

# **Tort law**

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# System of tort law

- zero point
  - *neminem laedere* (not to harm anyone)
    - everyone is liable for everything
  - *casum sentit dominus* (coincidence affects the owner)
    - no-one is liable for anything

# Meaning of Tort law

- only non-contractual liability
- but! sc. 2913 – breach of contractual duty

# General clauses of tort liability

- breach of good moral sc. 2909
- culpable violation of absolute right sc. 2910
  - life, body, health, freedom, property, etc.
- culpable violation of a protective law sc. 2910

# Elements of liability for damage

- delict – breach of statute or good morals
- damage
- causal relationship
- fault

# Concepts of liability

- liability based on fault
- no-fault liability (strict liability)

# Civil delict

- objective criterion
- prohibitions and commands in the whole law system
- prevention – sc. 2900
  - required by the circumstances of the case or
  - required by the usages of private life
  - protected interests
    - freedom, life, body, property

# Defences and exception clauses

- using a right
- fulfil a legal duty
- victim's consent
- necessity sc. 2906
- self-help sc. 14
- self-defence sc. 2905

# Fault

- subjective criterion
- examined aspects – knowledge and will
- dolus directus – direct intent
- dolus eventualis – indirect intent
- culpa lata – wilful negligence
- culpa levis – unwilful negligence
- presumption of negligence sc. 2911

# Causation

- causal connection between the tortfeasor's conduct and the damage
- doctrine *condictio sine qua non* – theory of consequence
  - but-for test
- concept of adequate causation
  - action is a relevant cause only if it is not just under particularly exceptional and extremely unlikely circumstances, but generally, suitable to produce a certain result

# Material damage

- forms
  - damnum emergens – actual damage
  - lucrum cesans – lost profit
- differential hypothesis
  - what would the victim have, if the damage didn't happen
  - expressible in the money

# Compensation of material damage

- sc. 2951
- restoration to the original state
- in money
- choice of victim
- reduction of compensation sc. 2953

# Non-material damage

- isn't quantifiable in money
- sc. 2894 par. 2
- general clause sc. 2956
  - other clauses – sc. 2969 par. 2, sc. 2971 and others

# Appropriate satisfaction

- sc. 2951 par. 2
- moral – apologize
- in money

# Compensation for bodily harm and death

- sc. 2958
- reparation money
- compensation for deteriorated social position
- other non pecuniary harm
- Method of The Supreme Court of Justice

Thank you!