performance of an obligation, the obligor uses the services of other persons, he is responsible for their conduct as if it was his own.

Article 77

Where, in the performance of an obligation, a thing is used which is unfit for the purpose, the resulting failure is attributed to the obligor unless this would be unreasonable in view of the terms and necessary implication of the juridical act from which the obligation arises, generally accepted principles and other circumstances of the case.

Article 109

1. The court may reduce a legal obligation to pay damages if a full award of damages would lead to clearly unacceptable results in the given circumstances, including the nature of the liability, the existing juridical relationship between the parties and their financial resources.
2. The reduction may not be made if it reduces the amount below that for which the obligor has covered his liability by insurance or was obliged to do so.
3. Any stipulation in breach of paragraph 1 is a nullity.

Article 162

1. A person who commits an unlawful act against another which is attributable to him, must repair the damage suffered by the other in consequence thereof.
2. Except where there are grounds for justification, the following are deemed unlawful: the violation of a right and an act or omission breaching a duty imposed by law or a rule of unwritten law pertaining to proper social conduct.
3. A wrongdoer is responsible for the commission of an unlawful act if it is due to his fault or to a cause for which he is accountable by law or pursuant to generally accepted principles.

Article 163

There is no obligation to repair the damage if the standard breached does not serve to protect against damage such as that suffered by the person suffering the loss.

Article 164

Conduct of a child under fourteen years of age cannot be attributed to him as an unlawful act.

Article 165

1. Where the conduct of a person of fourteen years of age or more may be considered an act performed under the influence of a mental or physical handicap, this does not exclude the attribution of the same to him as an unlawful act.
2. Where a third party is also liable towards the person suffering the loss on account of insufficient supervision, that third person must as regards the wrongdoer contribute to the damages for the full amount of his liability towards that person suffering the loss.

Article 166

1. If one out of a group of persons unlawfully causes damage and the risk of thus causing damage should have restrained such persons from their collective conduct, they shall be solidarily (jointly and severally) liable if they can be held accountable for such conduct.
2. As amongst themselves, they must contribute in equal shares to the damages unless, in the circumstances of the case, fairness requires a different apportionment.

Article 167

1. Where pursuant to this Title a person is liable towards another person on account of an incorrect or, by its incompleteness, misleading publication of information of a factual nature, the court may, upon the demand of such other person, order him to publish a correction in such manner as it determines.
2. The same shall apply in the absence of liability where the wrongdoer cannot be held accountable for the publication on account of his ignorance of the incorrectness or incompleteness.
3. In the case of paragraph 2, the court which allows the action may determine that the costs for the proceedings and the publication of the correction shall be wholly or partly borne by the person who instituted the action. Each of the parties shall have recourse against each person liable for the damage arising from the publication for a share of the costs of the proceedings and publication of the correction that must be borne pursuant to the judgment.

Article 168

1. The court may disallow an action for an injunction to restrain unlawful conduct on the grounds that such conduct should be tolerated for compelling reasons of public interest. The person suffering the loss shall retain a right to reparation of damage in accordance with the present Title.
2. In the case of article 170 a subordinate shall not be liable for such damage.
3. If an order to pay damages or to provide security therefor is not complied with, the court may further impose an order to restrain such conduct.

Article 169

1. A person who exercises parental authority or guardianship over a child under fourteen years of age is liable for damage caused to a third person by the conduct of that child if such conduct would have been regarded as the child's unlawful act but for the child's age.
2. A person who exercises parental authority or guardianship over a child which has reached the age of fourteen years but is not yet sixteen years of age shall be liable for damage caused to a third party by the child's fault, unless he cannot be blamed for not preventing the conduct of the child.

Article 170

1. The person in whose service a subordinate fulfils his duties shall be liable for damage caused to a third party by the fault of such subordinate if the risk of the fault is increased by the order to perform such duties and the per-

son by whom he was employed had control through such juridical relationship over the conduct constituting the fault.

2. Where the subordinate was employed by an individual and did not work in the conduct of that person's profession or business, the latter shall be liable only if the subordinate, when committing the fault, acted in the performance of his given duties.

3. If the subordinate and the person by whom he was employed are both liable for the damage, the subordinate need not contribute to the damages in their mutual relationship unless the damage results from his intent or deliberate recklessness. The circumstances of the case and the nature of their relationship may produce a result different from that provided in the preceding sentence.

Article 171

If a non-subordinate who performs activities in the conduct of another person's business under the direction of that other person is liable towards a third person for a fault committed in the course of those activities, that other is also liable to the third person.

Article 172

If the conduct of a representative in the exercise of powers under his representation constitutes a fault towards a third person, the person who is represented is also liable towards that third person.

Article 173

1. A possessor of a movable thing which is known to constitute a special danger for persons or things if it does not meet the standards which, in the given circumstances, may be set for such thing, is liable if this danger materialises, unless, pursuant to Section 1, there would have been no liability if the possessor would have known of the danger at the time it arose.

2. If the thing does not meet the standards referred to in paragraph 1 because of a defect as referred to in Section 3, there shall be no liability on the basis of paragraph 1 for damage referred to in that Section, unless:

a. taking all the circumstances into consideration, it is likely that the defect did not exist when the product was put into circulation, or that the defect arose at a later date; or

b. in respect of damage to things and pursuant to Section 3, there is no right to damages because of the excess or deductible provided for in that Section.

3. Paragraphs 1 and 2 do not apply to animals, motor vehicles, ships and aircraft.

Article 174

1. A possessor of a building or structure which does not meet the standards which, in the given circumstances, may be set for it and thereby constitutes a danger for persons or things, is liable if this danger materialises, unless, pursuant to Section 1, there would have been no liability if the possessor would have known of the danger at the time it arose.
2. In the case of emphyteusis (*leasehold*), the liability falls upon the possessor of the right. In the case of public roads, it falls upon the public authority in charge of the proper maintenance of the roads; in the case of conduits, it rests upon the person managing them, except to the extent that the conduit is located in a building or works and serves to supply or drain that building or works.
3. In this article, building or structure means buildings and works permanently attached to land, either directly or through incorporation with other building or works.
4. A person who is entered in the public registers as owner of the building or structure or the land, is presumed to be the possessor thereof.
5. For the purposes of this article, a public road includes the foundation and surface of the road, and their fixtures.

Article 179

The possessor of an animal is liable for the damage caused by the animal, unless, pursuant to Section 1, there would have been no liability if the possessor had had control over the behaviour of the animal which caused the damage.

Article 186

1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:
 - a. the presentation of the product;
 - b. the use to which it could reasonably be expected that the product would be put;
 - c. the time when the product was put into circulation.
2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

Article 199

1. A manager of another's affairs must exercise the necessary care in his management of another's affairs and, to the extent that this can reasonable be required of him, he must continue the management of another's affairs which he has begun.
2. As soon as reasonably possible, the manager must account to the interested party for what he has done. If funds were spent or received on behalf of the interested party, he must account for the same.

Spain

Civil Code

Article 569

If it were indispensable for the construction or repair of a building to carry the materials through another's estate, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate is obligated to consent thereto, receiving an indemnification corresponding to the damage caused him.

Article 1105

Outside of the instances expressly mentioned in the law, and those stipulated in the obligation involved, no person shall be liable for events that could not have been foreseen or that, if foreseen, were inevitable.

Article 1902

A person who, by act or omission, causes damage to another by fault of negligence must repair the damage caused.

Article 1903

The obligation imposed by the preceding article is demandable not only for personal acts or omissions, but also for those of persons for whom others must respond.

Parents are responsible for the damage caused by their children who are under their guard.

Tutors are liable for the damage caused by minors or incapacitated persons under their authority who live with them.

The owners or directors of an establishment or enterprise are liable for the damage caused by their employees in the service of the branches in which they are employed or on account of their duties.

Persons or entities that own an educational institution that is not of higher learning shall be liable for the damages caused by their minor students during the time periods in which such students are under the control or supervision of the teachers of the institution, while engaged in curricular or extracurricular activities and those complementary thereto.

The liability referred to in this article shall cease when the persons mentioned in it prove that they employed all the diligence of a prudent administrator to prevent the damage.

As amended by Law 11/1981 of May 13, and Law 1/1991 of January 7.

Article 1904

A person that pays the damage caused by his subordinates may recover from the latter what he has paid.

In cases involving educational centers not of higher education, the owners thereof can demand the sums paid from the teachers, if the latter have engaged in willful misconduct or gross fault in the exercise of their function that caused the damage involved.

As amended by law 1/1991 of January 7.

Article 1905

The possessor of an animal, or one who makes use of it, is liable for the damage that it may cause, even if it escapes or is lost. This liability ceases only where the damage is caused by *force majeure* or the fault of the person that sustained it.

Article 1906

The owner of a game preserve shall be liable for the damage caused by the game to the neighboring estates, when he has not done what is necessary to prevent the increase of the same or where he has hindered the efforts of the owners of said neighboring estates to hunt the game.

Article 1907

The owner of a building is liable for the damage caused by the total or partial ruin thereof if it arises as a result of the lack of necessary repairs.

Article 1908

Owners shall also be liable for the damage caused:

- 1) By the explosion of machines that were not cared for with due diligence, and by the kindling of explosive substances that were not placed in a secure and adequate place.
- 2) By excessive smoke that is harmful to persons or properties.
- 3) By the fall of trees located in places of transit, when not caused by *force majeure*.
- 4) By the emanations of sewers or deposits of infectious matters, when constructed without the proper precautions for the place where they are located.

Table of abbreviations

A.	<i>Corte di Appello</i>
a.o.	<i>among others</i>
AAV	<i>Allgemeine Arbeitnehmer Schutzverordnung</i>
AAVV	<i>Autores Vários</i>
ABGB	<i>Allgemeines Bürgerliches Gesetzbuch</i>
AC	<i>Appeal Case</i>
	<i>Archivio civile</i>
Ac.RL	<i>Acórdão da Relação de Lisboa</i>
Ac.STJ	<i>Acórdão do Supremo Tribunal de Justiça</i>
AcP	<i>Archiv für die civilistische Praxis</i>
AdminL	<i>Administrative Law</i>
ADSchV	<i>Allgemeine Dienstnehmer Schutzverordnung</i>
AED	<i>Supreme Court of Conflicts</i>
AHG	<i>Amtshaftungsgesetz</i>
AK	<i>Astikos Kodikas</i>
All ER	<i>All England Reports</i>
Am. J. Comp. L.	<i>American Journal of Comparative Law</i>
AMG	<i>Arzneimittelgesetz</i>
AP	<i>Areios Pagos</i>
Arch. giur. circol. e sinistri	<i>Archivio giuridico di circolazione e sinistri stradale</i>
ArcN	<i>Archeion Nomologicas</i>
Arm	<i>Armenopoulos miniaia epitheorisis</i>
ASchG	<i>Arbeitnehmerschutzgesetz</i>
Ass. Plén.	<i>Cour de Cassation, Assemblée Plénière</i>
ASVG	<i>Allgemeines Sozialversicherungsgesetz BGBl</i>
BGB	<i>Bürgerliches Gesetzbuch</i>
BGBl	<i>Bundesgesetzblatt</i>
BGE	<i>Entscheidungen des Schweizerischen Bundesgerichts</i>
BGH	<i>Bundesgerichtshof</i>
BGH, JZ	<i>Bundesgerichtshof, Juristenzeitung</i>
BGHZ	<i>Entscheidungen des Bundesgerichtshofes in Zivilsachen</i>
BMJ	<i>Boletim do Ministério da Justiça</i>
BMLR	<i>Butterworths Medico-Legal Reports</i>
BR DS (BR Drucks)	<i>Bundesrat Drucksache</i>
Bull. Civ.	<i>Bulletin des arrêts de la Cour de Cassation, chambres civiles</i>
Bull. Crim.	<i>Bulletin des arrêts de la Cour de Cassation, chambre criminelle</i>

xlvi table of abbreviations

BVerfG	<i>Bundesverfassungsgericht</i>
BW	<i>Burgerlijk Wetboek</i>
c	
.c./C.C.	<i>Codice Civile / Code civil / Civil Code / Código Civil</i>
Calif. L. Rev.	<i>California Law Review</i>
Cass. civ.	<i>Cassazione civile</i>
Cass. D.	<i>Dalloz: Décisions de la Cour de Cassation</i>
Cass. pen.	<i>Cassazione penale</i>
Cass. Penale	<i>Cassazione penale</i>
CCbe	<i>Code civil belge</i>
CCfr	<i>Code civil français</i>
CCP	<i>Code of Civil Procedure</i>
CCPr	<i>Code of Civil Procedure</i>
chron.	<i>chronique</i>
CJ	<i>Colectânea de Jurisprudência</i>
CJ-ASTJ	<i>Colectânea de Jurisprudência. Acórdãos do Supremo Tribunal de Justiça</i>
CJ-STJ	<i>Colectânea de Jurisprudência. Supremo Tribunal de Justiça</i>
CLJ	<i>Cambridge Law Journal</i>
CML Rev.	<i>Common Market Law Review</i>
Cmnd.	<i>Command Papers, 5th series</i>
Columbia J. Eur. L.	<i>Columbia Journal of European Law</i>
Com.	<i>Arrêt de la chambre commerciale de la Cour de Cassation</i>
Cons.	<i>Consultation</i>
Cons. Stato	<i>Consiglio Stato</i>
Corr. giur.	<i>Corriere giuridico</i>
D	<i>Dike / Diki</i> <i>Recueil Dalloz et Sirey</i>
D.kr.	<i>Danske kroner / Danish kroner</i>
D.L.	<i>Dalloz: Législation</i>
d.P.R. / d.p.r.	<i>Decreto Presidente della Repubblica</i>
Danno e resp.	<i>Danno e Responsabilità</i>
DD	<i>Diokitiki Dike</i>
Dig	<i>Digest of Justinian</i>
Dir. comm. internaz.	<i>Diritto commerciale internazionale</i>
Dir. famiglia	<i>Diritto di famiglia e delle persone</i>
DL	<i>Danske Lov</i>
DP	<i>Recueil Dalloz périodique</i>
DR	<i>Danno e Responsabilità</i> <i>Deutsches Recht</i> <i>Diário da República (off. Gazette Portugal)</i>

DrdA	<i>Das Recht der Arbeit</i>
EC	<i>European Community</i>
ECJ	<i>European Court of Justice</i>
ECR	<i>European Court Reports</i>
ECU	<i>European Currency Unit</i>
EEN	<i>Egimeris Elinon (Hellinon) Nomikon</i>
EfAth	<i>Efeteio Athinon</i>
EFSlg	<i>Ehe- und familienrechtliche Entscheidungen</i>
EfThes	<i>Efeteio Thesalonikis</i>
EJC	<i>European Court of Justice</i>
EKHG	<i>Eisenbahn- und Kraftfahrzeug-Haftpflichtgesetz</i>
Encicl. giur. Treccani	<i>Enciclopedia giuridica Treccani</i>
EnvirP	<i>Environmental Protection</i>
EnvL	<i>Environmental Law</i>
EpSD	<i>Episkopisi Emporikou Dikaiou (Commercial Law Review)</i>
Erle CJ	<i>Erle Court of Justice</i>
ERPL	<i>European Review of Private Law</i>
EuGH	<i>Europäischer Gerichtshof</i>
EvBl	<i>Evidenzblatt der Rechtsmittelentscheidungen</i>
Exch	<i>Court of Exchequer</i>
f. / ff	<i>and following</i>
fasc.	<i>fascicolo</i>
FED	<i>Forsikrings- og Erstatningsretlig Domssamling</i>
Foro it.	<i>Foro Italiano</i>
Giur. bollettino legis. tecnica	<i>La Giurisprudenza del bollettino di legislazione tecnica</i>
Giur. it.	<i>Giurisprudenza Italiana</i>
Giur. merito	<i>Giurisprudenza di merito</i>
Giur. Toscana	<i>Giurisprudenza toscana</i>
Giust. civ.	<i>Giustizia civile</i>
G-S	<i>Georgiadis-Stathopoulos</i>
Harv. L. Rev.	<i>Harvard Law Review</i>
HellD	<i>Helliniki Dikaioyni</i>
HL	<i>House of Lords</i>
I.K.A.	<i>Social Insurance Organization</i>
ICLQ	<i>International and Comparative Law Quarterly</i>
INAIL	<i>Instituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro</i>

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IntCC	<i>Introductory Law of the Civil Code</i>
iS	<i>im Sinne von; in Sachen</i>
J. Legal Stud.	<i>Journal of Legal Studies</i>
J.O.	<i>Journal Officiel de la République Française</i>
JBl	<i>Juristische Blätter</i>
JCP	<i>Semaine Juridique or Juris-classeur périodique, Edition générale</i>
JSev	<i>Joint and Several obligation</i>
JuS	<i>Juristische Schulung</i>
JZ	<i>Juristenzeitung</i>
KB	<i>King's Bench Koninklijk Besluit</i>
Kfz	<i>Kraftfahrzeug</i>
KJ	<i>Kritische Justiz</i>
KOK	<i>Code of Traffic</i>
l.c.	<i>loco citato</i>
L.G.S.S.	<i>Ley General de la Seguridad Social</i>
Law and Contemp. Prob.	<i>Law Contemporary Problems</i>
LG	<i>Landgericht (deutsch); Landesgericht (austrian)</i>
Lloyd RL	<i>Lloyd's Reports: Law</i>
Lloyd's Rep. Med.	<i>Lloyd's Reports: Medical</i>
LQRev	<i>Law Quarterly Review</i>
LR	<i>Law Reports</i>
Med. L. Rev.	<i>Medical Law Review</i>
MedC	<i>Article of _ . Fountethaki, The problem of causal relation in medical liability, HellD 1994, at 1226 ff.</i>
MedL	<i>Medical Law</i>
MedR	<i>Medizinrecht</i>
Mich. L. Rev.	<i>Michigan Law Review</i>
MietSlg	<i>Mietrechtliche Entscheidungen</i>
Miss. L.J.	<i>Mississippi Law Journal</i>
MJ	<i>Maastricht Journal of European and Comparative Law</i>
Mod. L. Rev.	<i>Modern Law Review</i>
MPrThes	<i>Monomeles Protodikeio Thesalonikis</i>
NJW	<i>Neue juristische Wochenschrift</i>
NJW-RR	<i>Neue juristische Wochenschrift – Rechtsprechungsreport Zivilrecht</i>

NoB	<i>Nomiko Vima</i>
Notiziario giur. lav.	<i>Notiziario giuridico del lavoro</i>
Nuova giur. civ. comm.	<i>Nuova Giurisprudenza Civile Commentata</i>
Nuove leggi civ.	<i>Nuove leggi civili</i>
NuR	<i>Natur und Recht</i>
NZ	<i>Notariatszeitung</i>
NZV	<i>Neue Zeitschrift für Verkehrsrecht</i>
Ob	<i>Oberster</i>
ObL	<i>Law of Obligations</i>
obs.	<i>observation</i>
OGH	<i>Oberster Gerichtshof</i>
OJ C	<i>Official Journal of European Communities (Issue C [Communication]: Information and Notices)</i>
OJLS	<i>Oxford Journal of Legal Studies</i>
ÖJZ	<i>Österreichische Juristen-Zeitung</i>
OLG	<i>Oberlandesgericht</i>
op. cit.	<i>option citée/opere citato</i>
ÖRZ	<i>Österreichische Richterzeitung</i>
Oxford U Comparative L Forum	<i>Oxford University Comparative Law Forum</i>
PIQR	<i>Personal Injuries and Quantum Reports</i>
PirJ	<i>Piraiiki Nomologia (Piraeus Cases)</i>
ProdHaftG	<i>Produkthaftungsgesetz</i>
PropL	<i>Property Law</i>
QB	<i>Law Reports, Queen's Bench Division</i>
QBD	<i>Law Reports, Queen's Bench Division of the High Court</i>
rapp.	<i>rapport</i>
Rass. giur. Enel	<i>Rassegna giuridica Enel</i>
Rass. giur. umbra	<i>Rassegna giuridica umbra</i>
RC	<i>Relação (Court of Appeal) of Coimbra (Portugal)</i>
RDS	<i>Reichsdienststrafhof</i>
Rec. Dalloz	<i>Recueil Dalloz</i>
Resp. civ. prev.	<i>Responsabilità civile e previdenza</i>
Resp. civ.	<i>Responsabilità civile</i>
RGZ	<i>Entscheidungen des Reichsgerichtes in Zivilsachen</i>
RIDC	<i>Revue internationale de droit comparé</i>
Riv. dir. civ.	<i>Rivista di Diritto Civile</i>
Riv. giur. amb.	<i>Rivista giuridica dell'ambiente</i>

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Riv. giur. cicol. trasp.	<i>Rivista giuridica della circolazione e dei trasporti</i>
Riv. giur. edilizia	<i>Rivista giuridica dell'edilizia</i>
Riv. giur. polizia locale	<i>Rivista giuridica di polizia locale</i>
Riv. giur. Sarda	<i>Rivista giuridica Sarda</i>
Riv. it. medicina legale	<i>Rivista italiana di medicina legale</i>
Riv. it., dir. lav.	<i>Rivista italiana di diritto del lavoro</i>
RIW	<i>Recht der Internationalen Wirtschaft</i>
RJUM	<i>Revista Jurídica da Universidade Moderna</i>
RL	<i>Relação de Lisboa (Portugal)</i>
RLJ	<i>Revista de Legislação e Jurisprudência</i>
ROA	<i>Revista da Ordem dos Advogados</i>
RP	<i>Relação (Court of Appeal) do Porto (Portugal)</i>
RSI	<i>repetitive strain injury</i>
RTD civ.	<i>Revue trimestrielle de droit civil</i>
Rz / RZ	<i>Richterzeitung</i>
SC	<i>Scots Session Cases</i>
SE	<i>Symvoulío Epikratias (Supreme Administrative Court)</i>
seq.	<i>sequentes</i>
Sez. Civile	<i>Sezione Civile</i>
sez.	<i>sezione</i>
SGB	<i>Sozialgesetzbuch</i>
SLT	<i>Scottish Law Times Reports</i>
So. Cal. L. Rev.	<i>Southern California Law Review</i>
Stan. L. Rev.	<i>Stanford Law Review</i>
StHG	<i>Staatsgerichtshof</i>
STJ	<i>Supremo Tribunal de Justiça (Portugal)</i>
STS	<i>Sentencia Tribunal Constitucional</i>
StVG	<i>Straßenverkehrsgesetz</i>
StVO	<i>Straßenverkehrsordnung</i>
SZ	<i>Entscheidungen des österreichischen Obersten Gerichtshofes in Zivil (und Justizverwaltung) sachen</i>
Tenn. L. Rev.	<i>Tennessee Law Review</i>
Tex. L. Rev.	<i>Texas Law Review</i>
TfR	<i>Tidsskrift for Rettsvitenskap</i>
Tul. L. Rev.	<i>Tulane Law Review</i>
UmweltHG	<i>Umwelthaftungsgesetz</i>
VerkG	<i>BW: Verkündigungsgesetz</i>
VersR	<i>Versicherungsrecht</i>
VfGH	<i>Verfassungsgerichtshof</i>

VfSlg	<i>Sammlung der Erkenntnisse und wichtigsten Beschlüsse des Verfassungsgerichtshofes</i>
VP	<i>Die Versicherungs-Praxis</i>
Wayne L. Rev.	<i>Wayne Law Review</i>
WHG	<i>Wasserhaushaltsgesetz</i>
WLR	<i>Weekly Law Reports</i>
ZBl	<i>Zentralblatt für die juristische Praxis</i>
ZEuPZ	<i>Zeitschrift für Europäisches Privatrecht</i>
ZfRV	<i>Zeitschrift für Rechtsvergleichung</i>
ZIP	<i>Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis</i>
ZSR	<i>Zeitschrift für Sozialreform</i>
	<i>Zeitschrift für Schweizerisches Recht</i>
ZUR	<i>Zeitschrift für Umweltrecht</i>
ZVR	<i>Zeitschrift für Verkehrsrecht</i>

