

Fundamentals of Anglo- American and Polish Legal Systems – Law of Torts

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Parties in tort

- Wrongdoer / Tortfeasor



- Victim

Wrongful acts

- Crimes
- Criminal court
- Penal law
- *guilty or not guilty*



- Torts – Delicts – Civil wrongs
- Civil court
- Civil/Private law
- *liable or not liable*

Civil wrongs

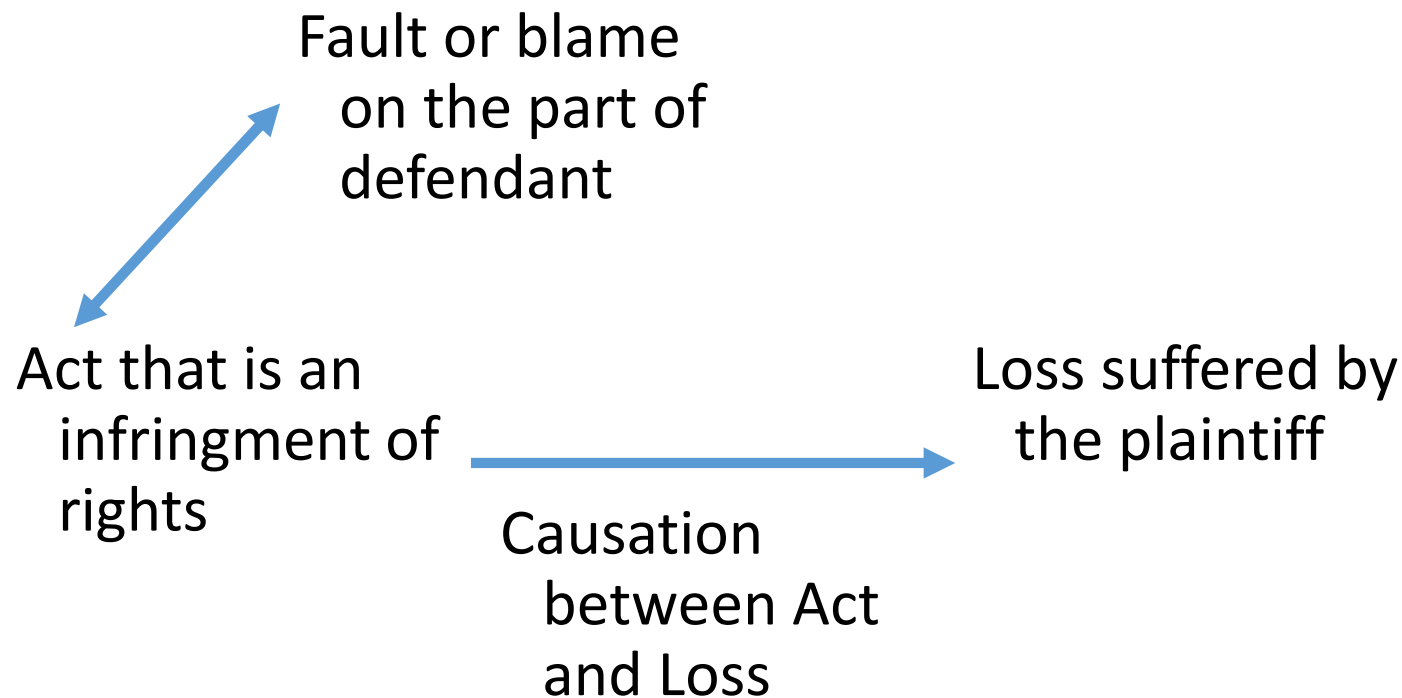


In Continental law –
Delict=Tort (e.g.:
a) art. 415 CC (Pol),
b) art. 1382 CC (Fr),
c) § 823 BGB (Ger))



In Anglo-American
Law –
a) Common law torts
b) Equitable wrongs
c) Statutory torts
d) Breach of contract

Liability in tort – essential elements



The general rule in the Civil Code



- Art. 415. Fault. Anyone who by a fault on his part causes damage to another person is obliged to remedy it.
- Art. 416. Fault of authority. A legal person is obliged to remedy any damage caused through a fault on the part of its authority.
- Art. 417. State Treasury liability. § 1. The State Treasury or a local government unit or another person exercising public authority by force of law is liable for any damage caused by an unlawful action or omission while exercising public authority.
- § 2. If performance of public authority tasks is contracted under an agreement to a local government unit or another legal person, joint and several liability for any damage caused is borne by the contractor and the local government unit contracting the tasks or the State Treasury.

Liability in tort – essential elements



- As a rule: Fault or blame on the part of defendant
- Law of negligence – separate chapter of torts
- Exception: Strict liability torts –
 - dangerous things escaping from land (Rylands v. Fletcher - 1868);
 - dangerous animals;
 - some statutory duties



Animals in the Civil Code



- Art. 431. Animals.
- § 1. Anyone who keeps or uses an animal is obliged to remedy any damage the animal causes irrespective of whether it was under his supervision, or had strayed or run away, unless neither he nor a person for whom he is responsible is at fault.
- § 2. Even if a person who keeps or uses an animal is not responsible for it in accordance with the provisions of the preceding paragraph, the aggrieved party may demand full or partial remedy of damage from him if it follows from the circumstances, and especially from a comparison of the financial condition of the aggrieved party and that of the other person, that the principles of community life so require.

Liability in tort – essential elements

- As a rule: Loss suffered by the plaintiff
- Exceptions:

Torts actionable per se, i.e.:
without proof of loss –

- libel
- trespass to land
(-> lead only to nominal damages)



Liability in tort – essential elements



- Damage to the property
- Injury to the person [pain and suffering; loss of ability to pursue previous activities or interest; loss of actual or prospective earnings; medical expenses]
- Financial loss



Causation & Scope of damages in CC



- Art. 361. Causal relationship; damage.
- § 1. A person obliged to pay compensation is liable only for normal consequences of the actions or omissions from which the damage arises.
- § 2. Within the above limits, in the absence of a provision of the law or contract to the contrary, remedy of damage covers the losses which the aggrieved party has suffered, and the benefits which it could have obtained had it not suffered the damage.
- Art. 363. Remedy of damage.
- § 1. Damage should be remedied, at the aggrieved party's choice, either by the previous condition being restored or a relevant sum of money being paid. If, however, restoration of the previous condition is not possible or it results in excessive difficulties or costs for the obliged person, the aggrieved party's claim is limited to monetary performance.

Scope of damages in CC



- Art. 444. Personal injury.
- § 1. In the event of bodily injury or health disorder, remedy of damage includes all resulting costs. On the aggrieved party's demand, the person obliged to remedy the damage should pay in advance the sum necessary for medical costs and if the aggrieved party becomes disabled also the sum needed to train him for another occupation.
- § 2. If the aggrieved party becomes completely or partially incapable of working or if his needs have increased or his future perspectives have diminished, he may demand an appropriate annuity from the person obliged to remedy the damage.
- § 3. If, at the time the judgment is passed, the damage cannot be precisely assessed, a temporary annuity may be awarded to the aggrieved party.
- Art. 445. Monetary recompense. § 1. In the instances referred to in the preceding article, the court may award an appropriate sum to the aggrieved party as monetary recompense for the harm suffered.

Remoteness of damage



- Link between wrongful act and resulting loss/injury.
- Chain of events.
- Reasonably foreseeable damage / Wagon Mound Case (1961)

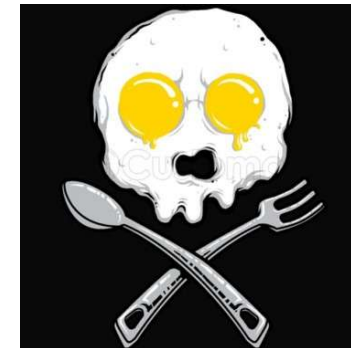


Remoteness of damage

- Novus actus interveniens
/hospital treatment of car accident victim/



- Defendant must take victims as he finds them
/Eggskull rule in R v Blaue (1975)/



Vicarious liability

Employer is liable for his employee.

Principal – for his agent.

Partner – for his partners in partnership.

Car's owner – for car's driver



Vicarious liability



Employer is liable for his employee and not for an independent contractor.

Employer is liable for his employee in the course of his employment.

Limpus v. London General Omnibus Co (1862)

Warren v. Henlys Ltd (1948)

Vicarious liability

- Vicarious liability does not affect tortfeasor's liability.
- Employer can sue employee for indemnity.



Vicarious liability in the Civil Code (430)



- Art. 429. Anyone who entrusts an act to another person is liable for any damage caused by the perpetrator when performing the act unless he was not at fault when choosing that person or he entrusted the act to a person, enterprise or establishment which performs such acts within the scope of its professional activity.
- Art. 430. Anyone who, on his own account, entrusts an act to a person who, while performing the act, is under his management and is obliged to follow his instructions is liable for any damage caused due to a fault on that person's part when performing the act.