

Tort Law

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Meaning of Tort Law

- only non-contractual liability
- Book four Title III – Obligations arising from torts
- but! sc. 2913 – Breach of contractual duty
 - (1) If a party breaches a contractual duty, such a party shall provide compensation for the resulting damage to the other party or the person who was evidently intended to benefit from the fulfilment of the stipulated duty.

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
 - typical for the Czech law

Functions of Tort Law

- Compensatory/indemnification function
- Preventive function (Sc. 2900 CC)

- Sanction/penalty function
 - Not generally accepted

Basic Elements of Liability for Damage

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

Civil Delict

- objective criterion
- prohibitions and commands in the whole law system
- prevention – sc. 2900
- If required by the circumstances of the case or the usages of private life, everyone has the duty to act so as to prevent unreasonable harm to freedom, harm to life, bodily harm or harm to the property of another.

General Clauses of Tort Liability

- breach of good moral sc. 2909
 - A tortfeasor who causes harm to a victim by an intentional breach of good morals has the duty to provide compensation for it; however, if the tortfeasor was exercising his right, he has the duty to provide compensation for the damage only if his main purpose was to harm another.
- culpable violation of absolute right sc. 2910
 - life, body, health, freedom, property, etc.
- culpable violation of a protective law sc. 2910
 - A tortfeasor who is at fault for breaching a statutory duty, thereby **interfering with an absolute right** of the victim, shall provide compensation to the victim for the harm caused. A tortfeasor also becomes obliged to provide compensation if he **interferes with another right** of the victim by a **culpable breach of a statutory duty enacted to protect such a right**.

Defences and Exception Clauses

- using a right
- fulfill a legal duty
- victim's consent
- voluntary assumption of risk
- self-help sc. 14
- necessity sc. 2906
- self-defence sc. 2905

Necessity

- Sc. 2906 A person who protects himself or another from an imminent risk of harm does not have the duty to provide compensation for the resulting harm if, given the circumstances, the danger could not have been prevented otherwise, or if he does not cause a consequence which is evidently equally serious as, or even more serious than, the imminent harm, unless the property would have decayed in any case even without the act made under necessity. This does not apply if the actor was at fault for inducing the risk.
- Sc. 2907 In assessing whether or not someone acted in self-defence or under necessity, account is taken of justifiable excitement of mind of the person who prevented the attack or another danger.
- Sc. 2908 A person who prevented imminent harm is also entitled to the reimbursement of reasonably incurred costs and compensation for the harm suffered in doing so against the person in whose interest he acted, but only to the extent appropriate to the harm which he prevented.



Sc. 3014 If a person in difficulties sacrifices a thing in order to prevent greater damage, each of the persons benefiting from the situation shall provide the victim with a proportionate compensation.

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Self-defence sc. 2905

- A person who protects himself or another from an imminent or ongoing unlawful attack and, in doing so, causes harm to the attacker, has no duty to provide compensation for such harm. This does not apply if it is clear that, given the circumstances, the attacked person is under the threat of incurring only negligible harm, or the defence is manifestly excessive, especially given the gravity of the harm caused to the attacker by preventing the attack.

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

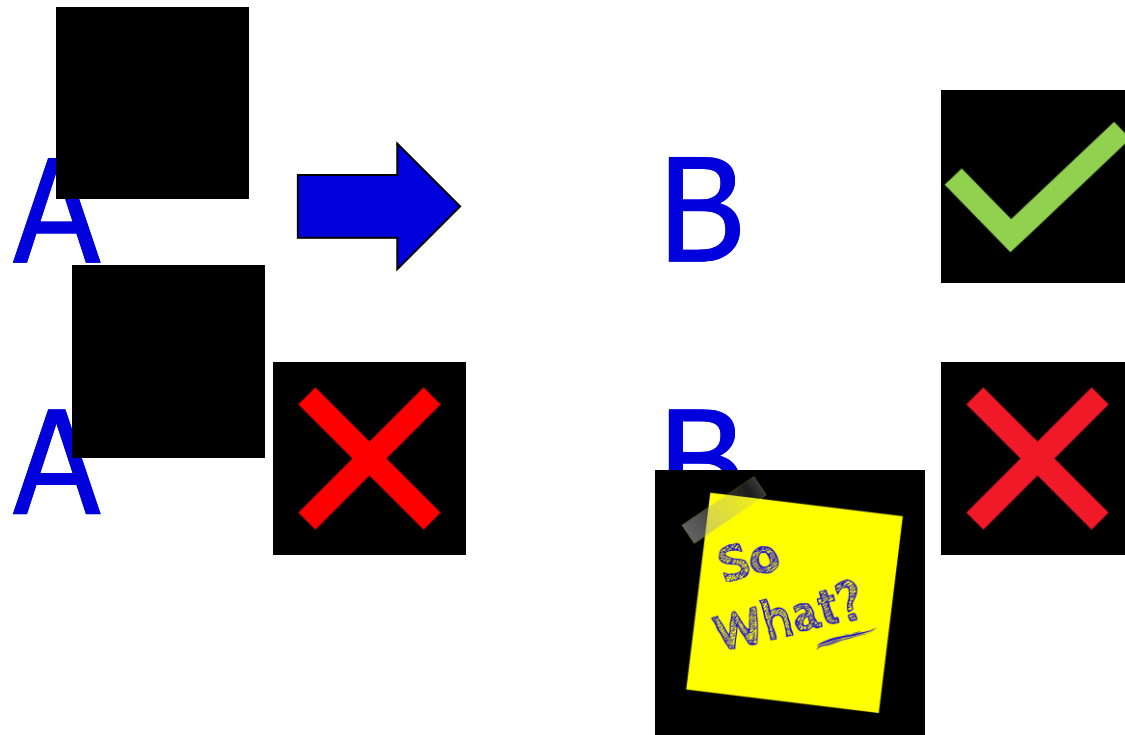
Sc. 2911 If a tortfeasor causes damage to the victim by breaching a statutory duty, he is presumed to have caused the damage through negligence.

Concepts of Liability

- liability based on fault
- no-fault liability (strict liability)
 - sc. 2895 - A tortfeasor has the duty to pay damage regardless of his fault in cases specifically provided by a statute.
 - ex. - Damage resulting from operating activities, Damage caused by a particularly hazardous operation, Damage caused by the operation of a means of transport

Causation

- causal connection between the tortfeasor's conduct and the damage
- doctrine *conditio 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.

Damage

- Pecuniary (material) and non-pecuniary (non-material)
- Regulation of manner of compensation sc. 2951: **Damage** is compensated by the **restoration to the original state**. If this is not reasonably possible, or if so requested by the victim, damage is payable in **money**. **Non-pecuniary harm** is compensated by **appropriate satisfaction**. Satisfaction must be provided in money unless real and sufficiently effective satisfaction for the harm incurred can provide for satisfaction otherwise.

Material Damage

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

Compensation of Material Damage

- sc. 2951 - Damage is compensated by the restoration to the original state. If this is not reasonably possible, or if so requested by the victim, damage is payable in money.
 - restoration to the original state
 - in money
 - choice of victim

Reduction of Compensation sc. 2953

- (1) For reasons deserving special consideration, a court shall proportionately reduce the compensation of damage. In doing so, the court shall in particular take into account how the damage occurred, the personal and property situation of the individual who caused and is liable for the damage, as well as the circumstances of the victim. Compensation may not be reduced if the damage was caused intentionally.
- (2) Subsection (1) does not apply if the damage was caused by a person who offered to provide professional performance as a member of a particular vocation or occupation, or by a breach of professional care.

Non-Material Damage

- isn't quantifiable in money
- sc. 2894 subsc. 2 - If the duty to provide compensation to another for non-pecuniary harm has not been expressly stipulated, it affects the tortfeasor only where specifically provided by a statute. In such cases, the duty to provide compensation for non-pecuniary harm by providing satisfaction is assessed by analogy under the provisions on the duty to provide compensation for damage.
- general clause sc. 2956
 - other clauses – sc. 2969 par. 2, sc. 2971 and others

Appropriate Satisfaction

- sc. 2951 subsc. 2 - Non-pecuniary harm is compensated by appropriate satisfaction. Satisfaction must be provided in money unless real and sufficiently effective satisfaction for the harm incurred can provide for satisfaction otherwise.
 - moral – apologize
 - in money

- When determining the form and the amount of compensation for immaterial damage following criteria are considered: (sc. 2957):
 - Causing harm intentionally or unintentionally
 - Causing harm by trickery
 - Using force when causing harm
 - Misuse of the injured person's depending on the tortfeasor (superior at work, younger person in relation to the older one)
 - Multiplication of effects by making something widely known (e. g. defamatory disclosure of a fact in the media)
 - Discrimination of the injured person regarding his sex, health, ethnical creed, or any other serious reasons
 - Fear of the injured person of losing his life, or serious damage to his health

Compensation for Bodily Harm and Death

Sc. 2958 - In the case of bodily harm, the tortfeasor shall compensate the victim for such harm in money, fully compensating for **the pain and other non-pecuniary harm** suffered; if the bodily harm resulted in an impediment to a better future for the victim, the tortfeasor shall also compensate him for the **deteriorated social position**. Where the amount of compensation cannot be determined in this manner, it is determined according to the principles of decency.

Compensation for Bodily Harm and Death

- reparation money
- compensation for deteriorated social position
 - the weakening of the social capacity of a person
 - impediment to a better future
- other non pecuniary harm
- Method of The Supreme Court of Justice

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http://www.nsoud.cz/Judikatura/ns_web.nsf/Edit/Rozhodovacicinnost~Metodikak%3F2958o.z.?Open&area=Rozhodovac%C3%AD%20%C4%8Dinnost&grp=Metodika%20k%20%C2%A7%202958%20o.z.&lng=

Reparation Money (Pain)

Example – pulling out an eye

B S057 = 200 points

1 point = average wage in CZR in the
previous year / 100

1 point in 2022 = 378,39 Kč (15,48 €)

75 678 Kč (3 098 €)



Impediment to a Better Future

Starting question: What is the price for destroyed life?



= average wage in CZR in the
previous year * 400
in 2022

15 135 600 Kč (619 550 €)

- can be modified by: maximal modification
= double
- Age of the victim
 - Lost of career
 - Intentional harm

30 271 200 Kč (1 239 100 €)

Considered Life Activities

- Learning and application of knowledge
- General tasks and requirements
- Communication
- Mobility
- Self care
- Home life
- Interpersonal negotiations and relationships
- The main areas of life (upbringing, job)
- Community, social and civic life



- Weighted average in every category
- Complex weighted average

Worse life by 1 %

1 % * 15 135 600 Kč (619 550 €)

= 151 356 Kč (6 195,50 €)

If the victim dies

Sc. 2959 In the case of killing or particularly serious bodily harm, the tortfeasor shall compensate the spouse, parent, child or other close person for the mental suffering in money, fully compensating their suffering. Where the amount of compensation cannot be determined in this manner, it is determined according to the principles of decency.

- spouse, parent, child or other close person
- = average wage in CZR in the previous year * 20
- in 2021 = 756 780 CZK (30 978 €)

What about the victim's claims?

Sc. 1475 § 2 A decedent's estate consists of the entire assets and liabilities of a decedent except for the rights and duties exclusively bound to him personally, unless they have been acknowledged or enforced as a debt before a public body.

- If the victim dies immediately, his claims terminate.
- If the victim survive for a while, he has to bring an action against tortfeasor. Then his claims are part of heritage.

Serious harm
1 239 100 € > Kill
30 978 €

Voluntary Homework

- Find the regulation of legal compensation for the damage caused by the animal in the legal order of the country you come from (e.g. § 833 BGB, § 1320 ABGB etc.).
- See § 2933 to 2935 CC

Thank you!