

Torts and Damages

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Introduction

An understanding of the course Torts and Damages will not be complete without first looking into the very operative term—*torts*. A simple quick skim in the New Civil Code will not lead to a hit on the term “tort.” Thus, a review of the Report of the Code Commission is in order.

Torts is an Anglo-American or common law concept. It includes both negligent and intentional criminal acts, including assault and battery, false imprisonment and deceit. However, the commissioners declined to use “tort,” opting instead to use the term “quasi-delict,” which we can see in arts. 1157 and 2176. Spanish legal law treatises call quasi-delict as *culpa aquiliana*. The omission was deliberate!

Under art. 1157, the five sources of obligations are:

1. Law
2. Contract
3. Quasi-contract
4. Acts or omissions punished by law
5. Quasi-delict

It is important to ask first what the source of obligation is involved in a particular case. In *Metropolitan Bank and Trust Company v. Rosales* [2014], the Supreme Court held a bank liable for breach of contract for “holding” (freezing) a client’s bank account. The bank triggered the “hold out clause,” after filing a criminal case for *estafa* against a depositor. According to the Court, the mere filing of a criminal case does not constitute an obligation *ex-delicto*, therefore, preventing the “hold out clause” from taking effect.

Consequently, art. 2176 provides the statutory definition of quasi-delict: “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 pre-existing contractual relation between the parties, is called a quasi-delict.”

But despite the commissioners’ attempt to have a clean-cut compartmentalization of the sources of obligation did not prevent the Court from creating penumbras and overlaps between them. Consider the delineation between quasi-delicts and contracts. Start with the text. At first glance, art. 2176 *must be* inapplicable whenever there’s a contract that binds a party. Generally, that’s correct, but it isn’t *always* true.

Quasi-delict vs. contract

Let’s begin with *Cangco v. Manila Railroad Co.* [1918]. Cangco rode the train home. While the train was approaching his stop, he stepped out of the train car—while the train was still in the process of stopping—but tripped because sacks of watermelons were on the edge of the platform. He fell into the train tracks, and an arm was amputated near the shoulder. Thus, Cangco sued based on breach of the contract of carriage between him and Manila Railroad. However, Manila Railroad raised the defense of due diligence in the selection and supervision (DDSS) of its employees, arguing that, if at all, only its employees who placed the watermelon sacks should be liable. The Court took it as an opportunity to clarify the distinction between contractual and tort obligations. (Because DDSS defense is available only in tort liability. We’ll get into that post-midterms but take that first as a matter of fact.)

Begin with the concept of *culpa*. *Cangco* states that *culpa* can either be substantive and independent and the source of obligation, or a mere accident in the performance of an obligation. The first one is extra-contractual *culpa*, while the other one is *culpa* in the performance of a contract. But “the fundamental distinction between obligations of this character and those which arise from contract, rests upon the fact that in cases of non-contractual obligation it is the wrongful or negligent act or omission itself which creates

the vinculum juris, whereas in contractual relations the vinculum exists independently of the breach of the voluntary duty assumed by the parties when entering into the contractual relation.”

The distinction between the two is important, because it provides how one can make a *prima facie* meritorious case of *culpa aquiliana* or *culpa contractual*. “When the source of the obligation upon which plaintiff’s cause of action depends is a negligent act or omission, the burden of proof rests upon plaintiff to prove the negligence” (*culpa quiliana*). “But when the facts averred show a contractual undertaking by defendant for the benefit of plaintiff, and it is alleged that plaintiff has failed or refused to perform the contract, it is not necessary for plaintiff to specify in his pleadings whether the breach of the contract is due to willful fault or to negligence on the part of the defendant, or of his servants or agents. Proof of the contract and of its nonperformance is sufficient *prima facie* to warrant a recovery” (*culpa contractual*).

In simpler terms, an action based on *culpa aquiliana* requires the plaintiff to prove the negligent act. In contrast, mere proof of the existence of the contract and its breach is enough to warrant a recovery—the defendant, then, has the burden of proving that he has some legal ground in failing to perform his contractual obligation. As applied in this case, Manila Railroad’s defense of DDSS is unavailing, because the cause of action is *culpa contractual* and not *culpa aquiliana*.

But the Court did not end its discussion there. Contractual and extra-contractual obligations are concentric, with the latter being broader because it comprises the “whole extent of juridical human relations.” In other words, “the mere fact that a person is bound to another by contract does not relieve him from extra-contractual liability to such person. When such a contractual relation exists the obligor may break the contract under such conditions that the same act which constitutes a breach of the contract would have constituted the source of an extra-contractual obligation had no contract existed between the parties.” Essentially, *Cangco* tells us that just because you have a contractual relation, it doesn’t automatically mean that the breaching party can no longer be held liable for quasi-delict. *Cangco*, however, does not fully expound this situation. Park that thought for a moment.

Sps. Guanio v. Makati Shangri-La Hotel and Resort Inc. [2011] discusses the rationale for compensating breach of contracts. According to the Court, three interests of the nonbreaching party must be protected. These interest are: (1) the expectation interest, which is his interest in having the benefit of his bargain by being put in as a good position as he would have been in had the contract been performed; (2) reliance interest, which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract *not* been made; and (3) restitution interest, which is his interest in having restored to him any benefit that he has conferred on the other party. Moreover, *Sps. Guanio* also tells us that the plaintiff need not prove the causation between the injury of the nonbreaching party and the negligence of the party in breach. In fine, the doctrine of proximate cause finds no application in breach of contract cases, because it's only applicable when the cause of action is based on a quasi-delict. Instead, art. 1170 governs as the basis of liability for the breach of contract: "Those who in the performance of their obligations are guilty of fraud, negligence or delay, and those who in any manner contravene the tenor thereof, are liable for damages."

We've learned from *Sps Guanio* that identifying the correct cause of action is important, because contractual and extra-contractual obligations have different rules. Now, let's take up the classic case of *Air France v. Carrascoso* [1966]. Carrascoso sued Air France, because the airline asked him to vacate his first class seat, arguing that a white man had a better right to it. Preliminarily, the case does not make it clear at the get-go what was Carrascoso's cause of action—was it a breach of the contract of carriage (for violating his entitlement to a first-class seat) or quasi-delict? It could go both ways! In any case, the contention of Air France was that the trial courts awarded moral damages to Carrascoso. But moral damages aren't typically awarded in breach of contract cases, and, if at all, the plaintiff must aver fraud or bad faith. The Court brushed aside these contentions and ruled that the complaint "substantially aver" bad faith, holding that "the inference of bad faith is there; it may be drawn from the facts and circumstances set forth therein." But here, the Court clarified, albeit not crystal-clear: "The contract was averred to establish the relation

between the parties. But the stress of the action is put on the wrongful expulsion.” Simply, Carrascoso’s cause of action was based on quasi-delict.

Could it be possible that Carrascoso could claim damages based on quasi-delict or tort, *despite* having a contract of carriage with Air France? Yes, said the Court, citing art. 21 of the Civil Code.¹ *Air France* is a vague, but we can infer two ideas: *First*, it’s possible to sue based on quasi-delict despite having a contractual relation, but *second*, there must be bad faith attending the breach (*e.g.*, the wrongful expulsion) or any violation of art. 21. In fine, the act of the breach must be in bad faith or in violation of art. 21 to allow a cause of action based on quasi-delict, notwithstanding the contract.

Fortunately, *Orient Freight International Inc. v. Keihin-Everett Forwarding Company Inc.* [2017] provided a clearer rule. In declining to hold a subcontractor liable for damages based on quasi-delict, the Court held: “In situations where the contractual relation is indispensable to hold a party liable, there must be a finding that the act or omission complained of was done in bad faith and in violation of Article 21 of the Civil Code to give rise to an action based on tort.” This is the test that we will be using. “The doctrine ‘the act that breaks the contract may also be a tort,’ on which the lower courts relied, is inapplicable here. [Orient Freight’s] negligence, arising as it does from its performance of its obligation to respondent, is dependent on this obligation. Neither do the facts show that Article 21 of the Civil Code applies, there being no finding that [Orient Freight’s] act was a conscious one to cause harm, or be of such a degree as to approximate fraud or bad faith.” Because the negligence in question did not rise to the level of fraud or bad faith, art. 2176 will not come into play. Instead, arts, 1170, 1172,² and 1173³ were used.

¹ Any person who willfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage

² Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.

³ The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

Parenthetically, *Orient Freight* also discussed the effect of the absence or presence of bad faith in determining the scope and amount of indemnity. Plainly, art. 2201 provides a narrower scope (“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”) of recovery when the breaching party did not act with bad faith, and a wider scope (“all damages which may be reasonably attributed to the non-performance of the obligation”) if he acted with fraud, malice or wanton attitude.

With those clear, it’s now time to introduce the elements of a quasi-delict. According to *Kim v. Slimmers World International* [2024], the elements of a quasi-delict are:

1. The damage suffered by the plaintiff;
2. The act or omission of the defendant constituting fault or negligence; and
3. The causal connection between the act and the damage sustained by the plaintiff or the proximate cause.

The Court had this to say: “In actions based on quasi-delict, it is incumbent upon the plaintiff to prove the presence of the foregoing elements by preponderance of evidence,” because the law presumes that a person exercises ordinary diligence and that private transactions have been fair and regular. Negligence in a quasi-delict cause of action must be proven. Of course, it must be. Unlike in contractual obligations where the contract itself is the proof of the legal tie between the plaintiff and the defendant, the wrongful or negligent act or omission is the legal tie in tort cases that must be established by the plaintiff. That wrongful or negligent act or omission is the very bridge that must be established to demand recovery from the defendant. Proving the negligence is to establish the *vinculum juris*.

Slimmers World also involved a case based on *both* contract and quasi-delict. The trial court ruled in favor of the plaintiff, based on art. 2176, while the appellate court used art. 1170. The Court held that the plaintiff did not prove both causes of action, and had the complaint dismissed.

Sps. Fabre v. Court of Appeals [1996] also presented a case of recovery both based on contract and quasi-delict. In this case, Sps. Fabre owned a minibus and had it rented out for the transportation of 33 individuals from Manila to La Union. Cabil was driving the vehicle, when, suddenly, the minibus skid to the left shoulder and landed on its left side, coming to a full stop only after a series of impacts. Notably, that night, it was raining and the road was slippery, but Cabil was moving at 50 kilometers per hour. Antonio, a survivor of the car crash, sued for damages.

At the outset, the Court wrote that it was unnecessary to decide the case whether based on breach of contract of carriage or quasi-delict, because “the act that breaks the contract may also be a tort.” Let’s test that statement. In *Orient Freight*, this doctrine will only apply if the act or omission complained of was done in bad faith and in violation of art. 21. If yes, a recovery based on quasi-delict is possible. In this case, the lower courts found that Cabil drove the bus with gross negligent, because he drove the minibus at 50 kilometers per hour, when it should only be 20 kilometers per hour (because of the darkness and that the road was slippery due to the rain). Thus, pursuant to arts. 2176 and 2180, Cabil’s gross negligence gave rise to the presumption that Sps. Fabre—his employers—were negligent in the selection and supervision of their employee. Nevertheless, Sps. Fabre were also guilty of breach of contract of carriage, and because of Cabil’s gross negligence, moral damages were also awarded in favor of Antonia. To recapitulate, recovery based on quasi-delict here was allowed, because the tortfeasor (Cabil) was guilty of gross negligence—thus, the act that breaks the contract of carriage was also a tort.

Light Rail Transit Authority (LRTA) v. Navidad [2003] sums up the concepts we have discussed so far. Nicanor bought a ticket to ride the LRT-1. While waiting in the platform, the security guard, Escartin, approached Nicanor. A misunderstanding or an altercation between the two apparently ensued led to a fist fight. Nicanor fell on the LRT tracks, and at that exact moment, a train (driven by Roman) was approaching. Nicanor was struck by the moving train, and he was killed instantaneously. It’s unknown who started the fight, or how Nicanor fell. The widow, Marjorie, filed a complaint for damages against Roman, LRTA, Escartin, and the security agency, Prudent.

The foundation of LRTA's liability is the contract of carriage. Marjorie's cause of action against Roman, Escartin and Prudent is quasi-delict. Let's dissect the actors' liability one by one. As to LRTA, we know that a presumption of negligence automatically arises, because Nicanor failed to reach his destination and, in fact, died while in the train station. Thus, it was for LRTA to demonstrate that it exercised extraordinary diligence to avoid liability. This, LRTA failed to do. As for Roman, it was for Marjorie to demonstrate his negligence (*i.e.*, negligently driving the train). Marjorie failed to discharge this burden, thus, Roman cannot be held liable. Likewise, because of the principle of relativity of contracts, the contract of carriage between Nicanor and LRTA does not extend to Roman.

What about Prudent's liability? According to the Court, Prudent will only be held vicariously—not directly—liable under art. 2180⁴ in relation to art. 2176. The premise of such a liability, however, is negligence or fault on the part of Escartin. Once Escartin's fault or negligence is proven, the employer is presumed to have been negligent in the selection and supervision of his employee, and his defense will be DDSS. In this case, there is nothing in the facts to prove Escartin's negligence. Consequently, the case of vicarious liability against Prudent must necessarily fall.

By way of an *obiter dictum*, the Court discussed that assuming Escartin was negligent and Prudent failed to overcome the presumption of negligence, the liability of Prudent (an independent contractor) and LRTA (the common carrier) would be solidary. Accordingly, “when an act or omission which constitutes a breach of contract would have itself constituted the source of a quasi-delictal liability had no contract existed between the parties, the contract can be said to have been breached by the tort, thereby allowing the

⁴ 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.

[x x x x]

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

[x x x x]

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 prevent damage.

rules on tort to apply.” We doubt the precedential effect of this pronouncement (the solidary nature of liability), because the Court did not even find Escartin negligent. Because of the different source of obligation of LRTA and Prudent, they cannot be joint tortfeasors under the contemplation of art. 2194.⁵

Quasi-delict vs. delict

The term “delict” does not appear in the enumeration of art. 1157. Nevertheless, art. 1157 (4) is a fancy way of saying delict—acts or omissions punished by law. But like with contracts, quasi-delict has a lot of crossovers with delict. In art. 100 of the Revised Penal Code (RPC): “Every person criminally liable for a felony is also civilly liable.” This means that a crime or felony results to two kinds of liability: the criminal liability, and the civil liability *ex-delicto*. Under Rules of Criminal Procedure, the civil aspect of a criminal case is deemed instituted upon filing of the charges. Thus, the injured party in a crime need not file a separate civil case to collect civil liability *ex-delicto*. But the Rules allow for three exceptions: (1) when the offended party waives the civil aspect; (2) when the offended party reserves the right to independently pursue it; and (3) when the offended party has already instituted it, in which case, it must be suspended. It is the second exception that is relevant to us.

There also exists a seeming conflict between the definition of a quasi-delict and the felony of criminal negligence under art. 365 of the RPC.⁶ Recall that quasi-delict covers acts of negligence which causes damage to another. However, art. 365 of the RPC also punishes acts arising from simple negligence and reckless imprudence. There’s certainly an overlap between art. 2167 and art. 365 of the RPC. Fortunately, the Court had a chance to reconcile the “conflict” in *Barredo v. Garcia* [1942].

⁵ The responsibility of two or more persons who are liable for quasi-delict is solidary.

⁶ Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period shall be imposed.

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed.

In *Barredo*, a taxi driven by Fontanilla (owned by Barredo) and Dimapilis's carretela collided. The carretela was overturned and one of its passengers, Garcia, died. A criminal complaint versus Fontanilla was filed and he was convicted. The civil aspect was reserved. Three years later, Sps. Garcia (parents of the boy) filed a civil action against Barredo, the sole proprietor of Malate Taxicab and employer of Fontanilla. Barredo contends that his liability is only subsidiary—because Fontanilla wasn't civilly sued, Barredo cannot be civilly held responsible.

The Court rejected Barredo's argument, holding that the same negligent act causing damages may produce civil liability *ex-delicto*, or create an action for quasi-delict. The two must not be confused, because delict and quasi-delict are different. The Court distinguished the two: (1) crimes affect the public interest, while quasi-delicts are only of private concern; (2) penal laws punish or correct the criminal act, while the Civil Code, by means of indemnification, merely repairs the damage; and (3) delicts are not as broad as quasi-delicts, because the former are punished only if there is a penal law clearly covering them, while the latter include all acts in which any kind of fault or negligence intervenes. However, not all violations of the penal law produce civil responsibility, such as begging in contravention of ordinances, violation of the game laws, infraction of the rules of traffic when nobody is hurt (*i.e.*, victimless crimes).

The Court determined that Barredo was liable for two kinds of civil liability: (1) subsidiary because of the civil liability of the taxi driver arising from the latter's criminal negligence; and (2) Barredo's primary liability as an employer (vicarious liability). According to the Court, the Sps. Garcia were probably being practical in suing the operator of the taxi: Fontanilla may be in jail and has no property to satisfy the civil liability.

But the Court did not end there. Defending the "separate individuality" of quasi-delict or *culpa aquiliana*, the Court said that if it were to allow art. 365 of the RPC to be the remedy for *all* kinds of negligence, then, even death or injury to persons and damage to property "through any degree of negligence—even the slightest—would have to be indemnified only through the principle of civil liability arising from a crime." For the Court, this could not be the intention of the legislators who drafted the Civil

Code. “Secondly, to find the accused guilty in a criminal case, proof of guilt beyond reasonable doubt is required, while in a civil case, preponderance of evidence is sufficient to make the defendant pay in damages. There are numerous cases of criminal negligence which cannot be shown beyond reasonable doubt, but can be proved by a preponderance of evidence. In such cases, the defendant can and should be made responsible in a civil action.” Finally, “to hold that there is only one way to make defendant's liability effective, and that is, to sue the driver and exhaust his (the latter's) property first, would be tantamount to compelling the plaintiff to follow a devious and cumbersome method of obtaining relief.” Relief based on quasi-delict is a more expeditious way.

The holding in *Barredo* was extended in *Elcano v. Hill* [1977], which was decided under the aegis of the New Civil Code. Agapito Elcano was killed by Reginald Hill, who, despite being married at the time, was a minor living under the care and subsistence of his father, Marvin. Reginald was subsequently prosecuted for the killing. The criminal proceedings concluded with his acquittal. Consequently, Sps. Elcano, initiated a civil action for recovery of damages against both Reginald and Marvin Hill based on quasi-delict. The Hills moved to dismiss the complaint, arguing that the civil action is barred by the acquittal of Reginald.

According to the Court, the thrust of the pronouncements in *Barredo* extends to fault or *culpa*. Recall that in *Barredo*, the crime involved as reckless imprudence. Here, we have a killing—an intentional felony. Thus, on this score alone, the Hills' motion to dismiss must be denied, because Sps. Elcano are well within their rights to institute the action based on quasi-delict.

The Court also reiterated the doctrine in *Barredo*, in light of the New Civil Code. The writer of the opinion in *Barredo*, Justice Jorge Bocobo, led the Code Commission who drafted the New Civil Code. Thus, a new provision, art. 2177, clarified the relationship between civil liability *ex-delicto* and quasi-delict: “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.” The provision is a codification of the *Barredo* doctrine.

Therefore, the acquittal of Reginald in the criminal case has not extinguished his liability for quasi-delict, hence that acquittal is not a bar to the instant action against him.

That the acquittal or conviction of the defendant in a criminal case does not matter in an action for quasi-delict was explained in *Sps. Andamo v. Intermediate Appellate Court* [1990]. This case involved an initial criminal complaint filed by Sps. Andamo against the Missionaries of Our Lady of La Sallette Inc. The following year, Sps. Andamo also filed a civil action for damages. The trial court suspended the civil case until after judgment in the criminal case. Eventually, the civil suit was dismissed for lack of jurisdiction. Ruling for Sps. Andamo, the Court held that acquittal or conviction in the criminal case is entirely irrelevant in the civil case, unless, in the event of an acquittal where the court has declared that the fact from which the civil action arose did not exist, in which case the extinction of the criminal liability would carry with it the extinction of the civil liability.

We can glean from *Sps. Andamo* that it's possible for the two different cases to proceed simultaneously—even all the way up to the Supreme Court. The only limitation is that the plaintiff cannot have double recovery on both civil cases—he would only be entitled “only to the bigger award of the two, assuming the awards made in the two cases vary.” Only the bigger award will the plaintiff get. This rule is in conformity with the rule against double recovery in art. 2177.

Quasi-delict

Recall that a quasi-delict has the foregoing elements: (1) the damage suffered by the plaintiff; (2) the act or omission of the defendant constituting fault or negligence; and (3) the causal connection between the act and the damage sustained by the plaintiff or the proximate cause. Let's start breaking down those requisites, beginning with the cast of characters, *i.e.*, the parties and the nature of their liability.

Parties

Plaintiffs in an action for quasi-delict must have suffered some form of injury. This is precisely the issue in the landmark case of *Geluz v. Court of Appeals* [1961]. In this case, the father of an unborn child sued to recover civil indemnity for death under art. 2206. The Court dismissed the complaint, holding that the father cannot sue based on the injury the unborn fetus received due to an intentional abortion. “Since an action for pecuniary damages on account of personal injury or death pertains primarily to the one injured, it is easy to see that if no action for such damages could be instituted on behalf of the unborn child on account of the injuries it received, no such right of action could derivatively accrue to its parents or heirs. In fact, even if a cause of action did accrue on behalf of the unborn child, the same was extinguished by its pre-natal death, since no transmission to anyone can take place from one that lacked juridical personality.”

We find relevant in *Geluz* the applicability of arts. 40 and 41 of the Civil Code. Birth determines personality. Hence, an aborted fetus cannot die in a legal sense, because it hasn’t been born in the first place. Because it hasn’t died in the eyes of the law, civil indemnity for death cannot apply. However, the importance of *Geluz* is the principle that it laid down. In fine, while a parent cannot sue using art. 2206 if the subject matter is an aborted fetus, it *may* however use the same route, if the fetus is deemed “born” under the fiction of art. 41. In other words, if the fetus was born and subsequently died, then, the civil wrong which caused the death may be remedied using art. 2206.

Consider this example: A pregnant person crossing the street was hit by a car being negligently driven. The fetus died. May the mother recover civil indemnity for death? *It depends*. If the intrauterine life of the fetus was less than seven months, then it must’ve lived outside the womb for at least 24 hours to be considered born. If the intrauterine life is more than seven months, then the fetus should at least be alive at the moment of birth. In either case, if stillbirth results, art. 2206 is inapplicable.

By way of an *obiter dictum*, the Court held that the parents are not without a remedy. “But such damages must be those inflicted directly upon them, as distinguished from the injury or violation of the rights of the deceased, his right to life and physical integrity. Because the parents cannot expect either help, support or services from an unborn child, they would normally be limited to moral damages for the illegal

arrest of the normal development of the *spes hominis* that was the fetus, *i.e.* on account of distress and anguish attendant to its loss, and the disappointment of their parental expectations, as well as to exemplary damages, if the circumstances should warrant them.” These were nevertheless not applied in *Geluz*.

We’re done on the part of the plaintiffs. Now, let’s move to discuss the defendants—particularly, the nature of their liability.

If there’s a single defendant, then, it shouldn’t really be a problem, because he will be solely liable for the quasi-delict. However, things can get murky if we can attribute the source of the fault or negligence to two or more persons. We call them joint tortfeasors. The identification of the nature of liability of tortfeasors is important, because art. 2194 provides that “the responsibility of two or more persons who are liable for quasi-delict is solidary.” The importance of this provision cannot be underscored enough, for solidary liabilities aren’t presumed.⁷ Thus, the plaintiff can collect the entire sum of the indemnity against any one of the joint tortfeasors.

Consider the case of *Philippine National Construction Company (PNCC) v. Court of Appeals* [2005]. In finding PNCC and PASUDECO liable as joint tortfeasors, the Court considered their negligent acts concurrent and successive. Thus, the rule: “Where the concurrent or successive negligent acts or omission of two or more persons, although acting independently of each other, are, in combination, the direct and proximate cause of a single injury to a third person and it is impossible to determine in what proportion each contributed to the injury, either is responsible for the whole injury, even though his act alone might not have caused the entire injury, or the same damage might have resulted from the acts of the other tortfeasor.”

It can be gleaned that the foregoing doctrine has the following elements: (1) concurrent or successive negligent acts or omission of multiple persons; (2) they are acting independently; (3) the

⁷ Art. 1207, New Civil Code.

negligent acts or omission is the direct and proximate cause; (4) there must be a single injury to a third person; and (5) it is impossible to determine the proportion each contributed to the injury.

The case of *Chan v. Iglesia ni Cristo Inc.* [2005] provided us with a definition of *who* are joint tortfeasors: They “are all the persons who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit.” The latter part of the definition is quite strong—even persons who approve the tort *post-facto*, if done for their benefit, are joint tortfeasors. Thus, the Court deemed the gas station owner and his contractor as joint tortfeasors in causing damage in the foundation of a neighboring chapel (they were doing treasure-hunting activities).

Case law, however, would appear to diverge from the statutory definition of a joint tortfeasor. Under art. 2194, the liability of the persons must be based on quasi-delict, for them to be considered solidarily liable. However, *Sps. Pereña v. Sps. Zarate* [2012] gave a contrary rule. The case involved a tragic accident, involving a school bus which was hit by a train, resulting in the death of Aaron Zarate. Thus, Sps. Zarate sued Sps. Pereña, the operator of the school bus, and the Philippine National Railways (PNR). Sps. Pereña were presumed to be negligent, owing to their role as a common carrier. They failed to rebut the presumption and was thus guilty of breaching the contract of carriage. Likewise, PNR was negligent on the basis of quasi-delict, because during the said time of the, “there were no appropriate and safety warning signs and railings at the site commonly used for railroad crossing.”

Despite the glaring difference in the source of obligation of Sps. Pereña and PNR, the appellate court nevertheless found them solidarily liable to Sps. Zarate. The Court affirmed this, holding that: “Although the basis of the right to relief of the Zarates (*i.e.*, breach of contract of carriage) against the Pereñas was distinct from the basis of the Zarates’ right to relief against the PNR (*i.e.*, quasi-delict under Article 2176, Civil Code), they nonetheless could be held jointly and severally liable by virtue of their respective negligence combining to cause the death of Aaron. Verily, the Pereñas and the PNR were joint tortfeasors.”

We believe that the aforesaid holding is correct, insofar as it gives us a jurisprudential doctrine on holding two negligent individuals, whose negligence combined to cause the injury, solidarily liable to the damage suffered by the plaintiff. It's worth noting that the decision in *Sps. Pereña* does not mention nor cite art. 2194. Thus, with the decision, there is now a basis to make two defendants "joint tortfeasors," despite differing sources of obligation.

Strictly speaking, however, and if we purely consider the plain language of art. 2194, the doctrine of *Sps. Pareña* should not have happened. As clarified in *Torres-Madrid Brokerage Inc. v. FEB Mitsui Insurance* [2016]: "Notably, TMBI's liability to Mitsui does not stem from a quasi-delict (*culpa aquiliana*) but from its breach of contract (*culpa contractual*). The tie that binds TMBI with Mitsui is contractual, albeit one that passed on to Mitsui as a result of TMBI's contract of carriage with Sony. The legal reality that results from this contractual tie precludes the application of quasi-delict based Article 2194."

Art. 2194 was also used by the Court in *Vda. de Maglana v. Consolacion* [1992] to prevent a solidary liability from arising between the insured and the insurance company. In that case, the plaintiff-victim of a vehicular accident sought to make solidarily liable the defendant (insured) and his insurer for the third-party liability. According to the Court: "While it is true that where the insurance contract provides for indemnity against liability to third persons, such third persons can directly sue the insurer, however, the direct liability of the insurer under indemnity contracts against third party liability does not mean that the insurer can be held solidarily liable with the insured and/or the other parties found at fault. The liability of the insurer is based on contract; that of the insured is based on tort." In sum, the victim can directly go against the third-party insurer, but it and the insured are *never* solidarily liable.

Negligence

Statutorily, the definition of negligence is that "omission of that diligence which is required by the nature of that diligence which is required by the nature of the obligation and corresponds with the circumstances

of the persons, of the time and of the place.”⁸ Moreover, “responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.”⁹

The early case of *Picart v. Smith* [1918] deals with the concept of negligence. According to the Court: “Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.” This stems from the Court’s pronouncement that there are two requisites for negligence to exist: (1) the reasonable foresight of harm, and (2) the ignoring of the reasonable foresight of harm.

More importantly, *Picart* laid down the test in determining whether a person is defendant: “Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.” We will see this test applied in many succeeding cases. Applying the test in this case, the Court held that the defendant, Smith, was negligent in driving his car, because he had the last clear chance to avoid the accident.

Apart from the relevant doctrines we can get from *Picart*, what is apparent in the case is the fact that a person can be deemed negligent, even if his acts are legal and proper. Here, Smith was on the correct side of the road. Yet the Court chastised him for his failure to swerve to avoid the accident.

On the contrary, *Child Learning Center Inc. v. Tagario* [2005] seemingly imposed a higher standard on the defendant. In this case, the Court found the defendant liable for the injury sustained by a student, despite merely following the minimum requirements in the National Building Code. Said the Court: “Nevertheless, the fact is that such window, as petitioners themselves point out, was approximately 1.5 meters from the floor, so that it was within reach of a student who finds the regular exit, the door, not functioning. Petitioners, with the due diligence of a good father of the family, should have anticipated that

⁸ Art. 1173, New Civil Code.

⁹ Art. 1172, New Civil Code.

a student, locked in the toilet by a non-working door, would attempt to use the window to call for help or even to get out.”

What *Child Learning Center* tells us is that a party can still be held liable, despite performing exactly what the law requires (*i.e.*, the specifications in the building code). This is, of course, with the caveat that the situation should have been anticipated, with the due diligence of a good parent of the family.

Parenthetically, *Child Learning Center* also gives us a definition of fault and negligence. It’s important, because fault and negligence have only a single statutory definition in art. 1173. Thus, “Fault, in general, signifies a voluntary act or omission which causes damage to the right of another giving rise to an obligation on the part of the actor to repair such damage. Negligence is the failure to observe for the protection of the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand. Fault requires the execution of a positive act which causes damage to another while negligence consists of the omission to do acts which result in damage to another.”

The Court has, on several occasions, also used public necessity to impose a different standard of care. In *United States v. Bonifacio* [1916], the Court acquitted a train driver from the felony of homicide committed with simple negligence. According to the Court, a train driver has *no* obligation to stop or even slow down his engine when he sees an adult pedestrian standing or walking on or near the track, unless there is something in the appearance or conduct of the person on foot which would cause a prudent man to anticipate the possibility that such person could not, or would not avoid the possibility of danger by stepping aside. The driver may just give a warning of his approach, until he is assured that the attention of the pedestrian has been attracted to the oncoming train.

The Court even went as far as declaring the victim, who was deaf-mute, as “recklessly negligent.” For the court, an engine driver may fairly assume that all persons walking or standing on or near the railroad track, *except for children of tender years*, are aware of the danger to which they are exposed; and that they will take reasonable precautions to avoid accident, by looking and listening for the approach of trains, and

stepping out of the way of danger when their attention is directed to an oncoming train. A contrary rule would render it impractical to operate railroad. It will defeat public interest.

In a similar case, *Cusi v. Philippine National Railways (PNR)* [1979] held that “if warning devices are installed in railroad crossings, the travelling public has the right to rely on such warning devices to put them on their guard and take the necessary precautions before crossing the tracks.” As a result, PNR was declared negligent for failing to maintain the early warning devices in good condition and in working order. A caveat, though: It is not negligence *per se*, but only evidence of negligence, “which may be considered with all the circumstances of the case in determining whether the railroad company was negligent as a matter of fact.” As a possible defense, the Court wrote that had PNR been successful in establishing that the train blew his whistle *to compensate for the absence of warning signals*, and that Cusi sped (instead of slowing), then Cusi would’ve instead been declared negligent.

Anent the issue of contributory negligence on the part of the plaintiff or victim, the Court held in *Jarco Marketing Corp. v. Court of Appeals* [1999] that a child under the age of nine is conclusively presumed to have acted without discernment—consequently, they are conclusively presumed incapable of contributory negligence as a matter of law. The Court wrote an analogy: if in criminal cases a person under nine is exempt from criminal liability, then the same goes for civil liability. However, we believe this pronouncement is problematic, because minority is simply an exempting circumstance which does not, however, exempt the defendant/accused from civil liability *ex-delicto*.

Doctrine of attractive nuisance

In the old case of *Hidalgo Enterprises Inc. v. Balandan* [1952], the Court had to deal with the liability of the owner of an ice plant. In this case, an eight year-old boy drowned in the plant’s water tanks, which were neither covered nor fenced. The Court absolved the defendant based on the doctrine of attractive nuisance. Citing *Corpus Juris Secundum*: “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.” Applied in the case of the water tanks, the Court held the same to be not attractive nuisances. “Nature has created streams, lakes and pools which attract children. Lurking in their waters is always the danger of drowning. Against this danger children are early instructed so that they are sufficiently presumed to know the danger; and if the owner of private property creates an artificial pool on his own property, merely duplicating the work of nature without adding any new danger.”

Aleta v. Sofitel Philippine Plaza Manila [2023] qualified the holding in *Hidalgo Enterprises Inc.* In this case, the Court held that a swimming pool installed with slides was an attractive nuisance. “Taking *Hidalgo* into consideration, although the swimming pool alone may not be considered as an attractive nuisance, the kiddie pool’s close proximity to the slides formed an unusual condition or artificial feature intended to attract children. In other words, the installation of the slides with slopes ending over the swimming pool’s waters makes it an attractive nuisance.”

Heightened standard of care

As a general rule, ordinary diligence is the standard of care applicable to persons. Nevertheless, the Court has held in several cases that entities imbued with public interest must exercise greater degree of care and responsibility.

In *Makati Sharing-La Hotel and Resort Inc. v. Harper* [2012], the Court held the hotel liable for the murder of a guest inside his hotel room. “The hotel business is imbued with public interest. Catering to the public, hotelkeepers are bound to provide not only lodging for their guests but also security to the persons and belongings of their guests. The twin duty constitutes the essence of the business.” Invoking arts. 2000, 2001, and 2002, the Court held that there was much “greater reason to apply the same if not greater degree of care and responsibility when the lives and personal safety of their guests are involved.”

In *Philippine National Bank v. Santos* [2014], the Court declared that banks must exercise a “degree of diligence higher than that of a good father of a family.” This responsibility stems from the fiduciary relationship between the bank and the depositor. As a consequence thereof, “the bank’s obligation to observe ‘high standards of integrity and performance’ is deemed written into every deposit agreement between a bank and its depositor.”

Public utilities vested with public interest are also held to a higher degree of diligence, according to *Manila Electric Company v. Nordec Philippines* [2018]. “The rationale behind this ruling is that public utilities should be put on notice, as a deterrent, that if they completely disregard their duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers.” In this case, the Court wrote: “Should a distribution utility not exercise the standard of care required of it due to its negligence in the inspection and repair of its apparatus, then it can no longer recover the amounts of allegedly used but uncharged electricity.”

Presumption of negligence

There are instances where the law presumes that a party is negligent. The practical effect of such a presumption is that the burden of proving that he exercised the appropriate standard of care shifts to the defendant (*i.e.*, the person being accused of negligence). Thus, if not disputed, the presumption stands and the plaintiff need not prove the fact of negligence anymore.

Res ipsa loquitur

The case *D.M. Consunji Inc. v. Court of Appeals* [2001] explains the nature of *res ipsa loquitur*. The doctrine of *res ipsa loquitur* (literally, “the thing or transaction speaks for itself”) is based on the rule of necessity—in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendant's negligence is beyond plaintiff's power. The same case also compared the doctrine to a bridge, in such a way that a plaintiff, without knowledge of the cause, reaches over to defendant who

knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains.

The following are the requisites of *res ipsa loquitur*:

1. The accident was of a kind which does not ordinarily occur unless someone is negligent;
2. The instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and
3. The injury suffered must not have been due to any voluntary action or contribution on the part of the person injured.

Interphil Laboratories Inc. v. OEP Philippines Inc. [2019], the Court had this to say: “Utilizing *res ipsa loquitur* is a matter of evidence, a mode of proof, or a mere procedural convenience, since it furnishes a substitute for, and relieves a plaintiff of the burden of producing a specific proof of negligence. It recognizes that parties may establish *prima facie* negligence without direct proof, thus, it allows the principle to substitute for specific proof of negligence. It permits the plaintiff to present along with proof of the accident, enough of the attending circumstances to invoke the doctrine, create an inference or presumption of negligence and thereby place on the defendant the burden of proving that there was no negligence on his part.” To stress, despite the application of *res ipsa loquitur*, the defendant can still escape liability by proving that he exercised the required standard of care. In other words, it’s a possibility that the defendant can still prove that he was not negligent.

Violation of traffic rules and regulations

Arts. 2184¹⁰ and 2185¹¹ provide for a presumption of negligence when a person (tortfeasor) is violating a traffic regulation at the time of the incident.

Specifically, under art. 2184, “if the causative factor was the driver's negligence, the owner of the vehicle who was present is likewise held liable if he could have prevented the mishap by the exercise of due diligence.” However, it must be shown that the negligent acts of the driver are continued for such a length of time as to give the owner a reasonable opportunity to observe them and to direct his driver to desist therefrom. By way of an example in *Caedo v. Yu Khe Thai* [1968], the owner will be held solidarily liable with the driver if he permits his driver to drive up a busy street without any effort to stop him, although he has had a reasonable opportunity to do so. However, the owner will be spared from liability if the driver, by a sudden act of negligence, and without the owner having a reasonable opportunity to prevent the act or its continuance injures a person or violates a penal law. The bottom line is that the negligent act of the driver must be continued in the presence of the owner for such a length of time that the owner, by his acquiescence, makes his driver’s act his own. *Caedo* laid down the test: “The test of his negligence, within the meaning of Article 2184, is his omission to do that which the evidence of his own senses tells him he should do in order to avoid the accident.”

Art. 2184 is not to be confused with art. 2180 (which deals with vicarious liability). In *De Belen v. Fuchs* [2023]: art. 2184 “speaks of a situation where the owner is in the vehicle. In such a case, the owner becomes solidarily liable for damages caused by their negligent driver except if they could show that they could not prevent the misfortune even with the use of due diligence. On the other hand, in a situation where the owner is not in the motor vehicle, they become vicariously liable for damages caused by an employee

¹⁰ In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have, by the use of the due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.

If the owner was not in the motor vehicle, the provisions of article 2180 are applicable.

¹¹ Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

acting within the scope of their assigned task except if the owner shows that they observed the diligence of a good father of a family to prevent damage.” In fine, art. 2184 compels the owner to be an “intelligent back-seat driver.”

Meanwhile, art. 2185 gives a presumption of negligence when, at the time of the mishap, the tortfeasor was violating a traffic regulation. Being a presumption, satisfactory evidence may be presented to overcome it. Thus, the Court in *Mallari Sr. v. Court of Appeals* [2000] found a jeepney driver negligent (and liable for damages) because at the time of the mishap, he was overtaking a vehicle while traversing a curve on the highway, which is a violation of § 41 (a) of the Land Transportation and Traffic Code.

Añonuevo v. Court of Appeals [2004] makes it clear that art. 2185 does not apply to nonmotorized vehicles, such as a bicycle. According to the Court, while “the duty of using ordinary care falls alike on the motorist and the rider or driver of a bicycle, it is obvious, for reasons growing out of the inherent differences in the two vehicles, that more is required from the former to fully discharge the duty than from the latter.” Thus, if a bicycle was found to be violating a traffic ordinance, the presumption under art. 2185 will not apply, because it is *not* a motorized vehicle.

But the Court in *Añonuevo* did not stop there. Even if art. 2185 was applicable, a bicycle rider violating a traffic regulation was still not held liable in the peculiar facts of that case. Using the principle of negligence *per se*, the Court noted that the mere fact of violation of a statute is not sufficient basis for an inference that such violation was the proximate cause of the injury complained. However, if the very injury has happened which was intended to be prevented by the statute, it has been held that violation of the statute will be deemed to be the proximate cause of the injury. Thus, the nonobservance of what the legislature has prescribed as a suitable precaution is failure to observe that care which an ordinarily prudent man would observe. In this case, however, the proximate cause of the accident was due to the driver’s reckless driving and not due to the biker’s lack of early warning devices. Thus, the bare fact that the plaintiff was violating a municipal ordinance at the time of the mishap only established some degree of negligence on his part, but

it was nevertheless *not* the contributing cause of the injury. Thus, there must still be a causal connection between the failure to abide by the rule and the injury sustained.

Violation of statutes/ordinances and administrative rules

Private rules imposed may or may not be determinative of negligence. In *Marinduque Iron Mines Agents Inc. v. Workmen's Compensation Commission* [1956], the Court had to resolve the issue of whether the violation of a private or internal rule is constitutive of negligence. The internal rule involved in this case is the company's prohibition against workers riding the hauling trucks (which the plaintiff violated). According to the Court, violation of a rule promulgated by a Commission or a board is *not* negligence *per se*, but it may be evidence of a negligence. In this case, an internal order or prohibition is below the level of a rule promulgated by a Commission or a board. Thus, the Court upheld the finding of the lower tribunal that the plaintiff was not negligent (the violation was mere *possible evidence of negligence*). This finding was anchored on the fact that the prohibition has nothing to do with the personal safety of the riders.

A contrary finding was, however, reached in *FF Cruz v. Court of Appeals* [1988], where the Court held that the defendant's failure to construct a firewall—in accordance with city ordinances—would suffice to support a finding of negligence. Thus, FF Cruz's negligence was the cause of the fire and the spread of the fire to the neighboring houses.

FF Cruz was reiterated in *Cipriano v. Court of Appeals* [1996] where the Court held that "violation of a statutory duty is negligence *per se*." Thus, when a fire gutted a car maintenance shop and burned the plaintiff's car with it, the defendant-owner was held liable because a regulation required him to procure an insurance policy for his shop covering property entrusted by its customer for repair. Even though the Court deemed the fire a fortuitous event, defendant-owner was still held liable for his failure to comply with the regulation made him guilty of negligence.

In *Sanitary Steam Laundry v. Court of Appeals* [1998], however, the Court wrote that the plaintiff has the burden of showing a causal connection between the injury received and the violation of the Land

Transportation and Traffic Code. He must show that the violation of the statute was the proximate or legal cause of the injury or that it substantially contributed thereto. Negligence, consisting in whole or in part, of violation of law, like any other negligence, is without legal consequence unless it is a contributing cause of the injury. It appears that here, the Court confused the elements of negligence and proximate cause, which are distinct. This is the same in *Añonuevo*. Indeed, it's possible to find that there was negligence on the part of the defendant, but such a negligence was nevertheless not the proximate cause of the injury. Again, these elements are separate and distinct.

Dangerous weapons and substances

Art. 2188 also gives a *prima facie* presumption of negligence. It says, “there is *prima facie* presumption of negligence on the part of the defendant if the death of injury results from his possession of dangerous weapons or substances, such as firearms and poison, except when the possession or the use thereof is indispensable in his occupation or business.” Thus, by way of an exception, the presumption will not arise when the carrying of the dangerous weapon or substance is indispensable in the person's occupation or business.

Proximate cause

The Court defined proximate cause in *Bataclan v. Medina* [1957] as “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.” Proximate cause is also that “acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.”

Bataclan involved a case of a bus accident. But just as the rescuers—holding lighted torches—were approaching the overturned bus, a fire suddenly started. “The proximate cause was the overturning of the bus, this for the reason that when the vehicle turned not only on its side but completely on its back, the leaking of the gasoline from the tank was not unnatural or unexpected; that the coming of the men with a lighted torch was in response to the call for help, made not only by the passengers, but most probably, by the driver and the conductor themselves, and that because it was dark, the rescuers had to carry a light with them, and coming as they did from a rural area where lanterns and flashlights were not available; and what was more natural than that said rescuers should innocently approach the vehicle to extend the aid and effect the rescue requested from them.” It would have been different if, for instance, rogue bandits lit the bus on fire after the accident—that would’ve been an efficient intervening cause, thereby negating the accident itself as the proximate cause.

Note that the use of proximate cause in *Bataclan* was for the purpose of determining the liability of the common carrier (*i.e.*, the bus operator). While we learned from *Sps. Guanio* that the doctrine of proximate cause finds no application when the cause of action is based on breach of contract, *Sps. Guanio* involved ascertaining the damage or injury. Thus, proximate cause may be used in breach of contract cases only to establish liability (*Bataclan*), but not damages (*Sps. Guanio*).

According to *Abrogar v. Cosmos Bottling Co.* [2017], to be considered the proximate cause of the injury, the negligence need not be the event closest in time to the injury; a cause is still proximate, although farther in time in relation to the injury, if the happening of it set other foreseeable events into motion resulting ultimately in the damage. However, whenever a new cause intervenes, which is not a consequence of the first wrongful cause, which is not under control of the wrongdoer, which could not have been foreseen by the exercise of reasonable diligence, and except for which the final injurious consequence could not have happened, then such injurious consequence must be deemed too remote. An intervening cause, to be considered efficient, must be one not produced by a wrongful act or omission, but independent of it, and adequate to bring the injurious results. Any cause intervening between the first wrongful cause and the final

injury which might reasonably have been foreseen or anticipated by the original wrongdoer is not such an efficient intervening cause as will relieve the original wrong of its character as the proximate cause of the final injury. Thus, an efficient intervening cause must be: (1) independent of the wrongful act or omission, and (2) adequate to bring the injurious results.”

Defenses

Among the defenses available to a defendant in a case for quasi-delict are the following:

1. Plaintiff’s negligence is the proximate cause of the injury
2. Contributory negligence
3. Last clear chance
4. Assumption of risk
5. Emergency
6. Fortuitous event
7. Prescription
8. Waiver
9. *Damnum absque injuria*

Item numbers 1 and 2 are based on art. 2179 of the Civil Code: “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.”

Thus, the rule is:

- If plaintiff’s negligence is the proximate cause – the plaintiff cannot recover damages; the defendant is *completely* absolved

- If the plaintiff's negligence is only contributory *but* the defendant's negligence remains the proximate cause – the plaintiff may recover damages, but the defendant's liability is mitigated.

Plaintiff's negligence is the proximate cause of the injury

If it is proven that the proximate cause is not the defendant's negligence, then, the defendant is *completely* exonerated from the liability. *Taylor v. MERALCO* [1910], citing Scaelova, "fault or negligence gives rise to an obligation when between it and the damage there exists the relation of cause and effect, but if the damage caused does not arise from acts or omissions of a third person, there is no obligation to make good upon the latter, even though such acts or omissions be imprudent or illegal, and much less so when it is shown that the immediate cause of the damage has been the recklessness the injured party himself." *Taylor* involved a case where several minors were able to gather detonating caps in MERALCO's plant. The detonation caps exploded, but only because the children tried to pry it open. Thus, according to the Court, "the immediate cause of the explosion, the accident which resulted in plaintiff's injury, was his own act of putting a match to the contents of the cap, and that having contributed to the principal occurrence, as one of its determining factors, he cannot recover" any damages.

The Court also declined to hold McDonalds liable in *Sps. Latonio v. McGeorge Food Industries Inc.* [2017]. In this case, the mother of an eight-month old infant was about to hand over the child to the mascot, "Birdie," who was at that time, only had wings and no arms to grasp the infant. And so, the child fell, headfirst. In ruling for McDonalds, the Court held that the mother's negligence was the proximate cause of the injury: "Why was she negligent can be traced to the fact as established that she left her eight-month-old baby on top of a chair to the temporary custody of a mascot. Even if the baby was only left for a few seconds or minutes that could already spell a disaster, in fact, it really happened. The baby fell from the chair and went straight into the floor headfirst."

Contributory negligence

National Power Corporation v. Casionan [2008] defined contributory negligence as follows: “contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection.” Accordingly, there is contributory negligence when the party’s act *showed lack of ordinary care and foresight* that such act could cause him harm or put his life in danger. It is an act or omission amounting to *want of ordinary care* on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury. It must be shown that the plaintiff/injured party performed an act that brought about his injuries in disregard of warnings or signs on an impending danger to health and body. To note, while the plaintiff is guilty of *some* contributory negligence, the defendant’s negligence must still be the proximate cause. If contributory negligence is proven, the defendant’s liability is mitigated.

Thus, the Court did not find any contributory negligence on the part of deceased Casionan, because there were no warning signs to inform passersby of the impending danger to their lives should they accidentally touch the high tension wires. Accordingly, the defendant was held fully liable for Casionan’s death.

The level of mitigation depends on the case. The Court explained in *Lambert v. Heirs of Casillon* [2005] that the underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages *actually* caused by his negligence. The determination of the mitigation of the defendant’s liability varies depending on the circumstances of each case. The Court has mitigated somewhere between 20 to 50%. In *Lambert*, the Court arrived at a 50-50 mitigation, because the injured party was: (1) driving the motorcycle at a high speed; (2) tailgating the Tamaraw jeepney; (3) imbibed one or two bottles of beer; and (4) not wearing a protective helmet. The contribution of these circumstances is all considered and determined in terms of percentages of the total cause.

In *Sps. Vergara v. Sonkin* [2015], the plaintiff's contributory negligence led to the deletion of moral damages in their favor. While moral damages may be awarded whenever the defendant's wrongful act or omission is the proximate cause of the plaintiff's physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury in the cases specified or analogous to those provided in art. 2219 of the Civil Code, they are only given to ease the defendant's grief and suffering and should, therefore, *reasonably approximate* the extent of hurt caused and the gravity of the wrong done. The contributory negligence involved in *Sps. Vergara* was the plaintiff's failure to respect the legal easements, which its neighbor-defendant was entitled to. We can see here that the violation of the law (*i.e.*, Law on Easements and the National Building Code) was treated as contributory negligence.

Last clear chance

We revisit *Picart*. In that case, the Court found both parties guilty of some negligence, albeit in a successive manner: the plaintiff was on the wrong side of the road, while the defendant ran straight on until he was almost upon the horse. Under these circumstances the law is that the person who has the *last fair chance to avoid the impending harm and fails to do so* is chargeable with the consequences, without reference to the prior negligence of the other party. Thus, the doctrine of the last clear chance.

Philippine National Railways Corp. v. Vizcara [2012] reiterated the doctrine, thus: The doctrine of last clear chance provides that where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligence brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising therefrom. Stated differently, the rule is that the antecedent negligence of a person does *not* preclude recovery of damages caused by the supervening negligence of the latter, who had the last fair chance to prevent the impending harm by the exercise of due diligence. At the very least, the plaintiff or injured party must be proven to be also negligent. Thus, absent negligence on the plaintiff, the doctrine will *not* be applicable.

The doctrine of last clear chance is likewise inapplicable where the party charged is required to act instantaneously, and the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered. Thus, in *Achevara v. Ramos* [2009], the Court found that while indeed the defendant driver had a chance to avoid the vehicular accident, he no longer had the opportunity to avoid it.

Bank of America v. Philippine Racing Club [2009] teaches us that the application of the last clear chance may mitigate the defendant's liability. In this case, the plaintiff had a practice of signing blank checks whenever its authorized bank signatories would travel abroad. However, the signed checks fell into the wrong hands and were encashed by the bank. The doctrine was applied, because the plaintiff's negligence preceded the bank's negligence—the bank had the last clear chance in preventing the checks from being encashed. But because of the finding of negligence on the depositor, the Court apportioned the liability, 60-40 in favor of the bank. *Bank of America* gives us a jurisprudence wherein the Court may look at the negligence of the plaintiff to mitigate the damages awarded in its favor. This is quite different from *Picart's* formulation, because in *Picart*, all we have to look at is *who had the last fair chance to avoid the impending harm and failed to do so*. So, we can say that *Bank of America* applied *both* the doctrine of last clear chance to determine liability and contributory negligence to mitigate damages.

Finally, *Lapanday Agricultural and Development Corp. v. Angala* [2007] applied the doctrine of last clear chance. In this case, the plaintiff was making a U-turn in the outer lane when he got hit by a speeding vehicle. The Court found both drivers negligent and “at fault”—the plaintiff was violating the Land Transportation and Traffic Code (because you're not supposed to make a U-turn on the outer lane) while the defendant was speeding. The doctrine of the last clear chance was applied to the defendant, because he was behind the plaintiff—he had the chance to observe plaintiff's behavior and accordingly slow down. He did not. Contrary to *Bank of America*, the Court did not mitigate the defendant's liability, despite a finding of negligence on the plaintiff.

Assumption of risk

We revisit *Abrogar*. One of the defenses raised by Cosmos there was that Abrogar assumed risk, thus, it is not liable. The doctrine of assumption of risk means that one who voluntarily exposes himself to an obvious, known and appreciated danger assumes the risk of injury that may result therefrom. The doctrine is based on voluntary consent, express or implied, to accept danger of a known and appreciated risk; it may sometimes include acceptance of risk arising from the defendant's negligence, but one does not ordinarily assume risk of any negligence which he does not know and appreciate. It has three elements:

1. the plaintiff must know that the risk is present;
2. he must further understand its nature; and
3. his choice to incur it must be free and voluntary.

In *Abrogar*, Rommel could not have assumed the risk of death when he participated in the race because death was neither a known nor normal risk incident to running a race. Neither was the waiver by Rommel, then a minor, an effective form of express or implied consent in the context of the doctrine of assumption of risk. There is ample authority, cited in *Prosser*, to the effect that a person does not comprehend the risk involved in a known situation because of his youth, or lack of information or experience, and thus will not be taken to consent to assume the risk.

By way of exceptions, the Court held in *Ilocos Norte Electric Company v. Court of Appeals* [1989] enumerated three instances where the doctrine of assumption of risk is inapplicable notwithstanding the concurrence of the three elements:

1. An emergency is found to exist
2. The life or property of another is in peril
3. When one seeks to rescue his endangered property.

Thus, the defendant may not use the defense of assumption of risk under those circumstances. Consequently, the plaintiff is not barred from recovering damages as a result of the plaintiff's negligence.

Finally, in *Rodriguez v. Manila Railroad Co.*, the Court had an occasion to explain that the doctrine does not mean that the plaintiff voluntarily assumes all conceivable risks. In *Rodriguez*, the plaintiff allegedly built his house on the land of Manila Railroad. Rodriguez's house was gutted in a fire. In ruling for Rodriguez, the Court held that so long as his house remained in this exposed position, he undoubtedly assumed the risk of any loss that might have resulted from fires occasioned by the defendant's locomotives if operated and managed with ordinary care. But he cannot be held to have assumed the risk of any damage that might result from the unlawful negligent acts of the defendant. Nobody is bound to anticipate and defend himself against the possible negligence of another. Rather he has a right to assume that the other will use the care of the ordinarily prudent man. In other words, the risk assumed by Rodriguez was only to the extent of acts caused by ordinary care—but not unlawful negligent acts. Thus, the case will still turn on the finding of negligence: if there's negligence on the part of the defendant, he will still be held liable.

Emergency

The emergency rule has been stated in *Gan v. Court of Appeals* [1988] as follows: One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence. If applied, the defendant will be *absolved* of the charge. It is a complete defense.

The emergency rule, however, does not find application when the defendant is finds an emergency caused by his *own* negligence. In *Delsan Transport Lines Inc. v. C&A Construction Inc.* [2003], the Court sustained the liability of the shipping line because notwithstanding the storm warning, the captain-in-charge still proceeded to sail. To sum, the emergency must not have been caused by the defendant.

Fortuitous event

Under art. 1174 of the Civil Code, “Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.”

Nakpil & Sons v. Court of Appeals [1986], laid the requisites for the application of art. 1174:

1. The cause of the breach of the obligation must be independent of the will of the debtor
2. The event must be either unforeseeable or unavoidable
3. The event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner
4. The debtor must be free from any participation in, or aggravation of the injury to the creditor.

The last requisite is important. In *Nakpil & Sons*, the Court did not absolve the defendant from liability, because it was guilty of contributory negligence. The contractor was guilty of contributory negligence because it made substantial deviations from the plans and specifications and have failed to observe the requisite workmanship in the construction as well as to exercise the requisite degree of supervision. Meanwhile, Nakpil & Sons was also liable because of inadequacies or defects in its prepared plans and specifications. In other words, had the contractor and design firm did their job, the building wouldn't have collapsed (in fact, it was the only building which collapsed in the area). Consequently, they were declared as joint tortfeasors.

In the *Resolution*¹² denying Nakpil & Son's motion for reconsideration, the Court added: “One who negligently creates a dangerous condition cannot escape liability for the natural and probable consequences thereof, although the act of a third person, or an act of God for which he is not responsible, intervenes to precipitate the loss.”

The case of *Philippine Communications Satellite Corp. v. Globe Telecom Inc.* [2004] formulated the doctrine of fortuitous event in this way: (1) the event must be independent of the human will; (2) the

¹² 243 Phil. 489, 496 (1988).

occurrence must render it impossible for the debtor to fulfill the obligation in a normal manner; and (3) the obligor must be free of participation in, or aggravation of, the injury to the creditor. Here, the Court zeroed in on the fact that the parties could not have avoided the Senate's nonratification of the new US Bases Treaty. As a consequence of the termination of the RP-US Military Bases Agreement (as amended) the continued stay of all US Military forces and personnel from Subic Naval Base would no longer be allowed, hence, plaintiff would no longer be in any position to render the service it was obligated under the agreement.

Prescription

The defense of prescription here is more specifically called extinctive prescription. Thus, due to mere lapse of time, a claim for damages based on quasi-delict may be barred. Art. 1146 provides that an action upon a quasi-delict must be instituted within four years.

An action for damages arising from tort prescribes in four years. That's the rule. But as a defense, could it be waived? No, said the Court in *Ferrer v. Ericta* [1978]. A complaint may be dismissed in the course of the proceedings on the ground of prescription, although such defense was not raised in the answer, where plaintiff's own allegation in the complaint shows clearly that the action had prescribed. Therefore, even if the defense of prescription was *not* raised, it may still be invoked by the defendant. Pertinently, Rule 9, Sec. 1 of the Rules of Civil Procedure provides: "Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that ... the action is barred ... by statute of limitations, the court shall dismiss the claim." In short, the trial court shall dismiss the action *motu proprio*.

Knowing the period is just half of the problem. Now, when does one start counting the four-year period? According to *Kramer v. Court of Appeals* [1989], the right of action accrues when there exists a *cause of action*, which has three elements:

1. A right in favor of the plaintiff

2. An obligation on the part of the defendant to respect such right
3. An act or omission on the part of the defendant violative of the right of the plaintiff.

It is only when the last element occurs or takes place that it can be said in law that a cause of action has arisen. Consequently, the prescriptive period must be counted when the last element occurs or takes place, that is, the time of the commission of an act or omission violative of the right of the plaintiff.

Notably, not all actions for damages prescribe in four years. In *De Guzman v. Toyota Cubao Inc.* [2006], a case concerning a complaint for damages due to a defective vehicle, the Court dismissed the plaintiff's complaint as barred by prescription. In so doing, the Court clarified that the plaintiff's cause of action was based on an implied warranty, because there was no express warranty between the plaintiff and the seller-defendant. The plaintiff filed the complaint 19 months after the delivery of the vehicle in question. Accordingly, an action for damages based on an implied warranty prescribes in six months from the delivery of the thing sold.¹³ Likewise, a claim for damages brought under the Consumer Act (for consumer products) for implied warranty prescribes in one year. Therefore, either under the Civil Code or the Consumer Act, the action has prescribed.

Finally, *Henson v. UCPB General Insurance Co.* [2019] settles the reckoning point of the prescriptive period as applied under Insurance Law. Copylandia was insured with UCPB. On May 9, 2006, a water leak caused damages to Copylandia's machineries, prompting it to claim with UCPB. On November 2, 2006, UCPB paid the insurance proceeds to Copylandia. This resulted in respondent's subrogation to the rights of Copylandia over all claims and demands arising from the said incident. On May 20, 2010, as the subrogee, UCPB filed a complaint for damages based on art. 2176 against the building owner due to the water leak. The owner interposed the defense of prescription. However, UCPB argued that the claim has not yet prescribed, because its subrogation created a new obligation based on law—art. 2207—which prescribes in 10 years. The Court rejected the insurer's arguments. Following the principles of subrogation,

¹³ Art. 1571 in relation to Art. 1561, New Civil Code.

the insurer only steps into the shoes of the insured and therefore, for purposes of prescription, inherits only the remaining period within which the insured may file an action against the wrongdoer. To be sure, the prescriptive period of the action that the insured may file against the wrongdoer begins at the time that the tort was committed and the loss/injury occurred against the insured. The indemnification of the insured by the insurer only allows it to be subrogated to the former's rights, and does not create a new reckoning point for the cause of action that the insured originally has against the wrongdoer.

Nevertheless, the Court applied the doctrine prospectively. However, if *Henson* was applied in the facts of *Henson*, UCPB's claim has already prescribed.

Waiver

Recall that a cause of action for a quasi-delict is based on a right—a right in favor of the plaintiff. Nevertheless, the plaintiff is free to waive this right and, consequently, extinguish any cause of action. Art. 6 provides: “Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.”

Let's take the case of a waiver in the context of a common carrier. The case of *Sanico v. Colipano* [2017] involved a vehicular accident. Colipano and her daughter was riding a jeepney owned by Sanico. An accident occurred, leading to Colipano's amputation. Thus, Colipano filed a complaint for breach of contract of carriage against Sanico. In her answer, Sanico alleged that Colipano actually signed an affidavit of desistance and release of claim. Nevertheless, the lower courts still held Sanico liable. On appeal, the Supreme Court declared the affidavit of desistance and release of claim void. The Court enumerated the requisites for a valid waiver:

1. The person making the waiver possesses the right
2. He has the capacity and power to dispose of the right
3. The waiver must be clear and unequivocal although it may be made expressly or impliedly

4. The waiver is not contrary to law, public policy, public order, morals, good customs or prejudicial to a third person with a right recognized by law

In this case, the last two requisites were lacking. For the waiver to be clear and unequivocal, the person waiving the right should understand what she is waiving and the effect of such. Here, Colipano cannot understand the English language, the medium which the waiver was written. There was also no proof that the contents were explained to her. The waiver was likewise *contrary to public policy*, because what was involved here was the liability of a common carrier for injuries sustained by passengers in respect of whose safety a common carrier must exercise extraordinary diligence. In any case, to uphold the waiver's validity is to "dilute and weaken the standard of extraordinary diligence exacted by the law from common carriers and hence to render that standard unenforceable." Thus, in instances of injury or death, a waiver of the right to claim damages is *strictly construed* against the common carrier.

While the waiver was struck down in *Sanico*, the case of *Sps. Dalen v. Mitsui O.S.K. Lines* [2019] upheld the waiver. A ship chartered by O.S.K. Lines sunk, drowning the kin of the petitioners. However, O.S.K. Lines received full payment of the death benefits based on the employment contract and the collective bargaining agreement. Following the payment, the heirs of the deceased seafarers, with the assistance of their counsel, signed a settlement agreement, affidavit of heirship and receipt of payment before the Overseas Workers Welfare Administration. The documents were, essentially, waivers, which released respondents from *all* liabilities, including those based on tort. However, not quite satisfied, the heirs sued the employer anew, seeking to collect more damages. The Supreme Court barred the claim and upheld the validity of the settlement agreements. According to the Court, *not all waivers and quitclaims are invalid as against public policy*. Thus, to uphold a waiver, it must be shown that it was entered into voluntarily and that it represents a reasonable settlement.

"If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of the

settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.” In *Sps. Dalen*, the plaintiffs signed the waiver in the presence of their counsel. It could be said that they brought their counsel along to make sure that they would understand the contents of the agreements and that they are not tricked into signing the same.

Another ground for the invalidity of a waiver is if it’s a waiver for future fraud. Art. 1171 provides: “Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.”

Banaga v. Majaducon [2006] involved a land dispute. To resolve the dispute, both parties agreed in open court to abide by a relocation survey conducted by the DENR, effectively waiving their right to contest the findings. However, Banaga—notwithstanding the waiver—contested the correctness of the DENR survey. The Court upheld Banaga’s objection. While it is correct that Banaga bound herself to abide by the findings of the survey team, the waiver does not include future fraud, citing art. 1171. Banaga brought up allegations of discrepancy and alterations in the lot data computations used in the survey when to data found in DENR records. In any case, Banaga’s waiver cannot be taken to cover allegations of fraud.

In the context of air carriers, *Sabena Belgian World Airlines v. Court of Appeals* [1996] clarified that Warsaw Convention denies to the carrier availment of provisions which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part. In other words, the limitation of liability of air carriers does not apply when there is willful misconduct. To stress, airlines may not limit its liability by way of a waiver if it is guilty of willful misconduct. This rule is in accord with art. 1171. Willful misconduct is akin to fraud, which cannot be waived. It is then, apparent, that only simple negligence can be waived—but never gross negligence, bad faith, fraud, or willful misconduct.

Valenzuela Hardwood and Industrial Supply Inc. v. Court of Appeals [1997] held that a waiver in a contract of carriage for future liability is valid, if the common carrier is a private carrier. As a private carrier, a stipulation exempting the owner from liability for the negligence of its agent is *not* against public policy, and is deemed valid. In an case, the stipulation in the charter party absolving the owner from liability for loss due to the negligence of its agent would be void only if the strict public policy governing common carriers is applied. Thus, the waiver of liability for private carriers is valid, as under art. 1306, it is freely entered into by the parties and it is *not* contrary to law, morals, good customs, public order or public policy.

By way of a summary, the general rule remains that a waiver for future fraud is void. In air carriers, a waiver for willful misconduct is likewise violative of the Warsaw Condition. However, when the carrier is acting as a private charter—not as a common carrier—a waiver for future liability is valid.

Damnum absque injuria

Literally, “damnum absque injuria,” means damage without injury. *Sps. Custodio v. Court of Appeals* [1996] gives a good example of how this doctrine plays out.

Mabasa filed a case for the grant of an easement of right of way against Custodio. Mabasa discovered that an *adobe* fence had been constructed along the primary passageway leading from his two-door apartment to P. Burgos Street, narrowing the access point. Thereafter, Morato extended her own fence, completely enclosing the remaining space and effectively blocking the only viable access to the public street for Mabasa’s property. Following this total obstruction, the tenants occupying Mabasa's apartment vacated the premises, leading to a loss of rental income. Santos justified the construction of the barrier by citing personal grievances, including an incident where her daughter was injured by a tenant's bicycle and recurring nuisances such as noise and the theft of footwear. The Mabasas prevailed in the courts below. On appeal, *Sps. Custodio* assailed the award of damages in favor of the Mabasas.

It is worth noting that the lower courts based their award of damages solely on the fact that Mabasa incurred losses in the form of unrealized rentals when the tenants vacated the leased premises by reason of

the closure of the passageway. However, the mere fact that the plaintiff suffered losses does not give rise to a right to recover damages. To warrant recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. *Wrong without damage, or damage without wrong, does not constitute a cause of action*, since damages are merely a part of the remedy allowed for the injury caused by a breach or wrong.

To clarify our analysis, we must distinguish injury and damages.

Injury is the illegal invasion of a legal right, while damage is the loss, hurt or harm which results from the injury. Damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria*.

For the plaintiff to maintain an action for damages, he must establish that the injuries resulted from a breach of duty which the defendant owed to the plaintiff—a concurrence of injury to the plaintiff and legal responsibility by the person causing it. This sounds like a cause of action because it is. Recall that the one of the requisites for a cause of action is the breach of some duty. There must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded. It is not enough for the plaintiff to aver that he suffered some pain and suffering.

Thus, if an accident occurred, but the defendant did not violate any legal duty owed to the plaintiff, no cause of action is created. In such cases, the consequences must be borne by the injured person alone. The law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. In short, for a valid cause of action to arise, the act causing damage must be *both hurtful and wrongful*. There must be *damnum et injuria*.

In *Sps. Custodio*, there was no legal injury. Even art. 21 is inapplicable, because the act of the defendants of constructing a fence within their lot is a valid exercise of their rights as owners, which is not

contrary to morals, good customs or public policy. In fact, the law recognizes the right of the owner to enclose and fence his property. Moreover, there was no easement existing in favor of the Mabastas.¹⁴

What can we glean from *Sps. Custodio* is the rule that there is *no* cause of action for acts done by one person upon his own property in a lawful and proper manner, even though such acts *incidentally* cause damage or an unavoidable loss to another, because such loss is *damnum absque injuria*. Thus, the courts below erred in awarding damages in favor of the Mabastas.

¹⁴ Art. 430, New Civil Code.