

Chapter II, Book III, Code Civil – Of Intentional and Unintentional Wrongs

Art. 1382 (now Art. 1240)

Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.

Art. 1383 (now Art. 1241)

Everyone is liable for the damage he causes not only by his intentional act, but also by his negligent conduct or by his imprudence.

Art. 1384 (now Art. 1242)

A person is liable not only for the damages he causes by his own act, but also for that which is caused by the acts of persons for whom he is responsible, or by things which are in his custody.

(Act of 7 Nov. 1922) However, a person who possesses, regardless of the basis thereof, all or part of a building or of movable property in which a fire has originated is not liable towards third parties for damages caused by that fire unless it is proved that the fire must be attributed to his fault or to the fault of persons for whom he is responsible.

(Act of 7 Nov. 1922) This provision may not apply to the landlord and tenant relationship, which remains governed by Articles 1733 and 1734 of the Civil Code.

(Act no 70-459 of 4 June 1970) The father and mother, in so far as they exercise “parental authority” (Act no 2002-305 of 4 March 2002), are jointly and severally liable for the damage caused by their minor children who live with them.

Masters and employers, for the damage caused by their servants and employees in the functions for which they have been employed;

Teachers and craftsmen, for the damage caused by their pupils and apprentices during the time when they are under their supervision.

(Act of 5 April 1937) The above liability exists, unless the father and mother or the craftsmen prove that they could not prevent the act which gives rise to that liability.

(Act of 5 April 1937) As to teachers, the faults, imprudence or negligent conducts invoked against them as having caused the damaging act must be proved by the plaintiff at the trial, in accordance with the general law.

Art. 1385 (now Art. 1243)

The owner of an animal, or the person using it, during the period of usage, is liable for the damage the animal has caused, whether the animal was under his custody, or whether it had strayed or escaped.

Art. 1386 (now Art. 1244)

The owner of a building is liable for the damage caused by its collapse, where it happens as a result of lack of maintenance or of a defect in its construction.

TITLE IV bis - OF LIABILITY FOR DEFECTIVE PRODUCTS

Art. 1386-1 (now Art. 1244-1)

A producer is liable for damages caused by a defect in his product, whether he was bound by a contract with the injured person or not.

Art. 1386-2 (now Art. 1244-2)

(Act no 2004-1343 of 9 Dec. 2004).- The provisions of this Title shall apply to compensation for damage caused by personal injury.

They shall apply also to compensation for damage above an amount fixed by décret to an item of property other than the defective product itself.

Art. 1386-3 (now Art. 1244-3)

A product is any movable, even though incorporated into an immovable, including the products of the soil, of stock-farming, of hunting and fishing. Electricity shall be deemed a product.

Art. 1386-4 (now Art. 1244-4)

A product is defective within the meaning of this Title where it does not provide the safety which a person is entitled to expect.

In order to appraise the safety which a person is entitled to expect, regard shall be had to all the circumstances and in particular to the presentation of the product, the use to which one could reasonably expect that it would be put, and the time when the product was put into circulation.

A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

Art. 1386-5 (now Art. 1244-5)

A product is put into circulation when the producer has voluntarily parted with it.

A product is put into circulation only once.

Art. 1386-6 (now Art. 1244-6)

Is a producer, the manufacturer of a finished product, the producer of a raw material, the manufacturer of a component part, where he acts as a professional.

For the implementation of this Title, shall be treated in the same way as a producer any person acting as a professional:

1° Who presents himself as the producer by putting his name, trade mark or other distinguishing feature on the product;

2° Who imports a product into the European Community for sale, hire, with or without a promise of sale, or any other form of distribution.

Shall not be deemed producers, within the meaning of this Title, the persons whose liability may be sought on the basis of Articles 1792 to 1792-6 and 1646-1.

Art. 1386-7 (now Art. 1244-7)

A seller, a hirer, with the exception of a finance lessor or a hirer similar to a finance lessor, or any other professional supplier is liable for the lack of safety of a product in the same conditions as a producer only if the latter remains unknown" (Act no 2004-1343 of 9 Dec. 2004).

The remedy of a supplier against a producer is subject to the same rules as a claim brought by a direct victim of a defect. However, he must take action within the year following the date of his being summoned.

Art. 1386-8 (now Art. 1244-8)

In case of damage caused by a product incorporated into another, the producer of the component part and the one who has effected the incorporation are jointly and severally liable.

Art. 1386-9 (now Art. 1244-9)

The plaintiff is required to prove the damage, the defect and the causal relationship between defect and damage.

Art. 1386-10 (now Art. 1244-10)

A producer may be liable for a defect although the product was manufactured in accordance with the rules of the trade or of existing standards or although it was the subject of an administrative authorization.

Art. 1386-11 (now Art. 1244-11)

A producer is liable as of right unless he proves:

- 1° That he did not put the product into circulation;
- 2° That, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards;
- 3° That the product was not for the purpose of sale or of any other form of distribution;
- 4° That the state of scientific and technical knowledge, at the time when he put the product into circulation, was not such as to enable the existence of the defect to be discovered; or
- 5° That the defect is due to compliance with mandatory provisions of statutes or regulations.

The producer of a component part is not liable either where he proves that the defect is attributable to the design of the product in which the component has been fitted or to the directions given by the producer of that product.

Art. 1386-12 (now Art. 1244-12)

A producer may not invoke the exonerating circumstance provided for in Article 1386-11, 4°, where damage was caused by an element of the human body or by products thereof. [repealed]

Art. 1386-13 (now Art. 1244-13)

The liability of a producer may be reduced or disallowed where, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or of a person for whom the injured person is responsible.

Art. 1386-14 (now Art. 1244-14)

The liability of a producer towards an injured person shall not be reduced where the act or omission of a third party contributed to the production of the damage.

Art. 1386-15 (now Art. 1244-15)

The clauses which tend to exempt from or to limit the liability for defective products are forbidden and shall be deemed not written.

Nevertheless, as to damages caused to property not used by the injured party mainly for his own private use or consumption, the clauses stipulated between professionals are valid.

Art. 1386-16 (now Art. 1244-16)

Except for fault of the producer, the liability of the latter, based on the provisions of this Title, shall be extinguished on the expiry of a period of ten years after the actual product which caused the damage was put into circulation, unless the injured person has in the meantime instituted proceedings.

Art. 1386-17 (now Art. 1244-17)

An action for the recovery of damages based on the provisions of this Title is time-barred after a period of three years from the date on which the plaintiff knew or ought to have known the damage, the defect and the identity of the producer.

Art. 1386-18 (now Art. 1244-18)

The provisions of this Title may not affect any rights which an injured person may have according to the rules of contractual or tort liability or of a special liability system.

A producer remains liable for the consequences of his fault or for that of the persons for whom he is responsible.

Title 27, Book II, BGB: Torts

Section 823 - Liability in damages

- (1) A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this.
- (2) The same duty is held by a person who commits a breach of a statute that is intended to protect another person. If, according to the contents of the statute, it may also be breached without fault, then liability to compensation only exists in the case of fault.

Section 824 - Endangering credit

- (1) A person who untruthfully states or disseminates a fact that is qualified to endanger the credit of another person or to cause other disadvantages to his livelihood or advancement must compensate the other for the damage caused by this even if, although he does not know that the fact is untrue, he should have known.
- (2) A person who makes a communication and is unaware that it is untrue is not obliged to pay damages if he or the receiver of the communication has a justified interest in the communication.

Section 825 - Inducing others to sexual acts

A person who induces another person to undertake or acquiesce in sexual acts by cunning, duress or abuse of a dependency relationship is liable to him for the resulting damage incurred.

Section 826 - Intentional damage contrary to public policy

A person who, in a manner contrary to public policy, intentionally inflicts damage on another person is liable to the other person to make compensation for the damage.

Section 827 - Exclusion and reduction of responsibility

A person who, in a state of unconsciousness or in a state of pathological mental disturbance precluding free exercise of will, inflicts damage on another person is not responsible for such damage. If he has temporarily induced such a state in himself with alcoholic beverages or similar means, he is then responsible for damage that he unlawfully causes in this state as if he were responsible because of negligence; responsibility does not ensue if he came into this state without fault.

Section 828 - Minors

- (1) A person who has not reached the age of seven is not responsible for damage caused to another person.
- (2) A person who has reached the age of seven but not the age of ten is not responsible for damage that he inflicts on another party in an accident involving a motor vehicle, a railway or a suspension railway. This does not apply if he intentionally caused the injury.
- (3) A person who has not yet reached the age of eighteen is, to the extent that his responsibility is not excluded under subsection (1) or (2), not responsible for damage he inflicts on another person if, when committing the damaging act, he does not have the insight required to recognise his responsibility.

Section 829 - Liability in damages for reasons of equity

A person who, for reasons cited in sections 827 and 828, is not responsible for damage he caused in the instances specified in sections 823 to 826 must nonetheless make compensation for the damage, unless damage compensation can be obtained from a third party with a duty of supervision, to the extent that in the circumstances, including without limitation the circumstances of the parties involved, equity requires indemnification and he is not deprived of the resources needed for reasonable maintenance and to discharge his statutory maintenance duties.

Section 830 - Joint tortfeasors and persons involved

(1) If more than one person has caused damage by a jointly committed tort, then each of them is responsible for the damage. The same applies if it cannot be established which of several persons involved caused the damage by his act.

(2) Instigators and accessories are equivalent to joint tortfeasors.

Section 831 - Liability for vicarious agents

(1) A person who uses another person to perform a task is liable to make compensation for the damage that the other unlawfully inflicts on a third party when carrying out the task. Liability in damages does not apply if the principal exercises reasonable care when selecting the person deployed and, to the extent that he is to procure devices or equipment or to manage the business activity, in the procurement or management, or if the damage would have occurred even if this care had been exercised.

(2) The same responsibility is borne by a person who assumes the performance of one of the transactions specified in subsection (1) sentence 2 for the principal by contract.

Section 832 - Liability of a person with a duty of supervision

(1) A person who is obliged by operation of law to supervise a person who requires supervision because he is a minor or because of his mental or physical condition is liable to make compensation for the damage that this person unlawfully causes to a third party. Liability in damages does not apply if he fulfils the requirements of his duty to supervise or if the damage would likewise have been caused in the case of proper conduct of supervision.

(2) The same responsibility applies to any person who assumes the task of supervision by contract.

Section 833 - Liability of animal keeper

If a human being is killed by an animal or if the body or the health of a human being is injured by an animal or a thing is damaged by an animal, then the person who keeps the animal is liable to compensate the injured person for the damage arising from this. Liability in damages does not apply if the damage is caused by a domestic animal intended to serve the occupation, economic activity or subsistence of the keeper of the animal and either the keeper of the animal in supervising the animal has exercised reasonable care or the damage would also have occurred even if this care had been exercised.

Section 834 - Liability of animal minder

A person who by contract assumes the supervision of an animal for the keeper of the animal is responsible for the damage inflicted by the animal on a third party in the manner specified in section 833. The responsibility does not apply if he exercises reasonable care in supervision or if the damage would also have occurred even if such care had been exercised.

Section 835 - (repealed)

Section 836 - Liability of the owner of a plot of land

(1) If a human being is killed or if the body or the health of a human being is injured or a thing is damaged by the collapse of a building or any other structure attached to a plot of land or by parts of the building or structure breaking off, then the possessor of the plot of land is liable to make compensation to the injured person for damage resulting from this, to the extent that the collapse or severing is a consequence of defective construction or inadequate upkeep. Liability in damages does not apply if the possessor has observed reasonable care for the purpose of avoiding danger.

(2) A previous possessor of the plot of land is responsible for the damage if the collapse or breaking off occurs within one year after he vacated possession, unless during his period of possession he exercised reasonable care or a later possessor would have been able to avoid the danger by observing this care.

(3) The possessor within the meaning of these provisions is the owner-occupier.

Section 837 - Liability of building possessor

If anyone, in exercise of a right, possesses a building or another structure on the plot of land of another person, then the responsibility specified in section 836 applies to him instead of the possessor of the plot of land.

Section 838 - Liability of the person with a duty of maintenance of a building

A person who assumes the maintenance of a building or of a structure attached to a plot of land for the possessor or has to maintain the building or the other structure by virtue of a right of use to which he is entitled is responsible in the same way as the possessor for the damage caused by the collapse or the breaking off of parts of the building.

Section 839 - Liability in case of breach of official duty

(1) If an official intentionally or negligently breaches the official duty incumbent upon him in relation to a third party, then he must compensate the third party for damage arising from this. If the official is only responsible because of negligence, then he may only be held liable if the injured person is not able to obtain compensation in another way.

(2) If an official breaches his official duties in a judgment in a legal matter, then he is only responsible for any damage arising from this if the breach of duty consists in a criminal offence. This provision is not applicable to refusal or delay that is in breach of duty in exercising a public function.

(3) Liability for damage does not arise if the injured person has intentionally or negligently failed to avert the damage by having recourse to appeal.

Section 839a - Liability of court-appointed expert

(1) If an expert appointed by the court intentionally or by gross negligence submits a false expert opinion, then he is liable to make compensation for the damage incurred by a party to the proceedings as a result of a court decision based on this expert opinion.

(2) Section 839 (3) applies with the necessary modifications.

Section 840 - Liability of more than one person

(1) If more than one person is responsible for damage arising from a tort, then they are jointly and severally liable.

(2) If besides the person who is obliged to make compensation for damage caused by another person under sections 831 and 832 the other person is also responsible for the damage, then in their internal relationship the other is obliged alone, and in the case specified in section 829 the person with a duty of supervision is obliged alone.

(3) If besides the person who is obliged to make compensation for damage under sections 833 to 838 a third party is responsible, then the third party is solely obliged in their internal relationship.

Section 841 - Compensation for liability of a public official

If an official who by virtue of his official duty must appoint another person for management for a third party or must supervise such management or participate in it by ratifying legal transactions is responsible together with the other person, as a result of violating these duties, for the damage caused by the other, then the other person is solely liable in their internal relationship.

Section 842 - Extent of liability in damages when a person is injured

Liability to compensate for damage resulting from a tort directed against the person extends to the disadvantages the tort produces for the livelihood or advancement of the injured person.

Section 843 - Annuity in money or lump sum settlement

- (1) If the earning capacity of the injured person is eliminated or reduced as the result of an injury to body or health or if his needs are increased, then the injured person is to be given damages by payment of an annuity.
- (2) The provisions of section 760 apply to the annuity. Whether the person liable in damages must provide security and in what kind and in what amount is determined by the circumstances.
- (3) In lieu of the annuity, the injured person may demand a lump sum settlement if there is a compelling reason for doing so.
- (4) The claim is not excluded by the fact that another person must provide the injured person with maintenance.

Section 844 - Third-party compensation claims in the case of death

- (1) In cases where death is caused, the person liable in damages must reimburse the costs of a funeral to the person under a duty to bear these costs.
- (2) If the person killed, at the time of the injury, stood in a relationship to a third party on the basis of which he was obliged or might become obliged by operation of law to provide maintenance for that person and if the third party has as a result of the death been deprived of his right to maintenance, then the person liable in damages must give the third party damages by payment of an annuity to the extent that the person killed would have been obliged to provide maintenance for the presumed duration of his life; the provisions of section 843 (2) to (4) apply with the necessary modifications. Liability in damages also arises where the third party at the time of injury had been conceived but not yet born.

Section 845 - Compensation claims for lost services

In the case of death or injury to body or health, or in the case of deprivation of liberty, the person liable in damages must give a third party compensation for loss of services by payment of an annuity if the injured person by operation of law was under a duty to the third party to render services in the household or business of the latter. The provisions of section 843 (2) to (4) apply with the necessary modifications.

Section 846 - Contributory negligence of the injured person

In the cases of sections 844 and 845, if fault on the part of the injured person contributed to the genesis of the damage suffered by the third party, then the provisions of section 254 are applicable to the claim of the third party.

Section 847 - (repealed)

Section 848 - Liability for chance in connection with deprivation of a thing

A person who is obliged to return a thing of which he has deprived another person by a tort is also responsible for accidental loss, for a chance impossibility of restitution for another reason or for accidental deterioration of the thing, unless such loss, other impossibility of restitution or deterioration would have occurred even without the deprivation.

Section 849 - Interest on the compensation sum

If compensation is to be paid for the value of a thing of which a person has been deprived, or if compensation is to be paid for the decrease in value of a thing as a result of damage, then the injured person may demand interest on the amount to be paid in compensation from the date on which the determination of the value is based.

Section 850 - Reimbursement of outlays

If the person liable for restitution of a thing another person has been deprived of makes outlays on the thing, then in relation to the injured person he has the rights that a possessor has against the owner for outlays.

Section 851 - Compensation payment to unauthorised parties

If the person liable to pay damages for the deprivation of a person or for damage to a movable thing pays compensation to the person in whose possession the thing was at the time when the deprivation or damage occurred, then by this payment of compensation he is released, even if a third party was the owner of the thing or had another right in the thing, unless he knows of the right of the third party or his lack of knowledge results from gross negligence.

Section 852 - Claim for restitution after end of limitation period

If by a tort the person liable to pay compensation obtains something at the cost of the injured person, then even after the claim to compensation for the damage arising from a tort is statute-barred he is obliged to make restitution under the provisions on the return of unjust enrichment. This claim is statute-barred ten years after it arises, or, notwithstanding the date on which it arises, thirty years after the date on which the act causing the injury was committed or after the other event that triggered the loss.

Section 853 - Defence of bad faith

If someone obtains a claim against the injured person by a tort committed by him, the injured person may refuse performance even if the claim to cancellation of the claim is by then statute-barred.