TORT LAW

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General expectations

- At the end of this course, the student is expected to have an advanced understanding of the general principles that govern Tort Law;
- Student will will be able to comparatively understand the similarities and differences of Tort Law both in Civil and Common law systems;
- Students will be able to understand and apply the principles of tort using under civil and common law systems;
- Students will have a clearer understanding of both personal and vicarious liability torts;
- Students will be able to solve potential legal issues in the practice of Tort law;

Course outline

- This course covers:
- The principles and theories governing tort law;
- Understanding the concepts of fault, damages, causal link;
- Civil law understanding and approaches to tort law
- Understanding of the law of torts in civil law system: eg. France; Rwanda
- Introduction to the law of torts in Common law system: e.g: English tort law
- The Concept of personal liability tort: requirements and conditions
- The tort of negligence: Theory and practice
- Vicarious liability tort: Theory and practice

Tort Law: Concepts and Principles

- **Background**
- The term "*tort*" derived from and is the French equivalent of the English word "*wrong*".
- The French "*tort*" also derived from the Latin word *tortum*, which means *twisted* or *crooked* or *wrong*, in contrast to the word *rectum*, which means *straight* (*rectitude* uses that Latin root).
- Therefore, a conduct that is twisted or crooked and not straight is a *tort*.
- Then, what is tort law?

Tort law?

- A judge will usually instruct a jury that a tort is usually "*a wrong for which the law will provide a remedy, most often in the form of money damages*."
- The law does not remedy all "wrongs."
- There are the underlying legal principles that have to be carefully examined to compel restitution.
- Such include for instance such as those related to fault, causation and damages. They will be dealt with hereinafter.

Definitions

- A tort is a civil wrong committed against an individual (including legal entities such as companies).
- The gist of tort law is that a person has certain interests which are protected by law.
- These interests can be protected by a court awarding a sum of money, known as **damages**, for infringement of a **protected interest**.
- Alternatively, by the issuing of an **injunction**, which is a court order, to the defendant to refrain from doing something.

Differences in legal systems

- In the study of applicable principles, a thorough consideration of which legal system is worth taking.
- The way common law approaches tort law is quite different from the civil law viewpoint. These differences will be subject of our discussion later.
- However, even in the discussion of the principles governing tort, their influences cannot go unnoticed.
- In common law system, torts are divided in different categories/types and thus their constitutive elements are totally different from one category to another.
- In this vein, Torts can be: Tort of Negligence (the biggest), Malicious Prosecution, Tort of Trespass (include: Trespass to the person= such as *assault, battery, false imprisonment*, Trespass to goods=Wrongful interference with goods (conversion), etc), malicious falsehood, Passing Off, and so forth. They differentiate as well personal from vicarious and employer's liabilities.
- In civil law systems, such distinctions are rare. And the codification leads to a strict interpretation of torts. In Rwanda we have no particular act/law relating to torts, but a few provisions in the CCBIII and other few scattered legislations. Torts from criminal offences have a particular consideration. Vicarious liabilities are "strictly" enshrined by the law.

Elements of tort

- Considered together, one can draw the following to be basic elements in of tort:
- As per definition, tort consists of an **act** or **omission** by the **defendant** which causes **damage** to the claimant.
- The damage must be caused by the fault of the defendant and must be a kind of harm recognised as attracting legal liability.
- This model can be represented as:

•**Tort liability = act (or omission) + causation + fault + protected interest + damage**

•An illustration of this model can be provided by the occurrence most frequently leading to liability in tort, a motor accident.

•Example: X drives his car and inattentively mounts the pavement and hits Y, a pedestrian and causing him personal injuries. The act here is hitting Y, which has caused him damage.

•The damage was a result of X's carelessness, i.e his fault.

•The injury suffered by Y, personal injury is recognised by law as attracting liability.

•Therefore X will be liable to Y in the tort of negligence and X will be able to recover damages.

The common variations on the basic model

- The elements of act (or omission) and causation are common to all torts.
- There are certain torts which do not require fault.
- These are known as torts of **strict liability (**as opposed to fault-based liabilities).
- **For e.g:** An employee looses his finger while operating a machine in a factory. Though the employer may have done all his best to warn and give instructions to avoid such incident, and therefore no fault is established, he is still liable under "**strict liability". i.e** no need to prove the fault.

Damnum sine injuria

- ***Damnum sine injuria***: This principle refutes the liability when the *damage which is not coupled with an unauthorised interference* with the plaintiff's lawful right.
- Causing of damage, however substantial, to another person is not actionable in law unless there is also the violation of a legal right of the plaintiff.
- In ***Gloucester Grammar School*** case, the defendant had set-up a rival school to that of the plaintiffs with the result that the plaintiffs were required to reduce the tuition fees of their school substantially. It was held that the plaintiff had no cause of action against the defendant on the ground that bonafide competition can afford no ground of action, whatever damage it may cause.
- Damnum sine injuria means "harm without legal wrong".
- An illustration: A opens a coffee shop in the same street as B's coffee shop. A reduces his prices with the intention of putting B out of business. A has committed no tort as losses caused by lawful business competition are not actionable in tort.

Injuria sine damno: Actionable *per se*

- There are also cases where conduct is actionable even though no damage has been caused.
- This is known as ***injuria sine damno*** and where a tort is actionable without proof of damage it is said to be ***actionable per se.***
- ***Injuria sine damno*** means “the violation of a legal right without causing any harm, loss or damage to the plaintiff.” It is just reverse to the maxim *damnum sine injuria*.
- In ***Ashby v. White, (1703) 2 LR 938***, the plaintiff was a qualified voter at a parliamentary election, but the defendant, a returning officer wrongfully refused to take plaintiff’s vote.

- No loss was suffered by such refusal because the candidate for whom he wanted to vote won in spite of that.
- The defendant was held liable, even though his actions did not cause any damage.
- In case of injuria sine damno, the loss suffered by the plaintiff is not relevant for the purpose of a cause of action. It is relevant only for assessing a number of damages.
- If the plaintiff has suffered no harm and yet the wrongful act is actionable, nominal damages may be awarded.

Eggshell rule (thin skull rule)

- The **eggshell rule** (or **thin skull rule**) is a well-established legal doctrine in common law jurisdictions especially, that govern tort law (also applicable in criminal law).

- The rule states that, in a tort case, the unexpected frailty (weakness) of the injured person is not a valid defense to the seriousness of any injury caused to them.

- This rule holds that a tortfeasor is liable for all consequences resulting from his or her tortious activities leading to an injury to another person, even if the victim suffers an unusually high level of damage (e.g. due to a pre-existing vulnerability or medical condition.

- The eggshell skull rule takes into account the physical, social and economic attributes of the plaintiff which might make him more susceptible to injury.
- It may also take into account the family and cultural environment.
- The term implies that if a person had a skull as delicate as that of the shell of an egg, and a tortfeasor who was unaware of the condition injured that person's head, causing the skull unexpectedly to break, the defendant would be held liable for all damages resulting from the wrongful contact, even if the tortfeasor did not intend to cause such a severe injury.

R v Blaue (1975) 61 Cr App R 271

- **Outline:** In R v. Blaue (1975), the Court of Appeal concluded that the refusal by a member of the Jehovah Witness to accept a blood transfusion after being stabbed did not constitute a *novus actus interviens (i.e new intervening act breaks the chain of causation).*

- **Facts:** The defendant entered the home of an 18-year-old woman and asked for sex. When she refused he stabbed her four times; the wound penetrated her lung which necessitated both a blood transfusion and surgery in order to save her life.

- After refusing treatment because of her religious beliefs (as a Jehovah's Witness) she died. Medical evidence showed that she would not have died if she had received treatment. In his final speech to the jury, counsel for the Crown accepted that the girl's refusal to have a blood transfusion was a cause of her death.

- The prosecution did not challenge the defence evidence that the defendant was suffering from diminished responsibility. The defence argued that the victim's refusal to accept medical treatment broke the chain of causation between the stabbing and her death.

- **Judgment:** The Court ruled that, as a matter of policy, "*those who use violence on others must take their victims as they find them", invoking the Eggshell rule/thin-skull rule.*

Vosburg v Putney [In 1891US]

- In that case, a boy threw a small kick at another from across the aisle in the classroom.
- It turned out that the victim had an unknown microbial condition that was irritated, and resulted in him entirely losing the use of his leg.
- No one could have predicted the level of injury.
- Nevertheless, the court found that the kicking was unlawful because it violated the "order and decorum of the classroom", and the perpetrator was therefore fully liable for the injury.

The interests protected

- **Personal security:**

- People have an interest in their personal security. This is protected in a number of ways. If one person puts another in fear of being hit, then there may be an action in the tort of assault.

- If the blow is struck, then the person hit may have an action in the tort of battery. A person whose freedom of movement is restricted unlawfully may be able to sue for false imprisonment.

- If personal injury is caused negligently, then the claimant may have an action in the tort of negligence.

- The scope given to the personal security interest expands as society becomes more advanced.
- Until recently little attention was paid to the psychiatric damage that can be caused to a person.
- Someone who witnesses a traumatic event can incur serious mental suffering.
- The advance of psychiatric medicine and changing views on what is tolerable have led the courts to protect certain aspects of mental suffering, such as nervous shock caused by witnessing a negligently caused accident

- Litigation in this area has led to the courts having to examine difficult issues such as consent to treatment and the right to life.

- Here law and morality are inextricably mixed.

- What, for example, is the legal position if a doctor needs to give a blood transfusion to a patient who will die if they do not receive it, but the patient refuses to have the blood transfusion because of his religious beliefs?

CASE Studies on “nervous shock”

- Let’s look at the practice of psychiatric shock

1.Liability for nervous shock (psychiatric injuries

“*Alcock v Chief Constable of South Yorkshire Police [1992]*”

- **Outline:** The case centred upon the liability of the Police for the nervous shock suffered in consequence of the events of the Hillsborough disaster in 1991.

- **Summary of facts:** The claims were brought by Alcock and several other claimants after the Hillsborough disaster in 1989, where 95 Liverpool fans died in a massive crush during the FA Cup Semi Final at Hillsborough Stadium in Sheffield. It was reported that he accident was caused by the police negligently allowing too many supporters to crowd in one part of the stadium. Many alleged to have seen their friends and relatives die in the crush and suffered psychiatric harm or nervous shock after the incident.

- **Judgment:** The HoL considered that plaintiffs in this case were mostly "**secondary victims.**" i.e. they were not "directly affected" as opposed to the **"primary victims"** who were either injured or were in danger of immediate injury.

The Judicial Committee of the House of Lords, established in this case a number of "control mechanisms" or conditions that had to be fulfilled in order for a "*duty of care*" to be found in such cases"

- The claimant who is a "secondary victim" must perceive a "shocking event" with his own unaided senses, as an eye-witness to the event, or hearing the event in person, or viewing its "immediate aftermath". This requires close physical proximity to the event, and would usually exclude events witnessed by television or informed of by a third party, as was the case with some of the plaintiffs in *Alcock*.
- The shock must be a "sudden" and not a "gradual" assault on the claimant's nervous system. So a claimant who develops a depression from living with a relative debilitated by the accident will not be able to recover damages.

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If the nervous shock is caused by witnessing the death or injury of another person the claimant must show a "sufficiently proximate" relationship to that person, usually described as a "close tie of love and affection". Such ties are presumed to exist only between parents and children, as well as spouses and fiancés. In other relations, including siblings, ties of love and affection must be proved.

- It must be reasonably foreseeable that a person of "normal fortitude" in the claimant's position would suffer psychiatric damage. The closer the tie between the claimant and the victim, the more likely it is that he would succeed in this element. However, once it is shown that some psychiatric damage was foreseeable, it does not matter that the claimant was particularly susceptible to psychiatric illness - the defendant must "take his victim as he finds him" and pay for all the consequences of nervous shock.

What is the local experience?

- There is still little consideration of non physical injury.
- See the case RPA 1356/11/HC/KIG – RPA 1357/11/HC/KIG – RPA 1309/11/HC/KIG between *prosecution vs Africa Bernard* [2012]. Para 18-21.

ENGLISH CASE LAW DEVELOPMENTS ABOUT "*nervous shock*"

- ***Alcock v Chief Constable of South Yorkshire*** **(1992)** claimants were relatives of the victims of the Hillsborough football disaster. They had either witnessed the tragedy on television or within the ground (but not at close quarters). The HL had to consider 3 factors in deciding whether a duty of care existed in a nervous shock claim:

— Proximity – "PRIMARY" AND "SECONDARY" VICTIMS

— Relationship of claimant to the accident victim

— Means by which the shock caused

- ***White v Chief Constable of South Yorkshire*** **(1999)** HL claimants were serving police officers who had been on duty at the Hillsborough disaster. Held not "fair, just or reasonable" to allow them to succeed (especially as some relatives had not succeeded).

- ***Dulieu v White* (1901) 2 KB 669 -** the "**impact theory**"

***Dulieu v White* (1901) 2 KB 669 –** nervous shock due to real and immediate fear of physical injury to the claimant herself – the "**impact theory.**"

Facts: The claimant was pregnant and behind the bar in her husband's public house. A horse and cart crashed into the pub. The claimant was not physically injured but feared for her safety and suffered shock. She gave birth prematurely nine days later and the child suffered developmental problems.

The Court held: An action could lie in negligence for nervous shock arising from a reasonable fear for one's own immediate safety. According to the Court:

-What of fear for the well-being of relatives or friends?

- ***Hambrook v Stokes*** **(1925)** nervous shock when mother witnessed children in great danger – "**area of shock theory**" cf *Bourhill v Young* heard accident, went to investigate and suffered nervous shock on seeing the aftermath of the accident to strangers (if however she had been a **rescuer** in the immediate aftermath she might well have succeeded);

-***McLoughlin v O'Brian*** **(1983)** HL Mother informed of accident to family, came upon the badly injured family members in the A&E department, still shocked and not "cleaned up". Held claimant could succeed as she had come upon the "**immediate aftermath**" of the negligently caused accident.

Interest in property

- Property in the broad sense of the word is protected by tort law.
- Interests in personal property are protected by torts such as trespass to goods and conversion.
- Where clothing or a car is damaged in a negligently caused accident, then a person may have an action for damages in negligence.

Is tort right a property right or extra-patrimonial right?

- Tort actions in their broader senses imply both patrimonial and extra patrimonial aspects.
- In the study of the legal nature of the tort action, the Supreme Court in *SOCABU vs Butera Freddy RCAA003/11/CS* established that both moral and material damage constitute the right to property.
- Can it be alienated? Is there any exception?

Economic interests

- Tort law will give limited protection to economic interests where the defendant has acted unlawfully and has caused economic loss to the claimant.
- These are known as the economic torts.

Reputation and privacy:

- Increasingly important are a person's interests in their reputation and privacy.
- Where a person's reputation is damaged by untrue speech or writing, then they may have an action in the **tort of defamation**.
- More than moral damages. Now material loss.

The role of insurance

- Without insurance the tort system would simply cease to operate.
- Where a claimant is successful in an action, the damages will normally be paid by an insurance company.
- In cases of property damage, insurance may take the form of ‘loss’, or first-party insurance, which covers loss or damage to the property insured from the risks described in the policy, whether or not the loss occurs through the fault of another party.

- There is also ‘liability’, or third-party insurance.
- This is a matter of contract between the insurer and the insured whereby the insurer promises to indemnify the insured against all sums the insured becomes liable to pay as damages to third parties.
- The third party must establish the insured’s liability to them.

Tort vs contract

- Tort liability must be clearly differentiated, and should never be confused.
- Contract liability presupposes a breach of duty/obligation established between the parties. Its remedy is governed by the same agreement, and the contracts law, instead of tort.
- Therefore, it is extremely wayward to apply tort provision when the alleged fault is a breach of a pre-existing contractual obligation. i.e breach of article 64 of the law of contract.
- Tort law applies when there is a breach of a non contractual duty. That may be a violation to any protected interest of the claimant or their legal right and causes a loss.

- Therefore, tort remedies a damage emanating outside the contract. Its remedy is provided by tort law. i.e especially articles 258-262.
- When the defendant is caused to suffer a loss in absence of an agreement in relation to that fault, then tort law is invoked.
- A very significant source of obligation, the bond generated by the civil liability will be born not from a legal document, by which a person wished to be obliged, but from a legal fact (offence, quasi-offence), deprived of voluntary element: a fact to which the law will attach legal consequences, in fact a detrimental fact for others and which obliges compensation.

- In every claim for damages, it is necessary to examine whether someone breached a legal obligation or a contractual one, and which is exactly this obligation.
- This will help to know the applicable laws and the extent of responsibility of someone.
- There are several distinctions between contractual and tort liabilities. A few will be noted below:

The gravity of the fault

- In tort liability, there is a principle of “indifference of the gravity of the fault. i.e even the **slight fault** is sufficient to engage someone’s liability since it has caused damage.

- The gravity of the fault does not matter in this case while in contractual liability, the judge can appreciate the gravity of the fault and reduce damages accordingly if the fault is slight or even declare the debtor contractually irresponsible if he finds that the fault is very insignificant.

Restrictive clauses of liability

- Restrictive clauses are clauses that can be inserted in a contract reducing or limiting the responsibility of the debtor in the circumstances agreed up by the parties.
- Those clauses may be allowed in contractual liability and they determine the extent of liability.
- Tort liability is to the extent of the damage, since the target is to restore the defendant to their “status quo ante”.
- However, such limitation can be set later in settlement agreement if the parties wish so.

Limitation term

- The general limitation term in civil matters is 30 years (art. 647 CCBIII).
- But a tort action from a criminal fault, the limitation term (prescription) for the action is only 5 years. (art. 15 CPP).

Joint liability

- In Tort Liability, **co-**authors are automatically held *in solidium* since one cannot determine the part of damage of every co-author in the realised damage so that they can only be liable for their part because the authors of the fault may be many but the damage remains unique.

- In contractual matter, there is no automatic solidarity between those who are debtors under the terms of the contract unless it has been expressly provided for in the contract.

Proof?

- As regards contractual liability, the creditor must establish the existence of the contract before complaining about the breach of this one.

- For the tort, the victim must establish the causal link between the fault of someone and the damage suffered.

- The existence of the damage only is not enough.

- Still the victim must prove that the damage he is suffering has been caused by the fault of someone before engaging his/her responsibility.

Respective fields of two liabilities

- For **contractual liability**, the field is limited to those who signed that contract (relative effect of a contract).

- This contract cannot benefit or burden third parties except in the cases provided for by the law.

- For the Tort liability, the field is much extended and plays to all since the conditions of civil liability are met.

- This is why for example in indirect liabilities (liability of parents for the damage caused by their children, liability of employers for the damage caused by their employees,..) the Tort liability is extended to those who did not even commit any fault.

- **Contest of two liabilities:**

- **The principle** is **the exclusion** of the application of the Tort liability, when the conditions for application of the contractual liability are met.

- These two liabilities cannot be engaged at the same time between the same persons for the same fault.

- **Note:** in labour matters, the practice allows additional action for moral damages on the basis of art. 258. (See Rubavu retreat, para 5.)

- This is in addition to those provided under art. 33 and 28 of the Labour code.

Tort vs criminal liability?

- **It does not matter in establishing tort liability**, whether the author of the damage was aware or not of the consequences of his/her act.

- This means that whether the author of the fault knew or did not expect the given result, Tort Liability will still be engaged. An example here is a damage caused by a person with a mental disorder**.**

- In this case, even though this person did not know what he/she was doing because he/she is mentally sick, there must be someone to repair this damage caused (the civilly responsible).

Basis for the nomination of the person to be held liable

- The right to repair once born to the profit of the victim, it is important to designate a person to be held liable.
- The fault fulfills already this function, when it is at the origin of the damage.
- Because in the event of damage caused by the fault of a person, this one is quite naturally indicated to answer for it.
- The fault is at the same time source of the right to repair and base of designation of the person to be held liable.

- But the fault generating of personal liability can also start the responsibility for others.

- It is for example, the case of the employee who acts for the account of others and makes a fault: it obliges his/her "employer" to answer for the damage caused.

- The fault does not generate only the personal liability for its author but also it gives birth to a responsibility with regard to a third person, who should be indicated independently of any fault.

- The basis for the nomination of a person in charge in these indirect responsibilities are varied.

- The first is that which sees in the liability the **counterpart** of the profit that a person draws from an activity which can appear dangerous.

- That explains in particular why the employer is declared responsible because of his employees, because he benefits from their activity.

- Another justification is based on the fact that it appears natural to charge the liability to that who is at the origin of the risks.
- It is not an issue of sanctioning a creator of risks, because the entrepreneurship is not condemnable, on the contrary; but rather, to continue a prevention policy of the damage while being based on this idea that, that who is at the source of the risks is the best capable to prevent the realization of it.

Personal liability: one's act (art. 258) or negligence (art. 259)

- Articles 258 and 259 CCB III holds liable the act or negligence that causes damage to another.
- Art. 258 "*Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it*." See also art. 1834 French civil code.

- Three conditions are required for this liability: **the damage**, **the fault** and the **causal link** between the detrimental fact and the damage.
- These are both "fault-based liabilities".

THE DAMAGE

- The existence of a damage is an essential condition of the civil liability.

- The need for a damage is only the application of the rule "**no interest, no claim**“.

- To have an interest to engage proceedings of civil liability, a damage should have been suffered. Otherwise, why should any one complain? The answer for this is that characterizes a fault which did not cause an injury and this cannot give place to the responsibility.

- It is necessary to specify the various kinds of damage and the characteristics of the reparable damage.

Material v Moral damages

- ***Material damage** vs **moral damage.***
- **The Material damage**
- That which is patrimonial/pecuniary: it consists in a loss in value in the property.
- **Ex**. destruction or deterioration of a good, loss of an amount of money, or a loss of earnings. The other results from the body lesions, such as wounds and mutilations, they are thus physical injuries.

- **Moral damages:**

- It is that which has an *extra-patrimonial* character. **Eg.:** the attack to the reputation of a person, or his/her feelings of affection.

- As for the body damage, it has at the same time **two kinds of elements:**

- **Material elements**: **medical expenses** and of hospitalization and **loss of earnings** resulting from disability.

- **Moral element:** the physical suffering, mental anguish the aesthetic damage, etc.

- In common law system, damages are divided into two types of damages: **compensatory damages** and **punitive damages.**
- Compensatory damages attempt to place the injured party in the position he would have been in had the accident not occurred.
- Punitive damages are meant to punish the person responsible for the damage and to deter his conduct

- Compensatory damages are comprised of two categories of damages, **general** and **special** damages.
- Special damages are generally quantifiable, for example, an incurred medical expense.
- General damages, on the other hand, are not easily quantifiable and include pain and suffering, mental anguish and future lost wages,
- The injured person may recover past and future medical expenses caused by the defendant as well as past wages, future wages and loss of earning capacity. The main categories of general damages an injured person may recover are pain and suffering , mental distress, scarring or disfigurement and loss of enjoyment of life.

- Also, certain family members (spouse and children, parents, siblings or grandparents) may recover for the "loss of consortium" (basically, loss of love, companionship and affection, uncompensated household services, and a spouses impairment of sexual relations) they suffer as a result of injury to another family member.

- A tort victim may also recover for damage to his property. Generally the plaintiff may recover the fair market value of the property, loss of use, and in certain situations even mental anguish . Plaintiffs generally are awarded interest from the date he files his lawsuit and may not recover attorney fees unless provided for in a statute or contract.

- **Speculative damages:** These are damages that have not yet occurred, but the plaintiff expects them to.

- Typically, these damages cannot be recovered unless the plaintiff can prove that they are reasonably likely to occur.

- **Statutory damages:** Are an amount stipulated within the statute rather than calculated based on the degree of harm to the plaintiff.

- Lawmakers will provide for statutory damages for acts in which it is difficult to determine the value of the harm to the victim.

- Mere violation of the law can entitle the victim to a statutory award/damages, even if no actual injury occurred.

- These are similar to, but different from, nominal damages (see below), in which no written sum is specified.

- **Nominal damages:** Nominal damages are very small damages awarded to show that the loss or harm suffered was technical rather than actual. Many times a party that has been wronged but is not able to prove significant damages will sue for nominal damages. This is particularly common in cases involving alleged violations of constitutional rights, such as freedom of speech.

- **Punitive damages:** Generally, punitive damages also termed ***exemplary damages*** in the UK, are not awarded in order to compensate the plaintiff, but in order to reform or deter the defendant and similar persons from pursuing a course of action such as that which damaged the plaintiff.

- Punitive damages are awarded only in special cases where conduct was egregiously insidious and are over and above the amount of compensatory damages, such as in the event of malice and intent.

- The leading case in the UK is *Rookes* v. Bernard. The Court concluded that exemplary damages are limited to the circumstances set out therein:

1. Oppressive, arbitrary or unconstitutional actions by the servants of government.

2. Where the defendant's conduct was 'calculated' to make a profit for himself.

3. Where a statute expressly authorises the same.

Moral damages irreparable?

- The compensation of the moral damage **raises a problem.**
- It was objected that such damage is **irreparable by nature**: one will give to the victim an allowance which will not erase its suffering or the attack carried to its reputation.
- Therefore, such damages **are not evaluated in money**, and consequently, the evaluation which the judge will have to make will be necessarily **arbitrary.**

Characteristics of the reparable damage

- To be repaired, the damage must meet the following conditions:
- It must be certain;
- It should not be already repaired;
- It must be direct;
- It must attack a "legitimate interest, juridically protected";
- It must be personal.

- **The damage must be certain**

- Today jurisprudence is unanimous that even a future damage must be sometimes repaired. Since one has the certainty that it will be carried out in the future and that one can appreciate *the quantum*, the victim has the right to require, without waiting, the compensation.

- It is thus no more necessary that the damage is current as long as there is no doubt about the point to know if the damage will be carried out or not.

- The action of civil liability cannot be received if the damage is possible and hypothetical.

- It is thus for example, requiring for a compensation for the loss of a child by asserting material loss for the financial advantages that this child was going to get.

- These advantages being dubious, the damage is too.

- The jurisprudence grants damages for the loss of a chance which can constitute a current and unquestionable damage; it admits that it is a damage, whose quantum varies according to whether the chance lost is more or less large.

- Thus the case of the runner of car whose car is damaged in an accident, the loss of the chance of participation is an unquestionable damage, but the loss of the stake (e.g. 100.000 Rwandan francs by winner) is a possible damage.

- See the case: R.COM.AA0008/05/CS, *KAMPIRE Claire & SIBOMANA Eugène/BANQUE DE KIGALI S.A (BK).*

It should not be already repaired

- The victim can obtain compensation **only once**. When the victim is compensated, the damage disappears.

- The victim should not thus ask for repair again, at least when the compensation was total.

- The victim cannot also cumulate several allowances for the same damage.

Violate a legitimate interest

- The legitimate interest is that which is worthy to be taken into account by the law: attack to the right of ownership, attack to the physical integrity of a person, etc.

- On the other hand, **the illegitimate interest**, not protected by the law, **cannot be compensated**

The damage must be direct

- The damage to be compensated, must be the direct and immediate result of a faulty behaviour.

- If the continuation **is remote**, the damage should not be repaired: **Ex**.: the wounded pedestrian misses an appointment, loses his job… and his wife asks for the divorce!

- However, case law admits the compensation of the damage raised by **"indirect"** victims in particular by nearest relatives of a person dead.

- If the damage worsens after the first compensation, it is possible to compensate the second time if the aggravation results from the same cause.

The damage must be personal

- The damage must be personally undergone by the victim. This one must prove that he/she is **victim** of the damage.
- **The heirs** can ask for compensation for the damage caused by the death of the victim of the accident in this quality; they do not ask repair of the damage undergone by the later, **but of the damage which they test personally.**
- **<u>However!</u>** See the case RCAA 0003/11/CS *SOCABU v. Faraja Ormiel* (para 22).
- Damages of the primary victim crime can be pursued by heirs

THE FAULT

- The fault is a fundamental element of the responsibility for the personal fact.
- The law does not define the concept of fault. It is the doctrines which were tested, with more or less success, to define the fault.
- Article 258 CCB III aims at the intentional fault, while article 259 CCB III aims at the non-intentional fault.

- The doctrines and jurisprudence consider in the definition of the fault three assumptions:
- **First assumption**: There is fault when there is violation of an imperative text.
- **Second assumption**: There is fault when one compares the behaviour of an individual to that of *the good father of family*.
- **Third assumption**: The fault is regarded as an abuse of right.

Bonus Pater Familias/Good father of the family

- A fault would be the behavior that the good father of family would not have (fairly diligent, circumspect, careful man).
- This behavior can be subjective. The good father of family is not a man completely model, infallible, but an average man.
- The civil fault is below the moral fault. The latter is appreciated compared to a higher man.
- As for the civil one, it is compared to an average man. This fault can be by commission or omission.

The causality between the damage and the fault

- **Problematic of causality:**
- It is not enough to the victim of a damage to establish a fault and just obtain compensation.
- Still it is necessary that a relation of cause and effect is established between the damage and the fault.
- The damage which gives place to compensation, is that which is a **consequence of the fault**. If it appears that **the damage would have occurred even in the absence of the fault**, there is no responsibility.

The research and the application of the concept of causality

- **Seek for the causal link:**
- How to determine the cause of the undergone damage?
- The fault must be *the direct and immediate necessary condition of damage*. It is necessary in other words, that the fault is such as without it, the damage would not have occurred.
- A damage can result from **several causes**, just like the same fault can be the cause of **a whole series of damage** of which some are only the consequence far away from the fault.

Solving the problematic of causation

John an auditor in DEF Company Ltd faces an accident on a Sunday when he was urgently called by his boss out of a church service, out of working hours.

The driver was on a high speed. John is led to the hospital and succumbs of the serious wounds.

It was proved that the nurses did not receive him quickly, and that even the doctor had managed inappropriate care to him. And finally he dies.

- **On the basis of this example, the causes are numerous:**
- To have left to the service Sunday;
- Excess speed of the driver;
- Delay of the care;
- Medical fault, etc.

- Who will then be liable? How to establish causation in this case?
- The doctrines created several theories when trying to resolve this problem of causality.

The Doctrinal theories of causation

a) The theory of the equivalence of the conditions;

- Concept:
- According to this theory, developed in XIX century by the German criminal lawyer Von BURI, the fault is causal when it is **a *sine qua non* "condition"** of the damage. A fault can thus be causal only if it constitutes a condition without which the damage would not have occurred such as it was carried out *in concreto.*

- **Consequences:**

- If a damage results from a plurality of causes whose one fault, the author of this one will be held to the integral repair of the caused damage.
- If several faults contributed to cause the same damage, their authors must each one be held to the integral repair.
- In case of concurrent faults having contributed to cause the same damage, each author will be held *in solidum* towards the victim.

•If there is contest between a fault and a case of *force majeure*, the judge will have to check if the fault is the indispensable condition of the damage.

•If he answers by the affirmative, the cause beyond control **does not exonerate** the author of the fault.

- **Critiques:**
- If one were to apply it in all its rigour, one could go up without end in the chain of the causes.
- It is not selective enough.
- Results in retaining **a multitude of faults** in relationship even very remote to the damage since it would be established that, without them, the damage would not have occurred;
- **an infinity of people** could thus have to answer for the same damage.

The theory of adequate causality

- **Principle and consequences**
- The theory of adequate causality makes possible to **make a choice** between the various causes having contributed to produce the damage and only the events which **were normally to cause** the damage can be regarded as its causes.

Two criteria were advanced to appreciate causality

- •**foreseeability** of the damage **(subjective approach)**: is causal, the fault whose author knew or should have known that it was going to cause the damage.
- •**The normal cause of the things** (**objective approach**): are regarded as causal only the faults which contain in themselves the objective possibility to produce, in the natural order of the things, the prejudicial result.

- **Critique:**
- This theory appears more **equitable**, insofar as it makes possible to break the causal link without having to go up too far in the chain of the causes.
- This theory however presents a risk of **arbitrary** because of the uncertainty to which the application of its criteria leads.

The theory of efficient causality (proximity of the cause)

- According to this third theory, the fault which appears among the antecedents of the damage will be retained as caused injury only if it were **likely to cause only the damage**, without being necessary that other conditions intervene.

- **In practice**, it is thus retained, in case of plurality of the causes, that the fault which is **closest to the damage is causal**, the former fault being exonerated by the posterior fault since it is established that this fault is not the necessary condition of the former fault.

Causation: Common Law

- What is the solution of “too many faults” in determining causation in common law jurisdictions?
- Not too different from civil law countries.
- It is usually defined as the"causal relationship between conduct and result”.
- The claimant will have to establish a two-stage inquiry, firstly establishing *'factual'* causation, then '*legal*' causation.
- ‘Factual’ causation must be established before inquiring into legal causation, perhaps by assessing if the defendant acted in the plaintiff’s loss.

But for-test?

- This is a test of necessity.
- It is the usual method of establishing factual causation is the *but-for test*. The but for test inquires ‘But for the defendant’s act (i.e without the defendant’s act), would the harm have occurred?’ A shoots and wounds B.
- We ask ‘But for A's act, would B have been wounded?’ The answer is ‘No.’ So we conclude that A caused the harm to B. The but for test is a test of necessity. It asks was it ‘necessary’ for the defendant’s act to have occurred for the harm to have occurred.

- **Critique:**
- One weakness in the but-for test arises in situations where each of several acts alone are sufficient to cause the harm.
- For example, if both A and B fire what would alone be fatal shots at C at approximately the same time, and C dies, it becomes impossible to say that but-for A's shot, or but-for B's shot alone, C would have died.
- Taking the but-for test literally in such a case would seem to make neither A nor B responsible for C's death.
- However, courts have generally accepted the but for test notwithstanding these weaknesses, sometimes by supplementing it with “common sense”.

- One of the leading cases on this dilemma is the US's ***State v. Tally*** [1894] where the court ruled that:

- "The assistance given ... need not contribute to criminal result in the sense that but for it the result would not have ensued. It is quite sufficient if it facilitated a result that would have transpired without it."

- In other words, A and B are liable in that no matter who was responsible for the fatal shot, the other "facilitated" the criminal act even though his shot was not necessary to deliver the fatal blow.

NESS test?

- NESS is a test of sufficiency instead of a test of necessity.
- Accordingly, something is a cause if it is a '**necessary element** of a set of conditions jointly sufficient for the result'.
- The pre-eminent case is known as "***the two hunters***", namely ***Summers v. Tice.***
- The set of conditions required to bring about the result of the victim's injury would include a gunshot to the eye, the victim being in the right place at the right time, gravity, etc.
- In such a set, either of the hunters' shots would be a member, and hence a cause.
- This arguably gives us a more theoretically satisfying reason to conclude that something was a cause of something else than by appealing to notions of intuition or common sense.

- **Facts:** In *Summers* the plaintiff, Charles A. Summers, accompanied defendants Tice and Simonson as a guide on a quail hunt in 1945.
- Each of the defendants was armed with a shotgun. Prior to going hunting plaintiff discussed the hunting procedure with defendants, indicating that they were to exercise care when shooting and to "keep in line."
- Plaintiff advanced ahead of the defendants up a hill, creating a triangle among the three men, with plaintiff front and center.

- The view of both defendants with respect to Summers was clear, and both defendants knew his location. A quail flew to a 10-foot elevation above the plaintiff's head (approximately four feet higher than the plaintiff's head), both defendants shot at the quail, and bird shot struck plaintiff in his right eye and another in his upper lip.
- Plaintiff sued both defendants for personal injuries.
- At trial it was established that each of two pellets had caused the injuries to plaintiff's lip and eye, respectively, and both might have been discharged from a single weapon (defendant) or each defendant may have contributed one of the injuring pellets.
- The trial court found that the defendants were negligent (i.e., that when they discharged their weapons they did not do so with ordinary prudence), and that the plaintiff was not contributorily negligent. The defendants appealed.

- Accordingly, in their view, neither was liable, and they could not be held jointly and severally liable (i.e., each defendant was liable for the full amount of damages).
- The court affirmed the lower court ruling that each defendant's behavior fell below the standard of care (i.e., they were both negligent) and that the plaintiff's conduct did not contribute to his injury.
- Laying out the groundbreaking doctrine of "***alternative liability***" because both defendants had been negligent, the court then decided that justice required that the burden of proving which of the defendants had caused either or both of plaintiff's injuries be shifted to the defendants, so that either could absolve himself of liability if possible.
- This is because it would have been impossible for the plaintiff to show which of the two negligent actors had caused his harm.

Summers v. Tice Rule

- As in two hunters (1948), A and B, who each negligently fire a shot that takes out C's eye.
- Each shot on its own would have been sufficient to cause the damage. But for A's shot, would C's eye have been taken out? Yes. The same answer follows in relation to B's shot.
- But on the *but-for test*, this leads us to the counterintuitive position that neither shot caused the injury.
- However, courts have held that in order to prevent each of the defendants avoiding liability for lack of actual cause, it is necessary to hold both of them responsible. This is known, simply, as the *Summers v. Tice* Rule.

Proximate cause?

- The but-for test is factual causation and often gives us the right answer to causal problems, but sometimes not. Two difficulties are immediately obvious.
- The first is that under the but-for test, almost anything is a cause. But for a tortfeasor's grandmother's birth, the relevant tortious conduct would not have occurred.
- But for the victim of a crime missing the bus, he or she would not have been at the site of the crime and hence the crime would not have occurred.
- Yet in these two cases, the grandmother's birth or the victim's missing the bus are not intuitively causes of the resulting harm.
- This often does not matter in the case where cause is only one element of liability, as the remote actor will most likely not have committed the other elements of the test. The legally liable cause is the one closest to or most proximate to the injury.
- This is known as the Proximate Cause rule. However, this situation can arise in strict liability situations.

New supervening cause

- This rule is known as "*novus actus interviens* (i.e new intervening act breaks the chain of causation)"
- Imagine the following. A critically injures B. As B is wheeled to an ambulance, she is struck by lightning. She would not have been struck if she had not been injured in the first place.
- Clearly then, A caused B's whole injury on the 'but for' or NESS test. However, at law, the intervention of a supervening event renders the defendant not liable for the injury caused by the lightning.

- The effect of the principle may be stated simply:
- if the new event, whether through human agency or natural causes, does not break the chain, the original actor is liable for all the consequences flowing naturally from the initial circumstances.
- But if the new act breaks the chain, the liability of the initial actor stops at that point, and the new actor, if human, will be liable for all that flows from his or her contribution
- In *R v Pagett* (1983), to resist lawful arrest, the defendant held a girl in front of him as a shield and shot at armed policemen. The police instinctively fired back and killed the girl.
- The Court of Appeal held that the defendant's act caused the death and that the reasonable actions of a third party acting in self-defence could not be regarded as a *novus actus interveniens* because self-defence is a foreseeable consequence of his action and had not broken the chain of causation.

Independent sufficient causes

- When two or more negligent parties, where the consequence of their negligence joins together to cause damages, in a circumstance where either one of them alone would have caused it anyway, each is deemed to be an "Independent Sufficient Cause," because each could be deemed a "substantial factor," and both are held legally responsible for the damages.
- For example, where negligent fire-starter A's fire joins with negligent fire-starter B's fire to burn down House C, both A and B are held responsible. See the case *Anderson v. Minneapolis,*(1920).
- This is an element of Legal Cause.

Concurrent actual causes

- Suppose that two actors' negligent acts combine to produce one set of damages, where but for either of their negligent acts, no damage would have occurred at all.
- This is two negligences contributing to a single cause, as distinguished from two separate negligences contributing to two successive or separate causes.
- These are "concurrent actual causes". In such cases, courts have held both defendants liable for their negligent acts.
- Example: A leaves truck parked in the middle of the road at night with its lights off. B fails to notice it in time and plows into it, where it could have been avoided, except for want of negligence, causing damage to both vehicles.
- Both parties were negligent. See *Hill v. Edmonds* (1966).

Third party's deliberate intervention

- In *R v Malcherek* (1981) the victim was placed on a life support machine and, after determining that she was brain dead, the doctors turned off the machine.

- The defendant appealed the conviction of murder arguing that the doctors had broken the chain of causation by deliberately switching off the life support machine.

- It was held that the original wounds were the operating and substantial cause of death, and that a life support machine does no more than hold the effect of the injuries in suspension and when the machine is switched off, the original wounds continue to cause the death no matter how long the victim survives after the machine's disconnection.

Liability for one's negligence

- Article 259 imposes liability for the damage caused by a person's negligence, carelessness or imprudence.
- It reads "*a person shall be liable not only for the damage occasioned by their own act, but also by their own negligence or imprudence.*"
- The constitutive elements of tort must still be fulfilled in this tort, notably, the fault, the damage and the causal link.
- The difference here is that the fault is not an *act* but rather failure to exercise required action, diligence. The Common law calls this ""*the tort of negligence.*"
- The tort of negligence holds liable any person whose failure to exercised necessary standard of care and diligence, the damage that can result from that failure.
- Thus 258 liability for an act, while 258 is liability for failure to exercise necessary care, which is termed as "negligence"

- Therefore, the person still needs to prove the *negligence*, *the damage* and the *causation* between that negligence and the damage. The damage should have occurred as a result of of a negligent conduct.

- In the case RADA 0054 /13/CS, between *EWSA vs ZIGAMA CSS* [2017], the Court held liable EWSA for failure to cover its electricity cables that supplied electricity to ZIGAMA CSS's office, and this has facilitated ZIGAMA's cleaner to break them and caused a short circuit in the wiring system and burnt all equipments in ZIGAMA's office.

- However, the Court has recognised *contributory negligence* as a reason to reduce the damage, thus a sharing of responsibility.

- It is thus retained that contributory negligence is applicable in Rwanda, as a partial or total defence depending on the extent of the defendant's negligence in causing the damage.

- The judge does not take into account the personality of the victim, but appreciates objectively the damage caused.
- The judge may provide some elements in an objective way to appreciate integral compensation.
- He does not take into account the external elements, the richness of the victim or the personality of the victim.
- In short, the judge must be objective and evaluate the damage in this way.

The extinction of the action and competence of the court

- The action can be extinguished by *the prescription* or *the renunciation.*
- The right in tort can be discharged in cases of death of parties, acquiescence, accord and satisfaction, recovery by judgment and by operation of statutes.

Compensation in tort

- **This judgement relates to two significant elements**:
- Mode of compensation; and the amount of compensation.

Modes of compensation

•Once the characteristics of a reparable damage are joined together, the choice belongs to the judge as regards the modes of compensation.

•This capacity remains however limited by the principle of integral compensation.

•This compensation can be done **in kind** or **by equivalent**. Compensation in kind is possible but not always.

•Example: in the event of slandering, the judge can ask for the contradiction in the same newspaper which defamed and at the same place.

•This compensation in kind can also be done when the judge uses the same means which were used by the author of the damage.

•It is the case for example of the demolition of a house built

•Most of the time, the compensation in kind is not always possible, it is then necessary to repair by an amount of money to pay to the victim.

•This pecuniary allowance can consist of a versed capital once and for all, or of a life annuity.

•The judge is free to choose the mode of compensation suitable to the damage.

•Compensation by equivalent consists in inserting in the inheritance of the victim, a value equal to that he/she was deprived of; it does not erase the damage, but compensates it.

•How then to evaluate the amount of compensation?

The principle of the indifference of the gravity of the fault

- •The judge must condemn the author of the damage to pay an amount, without taking into account the gravity of the fault.
- •This is due to the fact that a slight fault may cause a disaster while an inexcusable fault may also cause a slight damage.
- So, the judge may be mislead by the gravity of the fault and condemn the author to pay an amount which is not proportionate to the damage caused forgetting that the compensation must be based on the damage suffered

The principle of integral compensation (restitution *in integrum*)

- In front of an action for compensation, the judge in the evaluation of *the quantum* will refer to this principle.
- The purpose of this principle is to give the victim its *statu quo ante*.
- The action of responsibility must restore as exactly as possible the balance destroyed by the damage and replace the victim in the situation where it would have been if the detrimental act had not occurred.

Vicarious Liability

•**Art. 260 par.1 CCBIII** affirms that one is responsible for the damage which is caused by the fact of the people under one's control.

•It would be incomprehensible if the same article had not taken care, in its later subparagraphs, of determining who are these people for which one must answer.

•They are sometimes the children, whose detrimental fact can engage the responsibility either of their father and mother, or of the teachers, or of the craftsman of whom they are apprentices, sometimes employees, whose detrimental behavior can engage this time the responsibility of their employer.

- The liability for others is an indirect responsibility.
- The civilly responsible only intervenes because the responsibility of the author of the damage has occurred.
- The civilly responsible is generally the person who exercises an authority (control, monitoring, direction…) on the author of the damage.

- In Rwandan law, up to now, the list of civilly responsible persons is **restrictive.** The civil liability for the people noted above is **based on:**

- The presumption of bad education;

- The bad choice of the servant and employee;

- The idea that the author of the damage was generally insolvent.

- The theory of risk;

- And the fact that they are in better position to prevent or minimise the occurrence.

- The victim can direct its action against the legal person in charge on the basis of art. 260; in this case, the victim is exempted from proving the fault of the person in charge.

- He can also prefer to sue the author of the damage on the basis of article 258. In this case, he must prove the existence of the three conditions, and also he is exposed to the insolvency of the author of the damage.

- In vicarious liability action, the claimant does not have to prove the fault of the defendant. It is considered "*strict liability tort.*'

Parents v children

- **Principle**
- According to article 260 par. 2, the father, and the mother after the death of the husband, are responsible for the damage caused by their children **living with them.**
- Par. 4 adds that the responsibility takes place, unless the father and mother prove that they could not prevent the fact which gives place to this responsibility.

•It should however be noted that article 319 (1) CCB I lays out that the parental authority is exercised by the father and mother.

•It thus places the father and the mother at the equal footing. Consequently, article 260 par. 2 should logically be modified. It also contravenes the principle of equality and non discrimination.

•It is thus the father and the mother who are civilly responsible under the conditions that the law specifies.

•The other members of the family are excluded from this solution.

Basis of liability

•The doctrines and jurisprudence always try to determine which is the base of the responsibility thus put on the parents.

•One generally refers to a legal presumption of fault made in the monitoring or the education of the child.

•However, certain authors support that the presumption of fault is an inappropriate base for the responsibility for the parents.

•Other authors seek this base in the financial guarantee offered to the victims by the calling into question of the responsibility of the parents, in the parental authority or in the concept of family solidarity.

Determination of the responsible people

- Art. 260 par.2, establishes that the responsibility for the children weighs exclusively on **the parents**.
- In case of death, the responsibility weighs on the **surviving relative**, in case of divorce or of judicial separation, it weighs on that **who has the guard of the child.**

Conditions relating to the child

- Article 260 CCBIII requires **two conditions**:

- It is necessary that the damage is caused by a child;

- It is necessary that the child lives with his/her parents.

- The monitoring and education are only possible if the father and mother can exercise **a real control** on their children.

- If the child was **given up** by the parents, the latter are responsible on basis of art. 258 and 260. (One must prove that their fault consists in **the lack of control.**

- The absence of cohabitation should not however be understood in **a too material way: only when the child usually does not reside in his parents' house,** then we shall talk about absence of cohabitation.

- •It is not, for example, because the child goes to school during the day or was entrusted for few hours to a neighbor or to a friend which ceases the cohabitation with his/her parents.
- •There is suspension of cohabitation only as from the moment when the child usually does not reside in his parents ‘house, even if it is for a relatively short duration.
- •Jurisprudence requires moreover that this suspension bases on a legitimate reason, or else, the presumption of responsibility continues to apply.
- •The people at whom remains the child cannot be liable than on the basis of **article 259 CCB III**. One must prove that their fault consists in the lack of monitoring.

Defences

- •When the defendant manages to prove one of these legal causes, he/she will be exonerated from being responsible:
- •Exclusive fault of a third;
- •Exclusive fault of the victim;
- •Fortuitous cause or case of absolute necessity

Teachers & Craftsmen

- •**Responsibility of the craftsmen for their apprentices:**
- •**Principle:**
- •Art. 260 par.3 CCB III lays out that the teachers and craftsmen are responsible for the damage caused by their pupils and apprentices during the time that they are under their monitoring. It is based on a **presumption of fault**.
- •This responsibility requires **3 conditions:**
- •a relationship of the craftsman to the apprentice
- •a community of residence between the craftsman and the apprentice
- •a detrimental act must be an imputable fault to the apprentice.

A relationship between the craftsman and the apprentice

- •This relationship is based on an **apprenticeship contract**.
- •The craftsman is thus not an employer like others: he educates his apprentices who, frequently, live and take their meals at his place.

Exemption

•The craftsman can be exonerated by proving that **he could not prevent** the fact which gives place to this responsibility.

Teachers

•**Principle:**

•Also charged to supervise and educate the children who are entrusted to them by the parents, the teachers are declared responsible "for the damage caused by their pupils during the time that they are **under their monitoring**"(art. 260 par.3).

•The term teacher nominates any person **who gives a teaching to others**. This teaching is generally **intellectual**, the manual teaching being that of the craftsmen.

Conditions

•1) Someone must be a pupil i.e. the person who receives teaching;

•2) The detrimental fact of the pupil;

•3) The pupil must be under the monitoring of the teacher.

•This condition of time is **significant**, because the fault of the civilly responsible is presumed not only during the teaching hours, but still at all time when the pupils **are placed under the monitoring** of civilly responsible.

- This responsibility extends only to the damage **caused by the pupils**, **not** those which they undergo themselves.
- In other words, the damage must be caused by a pupil to another pupil or to a third person.
- If the **child causes the damage to the teacher**, there are 2 possibilities:
- •1. To attack the parents on the basis of article 260 par. 2 CCBIII;
- •2. To attack the child on the basis of article 258 CCBIII.
- Does this give a satisfying answer? For futher discussion read "*the tort liability of the classroom teacher*" by Stephen R. Ripps.

Employers and principals

- **Principle of solution:**
- Article 260 par.3 provides that employers and principle are responsible for the damage caused by their servants and employees **in the functions** to which they are employed".
- **The principal** is any person who has a right of control on the activity of another person.
- The employee is the person who acts for the account of another person, this one having in this respect, a capacity of monitoring, direction and control.

Basis of the responsibility of the principal

•For the traditional authors, the base of this responsibility is the presumption of fault; while other authors seek this base in the idea of the representation of the principal by the employee.

•In a diagrammatic way, these opinions melt the responsibility of the principal either on the fault of this one in the choice and the monitoring of the employee, or on the theory of the risk, or on the idea of the representation, or finally on the concept of equity and the guarantee.

Conditions

- **Four conditions** must be met to engage the responsibility of the employers:
  - **the link of preposition, the fault of the employee, damage and the relationship between the detrimental act and the exercise of the function.**

The link of preposition

•The relationship of principal to the employee appears as soon as one of the protagonists can give to the other **instructions on the manner of carrying out his work**.

•**It is not necessary** that the principal has the technical training necessary to be able to give orders with competence.

•It is **not necessary** that a written contract of employment is established.

•The relationship between the principal and the employee appears as soon as one can give to the other instructions on the manner of carrying out his work.

•It is **not necessary that the** job is voluntary or remunerated, temporary or free.

•For example one can become the employee of his father, if he obeys his directives, just like a husband can become the employee of his wife under the same conditions

Fault of employee

- To obtain compensation of the damage from the principal, the victim **must prove a fault** of the employee, there is **no presumption of fault** of the principal established by the law.

The damage must be caused to a third

•The third is any other person than the principal and the employee.

•It is thus an external person who should have suffered a damage.

•It should be noted that the industrial accidents are regulated by the law of the social security, and that of the civil liability.

The relationship between the detrimental act and the exercise of the function

•So that the responsibility of the principal can be engaged, it is necessary that the damage is caused by the employee "in the functions" to which he is employed.

•The solution is essential: in good justice, one does not see why the principal should answer for the behaviors of an employee which have nothing to do with his functions.

•If an employee bits his wife while returning at his place because she badly prepared his food, if an employee causes an accident with his personal car in holidays, the victims should know that it is not obvious to claim compensation from the employer.

- •On the contrary, the responsibility of the principal is certainly engaged when the employee causes a damage when carrying out the task which is entrusted to him, for example, by using a machine not according to expresses or tacit directives which were given to him by the employer.
- •But, between these two clear situations, there is an issue to resolve: what to decide when the employee causes a damage by a behavior which does not correspond to the express or tacit orders of his principal (and even sometimes against these orders)?

•It is all the same to the functions which he exercises in particular because he found in them the occasion and the means of causing the damage? Is the principal responsible?

•This question known as "the abuse of functions" gave place to controversies and jurisprudential fluctuations.

•In the years 1930s, the decisions of the French *Court de cassation* did not distinguish according to whether there is abuse of functions or not.

•It was enough, so that the third victim can engage the responsibility of the principal, that the damage was caused by the employee at the time he was supposed to be in functions.

•However, this desire to protect the thirds victims was erased when the employee was considered by the victim of the detrimental act as acting for his personal account.

•Consequently, there are two situations: the victim believed that the employee acted for the account of his principal and in this case, the abuse of function is to some extent incontestable for him; or he knew that the employee used his functions at personal ends and in this case, he could not complain to the principal.

•To put an end to these discussions, we may conclude the following: to put aside the responsibility of the principal, **it must be established (by him) that the employee acted, without authorization**, **at foreign ends to his attributions**; this responsibility is maintained exceptionally when **the victim believed in good faith**, that the employee acted in the performance of his duties. The silence kept by the principal who knows that his employee is acting while misusing his functions is a worth tacit authorization of the acts posed by the employee.

Case study: Prosecution v Pte NIYOYITA Innocent

- The supreme Court has laid a foundation and constitutive elements for this responsibility.

- Any critique?

Questions/Assignments

- Group I: Critically discuss the liability of the state for the acts committed by their employees while exercising their duties

- Group II: Critically analyse the judgment in *Prosecution v. MUNYANKUMBURWA. Does it resolve all dilemma existing in employer vs employee liability?*

- Group III: Is it possible for the manufacturer, producer or distributor to be liable for damage caused by the defect in the product? Under what conditions?

THE LIABILITY FOR DAMAGE CAUSED BY THINGS

- The law holds liable under Art. 260 par.1 CCBIII, "one is responsible not only for damage caused by his fact, but still of that which is caused by the fact (…) **of things that one has under his/her guard**".
- Under this, we will distinguish three assumptions:
- Liability for the animals;
- Liability for ruin of the buildings;
- Liability for the inanimate things.

GENERAL LIABILITY FOR THE THINGS

- **Principle**
- It is the guardian who has the obligation to repair the damage caused by the thing which he/she has under his/her guard, because it is him/her who supervises and who controls the thing.
- This responsibility is not attached to the ownership like it is the case for the liability for buildings.
- Any person who is using a thing even though it is not his/hers will be responsible for the damage it causes since he/she is the guardian of that thing according to art. 261 CCB III.

LIABILITY FOR THE ANIMALS

- **Principle**

- Under article 261 CCBIII, "the owner of an animal or that who makes use of it, is responsible for the damage which the animal caused, either that the animal was under his/her guard, or was escaped".

- Thus, any person who has under his monitoring an animal must take care of it so that this one does not cause damage to others, or else his responsibility, not that of the animal is engaged.

- It would not be possible in defense, to call upon the fact that the animal was mislaid or escaped and the guardian lost its control because, precisely, it is what is to avoid.

- This responsibility thus does not suppose, to be implemented, the proof of a fault of the guardian of the animal.

- However, it is not an issue either of putting a burden on the guardian of the obligation of guarantee of all the damage caused by the fact of his animal, but a simple protection of the victim

Conditions

- We may deduct from the application of article 261 CC B III that it requires the proof by the victim the following conditions:

- 1. An animal;

- 2. An act of this animal;

- 3. A damage;

- 4. The causal link between the act of the animal and the damage.

- On the level of the animal

- The animal must at least be **owned**. The animals which one answers for under the terms of article 261 are those on which exists **a right of ownership.**

- **These are:**

- The domestic animals

- The animals which belong to an owner by way of accession and become immovable by destination (Ex. fish of the ponds, pigeons,....)

- Wild animals which are not *res nullius*

- The detrimental fact of the animal does not consist only in the body injuries and material degradations which the applications of article 261 CCB III illustrates abundantly.

- Less tangibly, the transmission of a disease of the animal, including to the man can also be a concern of the provisions of this article.

- The relation of cause and effect between the fact of the animal and the damage must be proven so that article 261 CCB III plays, but this relation does not require the contact with the animal.

- The French Supreme Court judged that the responsibility for an animal under the terms of article 1385 CC (Article 261 CCB III) is engaged if the victim suffered a damage as a consequence of the threat which he proved by the sight of the animal.

- **A dead animal** is not an animal, but a thing (inanimate). The consequence is that, it is not art. 261 CCB III which is applicable, but art.260 par.1 CCB III relating to the regime of things

On the level of the responsible person

- **The guardian**

- The person liable for the damage caused by an animal is that who has the obligation to keep it, correlative obligation with the capacities of **direction, control and use.** If another person than the owner of the animal uses it himself, it is against this user that the proceedings will have to be brought. It is a responsibility based on the **presumption of fault.**

- **Note**: when the victim provoked the animal, he will support himself the damage.

- We have to note also that animals in protected areas are governed by special laws.

Compensation for damages caused by protected animals

- Art.1 of the law n026/2011 of 27/7/2011 on compensation for damage caused by animals determines compensation when:

- any person is damaged by any animal in National parks or other protected area during work or visit authorised by competent authority;

- any person is damaged by any animal on the list established by an Order of the Minister in charge of conservation of National Packs, encountered outside the park or other protected area. **See the MO no 14/minicom/2012 of 18/04/2012 determining the list of wild animal species concerned with the law on compensation for damage caused by animals.**

Modalities for calculating compensation

- According to art.3 of the law on the compensation of the damage caused by animals, compensation is determined in the following categories:

- Compensation to the family members of any child or adult killed by an animal;

- Compensation to a child or an adult, victim of injuries caused by an animal , or harmed in one way or another and affected by consequences thereof

- Compensation to a child or an adult for loss or damage to his/her property caused by an animal

- Family members of a child or an adult killed by an animal shall receive the following compensation: compensation for moral loss, compensation for pecuniary loss, medical expenses for the person who died, transport fees and burial fees.

- All these compensations may be cumulated when a damage occurs.

- In case of corporal injury, the victim will receive the following:

- -compensation for the corporal injury in accordance with the level of disability ascertained by an authorized medical doctor and the loss incurred;
- -compensation for pecuniary loss;
- -All medical expenses after providing supporting documents;
- -prothesis and orhesis upon recommendation by an authorized medical doctor;
- -transport fees.
- When the damage is based on the property, the victim shall receive the compensation based on real-cost value.

- According to the M.O nº 26/03 of 23/05/2012 determining the rates, calculating method and criteria for determining compensation to the victim of damage caused by an animal, the **Payment** is made by the special Guarantee Fund for automobile and damages caused by animals (art.1).

- See also the Law nº 52/2011 of 14/12/2011 establishing the special Guarantee Fund for automobile and damages caused by animals (SGF)

- As for the compensation period, the claimant must be notified of the decision from the Fund in 30 working days.

- When both parties have reached the agreement, payment is made in 15 working days from the day of the agreement.

- In case of delay in payment a penalty of 1% per month shall be paid in addition to the compensation.

- If payment is not made in 3 month of the late payment interest, the victim may go to Court (art.8).

- It must be understood that the victim cannot be received to Court unless this procedure is respected (art. 10).

- Art. 11 provides that if there has been a fault of another person in the occurrence of the damage, he/she will be responsible after payment by the Compensation Organ.

Modalities for awarding damages

- **Requirements to be fulfilled**:

- The victim, a person whose property has been damaged by animals, or their authorized close relative shall submit the following documents to the compensation awarding department:

- **Main documents:** (see notes)

- **For a deceased person**

- **For the injured person (art.3)**

- **For a person whose property has been damaged (art.3)**

Members of the approving Committee (art.5)

- The committee that approves damages caused by the animals shall be composed of the following:

- 1° The representative of the Police in the area where the accident took place;

- 2° The head of the village where the accident took place;

- 3° The Executive Secretary of the cell where the accident took place;

- 4° The Executive Secretary of the sector or his\her representative;

- 5° A representative of the institution in charge of park management in that area.

Procedure followed by a victim (art.6)

- Any damages caused by the wild animals must be reported to the Executive Secretary of the Sector where the accident took place within a period not exceeding seven (7) days, the reception of the notification shall be an element of evidence if considered necessary.

- If considered necessary, Prime Minister Instructions may determine another place where damages can be reported.

Awarding compensation (art.12)

- Upon receiving all compensation request letters, and where compensation request is valid, the compensation awarding department shall, in a period not exceeding thirty (30) working days, clearly explain to all interested persons modalities for awarding compensation, including relevant figures.

- Persons entitled to compensation shall express their opinion on proposed payment modalities in a period not exceeding thirty (30) days, beyond that period, they shall be deemed to have accepted them

Section 2. THE LIABILITY FOR THE BUILDINGS

- **Principle of solution**

- According to art. 262 CCBIII, "the owner of a building is responsible for the damage caused by its ruin, when it arrived in consequence of the **lack of maintenance** or **the defect of its construction**".

- The responsibility is this time attached to the **ownership, not to the guard.**

- The New Draft Law governing non-contractual obligations, provides for a joint-liability with the occupier under articles 29-33. It also establishes the duty of care to the visitors.

Conditions

- It must be a building;
- The damage must be caused by the ruin of a building;
- This ruin must come from a lack of maintenance or defect of its construction;
- The defendant in responsibility must be the owner of the building
- **No repair** can be asked to the owner if the ruin is imputable to another cause such as **the war** or a demolition by crumbling. It is the same if the cause of the ruin remained unknown.

Basis of the liability of the owner

- The responsibility which falls to the owner is based on a presumption of fault, either by the owner, when there has been lack of good maintenance of the building or by a third person in case of default in construction.

- **Means of defence**

- When the ruin comes from the lack of maintenance, the owner has an action against **the tenant or the usufructuary**.

- If it is a defect in **construction**, the owner has an action **against the constructor being his/her fault.**

- The owner can be exonerated by proving that he could not maintain the building or avoid the defect in construction as a consequence of a **case of absolute necessity.**

- For example if the owner proves that he/she was in exile for a long time and he/she could not maintain his/her building.

- He/she can be even exonerated completely or partially by **proving the fault of the victim.**

GENERAL LIABILITY FOR THE THINGS

- **Principle**

- It is the guardian who has the obligation to repair the damage caused by the thing which he/she has under his/her guard, because it is him/her who supervises and who controls the thing.

- This responsibility is not attached to the ownership like it is the case for the liability for buildings.

- Any person who is using a thing even though it is not his/hers will be responsible for the damage it causes since he/she is the guardian of that thing according to art. 260 (1) CCB III.

Conditions

- Three conditions must be met for this liability to be engaged:

- The damage must be caused by a thing;

- A fact of the thing and its causal link to the damage;

- The guard.

The thing itself

- These things can be movable or immovable, dangerous or not, small or big, simple or complex, stable or moving.

- They are however things to be put aside for legal reasons.

- It is the case of **the corps**, **the incorporeal things**, or *the res nullius*, because these things cannot have a guardian.

The fact of the thing and its causal link to the damage

- **The fact of the thing**

- The issue of the **inanimate thing** is delicate here. The issue is how a thing which does not have any movement by itself can cause damage. **Is a pedestrian for example reversed by a car, the fact of the driver or the fact of the inanimate thing (the car)?** *If there is fault of the driver, there is no problem! But if the car was packed, would it have caused the damage?*

- The issue arises only if no fault is proven against the driver, and it is posed then in the following terms**: is it possible that the accident is the fact of the thing?** This is also for example the case of a person who hits a head on a tree.

- We cannot deny that this person suffers a damage! But is it the fault of the tree?

- **The link of causality between the thing and the damage (the thing must have caused the damage)**

- **Is it fair to say that, whatever role played by the thing, its guardian is supposed to be responsible?** Can a person who falls down call upon the guardian of the floor on which he/she fell to be responsible? **The mechanism is thus this one**: the victim must prove the intervention of the thing (he seeks to establish that this intervention was an **indispensable cause** of the damage).

- The thing is then supposed to be the cause generating of the damage.

- The guardian can reverse this presumption by proving that the thing played **a passive role** in the realisation of the damage.

Guard of the thing

- The concept of guard can be split between the **legal guard** and the **material guard.**

- **The material guard** indicates sometimes the simple material detention of a thing, sometimes the use of the thing, but without being invested with any right on the thing, while **the legal guard** refers to the idea of control and direction which the guardian can have on the thing as an **attribute of the right of ownership.**

- The employees **could never** be guardians of the thing of the employer.

- For example, a driver of other's car could never be responsible for the damage caused by this car unless a fault on his/her side is proven.

- However, the owner can carry out **a voluntary transfer of the thing** (example: loan, leasing agreement, deposit, etc.) **and loses** the quality of guardian thus, while remaining the owner.

- Therefore, we may conclude that the guardian of a thing according to article 260 par.1 CCBIII is the one who keeps the thing for his/her own interests or who uses it for his/her benefits.

Basis of the liability for inanimate things

- The basis of this liability is the **presumption of responsibility of the guardian.**

- Held by an irrefragable presumption, the guardian cannot release himself by proving that he did not make any fault.

- The damage caused by a thing involves automatically the responsibility of the guardian without seeking her/his fault.

Liability for environmental attempt (NEW)

- The new Draft Law Governing Non-Contractual Obligations suggests a regime of liability for environmental attempt.

- Art. 25 holds liable any person who **degrades** the environment by their activity or by their business.

- Such degradation happens when the act violates measures taken by responsible environment authorities/activists in order to: **(1) prevent an imminent harm; (2) mitigate the consequences of a present or past attempt; (3) restoring the damage**. Art. 26.

- Agreement to exclude such liability is null.

Who is the Victim?

- Noramally, everyone or at least those living/occupying the vicinity of the damage are direct victims. Can all sue? Do they have *locus standi* to claim for damages of environmental harm?

- How to satisfy the requirements of ***damage, fault*** and ***causation?***

- How about acts that are done outside the boundaries/territories and have a crossborder effect? How about activities profited by the victims? How about those carried out by governments in causing harm beyond their territories?

- ***Locus standi*** in environmental tort actions needs further realisations.

- Boundaries need to be put in place to create a special regime of liability and address the right of victims and qualify, in tort, those victims.

New Draft on *Locus Standi*

- New Draft gives limited rights to those who can have the right to claim for environmental harm.
- If it belongs to a certain owner (who has taken violated measures), then that owner is rightfully able to bring a claim against the tortfeasor.
- If it has no known owner or no person took no measure of protection, the *locus standi* is vested in *relevant public authorities, national* or *regional environmental organisations* who took the violated measures. Art. 27
- Should damage only concern violation of taken measures?
- How about those who dirtens lake waters or rivers usually useful benefitable to the people?
- More remedies are needed.

Means of defence

- Because of the presumption of responsibility imposed upon the guardian of the thing, this one cannot be exonerated by proving that there has not been a fault of his own.

- **However** the guardian can deny the existence of a fact of the thing, or the causal link between the fact and the damage, or his quality of guardian.

Important general defences

- In every action for tort, certain defences are open to the defendant:

- **1. Volenti non fit injuria:** When a person has consented to the commission of a wrong in the nature of a tort, then he cannot subsequently sue for it.

- The maxim applies only to: (a) intentional acts which, otherwise, are tortious; (b) cases where plaintiff runs the risk of harm which would otherwise be actionable.

- The maxim does not apply to such unlawful acts, and where there is a breach of a statutory duty.

- It will also not apply where the defendant has been responsible for a dangerous situation and the plaintiff takes the risk to save persons involved in it.

- Again, the maxim cannot be applied where defendant is negligent.

- **2. Inevitable accident:**

- Inevitable accident is that happening which could not have been prevented by the exercise of ordinary care and skill of a reasonable man.

3. Act of God/ force majeure

- Accident which is purely the result of natural calamities and forces of nature like storm, earthquake, land-slide, flood etc.

- **4. Statutory authority:**

PRODUCT LIABILITY

- Repealed “Civil Code Book III” has been the legal and regulatory framework.

- There was no particular law on product liability. This was covered by provisions related to the sale of goods, especially under article 320 CCBIII.

- **Guarantee against latent defects**

- A**rt 320 CCBIII** states that the seller is responsible for the products latent defects, unless contrary clauses. This article obliges the seller on one hand, to guarantee a defect that may be hidden in the product when selling it.

- One the other hand, the seller has to ensure that he/she offers products with will not cause damage to the customers. If such damage occurs, he/she shall be liable.

- Parties may agree on the clauses which modify that guarantee. But when the seller is of bad faith (knew the latent defect) the clauses of no guarantee are null.

- When it comes to the damage caused by the product, we have to remember that the clauses of no responsibility are null.

- **Obligation of security of products and services**

- Consumers must be protected against the defects of products which may affect their health and security.

- In French law, the producer who puts the defected goods in circulation is liable on art. 1382 and 1383CC (258 and 259CCBIII). When it is a product which explodes and causes damage, it is art 1384 par.1 (260 par. 1 CCBIII) which is applied.

- In Rwandan law, the victims of defected products are compensated based on the rules of contractual and tort liability.

- This means of solution is not helpful to the consumers who have to prove the fault of the professional producer, distributor or seller, to obtain compensation.

- However, new Draft Law Governing Non-Contractual Liabilities brought an improvement, by enacting specific articles related to product liability.

Draft Law: Provisions on Product Liability

- The Liability is first of all imposed on the manufacturer as the originator of the damage, the risk owner.

- "The manufacturer is held liable for damage caused by a defective product whether or not the manufacturer concluded a contract with the aggrieved party." Art. 17

- Can all victims identify and locate the manufacturer? The answer is No. Thus, the victim should be given the burden to seek the originator of a product on the market.

- Those involved in the **chain of distribution** are held responsible, as from seller, wholesaler, distributor, sales representative, importer, exporter, to the manufacturer.

- Art. 18 of the new draft gives those in the **chain of distribution** a grace period of 3 months, to indicate the manufacturer.

- Understandably, ths period is also used to idicate the superior in the chain of distribution.

- The seller who can indicate the manufacturer within 3 months, they are released from liability.

- If identified after payment of damages, the seller/equivalent has right to subrogate the victim to sue the manufacturer. This is the **subrogation** rights.

- **Joint liability** is established for a damage caused by a product incorporated into another.

Examptions/Defenses for the manufacturer

- Art. 20. They are exempted of liability if:

a. the manufacturer has not put the product on the market

b. damage did not exist by the time the product was put on the market or if that defect arose after the product was put on the market

c. the product was not intended for sale or distribution

d. the state of scientific and technical knowledge at the time could not reveal the damage.

e. Damage is due to compliance.

f. Fault of the victim (contributory? Exclusive?)

Special rules in cases of products security

- In European law, 2 specific rules have been put in place in case of product security:

- 1. The Directive on the liability for defected products; and

- 2. The Directive on the general security of products

- The first one puts in place an **automatic liability** of the producer who is the creator of the risk and able to control and prevent the damage which may be caused to the consumers. In this case **3 conditions must be met**: the damage, defected product and the causal link between the damage and the defected product.

- The second directive obliges the producers to put into circulation the products on which they are sure to be unharmful to the health of the consumers.

LIABILITY FOR ROAD TRAFFIC ACCIDENTS

- When studying this section, the following laws must be necessarily observed:

- -Law nº41/2001 of 9/9/2001 relating to the compensation of victims of physical accidents caused by motor vehicles; in Codes and Laws of Rwanda, volume 5 (Business Law).

- -Presidential Oder nº31/01 of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicles; in Codes and Laws of Rwanda, Volume 5 (Business Law).

- These regulations provide in details the modes of damages to be compensated and the calculations thereof, which cannot be detailed in these notes.

Principle

- **Art. 260 par. 1 CCB III**: if in the course of the operation of a motor vehicle a person is killed, the body or the health of a person is injured or an object is damaged, the keeper of the motor vehicle is liable for the damage caused. This liability supposes **a fault** of the keeper.

- When the victim is at the origin of the accident he is in his turn liable on art. 258 or 259 CCBIII because being at the origin of the accident, it is a fault that the victim must be liable for.

II. Damaged things to be repaired

- The damage to be repaired, **4 conditions** must be met:

1. To be based on a legitimate interest

2. The damage must be certain

3. The damage must be personal

4. The damage must be the result of the harmful act.

- **Now the question is what if the victim causes damage to him/herself by his/her fault in an accident?**

- When the fault of the victim is a condition *sine qua none of the accident, he supports the damage.*

- If both the driver and the victim have participated in the realization of the damage, **they will share the responsibility**!

Compensation of the damage caused by motor vehicles

1. Material damage

- The victim receives either the equivalent thing or its value.
- **What about the old damaged thing?** The answer is that the compensating person should remain with this old thing to avoid undue enrichment on the side of the victim. The victim may also ask for repair of that thing, or its remaining value.

- **Note:** the liability in case of road traffic accidents weighs on the insurance companies because that insurance is compulsory (Compulsory insurance for civil liabilities caused by automotive vehicles as established by Law-Decree n°32/75 of 7 August 1975, later on modified and complemented by Law n°02/2002 of 17/01/2002)

2. Repair of the vehicle

- In case it is a automotive vehicle which is damaged, the technicians of both sides agree on the value of the damage caused to the vehicle.

- When the price of repair exceeds the value of the vehicle, the victim is given the remaining value of the vehicle.

4. Loss of income

- In this case, the damage is calculated according to the usual activity of the vehicle, and this for all the time it was not working

5. Body Damage

- When the victim is not dead:

- The responsible will pay all the hospital fees, and all transportation fees to and from the hospital.

- Temporally and permanent incapacity

- The damage is evaluated according to whether the victim had a job or not. The victim must prove that he lost all or part of his salary or other work benefits.

- **Aesthetic damage**

- Damages are allocated according to the level of aesthetic loss as determined by the appreciation of the judge.

- **Loss of a chance to marriage**

- Damages are only given to the single persons when the permanent incapacity is above 50%.

- **Loss of professional experience**

- The damages can be allocated to the pupils and students because of a loss of chance to the remunerating work and also the workers who were already in activities.

When the victim is dead:

- **Material damage**

- The responsible will pay all the expenses occurred by the death of the victim including the hospital and funeral fees and all the transportation fees.

- **Affection damage**

- The affection damages are given to only: spouses, parents, children and brothers and sisters according to the % determined by the law.

- **What if the vehicle which caused damage was not identified, was not insured, or was stolen?** In this case there is no insurance company to compensate the victim.

- However, a fund has been put in place to compensate the victim in the above mentioned cases.

THANK YOU