

# **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
- Book four Title III – Obligations arising from torts
- 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)
  - sc. 2895 - A tortfeasor has the duty to pay damage regardless of his fault in cases specifically provided by a statute.

# 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.

# 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



## 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.

## 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.

# 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 - 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

# 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
- other non pecuniary harm
- Method of The Supreme Court of Justice
- [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=](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=)

Thank you!