

## A. Introductory Concepts

## 1. Nature, scope and coverage

**What is a tort**

- ✓ a wrongful act that injures another person's body, property or reputation
- ✓ independent of a contract
- ✓ covers intentional and unintentional acts

## Notes:

- Not contractual agreement or arrangement
- Involves persons, property, reputation
- In Philippines, the term tort is equivalent to quasi-delict or culpa aquiliana.
- Intentional - civil suit for damages. It becomes a dolo punished as a crime by the RPC.
- Unintentional - founded on negligent acts. Committed without intent.

**Article 2176**

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict. xxx

## Notes:

- Quasi-delict is the fault or negligence.
- 1st sentence of Art. 2176 refers to the person or the tortfeasor.
- Tort - common law country, intentional or unintentional, can be a criminal offense, no pre-existing contractual obligation between parties
- Quasi delict - civil country like Phils, it is unintentional, can be a criminal offense (criminal negligence like reckless imprudence), there is criminal negligence, no preexisting contractual obligation between parties
- Culpa criminal - RPC
- Culpa Contractual - with existing contract

**Volenti non fit injuria** - One cannot maintain an action for a wrong occasioned by an act to which he has consented.

## Sources of obligation:

- Law - criminal liable
- Felony - there is dolo (deceit) and culpa (fault)

Notes from the book:

**Quasi-delict** is an act or omission by a person (tortfeasor) which causes damage to another in his person, property, or rights, giving rise to an obligation to pay for the damage done, there being fault or negligence but there is no pre-existing contractual relation between the parties.

➤ It refers to those obligations which do not arise from

law, contracts, quasi-contracts, or criminal offenses.

Basic principle of the law on quasi-delict, :

Except in those cases expressly provided, a person *cannot* be held liable for damage caused by him, unless he is at fault or is negligent and the damage is produced by his wrongful act or omission.

## Requisites of quasi-delict:

- (1) There must be an act or omission by the defendant;
- (2) There must be fault or negligence of the defendant;
- (3) There must be damage or injury caused to the plaintiff;
- (4) There must be a direct relation or connection of cause and effect between the act or omission and the damage; and
- (5) **There is no pre-existing contractual relation between the parties.**

BUT despite the existence of contractual relations, the "act that breaks the contract may also be a tort."

- ❖ The tort liability is said to arise from a breach of contract *when the act or omission is in itself wrongful, independently of the contract*, the breach of which being merely incidental to the commission of the tort.

	Culpa Aquiliana	Culpa Contractual
As to definition	It is the wrongful or negligent act or omission which of itself is the source of the obligation separate from, and independent of, contract.	It is an act or omission considered as an incident in the performance of an obligation already existing and which constitutes a breach thereof.
As to defense	An employer or master may excuse himself under the last paragraph of Art. 2180 by proving that he had exercised "all the diligence of a good father of a family to prevent the damage."	This defense is not available if the liability of the employer or master arises from a breach of contractual duty.
As to burden of proof	The plaintiff has the burden of proving that the defendant was at fault or negligent.	It is not necessary for the plaintiff to plead or prove that the violation of the contract was due to fault or negligence.
As to presumption	There is no presumption that the defendant was at fault or negligent (except as provided in Art. 2180, last par.)	The mere proof of the existence of the contract and its breach raises such presumption and the burden is on the defendant to prove that he was not at fault or negligent,

		because in culpa contractual, the rule of <i>respondeat superior</i> .
Similarities	Both are always based upon a <i>voluntary act or omission</i> which has caused damage to another and require only <i>preponderance of evidence</i> .	

**Negligence** is want of the care required by the circumstances. Where the danger is great, a high degree of care is necessary, and the failure to observe it is a want of ordinary care under the circumstances.

- ❖ Mere intoxication is not negligence; it does not establish a want of ordinary care. If a person's conduct is characterized by a proper degree of care it is immaterial whether he is drunk or sober.
- ❖ Fire is not considered a fortuitous event (see Art. 1278.) as it arises invariably from some act of man. (*Africa vs. Caltex*)
- ❖ "It was the duty of the defendant to maintain the track in reasonably sound condition, so as to protect the workmen from unnecessary danger. It failed in its duty, otherwise the accident could not have occurred." (*Rakes vs. Atlantic Gulf*)

## Exempting Circumstances

Art. 12. *Circumstances which exempt from criminal liability.* — the following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
2. A person under nine years of age.
3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Art. 80 of this Code.
5. Any person who act under the compulsion of irresistible force.
6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

Notes:

- Art. 11, RPC - there is no criminal liability but there is a civil liability.
  - Ordinance - jaywalking. There is no criminal liability but there is civil liability. E.g. caught driving under the influence of liquor, contempt of court, resistance of authority.
  - Treaty of precepts - Arts. 19-21(memorize)
2. Independent Alternatives, NCC Art. 1161
    - a. Revised Penal Code, Art. 100
    - b. Independent Civil Action for damages, NCC 32-34, 2176
    - c. Revised Rules of Court, Rule 111

## Article 1161, NCC

Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of Article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages.

## Article 34, NCC

When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.

Notes:

- Double recovery is proscribed under the NCC.
- Independent civil action - one can file this action even the criminal case has been filed.

Examples of ICA:

- Art. 32 - rights guaranteed in the constitution has been trampled or violated.
- Art. 33 - defamation, fraud, and physical injuries
- Art. 34 - police officer who failed to give aid
- Art. 2176
- Subsidiary liability - the person primarily liable is unable to pay.
- Joint and solidary liability - you can run after either
- Joint obligation - to each of its own

Notes from the book:

**Art. 2177.** Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

Crime or delict	Quasi-delict
there is criminal or malicious intent or criminal negligence	there is only negligence
affects public interest	concerns private interest or concern
there are generally two liabilities: criminal and civil	there is only civil liability
the purpose is punishment or correction	indemnification of the offended party
Criminal liability can not be compromised	liability for quasi-delict can be compromised as any other civil liability
the guilt of the accused must be proved beyond reasonable doubt.	proved by preponderance of evidence
liability of the person responsible for the author of the negligent act or omission is subsidiary	it is direct and primary

3. Elements

- a. Act or omission
- b. Fault or negligence, NCC Art. 1173
  1. concept
  2. standard of care
  3. presumptions of negligence, NCC

Arts. 2184-2185, 2188, 1756

## Elements

- ▣ act or omission
- ▣ damage or injury is caused to another
- ▣ fault or negligence is present
- ▣ **there is no pre-existing contractual relations between the parties**
- ▣ proximate cause

Notes:

Elements of Negligence:

- Duty
- Causation
- Damage
- Lack of foresight

What are the elements or requisites for negligence to be considered as existing?

- 1. There is a duty
- 2. Breach of a duty
- 3. Causes injury
- 4. There is proximate relation as to the breach and the injury

## Test of negligence

*Did the defendant  
in doing the alleged negligent act  
use reasonable care and caution  
which an ordinarily prudent man  
would have used in the same situation?*

Notes:

- 4th element: Even if there be a contractual relation - there may still be delict.

Questions asked by the court:

- Is there a necessary duty of care owed to the other?
- Did you breach the duty of care?
- Was there an injury?
- Is there a link between the breach of duty of care and the injury (causation)?

One can only be liable for probable consequences or could have foreseen before the happening. However, if there is fraud then one would be liable.

*Article 1171. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.*

▣

*Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.*

*In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.*

## US vs Juanillo

- ▣ Negligence is want of care required by the circumstances. It is a relative or comparative not absolute term, and its application depends on upon the situation of the parties, and the degree of care and vigilance which the circumstances reasonably impose.

Notes:

- A reasonable foresight
- Once the reasonable foresight of harm is established then the next criteria would be, did the actor take care (Picart v. Smith)
- Intoxication does not necessarily equates to negligence. It must be proven that the intoxicated driver breached the duty of care.

Factors to consider:

- Degree of intelligence
- Capacity of the person to take care of themselves
- Age

## Standard of care

*Discreet Pater Familias*  
(diligence of a good father of a family)

Notes:

- Standard of diligence required

Degrees of negligence

- 1. Simple negligence – Want of slight care and diligence only.
- 2. Gross negligence – There is a glaringly obvious want of diligence and implies conscious indifference to consequences ; pursuing a course of conduct which would probably and naturally result to injury.
- He who rely on the diligence must prove that there is negligence.

A. Causal Relation between act or omission and damage

1. Doctrine of Proximate Cause
  - a. Concept and definition
  - b. Test of proximate cause



2. Doctrine of Imputed Negligence, Art. 2184, 2185 and 2188
3. Res Ipsa Loquitur
4. Defenses
  - a. Plaintiff's own negligence
  - b. Assumption of Risk, NCC Art. 2179
  - c. Doctrine of Contributory Negligence, NCC Art. 2179
  - d. Doctrine of Last Clear Chance
  - e. Emergency Rule
  - f. Prescription, NCC Art. 1150

## DOCTRINE OF PROXIMATE CAUSE

*Proximate cause* - that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.

But-for test; foreseeability test; natural and probable consequences test; direct consequence test

Tests of proximate cause:

- i. **"But for" test** – defendant's conduct is the cause of the injury which would not have been sustained if the defendant had not been negligent.
  - ❖ The negligence need not be the sole cause of the injury. The actor is liable to respond in damages although there are other causes concurring with the negligence, as long as it is the "proximate concurring cause," or true cause, that is, the other cause or causes would not have produced the injury independently of his negligence.
- ii. **Cause-in-fact test** - where proximate cause is in issue, a "cause-in-fact" relation must exist between defendant's conduct and plaintiff's injury before liability may arise.
  - ❖ first step is to determine whether defendant's conduct in point of fact was a factor in causing plaintiff's damage.
  - ❖ if it be shown that his conduct was a factor in causing such damage, then the further would not have been sustained if the defendant had not been negligent. The question is whether his conduct played such a part in causing the damage as would make him the author of such damage and liable therefor in the eyes of the law.
- iii. **Substantial factor test** – if the actor's conduct is a substantial factor in bringing about harm to another, the fact that the actor neither foresaw nor should have foreseen the extent of the harm or the manner in which it occurred, does not prevent him from being liable.
- iv. **Foreseeability test** – must be shown that the actor foresaw or should have foreseen the injurious consequences of his act or omission. The actor or defendant should have foreseen the harm at the time of the event. (*Picarte v. Smith*) (See Art. 2202)
  - ❖ if the defendant could not reasonably foresee any injury as a result of his act, or if his conduct was reasonable in the light of what he could anticipate, there is no negligence, and **no liability**.
- v. **Natural and probable consequence test** – it must appear that the injury was not only the natural but also

the probable consequence of the conduct as distinguished from consequences that are merely possible. Since what is probable is, in a real sense, foreseeable, foreseeability appears to be an implicit element of this test of proximate cause.

vi. **Direct consequence test** – the defendant is liable for all the damage that flows as the ordinary and natural, or direct consequence of his conduct to be determined from the circumstances of the case rather than upon whether he might or must have reasonably expected the resulting injury.

## PROXIMATE CASE RULINGS

- Burning to death of a man with a lighted torch who approached an overturned bus at night due to a burst tire

## DOCTRINE OF IMPUTED NEGLIGENCE

A person who has not committed the act or omission which caused damage or injury to another may nevertheless be held civilly liable to the latter either directly or subsidiarily under certain circumstances.

- If the standard care is extraordinary diligence, even if the negligence was just slight, it will still result to liability

## PROXIMATE CASE RULINGS

-fire destroying a house built near the tracks due to sparks emitted from the locomotive engine of the railroad company

Answer: sparks

## PROXIMATE CASE RULINGS

-damages suffered by the driver of a car who bumped into a dump truck improperly parked by its driver near his residence at night

Answer: is improper parking

## PROXIMATE CASE RULINGS

-electrocution of a child who touched an overhead wire conducting electricity with parted ends and one of the charged ends fell to the ground

Answer: electric company is held liable

## PROXIMATE CASE RULINGS

-where the accused wounded the deceased who died of tetanus infection after 21 days

Answer: Tetanus

## PROXIMATE CASE RULINGS

-where the driver of a passenger jeep while being driven at a moderate speed, lost control of the jeep due to the skidding of the rear wheels of the vehicle as a result of which it fell into a precipice

Answer: the skidding of the rear wheels. The skidding may happen even without the fault of the driver esp when he is driving at a moderate speed.

## DOCTRINE OF IMPUTED NEGLIGENCE

A person who has not committed the act or omission which caused damage or injury to another may nevertheless be held civilly liable to the latter either directly or subsidiarily under certain circumstances.

The person who did not commit the act or omission.

## Article 101, RPC

**Article 101.** Rules regarding civil liability in certain cases. - The exemption from criminal liability established in subdivisions 1, 2, 3, 5 and 6 of Article 12 and in subdivision 4 of Article 11 of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules:

First. In cases of subdivisions 1, 2, and 3 of Article 12, the civil liability for acts committed by an imbecile or insane person, and by a person under nine years of age, or by one over nine but under fifteen years of age, who has acted without discernment, shall devolve upon those having such person under their legal authority or control, unless it appears that there was no fault or negligence on their part.

Should there be no person having such insane, imbecile or minor under his authority, legal guardianship or control, or if such person be insolvent, said insane, imbecile, or minor shall respond with their own property, excepting property exempt from execution, in accordance with the civil law.

## Article 101, RPC

Second. In cases falling within subdivision 4 of Article 11, the persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.

The courts shall determine, in sound discretion, the proportionate amount for which each one shall be liable.

When the respective shares cannot be equitably determined, even approximately, or when the liability also attaches to the Government, or to the majority of the inhabitants of the town, and, in all events, whenever the damages have been caused with the consent of the authorities or their agents, indemnification shall be made in the manner prescribed by special laws or regulations.

Third. In cases falling within subdivisions 5 and 6 of Article 12, the persons using violence or causing the fears shall be primarily liable and secondarily, or, if there be no such persons, those doing the act shall be liable, saving always to the latter that part of their property exempt from execution.

## Article 102, RPC

*Subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments.*

In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

## Article 103, RPC

*Subsidiary civil liability of other persons.*

The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

Notes:

- There is subsidiary liability.
- When the employee is insolvent, the employer is subsidiarily liable.
- If vicarious liability - primarily liable
- Defenses will not be applicable if liability is subsidiary.

## Requisites:

- 1) employee committed crime in discharge of duties;
- 2) said employee is insolvent and not satisfied civil liability;
- 3) employer is engaged in some kind of industry

- In quasi-delict, the liability of the employer is direct and immediate.
- In felony or criminal act, the the liability of the employer is subsidiary.

## RES IPSA LOQUITUR

Applicable under the following conditions:

- 1) Direct evidence is absent and not readily available;
- 2) Instrumentality under exclusive use and control of defendant; and
- 3) Event is of a kind which ordinarily does not happen unless one is negligent

- - how to establish quasi-delict. Rebuttable. Presumption of negligence. Mode of proof.
- - GR: the defendant has to be proven to be at fault in order for the plaintiff to claim damages
- - res ipsa loquitur is an XPN to the rule that the one who alleges should lie on the one alleges

Notes from the book:

**Res ipsa loquitur** literally means "the thing or the transaction speaks for itself."

- ❖ The phrase "res ipsa loquitur" is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's *prima facie* case, and present a question of fact for defendant to meet with an explanation.
- ❖ The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available. Hence, it has generally been held that the presumption of inference arising from the doctrine cannot be



availed of, or is overcome, where plaintiff has knowledge and testifies or presents evidence as to the specific act of negligence which is the cause of the injury complained of or where there is direct evidence as to the precise cause of the accident and all the facts and circumstances attendant on the occurrence clearly appear.

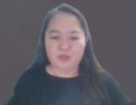
Requisites:

- (a) The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
- (b) It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
- (c) The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

## Plaintiff's own negligence

Article 2179, NCC:

*"When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded."*



## Contributory negligence

There is contributory negligence on the part of the injured party where his conduct has contributed, as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.

## Doctrine of comparative negligence

*A comparison is made in terms of the degree of negligence of plaintiff and that of the defendant and amount of damages recoverable by the plaintiff is reduced to the extent of his negligence.*

Forms:

1. Pure form
2. Modified form

Notes:

- Pure form -allows the plaintiff to recover regardless of the extent of negligence
- Modified form - the plaintiff can recover only if his negligence is less than or equal as to that of the defendant.

Notes from the book:

- ❖ There is contributory negligence on the part of the injured party where his conduct has contributed, as

a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection. (Valenzuela vs. CA)

- ❖ Where the drivers were equally negligent and contributed equally to the damage caused to each other's car, neither can recover from the other; each must bear his own damage.

A person claiming damages for the fault or negligence of another has the burden of establishing at least 3 conditions:

- (1) Fault or negligence of the defendant;
- (2) Damage, harm, or injury to the plaintiff; and
- (3) Connection of cause and effect between the fault or negligence and the damage.

## Doctrine of Comparative Negligence

- ❖ The test is simple. Distinction must be made between the accident and the injury, between the event itself, without which there could have been no accident, and those acts of the victim not entering into it, independent of it, but contributing to his own proper hurt.

## Assumption of Risk Doctrine

Requisites:

- 1) Plaintiff had actual knowledge of the danger
- 2) Plaintiff fully understands and appreciates the risk of harm
- 3) Plaintiff voluntarily chooses to enter or remain, or to permit his property to enter or remain within the area of such risk

Notes:

- If there is a contract, the defendant may interpose that you fault understand the assumption of risk.
- This is a complete defense so the petitioner cannot get anything.

## Doctrine of Last Clear Chance

Requisites:

- 1) Plaintiff was in a position of danger by his own negligence;
- 2) Defendant knew of such position of the plaintiff;
- 3) Defendant had the last clear chance to avoid the accident by exercise of ordinary care but failed to exercise such last clear chance; and
- 4) Accident occurred as proximate cause of such failure

Notes:

- Doctrine of supervening or humanitarian doctrine
- Even though a person's own act may have placed him in a position of peril and subsequently
- This is anchored on negligence on the part of the defendant which was the proximate cause of the accident.
- This is a defense but cannot be availed of by a defendant. This can be invoked by a plaintiff as a counter-defense.

Not applicable to:

- 1. Joint tortfeasors - jointly and severally liable
- 2. Defendants who are concurrently negligent
- 3. Against third persons

Notes from the book:

**Doctrine of Last Clear Chance** - the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence.

- ❖ even though a person's own acts may have placed him in a position of peril, and an injury results, the injured person is entitled to recovery. A person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent, or that of a third person imputed to the opponent, is considered in law solely responsible for the consequences of the accident.
- ❖ The doctrine applies only in a situation where the plaintiff was guilty of prior or antecedent negligence but the defendant, who had the last fair chance to avoid the impending harm and failed to do so, is made liable for all the consequences of the accident notwithstanding the prior negligence of the plaintiff. The subsequent negligence of the defendant in failing to exercise ordinary care to avoid injury to plaintiff becomes the immediate or proximate cause of the accident which intervenes between the accident and the more remote negligence of the plaintiff, thus making the defendant liable to the plaintiff. (Picart vs. Smith)
- ❖ This doctrine is invoked for the purpose of making a defendant liable to a plaintiff who was guilty of prior or antecedent negligence, although it may also be raised as a defense to defeat claim for damages.
- ❖ Last clear chance is a doctrine in the law of torts which states that the contributory negligence of the party injured will not defeat the claim for damages if it is shown that the defendant might, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the injured party. In such cases, the person who had the last clear chance to avoid the mishap is considered in law solely responsible for the consequences thereof.

## Emergency Rule Doctrine

A person, without fault or negligence on his part, is suddenly placed in an emergency or unexpected danger and compelled to act instantly and instinctively with no time for reflection and exercise of the required precaution is not guilty of negligence and therefore exempt from liability, even if he did not make the wisest choice of the available courses of conduct to avoid injury which a reasonably prudent person would have made under similar circumstances.

- Sudden peril doctrine
- His placement in a peril is not his fault.
- This would be applicable in situation that are sudden or emergency or unexpected situation.

## Factors to consider

- 1) Gravity of the harm to be avoided
- 2) Alternative courses of action
- 3) Social value and utility of the action

- In case of force majeure, this cannot be foreseen. Although foreseen but inevitable.
- Here, the defendant cannot be held liable.

Notes from the book:

**Emergency rule** - a person who, without fault or negligence on his part, is suddenly placed in an emergency or unexpected danger and compelled to act instantly and instinctively with no time for reflection and exercise of the required precaution, is not guilty of negligence and, therefore, exempt from liability, if he did not make the wisest choice of the available courses of conduct to avoid injury which a reasonably prudent person would have made under normal circumstances.

- ❖ an individual who suddenly finds himself in a situation of danger and is required to act without much time to consider the best means that may be adopted to avoid the impending danger is not guilty of negligence if he fails to undertake what subsequently and upon reflection may appear to be a better solution, unless the emergency was brought about by his own negligence. (Valenzuela vs. CA)
- ❖ The rule is not applicable where the situation or danger was caused by his own negligence

Rationale:

Courts have traditionally been compelled to recognize that an actor who is confronted with an emergency is not to be held up to the standard of conduct normally applied to an individual who is in no such situation. The law takes stock of impulses of humanity when placed in threatening or dangerous situations and does not require the same standard of thoughtful and reflective care from persons confronted by unusual and oftentimes threatening conditions.

## Prescription

Article 1150, NCC

*The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.*

- B. Liability for Act or Omission
1. By tortfeasor
    - a. Natural persons
    - b. Juridical persons
  2. By persons made responsible for others (Vicarious liability), NCC Article 2188

- a. Parents
- b. Guardians
- c. Owners and Managers of Establishments and Enterprises
- d. Employers
- e. Owners of vehicles
- f. State
- g. Teachers and heads of establishments of arts and trades
- h. Defense

## Liability for Act or Omission

- a) By tortfeasor (Article 2176)
- b) By persons made responsible for others (Article 2180)

### General Rule

All persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties or powers.

#### Notes:

- Mere presence or knowledge, approval, or satisfaction does not render one as liable insofar as he did not abet, join, or act in the crime.
- Ratification - full knowledge of the fact, one may be held liable.
- If it is in excess of your authority, mere approval can be liable.
- Art. 2180 - persons enumerated have the duty.

### Article 2180, NCC

**The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.**

- They can be held liable by vicarious liability.

### Article 2180, NCC

*The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.*

*Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.*

*The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.*

### Article 2180, NCC

*The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.*

*Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.*

*The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to*

- Due care and diligence in supervising their employees.
- Here, the principal is directly liable.
- Respondeat superior - the employer was negligent or remiss in supervising his employees. (NA in this principle)

#### Notes from the book:

**Principle of vicarious liability** - a person is made liable not only for torts committed by himself, but also for torts committed by others with whom he has certain relationship and for whom he is responsible, subject to certain conditions. It is called the doctrine of imputed negligence.

**GR:** No person can be held liable for the acts or omissions of another.

**XPN:** Principle of vicarious liability.

Doctrine of Respondeat Superior	Principle of vicarious liability
The negligent act or omission of the servant is conclusively the master's negligence. The employer cannot escape liability by interposing the defense of due diligence in the selection and supervision of the negligent employee.	Its liability is based on <i>pater familias</i> or the failure of the persons mentioned therein to exercise due care and vigilance over the acts of subordinates to prevent the damage. Negligence is imputed to them by law unless they overcome the presumption of its existence.
the carrier is liable only when the act of the employee is within the scope of his authority and duty. It is not sufficient that the act be within the course of employment only. (Maranan v. Perez)	it is enough that the assault happens within the course of the employee's duty. It is no defense for the carrier that the act was done in excess of authority or in disobedience of the carrier's orders. The carrier's liability here is absolute in the sense that it practically secures the passengers from assaults committed by its own employees. (ibid)

#### Liability of parents

- ❖ Under the Family Code, there is no more alternative



qualification as to the civil liability of parents. The liability of both father and mother is now **primary** and not subsidiary.

- ❖ It extends also to "other persons exercising parental authority like judicially appointed guardians and adopters.
- ❖ The liability of the parents for felonies committed by their minor children is likewise primary, not subsidiary.
- ❖ See Art. 221 of the Family Code
- ❖ This covers civil and criminal liability.

#### Liability of guardians

- ❖ incapacitated persons includes persons suffering the penalty of civil interdiction or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind, even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.
- ❖ *De facto* guardian - generally they are not liable but if the child has done such thing due to bad education or influence, then they are liable.

#### Liability of owners and managers of establishment or enterprise

- ❖ Manager - do not include the manager of a corporation as it is used in the sense of 'employer'

#### Liability of other employers.

- ❖ Negligent acts of employees, whether or not the employer is engaged in a business or industry, are covered so long as they were acting within the scope of their assigned task, even though committed neither in the service of the branches nor on the occasion of their functions, e.g. kasambahay/household helper.
- ❖ This encompasses negligent acts of employees acting within the scope of their assigned task.
- ❖ The fact that an employee in criminal case was acquitted because his criminal negligence was not proven cannot be invoked as a defense in an action for damages against the employer based on Articles 2176 and 2180 because the liability of the employer is **primary and direct**, based upon his own negligence (*culpa aquiliana*) and not that of his employees.

A distinction must be made between the two provisions to determine what is applicable. Both provisions apply to employers: the **fourth paragraph**, to owners and managers of an establishment or enterprise; and the **fifth paragraph**, to employers in general, whether or not engaged in any business or industry. The fourth paragraph covers negligent acts of employees committed either in the service of the branches or on the occasion of their functions, while **the fifth paragraph encompasses negligent acts of employees acting within**

**the scope of their assigned task.** The latter is an expansion of the former in both employer coverage and acts included. Negligent acts of employees, whether or not the employer is engaged in a business or industry, are covered so long as they were acting within the scope of their assigned task, even though committed neither in the service of the branches nor on the occasion of their functions. For, admittedly, employees oftentimes wear different hats. They perform functions which are beyond their office, title or designation but which, nevertheless, are still within the call of duty. (*Castilex Industrial Corporation. vs. Vasquez, et al.*)

**"within the scope of their assigned tasks"** - for purposes of raising the presumption of liability of an employer, includes *any act done by an employee, in furtherance of the interests of the employer* or for the account of the employer at the time of the infliction of the injury or damage.

Independent contractor - vicarious liability does not apply here.

Even if there is no formal employee-employer relationship is established, but the employer has the control, the vicarious liability is applicable.

#### Liability of the State for the acts of its special agents

- ❖ Where the act complained of is one performed in the discharge of the official duties of a public officer, the State is not liable.
- ❖ By **special agent** is meant one specifically commissioned to carry out the acts complained of outside of such agent's regular duties.

The **liability of the State** has two aspects, namely:

1. Its public or governmental aspects where it is liable for the tortious acts of **special agents only**.
- 2 Its private or business aspects (as when it engages in private enterprises) where it becomes liable as an ordinary employer.

Under Par. 6 of Art. 2180, the State has voluntarily assumed liability for acts done through special agents. The State's agent, if a public official, must not only be specially commissioned to do a particular task but that such task must be foreign to said official's usual governmental functions. If the State's agent is not a public official, and is commissioned to perform non-governmental functions, then the State assumes the role of an *ordinary employer* and will be held liable as such for its agent's tort. Where the government commissions a private individual for a special governmental task, it is acting through a special agent within the meaning of the provision. (*Fontanilla v. Maliaman*)

If the complained of is illegal or unauthorized, the State cannot be liable. The tortfeasor (even if he is a special agent) will be liable. Even if it is claimed as an act of the State, if it violates any of the act under 22 Articles, State shall not be liable.

### Liability of teachers or heads of establishments of arts and trades

- ❖ Meaning of the phrase “as long as they remain in their custody.” The protective and supervisory custody that the school and its head and teacher exercise over the pupils and students for as long they are in the school including recess time. There is nothing in the law which requires that for such liability to attach, the pupil or student who commits the tortious act must live and board in the school.
- ❖ **GR:** Where the school is academic rather than vocational or technical in nature, responsibility for the tort committed by the pupil or student will attach to the teacher in charge of such pupil or student.
- ❖ **XPN:** In the case of establishments for arts and trades (technical or vocational), it is the head thereof, and only he, who shall be held liable.

In other words, teachers in general shall be liable for the acts of their students except where the school is technical in nature, in which case it is the head thereof who shall be answerable. Following the canon of *reddendo singula singulis* “teachers” should apply to the words “pupils and students” and “heads of establishments of arts and trades” to the word “apprentices.” (*Amadora v. CA*)

Pupils - elementary students.

Students - high school and tertiary students

### Defense against vicarious liability

- ❖ Presumption may be rebutted by showing that they “observed all the diligence of a good father of a family to prevent the damage”, which in the case of employers, means due diligence in the selection and supervision of employees.
- ❖ Meaning of “diligence of a good father of a family.” — The phrase may be equated with ordinary care or that diligence which an average or a reasonably prudent person exercises over his own affairs.
- ❖ This standard of care is also referred to as that “a man of ordinary prudence,” or “a man using ordinary care and skill.”

#### **Article 2181**

*Whoever pays for the damage caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim.*

#### **Article 2182**

*If the minor or insane person causing damage has no parents or guardians, the minor or insane shall be answerable with his own property in an action against him where a guardian ad litem shall be appointed.*

### 3. Joint Tortfeasors, NCC Art. 2194

#### Notes from the book:

**Joint tortfeasors** are **solidarily liable** for damages. They

are each responsible as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves individually. The injured party may proceed against any one of them, or some, or all of them simultaneously, so long as the indemnity has not been fully satisfied.

**Joint tortfeasors** include all persons who command, instigate, promote, encourage, advice, countenance, cooperate in, aid or abet the commission of a tort, who approve of it after it is done for their benefit.

#### The ff are considered as joint torts:

- ❖ Where there is a concert of action or a common plan;
- ❖ When 2 or more parties who are under a common duty to another fail in performance.
- ❖ where a single indivisible harm is sustained as a result of the independent, separate, but concurring tortious acts of two or more persons.

#### Not considered as joint tortfeasors:

- ❖ where the independent concurring acts have caused distinct and separate injuries to the plaintiff, or where some reasonable means of apportioning the damages is evident.

4. Provinces, cities and municipalities, NCC Art. 2189

#### Notes from the book:

Article 2189 *does not* require the defective road, street, etc. to belong to the province, city, or municipality for liability to attach. It only requires that either control or supervision is exercised over the road, street, etc.

### **Provinces, cities and municipalities**

*Art. 2189. Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings and other public works under their control and supervision.*

#### Liability of LGU:

- Defective roads, bridges, etc.
- Acts under 2180 in the performance of the proprietary function

One cannot recover under the LGU unless there is a statute providing such.

In case of member of the city police force, if the latter fails to aid help, that police officer will be liable and the LGU will be subsidiarily liable.

5. Proprietor of Building, engineer, contractor, NCC Art. 2190-2192



## Proprietor of building, engineer, contractor

Art. 2190. *The proprietor of a building or structure is responsible for the damages resulting from its total or partial collapse, if it should be due to the lack of necessary repairs.*

## Proprietor of building, engineer, contractor

Art. 2191. *Proprietors shall also be responsible for damages caused:*

(1) *By the explosion of machinery which has not been taken care of with due diligence, and the inflammation of explosive substances which have not been kept in a safe and adequate place;*

(2) *By excessive smoke, which may be harmful to persons or property;*

(3) *By the falling of trees situated at or near highways or lanes, if not caused by force majeure;*

(4) *By emanations from tubes, canals, sewers or deposits of infectious matter, constructed without precautions suitable to the place.*

## Proprietor of building, engineer, contractor

Art. 2192. *If damage referred to in the two preceding articles should be the result of any defect in the construction mentioned in Article 1723, the third person suffering damages may proceed only against the engineer or architect or contractor in accordance with said article, within the period therein fixed.*

## Article 1723, Civil Code

*The engineer or architect who drew up the plans and specifications for a building is liable for damages if within fifteen years from the completion of the structure, the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground. The contractor is likewise responsible for the damages if the edifice falls, within the same period, on account of defects in the construction or the use of materials of inferior quality furnished by him, or due to any violation of the terms of the contract. If the engineer or architect supervises the construction, he shall be solidarily liable with the contractor. Acceptance of the building, after completion, does not imply waiver of any of the cause of action by reason of any defect mentioned in the preceding paragraph.*

*The action must be brought within ten years following the collapse of the building. (n)*

Quasi-Contractual - number of years as stated in the contract -- breach of contract

Quasi-delict - 15 years

Regardless of what is stipulated in the contract, so long as the cause of action is based on *quasi-delict*, the prescription is 15 years on liability and 10 years on filing of an action.

### Notes from the book:

Where the damage is caused by the *total or partial collapse of a building or any structure*, the proprietor or owner is *prima facie* deemed negligent and is made liable, if it should be due to lack of necessary repairs, because it is his duty to maintain his property in good

condition at all times to avoid causing injury or damage to another person or property.

To **relieve himself from liability**, he must prove that **property was in a good state of repair or that the collapse was due to a defect in its construction** in which case the engineer or architect and/or contract may be held responsible for the damage.

- ❖ If property is leased or in usufruct, it will not exempt the owner from liability for his duty to make necessary repairs.
- ❖ The lessee or the usufructuary is obliged to notify or advise the owner of the need for urgent or extraordinary repairs.

The liability caused by inanimate objects is based on the two principles:

- (1) **Principle of created risks.** — When a person introduces in society a dangerous object from necessity or profit, he exposes others to danger. If it injures another even without negligence on the part of the owner or proprietor, he should be liable for the damage caused; and
- (2) **Principle of presumed negligence.** — When an inanimate object causes damage to another the owner thereof becomes liable; proof of fault or negligence is unnecessary because this is presumed.

Cause of Action	Culpa Contractual	Culpa Aquiliana
Parties	Between Lessor and Lessee	Between Injured Person and Proprietor

## 6. Common Carriers

### Notes from the book:

Common carriers are bound to observe **extraordinary diligence** in the *vigilance over the goods* and for the *safety of the passengers* transported by them.

### Vigilance over goods. —

They are responsible for the loss, destruction, or deterioration of the goods.

### Safety of passengers. —

- A common carrier is bound to carry its passengers safely as far as human care and foresight can provide, employing utmost diligence in the carriage of passenger or extraordinary diligence.
- common carrier cannot generally be held responsible for injuries suffered by its passengers on account of the willful acts or negligence of other passengers or of strangers.

### Liability for breach of contract. —

- Where there is a breach of the carrier's contractual obligation to carry his passengers safely to their destination (*culpa contractual*), the liability of the carrier is not merely subsidiary or secondary but

direct and immediate.

- Civil actions based on alleged breach of contract are distinct and separate from the criminal action that may be brought by the injured party.
- the act that breaks the contract may be also a tort.

D. Nature and Enforcement of Liability (Arts. 30-36?)

1. Between tortfeasors, Art 2194

Responsibility of 2 or more persons who are liable for a quasi-delict is solidary.

2. No double recovery, Art. 2176

3. Requirement as to reservation

4. Manner of enforcement

E. Strict Liability Torts

One may be held liable because he failed to do an act which is required of him. He is liable although without his fault. "Liability without fault"

### Doctrine of Strict Liability/ Liability without Fault

*Strict liability is liability without fault or irrespective of fault. This means that in strict liability cases, the defendant is liable even though he did not intend to cause the harm and did not bring it about through his recklessness or negligence.*

This risk is inherent in the acts that he undertook. This is based on equity and public policy.

2 limitations:

1. Prudent man
2. It is up to the court to decide.

1. Possessor of animals, Art. 2183

### Possessor of animals

*Art. 2183. The possessor of an animal or whoever may make use of the same is responsible for the damage which it may cause, although it may escape or be lost. This responsibility shall cease only in case the damage should come from force majeure or from the fault of the person who has suffered damage.*

Liability independent of fault or negligence. —

The obligation imposed by Art. 2183 is not based on the negligence or the presumed lack of vigilance of the possessor or user of the animal causing the damage. It is based on natural equity and on the principle of social interest that he who possesses animals for his utility, pleasure, or service, must answer for the damage which such animal may cause. (*Vestil vs. IAC*)

Liability limited to possessor or user. —

Liability is imposed only on the possessor or user of the animal. Since he is the one who has custody and control,

he is, therefore, in a position to prevent the animal from causing damage. Note that this liability obtains even if he loses such custody and control because the animal escaped or was lost.

The owner of an animal was held not liable for injuries caused by it to its caretaker, who was paid by the owner for his work. Being injured was one of the risks of the caretaker's occupation. It was his business to prevent the animal from causing injury to himself or to anyone. Hence, the heirs of the caretaker who died as a consequence of his injuries cannot sue the owner. (*Afialda vs. Hisole*)

Force majeure. —

The possessor or user of an animal is liable for acts of the animal, whether they are instinctive or due to its defects. But when the instinctive act is due to *force majeure* such as lightning, thunder, etc. or to the act of a third person, there is no liability on the part of the possessor.

Fault of person suffering damage. —

The possessor of an animal is not liable if the damage or injury is caused by the fault or negligence of the injured person himself.

Contributory negligence - is not a defense but it can only reduce the liability.

2. Manufacturers and processors of foodstuff, Art. 2187

### Manufacturers and processors of of foodstuff

*Art. 2187. Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers.*

Purpose of the liability:

To insure that the burdens of such accidental deaths or injuries resulting from defective products intended for public consumption be placed upon those who market them, and can be treated as cost of production rather than by the injured persons who are powerless to protect themselves.

Requisites for liability:

- (1) Defendant is a manufacturer or processor.
- (2) Products manufactured or processed are "foodstuffs, drinks, toilet articles, and similar goods."
- (3) Defendant used noxious or harmful substances in the manufacture or processing.
- (4) Death or injury was caused by the product consumed or used containing such noxious or harmful substances.
- (5) Victim is the consumer, user, or purchaser.

3. Head of Family, Art. 2193



This provision imposes liability without fault or negligence.

“**head of the family**” may not be the owner of the building and it may include a lessee who lives in the building or a part thereof.

The head of the family who may have been obliged to pay indemnity to the injured party may recover from the person responsible for the damage. Their liability is **solidary**.

4. Allied laws – Secs. 97-102, Consumer Act, Sec. 31 of Corporation Code (Now, **Sec. 30 RCC**)

RA. No. 7394 “Consumer Act of the Philippines”  
(April 13, 1992)

Objectives:

- protection against hazards to health and safety;
- protection against deceptive, unfair and unconscionable sales acts and practices;
- provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer;
- provision of adequate rights and means of redress; and
- involvement of consumer representatives in the formulation of social and economic policies.

Prescription. — **Within 2 years** from the time the consumer transaction was consummated or the deceptive or unfair and unconscionable act or practice was committed and in case of hidden defects, from discovery thereof.

Batas Pambansa Blg. 68 “The Corporation Code of the Philippines.”  
(May 1, 1980)

- Amended by RA 11232 (Revised Corporation Code)

F. Special Torts

## Trinity of Precepts

- Abuse of right*
- Acts contrary to law*
- Acts contrary to morals (contra bonus mores)*

1. Abuse of right (Art. 19, NCC)

## Abuse of right

*Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.*

The right of one person entails corresponding duties to

respect the rights of others. Its exercise must never be abused, especially to the prejudice of another. When a right is exercised in bad faith for an illegitimate purpose or with the intention to injure another, and without any benefit to himself, even when the act itself is not illicit, there is an abuse of right, giving rise to liability for damages.

Standards in the exercise of rights and performance of duties. These standards are the following:

- to **act with justice**;
- to **give everyone his due**; and
- to **observe honesty and good faith**.

## Abuse of right

Elements:

- There is a legal right or duty;**
- Which is exercised in bad faith;**
- For the sole intent of prejudicing or injuring another.**

The law recognizes the primordial limitation on all rights:  
■ that in their exercise, the norms of human conduct set forth in Art. 19 must be observed.

Art. 19 lays down a rule of conduct for the regulation of human relations and for the maintenance of social order. **It does not provide a remedy for its violation.** An action for damages under either Arts. 20 or 21 would be proper.

Test of abuse of rights:

- ❖ No hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked
- ❖ There is an abuse of right when it is exercised for the only purpose of prejudicing or injuring another.
- ❖ In practice, courts, in the sound exercise of their discretion, will have to determine all the **facts and circumstances** when the exercise of a right is unjust, or when there has been an abuse of right.

2. Acts contrary to law (Art. 20, NCC)

## Acts contrary to law

*Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.*

- It covers all legal (not moral) wrongs done in violation of law, whether willfully or negligently.
- It furnishes the general sanction for violations of other laws which do not specifically provide any sanction, penalty or liability for such violation.
- A felony may be committed by means of deceit (*when performed with deliberate intent*) or by

means of fault or negligence. (Art. 3, RPC) If the fault or negligence does not constitute a penal offense, the actor is liable only for quasi-delict.

### 3. Acts contrary to morals (Art. 21)

#### Acts contrary to morals

*Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.*

#### Acts contrary to morals

##### Elements:

- 1) There is an act which is legal;
- 2) But which is contrary to morals, good custom, public order or public policy;
- 3) It is done with intent to injure.

Article 21 seeks to remedy the countless gaps in the statutes, which leave so many victims of moral wrongs helpless, even though they have actually suffered material and moral injury.

- those concerning injurious acts that are contrary to public policy but are not forbidden by statute.

- Moral damages may be recovered.
- Article 21 presupposes losses or injuries material or otherwise, which one may suffer as a result of the violation.

Article 19	Article 20	Article 21
Act must be intentional or in bad faith	Act may be done either "willfully," or "negligently."	Act must be intentional

### 4. Unjust enrichment (Art. 22)

#### Unjust enrichment

*Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.*

#### Unjust enrichment

##### Requisites:

- 1) the defendant has been enriched, i.e., he has acquired or come into possession of something
- 2) the enrichment has been brought about through the act of performance of the plaintiff, defendant, third party or any other means
- 3) the plaintiff has incurred a loss, i.e., the enrichment has been at his expense
- 4) the enrichment is without just or legal ground; and
- 5) there is no other remedy on contract, quasi-contract, delict or quasi-delict.

*Article 23. Even when an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefited.*

▣ *Article 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.*

▣ *Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.*

▣ *Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.*

Article 22 "compels the return of a thing acquired "without just or legal ground."

- This provision embodies the doctrine that **no person should unjustly enrich himself at the expense of another.**
- If there is an available action under any other institution of positive law, that action must be resorted to.
- The recovery cannot be more than the amount of loss but may be less.

In order that this remedy may prosper the following requisites must be present:

- (1) The **defendant has been enriched**, i.e., he has acquired or come into possession of something;



- (2) The enrichment has been brought about through the act or performance of the plaintiff, defendant, or a third party, or any other means;
- (3) The plaintiff has incurred a loss, i.e., the enrichment has been at his expense;
- (4) The enrichment is without just or legal ground; and
- (5) There is no other remedy on contract, quasi-contract, delict, or quasi-delict.

Indemnity that can be recovered is either:

- the amount of loss suffered by the plaintiff or
- the amount of unjust enrichment obtained by the defendant, whichever is lower.

**Remedy:** Restitution - to bring the thing back to original or make the person whole again.

## 5. Interference with relations

### a. Family Relations

### c. Social Relations (Sec. 26)

*Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:*

- (1) Prying into the privacy of another's residence
- (2) Meddling with or disturbing the private life or family relations of another
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

## Elements

### 1) wrongful conduct of defendant

- ▣ **GENERAL RULE:** *there is an intentional and malicious enticing of a spouse away or to stay away from the other spouse.*

### 2) loss of affection or consortium

### 3) causal connection between conduct and the loss

The following are the rights protected under Article 26:

- (1) Right to personal dignity (No. 4.);
- (2) Right to human personality which includes the right to personal security;
- (3) Right to privacy (Nos. 1 and 2.);
- (4) Right to peace of mind;
- (5) Right to family relations (No. 2.); and
- (6) Right to social intercourse. (No. 3.)

- Moral damages may be recovered for the acts mentioned.
- Liability incurred may not constitute a criminal offense.

### d. Economic/Contractual Relations (Sec. 24 & 28)

▣ *Article 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.*

▣ *Article 25. Thoughtless extravagance in expenses for pleasure or display during a period of acute public want or emergency may be stopped by order of the courts at the instance of any government or private charitable institution.*

Under the **doctrine of *parens patriae*** ("parent or guardian of the country"), the State has the sovereign power to provide protection to rights and property of persons who are non *sui juris* such as minors, insane and incompetent persons.

**Article 24** imposes upon the courts of justice the duty of vigilance for the protection of persons under disability in all contractual, property, and other relations.

**Art. 28** is intended to lay down a general principle outlawing unfair competition, both among enterprises and among laborers because same tends to undermine free enterprise. While competition is necessary in a free enterprise, it must not be unfair.

- Unfair competition may constitute a criminal offense.
- It shall give rise to indemnity for damages, and the civil action may be pursued independently of the criminal prosecution.
- What is actionable here is not any competition but one that is "unfair" causing damage to another.

▣ *Article 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.*

Requisites:

- There is an existing contract;
- Breach occurred because of an interference of a third party; and
- Knowledge of the existence of a valid contract.
  - **Note:** Actual knowledge is not required.
  - A third party may still be liable even without knowing the identity of the parties so long as he knew that a contra
- Existence of contract
- Existence of Malice
- Causal Relation
- Damage or injury may constitute as economic

- advantage
- Absence of legal justification or legal cause
- Intent to interfere

Extent of limit: Maximum limit

e. Political relations (Sec. 27)

In order that an action under Article 27 may prosper, the following requisites must be present:

- (1) The defendant is a public official or employee charged with the performance of official duties;
- (2) He refuses or neglects to perform his official duty in favor of the plaintiff;
- (3) The refusal or neglect is without just cause; and
- (4) The plaintiff suffers injury, i.e., material or moral loss, as a consequence of the defendant's inaction.

Remedy. Art. 27 gives the plaintiff:

- a cause of action for damages,
  - other relief, and
  - possible disciplinary administrative action against the defendant for dereliction of official duty.
- **Good faith of the public officer or employee is not a defense** because the discharge of the duties of public office is imperatively required by law.
  - Civil action for damages may be based on Art. 27, or on *quasi-delict* under Art. 2176, BUT if it constitutes a criminal offense, then under Art. 100 RPC.
  - Art. 27 speaks of the refusal or neglect (**nonfeasance**) to perform an official duty which the law requires him to do BUT **not to malfeasance and misfeasance**.
  - **Malfeasance** - covers any act which is illegal and causes physical or financial harm to another individual. It is an intentional act of doing something wrong, either legally or morally.
  - **Misfeasance** - means carrying out legal and improper action, but it is done in such a way that it harms others or causes injury to other people. Sometimes an act of a person causes harm to other people unintentionally.

Malfeasance	Misfeasance	Nonfeasance
It means the "commission of an unlawful Act".	It means "improper performance of some lawful act".	Failure or omission to perform an act when there is an obligation to perform that act.

## G. Kindred Torts

### 1. Legal Malpractice

*Scope of malpractice.* — Lawyer malpractice is ordinarily an economic tort, causing financial harm without personal injury or property damage. It deals only with violation of a lawyer's duty arising out of the lawyer's representation of a client.

**Lawyer malpractice** entails breach of a duty created by

the contract or by the relationship with the client.

**Malpractice claims** are **not confined to litigation malpractice**; they can arise in any kind of representation. Lawyers may be negligent in drafting or recording documents in search of records, negotiating a settlement or advising its acceptance, in giving advice, and possibly even in accepting a case beyond their experience and competence.

Elements —

- The plaintiff must first show a lawyer-client relationship.
- The contract or relationship establishes the general duty to provide professional care.
- Given the relationship, the commercial loss rule does not apply to eliminate liability for negligence.
- The remaining elements are those of other negligence cases.
- The plaintiff must prove a breach of the duty, cause in fact, proximate cause, and damages.
- Additional elements may be required in the case of criminal case malpractice.

Duties:

- duties of professional care and competence,
  - special duties of fiduciaries and
  - the duty to provide certain information to the client.
- Attorneys owe clients the skill, care, knowledge, and diligence exercised by reasonable and prudent lawyers in similar circumstances. Under this standard, not every professional mistake is negligence.
  - The standard is the **usual objective standard**. **Good faith of the lawyer is no defense** if he violates the standard.
  - the legal malpractice plaintiff must show by a preponderance of the evidence that if it had not been for that attorney's negligence he would have prevailed in the underlying action.

Legal malpractice action requires:

- ❖ the **resolution of two conflicts**: the initial lawsuit and
- ❖ the **malpractice action** — in essence a trial within a trial.

**Medical malpractice or medical negligence** - is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm. In order to successfully pursue such a claim, a patient must prove that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done; and that that failure or action caused injury to the patient. (*Li v. Soliman*)

4 essential elements a plaintiff must prove in a malpractice action based upon the doctrine of informed consent:



- (1) the physician had a duty to disclose material risks;  
 (2) he failed to disclose or inadequately disclosed those risks;  
 (3) as a direct and proximate result of the failure to disclose, the patient consented to treatment she otherwise would not have consented to; and  
 (4) plaintiff was injured by the proposed treatment. (*Li v. Soliman*)

Gravamen in an informed consent case requires the plaintiff to:

- point to significant undisclosed information relating to the treatment which would have altered her decision to undergo it.

### 3. Liability of directors & trustees of corporation

### 4. Nuisance –Arts. 694-707

## Nuisance

□  
- is any act, omission, establishment, business, condition of property, or anything else which:

- (1) Injures or endangers the health or safety of others;
- (2) Annoys or offends the senses;
- (3) Shocks, defies or disregards decency or morality;
- (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
- (5) Hinders or impairs the use of property. (Art. 694)

## Kinds of nuisance

- (1) Nuisance per se and nuisance per accident;
- (2) Public nuisance and private nuisance;
- (3) Attractive nuisance

## Nuisance per se; per accident

Nuisance per se – denounced as nuisance by common law or statute

Nuisance per accident – those which are in their nature not nuisances, but may become so by reason of their locality, surroundings, or the manner in which they may be conducted, managed, etc.

#### a. Nuisance Per Se and Nuisance Per Accident

**Nuisance per se** - is an act, occupation, or structure which is unquestionably a nuisance at all times and under any circumstances, regardless of location or surroundings. It is anything which of itself is a nuisance because of its inherent qualities, productive of injury or dangerous to life or property without regard to circumstance.

**Nuisance per accidens** - is an act, occupation, or structure, not a nuisance per se, but which may become a nuisance by reason of circumstances, location, or surroundings. Thus, raising and breeding pigs in a house within city limits is a nuisance per accidens.

	Nuisance Per Se	Nuisance Per Accidens
Existence	the thing becomes a nuisance as a matter of law. Its existence need only be proved in any locality, without a showing of specific damages, and the right to relief is established by averment and proof of the mere act.	whether a thing not a nuisance per se is a nuisance per accidens or in fact, depends upon its location and surroundings, the manner of its conduct or other circumstances, and in such cases, proof of the act and its consequences is necessary.
Abatement	affects the immediate safety of persons and property, they may be summarily abated under the undefined law of necessity	even the municipal authorities, under their power to declare and abate nuisances, would not have the right to compel the abatement of a particular thing or act as a nuisance without reasonable notice to the person alleged to be maintaining or doing the same at the time and place of hearing before a tribunal authorized to decide whether such a thing or act does in law constitute a nuisance.
	the complainant need not have property or use interest in any property affected by the defendant's conduct.	seeks to protect his own, current interest in the undisturbed enjoyment of or benefit from property. The plaintiff need not own the property — he need only be a lawful occupant, or the holder of one or more other use rights

#### b. Public Nuisance and Private Nuisance

## Public vs private nuisance

Article 695. Nuisance is either public or private.

A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal.

A private nuisance is one that is not included in the foregoing definition.

**Public nuisance** - the doing of or the failure to do something that injuriously affects safety, health, or morals of the public, or works some substantial annoyance, inconvenience, or injury to the public. It is a nuisance which causes hurt, inconvenience, or damage to the public generally, or such a part of the public as necessarily comes in contact with it in the exercise of a public or common right. It is a condition of things which is prejudicial to the health, comfort, safety, property, sense of decency, or morals of the citizens at large, resulting either from an act not warranted by law, or neglect of a duty imposed by law.

### Remedies against public nuisance

(1) A prosecution under the Penal Code or any local ordinance; or

(2) A civil action; or

(3) Abatement, without judicial proceedings

(Article 699, Civil Code of the Philippines.)

**Private nuisance** - one which violates only private rights and produces damage to but one or a few persons, and cannot be said to be public. It has been said to exist where one is injured in relation to a right which he enjoys by reason of his ownership of an interest in land, and where an individual wrong arising from an unreasonable, unwarrantable, or unlawful use of one's property produces such material annoyance, inconvenience, discomfort, or hurt that the law will presume a consequent damage.

### Remedies against private nuisance

1) A civil action; or

☐ (2) Abatement, without judicial proceedings

☐ (Article 705, Civil Code of the Philippines.)

	Public Nuisance	Private Nuisance
Affected	affects the public at large or such of them as may come in contact with it	affects the individual or a limited number of individuals only
remedies available	indictable	actionable, either for their abatement or for damages, or both.
		<i>Note:</i> Injunctive

		relief may be granted against a private nuisance.
	the complainant need not have property or use interest in any property affected by the defendant's conduct.	seeks to protect his own, current interest in the undisturbed enjoyment of or benefit from property. The plaintiff need not own the property — he need only be a lawful occupant, or the holder of one or more other use rights

### Test of a public nuisance

The possibility of injury or annoyance not to the public, but to all who come within its sphere. To constitute a public nuisance, it is sufficient that there is a tendency to the annoyance of the public, by an invasion of its rights which all are entitled to exercise if they see fit.

*Note:* The fact that acts or conditions may be beneficial to the public in some degree will not prevent them from being a nuisance, if their effects are such as to fall within the definition of a nuisance.

**Mixed nuisance** - a nuisance may be both public and private in character; it may be a public nuisance because it violates public rights to the injury of many persons, and it may also be private in character in that it produces special injury to private rights to any extent beyond the injury to the public.

### c. Attractive Nuisance

#### Attractive Nuisance Doctrine

*A class of cases within the general rule that one is liable for the injury resulting to another from failure to exercise the degree of care commiserate with the circumstances the attractiveness of the premises or of the dangerous instrumentality to children of tender years is to be considered as an implied invitation, which takes the children who accepted it out of the category of a trespasser and puts them in the category of invitees, towards whom the owner of the premises or instrumentality owes the duty of ordinary care.*

**GR:** When people come to the lands or premises of others for their own purposes, without right or invitation, they must take the lands or premises as they see them. If they are exposed to injury from unseen dangers, the responsibility therefor is upon themselves.

**XPN:** Doctrine of attractive nuisance.

➤ One who maintains on his premises dangerous instrumentalities or appliances of a character likely to attract children in play, and who fails to exercise ordinary care to prevent children from playing

therewith or resorting thereto, is liable to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises.

## PART II – DAMAGES

### A. Classification, NCC Art. 2197

“**Damages**” involve any and all manifestations of life: physical or material, moral or psychological, mental or spiritual, financial, economic, social political and religious.

- is the sum of money which the law awards or imposes as a pecuniary compensation, a recompense or satisfaction for an injury done or wrong sustained as a consequence either of a breach of a contractual obligation or a tortious act.

**Article 2195.** The provisions of this Title shall be respectively applicable to all obligations mentioned in article 1157.

**Article 2196.** The rules under this Title are without prejudice to special provisions on damages formulated elsewhere in this Code. Compensation for workmen and other employees in case of death, injury or illness is regulated by special laws. Rules governing damages laid down in other laws shall be observed insofar as they are not in conflict with this

### **Article 2197.** Damages may be:

- (1) Actual or compensatory;
- (2) Moral;
- (3) Nominal;
- (4) Temperate or moderate;
- (5) Liquidated; or
- (6) Exemplary or corrective.

2 kinds of damages:

- 1) compensation damages and
- 2) punitive (exemplary or corrective) damages.

**Nominal damages** - given in vindication of a breach of duty which does not result in any actual or pecuniary loss.

**Liquidated or conventional damages** - if stipulated by the parties in a contract

**Non-conventional** - if not agreed upon or predetermined.

- If fixed by law, it is called statutory
- If fixed by the courts, it is called judicial.

**Ordinary damages** - those which necessarily and by implication of law result from the act or omission complained of.

**Special damages** - those which result directly but not necessarily or by implication of law, from the act or

omission complained of and exist only because of special circumstances.

### B. Actual and Compensatory Damages

#### 1. Concept, NCC Arts. 2199-2200

**Compensatory damages** - damages awarded to a person as compensation or indemnity for such pecuniary loss suffered by him as he has duly proved.

- it covers all losses recoverable as a matter of right and includes all damages other than moral, nominal, temperate or moderate, liquidated, and exemplary or corrective damages.

**Pecuniary loss** - a loss of money or something by which money or something of money value may be acquired.

“**indemnity for damage to the person**” - includes compensation for everything then on, about, or belonging to the person, as well as for all bodily injuries which are proved to be the result of the accident.

#### 2. Requisites

- a. Alleged and proved with certainty
- b. Not speculative

The court cannot base a finding of substantial damages upon speculation, conjecture or guesswork in determining the fact and amount of damages. Actual damages may only be awarded for expenses duly supported by receipts. (*People vs. Malinao*)

It is not necessary to prove the exact amount of the loss. It is enough that the loss is established by competent evidence and the amount awarded as damages by the court is fair and reasonable. (*Hicks vs. Manila Hotel*)

Actual damages need **not** be proved in case *pecuniary loss is presumed as when a child or a spouse dies*. (*Mansanares vs. Moreta*)

Well-settled is the rule that *even if the complaint filed by one against the other is clearly unfounded this does not necessarily mean, in the absence of specific facts proving damages, that said defendant really suffered actual damage over and above attorney’s fees and costs*. The Court cannot rely on its speculations as to the fact and amount of damages. It must depend on **actual proof of the damages** alleged to have been suffered. (*Perfecto vs. Gonzales*)

Actual damages must be specifically pleaded and prayed for. Where, however, the prayer mentions also “such further relief as this Honorable may deem just and equitable,” the phrase “such further relief” may be deemed to include “actual damages” if and when proved although not alleged in the answer. (*Heirs of Justina vs. CA*)

#### 3. Component Elements

- a. Value of loss; unrealized profit, NCC 2200



2 kinds of actual or compensatory damages under Art. 2200:

- (1) **Loss suffered or actual loss**, which is known as *daño emergente* or *damnum emergens*; and
  - (2) **Unrealized profits** or the profits which the complainant failed to obtain, by reason breach of contract or as a result of the commission of quasi-delict, which is known as *lucro cessante* or *lucrum cesans*.
- These damages may be awarded for pecuniary loss in business, property, profession and occupation and for injury to business goodwill.

Article 2200	Article 2201
It entitles the respondent to recover as compensatory damages not only the value of the loss suffered but also prospective profits	It entitles the respondent to recover all damages which may be attributed to the non-performance of the obligation. However, in order to recover this kind of damages, the plaintiff must prove his case.

#### b. Loss of earning capacity

The actual value of the loss of earning capacity must be adequately established. Indemnification for the loss of earning capacity partakes of the nature of actual damages and must be proved not only by credible and satisfactory evidence but also by unbiased proof. (Art. 2205)

The award of lost income refers to the net income (total income less average expenses) of the victim.

GR: Documentary evidence for claims of damages for loss of earning capacity is required.

XPNS: Provided there is testimony that the victim is;

- (a) **self-employed** earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or
- (b) **employed as a daily wage worker** earning less than the minimum wage under the current labor laws.

*Note*: Even though the plaintiff was **not employed**, he is entitled to full compensation for the impairment of his right to work and earn money, assuming, of course, that the impairment was the result of the fault of the defendant.

#### c. Attorney's fees and expenses of litigation

Art. 2208. In the absence of stipulation, **attorney's fees and expenses of litigation**, other than judicial costs, **cannot** be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be **reasonable**.

#### d. Interest

Interest may be recovered for **failure to pay a sum of money**. Speculative and consequential profits and losses are too remote to be included as damages. (*Sun Life Insurance Co. vs. Rueda Hermanos Co.*)

The rate of **12%** interest (C.B. Circular No. 416) applies only to **loan or forbearance of money** or to cases where money is transferred from one person to another and the obligation to return the same or a portion thereof is adjudged. (*PNB vs. CA*)

- the rate of interest shall be 12% per annum to be computed from default, *i.e., from judicial or extrajudicial demand*.

When an obligation, **not constituting a loan or forbearance of money** (*e.g., obligation arises from a contract of purchase and sale*) is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court, at the rate of **6%** per annum as provided in *Article 2209*.

No interest shall be adjudged on unliquidated claims or damages **except** when or until the demand can be established with reasonable certainty. When such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made.

**Compound interest** is interest earned upon interest due. Art. 2212 contemplates a situation where the interest stipulated by parties had accrued which would earn legal interest from the time of judicial demand or a suit is filed

for its recovery. It is applicable only to obligations containing a stipulation for the payment of interest otherwise there would be no compounding of interest.

#### 4. Extent or scope of actual damages

a. In contracts and quasi-contracts, NCC 2201

i. obligor in good faith

He shall be liable for those damages “that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.”

ii. obligor in bad faith

He “shall be responsible for all damages which may be reasonably attributed to the nonperformance of the obligation.”

General Damages or the Natural and Ordinary Damages	Special Damages or Compensatory Damages
General damages are those which are the <b>natural and necessary result of the wrongful act or omission</b> asserted as the foundation of the liability. They are those which are traceable to, and the probable and necessary result of, the injury, or which are presumed by, or implied in, law to have resulted therefrom.	Special damages denote such damages (e.g., <i>hospital and doctor's bills</i> ) as <b>arise from the special circumstances of the case</b> , which, if properly pleaded, may be added to the general damages which the law presumes or implies from the mere invasion of the plaintiff's rights.
The distinction between the 2 damages are not absolute, but relative.	
Whether the obligor is in good faith or in bad faith, general damages are recoverable, but <b>special damages may be recovered only against an obligor in bad faith except</b> that the obligor in good faith can also be held liable for them when he knows or has been previously informed of such special conditions.	
These may be may be recovered under general allegation of damage.	These must be specially pleaded.

b. In crimes and quasi-delicts, NCC Art. 2202

*Limited to a fair compensation for the harm done.* — In awarding damages for tortious injury, the courts shall provide for adequate compensation by putting the plaintiff in the same financial position he was in prior to the tort.

#### Fundamental Principle in the Law on Damages

- ❖ Defendant **cannot** be held liable in damages for more than the actual loss which he has inflicted.

- ❖ Plaintiff is entitled to **no more than** the just and adequate compensation for the injury suffered. The law will not put him in a position better than where he should be in had not the wrong happened.

The rule in measuring damages in crimes and quasi-delicts is the same as the rule in breach of contracts and quasi-contracts where the obligor acted in good faith, except that the accused or defendant must answer for such damages whether he had foreseen them or not.

The accused or defendant shall be responsible in the same manner as a contractual debtor in bad faith, who shall be liable for all damages which may be reasonably attributed thereto, whether or not they have been or could have reasonably been foreseen by him.

Damages due to a death resulting from a crime may consist of indemnity for the victim's death, loss of earning capacity, moral damages, exemplary damages, attorney's fees, litigation expenses, and interest in proper cases. (*Briñas vs. People*)

i. resulting to death, NCC Art. 2206

There can be no exact or uniform rule for measuring the value of human life and the measure of damages cannot be arrived at by precise mathematical calculation but the **amount recoverable depends on the particular facts and circumstances of each case.**

Damages that may be recovered under Article 2206:

- indemnity for the death of the victim,
- loss of earning capacity,
- expenses for support, and
- moral damages.

Other damages may also be awarded including:

- actual and exemplary damages,
- attorney's fees,
- litigation expenses, and
- interest in proper cases.

#### Compensation for loss of earning capacity

Article 2206 provides that in addition to the indemnity for death caused by a crime or quasi-delict, the defendant shall be liable for the **loss of the earning capacity** of the deceased, and the indemnity shall be paid to the heirs of the latter.

Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession.

But compensation should be allowed for loss of earning capacity resulting from the death of a minor who has not yet commenced employment or training for a specific profession if sufficient evidence is presented to establish the amount thereof.

Factors to be considered in determination of amount of



damages:

- (1) the number of years on the basis of which the damages shall be computed; and
- (2) the rate at which the losses sustained by said respondents should be fixed.

$2/3 \times [80 - \text{age of the victim at time of death}] = \text{life expectancy}$

$\text{life expectancy} \times [\text{gross annual income} - \text{reasonable and necessary living expenses (50\%)}] = \text{net earning capacity}$

Other factors that are usually considered are:

- (1) pecuniary loss to plaintiff or beneficiary;
- (2) loss of support;
- (3) loss of service;
- (4) loss of society;
- (5) mental suffering of beneficiaries; and
- (6) medical and funeral expenses.

It must be stressed that this amount (indemnity for the death of the victim), as well as the amount of moral damages, may be adjudicated even without proof of pecuniary loss, the assessment of the moral damages being 'left to the discretion of the court, according to the circumstances of each case. Exemplary may also be imposed.

The indemnity arising from the fact of death due to a crime is fixed whereas the others are still subject to the determination of the court based on the evidence presented. (*Briñas vs. People*)

The father of the fetus that was aborted without his consent, is not entitled to recover damages from the doctor under Art. 2206 because it is not yet endowed with juridical personality. (*Geluz vs. CA*)

A widow whose husband died when he fell from a speeding, overcrowded train, was denied moral and exemplary damages because he was guilty of contributory negligence although the carrier was held liable for actual damages, including loss of earning capacity and attorney's fees. (*PNR vs. CA*)

When death occurs as a result of a crime, the heirs of the deceased are entitled to the following items of damages:

- (a) As indemnity for the death of the victim of the offense — without the need of any evidence or proof of damages.
- (b) As indemnity for loss of earning capacity of the deceased — an amount to be fixed by the court according to the circumstances of the deceased related to his actual income at the time of death and his probable life expectancy, the said indemnity to be assessed and awarded by the court as a matter of duty, unless the deceased had no earning capacity at said time on account of permanent disability not caused by the accused.
- (c) As moral damages for mental anguish — an amount

to be fixed by the court. This may be recovered by the spouse, legitimate or illegitimate descendants and ascendants and **not** the brother or sister of the deceased. Moral damages are not awarded to punish the defendant but to compensate the victim.

(d) As **exemplary damages**, when the crime is attended by one or more aggravating circumstances — an amount to be fixed in the discretion of the court.

(e) As **attorney's fees and expenses of litigation** — the actual amount thereof, (but only when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded).

(f) **Interests** in the proper cases.

## 5. Assessment of Damages, NCC Arts. 2203–2204, 2214–2215

Art. 2203 obligates the party injured whether by a wrongful or negligent act or omission or a breach of contract to take such measures as prudent men usually take under the circumstances as would alleviate and not aggravate his condition, to reduce the damages as much as possible.

**No liability for damages** which would have been avoided with ordinary care and reasonable expense can be enforced or **such liability may be reduced**, when the claimant, being in a position to do so, did nothing to avoid or minimize his loss.

### Doctrine of Avoidable Consequences

Article 2203 embodies this doctrine. Injured victims have a responsibility to act reasonably to limit or mitigate losses incurred.

#### Art. 2204

##### On Penalty

Mitigating circumstances serve to reduce the penalty imposed by law, while aggravating circumstances serve to increase the penalty.

##### On Liability

The liability for damages may be respectively increased or lessened depending on the presence of mitigating or aggravating circumstances.

**Principle of a single recovery** - the plaintiff gets only a single recovery, providing compensation not only for past but also for future losses, if any.

- **Advantages:** the case does not go on forever
  - Plaintiff - the benefit of closure is that he can get on with his life, both psychologically and physically.
  - Defendant - defendant's financial exposure and vulnerability to the plaintiff have ended.
  - Legal System - avoidance of multiple judicial proceedings
- **Disadvantages:**
  - there is almost certainly less accuracy in estimating future damages than there would be if determinations were made periodically as

losses were incurred.

**Doctrine of Subrogation** (Art. 2207) - a process of legal substitution: the insurer, after paying the amount covered by the insurance policy, steps into the shoes of the insured, as it were, availing himself of the latter's rights that exist against the wrongdoer at the time of the loss. This applies only to property, and not to life insurance.

Where plaintiff contributes to the principal occurrence as one of its determining factors, he cannot recover. Where, in conjunction with the occurrence he contributes only to his own injury, he may recover the amount that the defendant responsible for the event should pay for such injury, less a sum deemed a suitable equivalent for his own imprudence. (*Rakes vs. Atlantic Gulf & Pacific Co.*)

Duty to Minimize Damages	Doctrine of Contributory Negligence
The duty cannot arise until a cause of action has accrued which will entitle the plaintiff at least to nominal damages. It affects the amount of damages, and the burden of proof is upon the party alleging it.	Contributory negligence goes to the mitigation of recoverable damages merely, and is not a complete bar to the action itself.

**No pecuniary proof** is required in the award of moral, nominal, temperate, liquidated, or exemplary damages. It is essential that there should be a clear showing of the facts giving rise to such damages. With respect to liquidated damages, the courts have no discretion to fix their amount. They cannot be awarded where the parties did not stipulate on that kind of damages. (Art. 2216)

### C. Moral Damages

#### 1. Concept, NCC Arts. 2217-2218

**Moral damages** are damages for pain and suffering, which include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. The act or omission must not only be wrongful; it must be the proximate cause of the injury.

The grant of moral damages is based on the ancient maxim that "when there is a wrong there is a remedy."

There is no hard and fast rule in the determination of what would be a fair amount of moral damages, since each case must be governed by its own peculiar circumstances.

Moral damages may not be awarded in the absence of proof of mental and physical suffering on the part of the heirs of the victim. (*PP v. Perez*)

The award of moral damages is mandatory in cases of murder and homicide, without need of allegation and

proof other than the death of the victim. (*PP v. De Los Santos*)

Award of moral damages would require certain conditions to be met, to wit:

- (1) there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant;
- (2) there must be culpable act or omission factually established;
- (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and
- (4) the award of damages is predicated on any of the cases stated in Article 2219.

While an award for compensatory damages may be executed pending appeal, assuming the requisites for the court's valid exercise of its discretion to order execution are present, an award for moral and exemplary damages cannot be executed until there is a final and executory judgment.

Moral damages are recoverable where a woman, by reason of a breach of promise to marry by a man, suffers mental anguish, besmirched reputation, wounded feelings, moral shock and social humiliation. (*Wassmer v. Velez*)

**Moral damages not allowed** - Where the cause of the accident was merely the bursting of a tire while the bus was overspeeding, there being no evidence of fraud, malice or bad faith on the part of the defendant carrier. (*Mercado vs. Lira*)

**GR:** There can be no recovery for mental anguish suffered in connection with an injury to property.

**XPN:** The act of the offender is inspired by fraud, malice or like motives, mental suffering is a proper element of damages. Thus, the court in fixing the amount of moral damages, may consider the **sentimental value** of the property real or personal. (Art. 2218)

#### 2. When recoverable, NCC Arts. 2219-2220

Moral damages may not be recovered in crime, unless it results in or causes physical injuries.

Moral damages are recoverable where it is proved that the carrier (breach of contract of carriage) or its employee is guilty of malice or bad faith.

**GR:** A juridical person is not entitled to moral damages but it may be awarded exemplary damages. A corporation has "no feelings, no emotions, no senses."

The statement that a corporation may recover moral damages if it "has a good reputation that is debased, resulting in social humiliation," is an **obiter dictum**. (*ABS-CBN, Broadcasting Corp. vs. CA*)

- a. In seduction, abduction, rape and



other lascivious acts

In rape cases, moral damages may be awarded to the victim in such amount as the court deems just under the circumstances without need of alleging or proving the basis thereof. Such award is separate and distinct from civil indemnity, which case law also automatically, awards upon proof of the commission of the crime by the offender.

The conviction of the accused in seduction and acts of lasciviousness also suffices as a basis for an award of moral damages to the victim and her parents in the same criminal action, without independent proof thereof, because the law presumes that not only the woman who was seduced, abducted, raped or abused but as well as her parents naturally suffer besmirched reputation, social humiliation, mental anguish and wounded feelings. (*People vs. Fontanilla*)

- ❖ The indemnity in the form of moral damages to a rape victim has been increased to P50,000 without need of proof of moral suffering. (*PP vs. Manalo [2003]*);
- ❖ In case of multiple rapes, the Court awarded P150,000. (*People vs. Espinosa [1995]*.)
- ❖ If the crime of rape is effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable mandatory laws, the civil indemnity awarded was P75,000. (*PP vs. Ballester*)

If the injury to property is willful, the court may award moral damages, if under the circumstances such damages are justly due. (*Art. 2220*)

In case of breach of contract, moral damages may be awarded only where the defendant acted fraudulently or in bad faith, or with gross negligence amounting to bad faith. Bad faith means a breach of duty through some motive or interest or ill-will. (*Art. 2220*)

Moral damages are recoverable for breach of contract of employment where the wrongful dismissal of an employee was attended with malice and bad faith, or constitutes an act oppressive to labor, or is done in a manner contrary to morals, good customs, or public policy.

Moral damages are not recoverable for breach of contract of carriage, *except*:

- 1) where the mishap results in the death or physical injuries of a passenger and
- 2) where it is proved that the carrier was guilty of fraud or bad faith, even if death does not result.

b. In acts referred to in NCC Arts. 21, 26, 27, 28, 29, 32, 34 & 35

c. In cases of malicious prosecution

Where the plaintiff secured an improperly and irregularly

issued writ of attachment against the defendant based on a false affidavit, the action to recover moral damages is identical with or analogous to an ordinary action for malicious prosecution. (*PCIB v. IAC*) *Except* where the party who requested the attachment acted in good faith and without malice.

Summary of Rules for the Award of Moral Damages	
Nature and purpose	Moral damages are not punitive in nature but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused to a person.
Amount	Although incapable of pecuniary computation, moral damages, nevertheless, must somehow be proportional to and in approximation of the suffering inflicted.
Proximate result	Such damages, to be recoverable, must be the proximate result of a wrongful act or omission the factual basis for which is satisfactorily established by the aggrieved party.
In <i>culpa contractual</i> or breach of contract	Moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence or in wanton disregard of his contractual obligation and, exceptionally, when the act of breach of contract itself is constitutive of tort resulting in physical injuries.
In <i>culpa aquiliana</i> , or quasi-delict	(a) when an act or omission causes physical injuries, or (b) where the defendant is guilty of intentional tort, moral damages may aptly be recovered.
In <i>culpa criminal</i>	Moral damages could be lawfully due when the accused is found guilty of physical injuries, lascivious acts, adultery or concubinage, illegal or arbitrary detention, illegal arrest, illegal search, or defamation. Malicious prosecution can also give rise to a claim for moral damages.
Analogous cases	Following the ejusdem generis rule, it must be held similar to those expressly enumerated by the law.

## D. Nominal Damages

### 1. Concept

Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown. (*Areola v. CA*)

Nominal damages are really a symbolic award given to the plaintiff when liability of the defendant is established but the amount of the harm done is not measurable or even demonstrable. The award indicates that the defendant committed a wrong and it serves to clarify or vindicate the rights of the plaintiff.

## 2. When awarded

Nominal damages may be awarded to plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered. (*Francisco vs. Ferrer, Jr.*)

Nominal damages may be assessed by the court in every obligation proven to have been violated whether such obligation arises from:

- a) law,
- b) contracts,
- c) quasi-contracts,
- d) crimes, or
- e) quasi-delicts (*Art. 1157.*), or
- f) in every case where the property right of the plaintiff has been invaded.

Only nominal damages can be recovered for a tort where there is no evidence from which damage can be calculated.

They are **not recoverable** when there is an award of actual, moral, or temperate damages.

Nominal damages are not recoverable in cases in which damages are an element of the cause of action and plaintiff has failed to prove those damages

### E. Temperate or Moderate Damages

#### 1. Concept

Temperate or moderate damages are included within the context of compensatory damages. The assessment of such damages is left to the sound discretion of the court, but the amount thereof must be reasonable under the circumstances and the same may only be recovered when the court finds some pecuniary loss has been suffered but its amount, cannot from the nature of the case, be proved with certainty in terms of money.

#### 2. When awarded

In case of death, where the amount of actual damages cannot be determined because of the absence of receipts to prove the same, temperate damages may be awarded, it being reasonable to presume that the family of the victim necessarily incurs expenses for the wake and the funeral.

Temperate damages can and should be awarded on top of actual or compensatory damages in instances where the injury is chronic and continuing.

### F. Liquidated Damages

#### 1. Concept, NCC Art. 2226

**Liquidated damages** means a sum of money stipulated by the parties at the time of entering into a contract as being payable as compensation for injuries in the event

of a breach.

## 2. Rules governing in case of breach of contract

Liquidated damages **cannot** be awarded where the parties did not agree on that kind of damages.

Liquidated damages take the nature of penalties. It has been held that "there is no difference between a penalty and liquidated damages, as far as legal results are concerned." In either case, the injured party need not prove his damages in order that the sum stipulated may be demanded.

Attorney's fees provided in contracts as recoverable against the other party as damages are in the nature of liquidated damages and the stipulation is aptly called a penal clause.

The stipulation as to the amount of indemnity should not be enforced where the breach committed by the defendant is not the one contemplated by the parties.

### G. Exemplary or Corrective Damages

#### 1. Concept, NCC Art. 2229

Exemplary or corrective damages are defined or described as damages which are given as an enhancement of compensatory damages suffered and are allowed as a punishment of the defendant and as a deterrent to others.

It is a requisite in the grant of exemplary damages that the act of the offender must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner.

Exemplary damages are imposed, **in addition** to the moral, temperate, liquidated, or compensatory damages, to provide an example or correction for the public good. They are designed to reshape behavior that is socially deleterious in its consequence and deter the wrongdoer and others like him from similar conduct in the future. Hence, in the absence of any of the 4 kinds of damages mentioned, exemplary damages cannot be granted.

Exemplary damages may be awarded even though not so expressly pleaded in the complaint nor proved.

#### 2. When recovered

##### a. In criminal offenses, NCC Art. 2230

*Minority view:* Recovery of exemplary damages for an injury received in consequence of an act punishable under the criminal law is denied. The reason given for this view is that the defendant might otherwise be twice punished for the same offense.

*Majority view:* Recovery of exemplary or punitive damages will not be denied merely because the wrongful act upon which the action is based may be or has been punished criminally.

Exemplary damages in a civil action are not awarded in lieu of criminal or penal punishment and have no necessary relation to the penalty incurred for the wrong done to the public.

The award of exemplary damages is justified if there is at least one aggravating circumstance. In the absence of any aggravating circumstance, the accused should not be made to pay exemplary damages. Such aggravating circumstances, even if not alleged in the information, can be considered as basis for an award of exemplary damages.

b. In quasi-delicts, NCC Art. 2231

Exemplary damages are recoverable in all actions for damages based upon tortious acts which involve circumstances or ingredients of malice, fraud, insult, gross negligence, or a wanton and reckless disregard of the right of the plaintiff.

c. In contracts and quasi-contracts, NCC Art. 2232

GR: Damages for breach of contract are limited to the pecuniary loss sustained. Thus, exemplary damages are not recoverable in actions for breach of contract.

XPNS:

- Where the breach amounts to an independent, willful tort, in which event, exemplary damages may be recovered under proper allegations of malice, wantonness, or oppression. Such damages may be awarded for the breach of an obligation not arising from contract.
- Bank's refusal to pay a customer's check where it has in its hands funds of the customer to meet it
- Where there has been some intentional wrong, insult, abuse, harshness, or such gross neglect of duty as to evince reckless indifference to the rights of others, or in cases where it is only accompanied with a fraudulent act.

3. Requisites, NCC Arts. 2233, 2234

Art. 2233 states that exemplary damages cannot be recovered as a matter of right. Their adjudication is at the discretion of the court.

Courts will grant exemplary damages if the defendant has acted:

- with gross negligence (*Art. 2231.*), or
- in a wanton, fraudulent, reckless, oppressive, or malevolent manner (*Art. 2232.*) in disregard of his obligation.
- where there is an abuse of public position, or
- wanton refusal to pay a just and valid debt, or
- mistake in the transmission of telegraph.

Rules under Art. 2234:

(1) The amount of exemplary damages need not be

proved to be entitled thereto but the plaintiff must show that he is entitled to moral, temperate, or compensatory damages; and

(2) Where liquidated damages have been agreed upon, the plaintiff must show that he would be entitled also to moral, temperate, or compensatory damages were it not for the stipulation for liquidated damages.

H. Graduation of Damages

1. Duty of Injured Party, NCC Art. 2203

2. Rules

- a. In crimes
- b. In quasi-delict, NCC Art. 2214
- c. In contracts, quasi-contracts and quasi-delicts, NCC Art. 2215
- d. Liquidated damages, NCC Art. 2227
- e. Compromise

I. Miscellaneous Rules

1. Damages that cannot co-exist

- a. Nominal with other damages, Art. 2223

An award of nominal damages precludes the recovery of actual, moral, and temperate damages. (*Ventanilla vs. Centeno*)

Where the court has already awarded compensatory damages, the award of nominal damages is unnecessary and improper. The purpose of nominal damage is to vindicate or recognize a right that has been violated in order to preclude further contest thereof, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. An award of compensatory damages is in itself a judicial recognition that the plaintiff's right has been violated.

b. Actual and Liquidated – Art. 2226

2. Damages that should co-exist

- a. Exemplary with moral, temperate, liquidated or compensatory

Exemplary damages are imposed, in addition to the moral, temperate, liquidated, or compensatory damages, to provide an example or correction for the public good.

3. Damages that should stand alone

- a. Nominal Damages, Art. 2223