Master Programme in European Law (LL.M.)

2nd semester
Summer term 2009

Module VII: Introduction to European Private Law
Module Coordinator: University of Bologna, Italy

Course title: Tort Law
Scholar: Prof. Dr. Riccardo Campione, University of Bologna

This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of Prof. Dr. Riccardo Campione and can under no circumstances be regarded as reflecting the position of the European Union.
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(Assistant Professor at the University of Bologna and Attorney at Law Member of the Italian State Bar in Bologna)

Tutor: Alessandra Spangaro
(PhD in Civil Law at the University of Bologna and Attorney at Law Member of the Italian State Bar in Bologna)
1. - Syllabus
2. - Table of Legislation
3. - Table of ECJ’s Cases
4. - Other materials
   A) Text of the Articles on Tort Law embodied in The European Civil Code drafted by the Study Group on a European Civil Code
   B) The Principles of European Tort Law elaborated by the European Group on Tort Law.
   C) Italian Civile Code (Articles 2043 – 2059) translated in Chinese.
5. - Recommended readings
## 1) Syllabus

### Monday 16th of March 2009

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<tr>
<th>Time</th>
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<tr>
<td>10:00 – 11:00</td>
<td>■ Introduction to European Tort Law.</td>
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<td>■ Tort Law in the light of three levels of European Law:</td>
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<td>2) European secondary legislation (Regulations, Directives, Decisions);</td>
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<td>3) European <em>ius commune</em>: the Projects of Harmonizing European Tort Law.</td>
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<td>11:00 – 12:00</td>
<td>1) <strong>EC and UE Treaties and The European Convention on Human Rights</strong>:</td>
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<td>a) Liability for breach of Community law: a prototype for European Tort Law?</td>
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<td>ECJ Case Law: C. – 110/75; C. 308/87; C. 412/92]</td>
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<td>2. Member State’s Liability for breach of Community Law.</td>
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<td>3. Liability of individuals for breach of Community law.</td>
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<td>[Legislation: art. 81 EC Treaty.</td>
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<td>ECJ Case Law: C. – 453/99]</td>
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<td>b) European Tort Law in the light of The European Convention on Human Rights.</td>
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<td>The Liability of Contracting States for the Infringement of Fundamental Rights</td>
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<td>ECJ Case Law: C. - 117/01]</td>
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<td>14:00 – 15:00</td>
<td>2) <strong>European secondary legislation (Regulations, Directives, Decisions)</strong>:</td>
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<td>15:00 – 16:00</td>
<td>a) Liability for Defective Products.</td>
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<td>[Legislation: Dir. 85/374/EEC; 99/34/EC;</td>
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<tr>
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01/93/EC.
ECJ Case Law: C – 365/88; C – 300/95; C – 203/99; C – 52/00; C – 154/00; C – 183/00; C - 402/03; C – 127/04

b) Liability of the Organizer/Retailer of a Package Travel
[Legislation: Dir. 90/314/ECC.
ECJ Case Law: C – 168/00]

c) Environmental Liability and Ecological Damage.
[Legislation: European Convention on Civil Liability for Damage resulting from Activities. Dangerous to the Environment (Lugano Convention); Dir. 2004/35/EC; Dir. 2006/21/EC].
d) Air carrier liability in the event of accidents.
e) The law applicable to non-contractual obligations.

Wednesday 18th of March 2009

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<td>a) Tort Law articles from the European Civil Code drafted by The Study Group on a European Civil Code</td>
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<tr>
<td>11:00 – 12:00</td>
<td>b) Principles of European Tort Law (PETL)</td>
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Tutorials

Tuesday 17th of March 2009

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<td>Lesson’s recapitulation; Analysis of some specific European Jurisdictions - Common Law Area: English Tort Law.</td>
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2) Table of Legislation

a) Treaties
- EC Treaty
  Articles 10, 81, 249, 288
- EAEC Treaty.
  Article 188

b) Regulations
- Regulation (EC) No 864/2007 of The European Parliament and of The Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II);
- Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air;

c) Directives

d) Decisions
e) Conventions
- European Convention on Human Rights (Rome 4 November 1950)
- European Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (Lugano 21 June 1993)
- Convention for the Unification of Certain Rules for International Carriage by Air (Montreal 28 May 1999)
3) Table of ECJ’s Cases(*)

- Liability for breach of Community Law
C. - 110/75;
C. - 308/87;
Joined oined cases C. - 6/90, 9/90
C. - 412/92.
C. - 479/93;
C. - 46/93;
C. - 48/93;
C. - 392/93;
C. - 5/94;
Joined cases C. - 178/94, 179/94, 188/94, 189/94, 190/94;
C. - 127/95;
C. - 265/95
C. - 319/96
C. - 424/97
C. - 352/98;
C. - 453/99;
C. - 224/01;
C. - 222/02
C. - 173/03.

C. - 117/01.

- Liability for Defective Products
C. - 365/88;
C. - 300/95;
C. - 203/99;
C. - 52/00;
C. - 154/00;
C. - 183/00;
C. - 402/03;
C. - 127/04.

- Liability of the Organizer/Retailer of a Package Travel
C. - 168/00.

(*) The full text of all the above mentioned ECJ’s Cases is available at:
http://eur-lex.europa.eu/JURISIndex.do
4) Other materials

A) Text of the Articles on Tort Law embodied in The European Civil Code drafted by the Study Group on a European Civil Code

Non-Contractual Liability Arising out of Damage Caused to Another

Chapter 1: Fundamental Provisions

Article 1:101: Basic Rule

(1) A person who suffers legally relevant damage has a right to reparation from a person who caused the damage intentionally or negligently or is otherwise accountable for the causation of the damage.

(2) Where a person has not caused legally relevant damage intentionally or negligently that person is accountable for the causation of legally relevant damage only if Chapter 3 so provides.

Article 1:102: Prevention

Where legally relevant damage is impending, this Book confers on a person who would suffer the damage a right to prevent it. This right is against a person who would be accountable for the causation of the damage if it occurred.

Article 1:103: Scope of Application

Articles 1:101 and 1:102
(a) apply only in accordance with the following provisions of this Book;
(b) apply to both legal and natural persons, unless otherwise stated;
(c) do not apply in so far as their application would contradict the purpose of other private law rules; and
(d) do not affect remedies available on other legal grounds.

Chapter 2: Legally Relevant Damage

Section 1: General

Article 2:101: Meaning of Legally Relevant Damage

(1) Loss, whether economic or non-economic, or injury is legally relevant damage if:
(a) one of the following rules of this Chapter so provides;
(b) the loss or injury results from a violation of a right otherwise conferred by the law; or
(c) the loss or injury results from a violation of an interest worthy of legal protection.
(2) In any case covered only by sub-paragraphs (b) or (c) of paragraph (1) loss or injury constitutes legally relevant damage only if it would be fair and reasonable for there to be a right to reparation or prevention, as the case may be, under articles 1:101 or 1:102.

(3) In considering whether it would be fair and reasonable for there to be a right to reparation or prevention regard is to be had to the ground of accountability, to the nature and proximity of the damage or impending damage, to the reasonable expectations of the person who suffers or would suffer the damage, and to considerations of public policy.

(4) In this Book
   (a) economic loss includes loss of income or profit, burdens incurred and a reduction in the value of property
   (b) non-economic loss includes pain and suffering and impairment of the quality of life.

Section 2: Particular Instances of Legally Relevant Damage

Article 2:201: Personal Injury and Consequential Loss

(1) Loss caused to a natural person as a result of injury to his or her body or health and the injury as such are legally relevant damage.

(2) In this Book:
   (a) such loss includes the costs of health care including expenses reasonably incurred for the care of the injured person by those close to him or her; and
   (b) personal injury includes injury to mental health only if it amounts to a medical condition.

Article 2:202: Loss Suffered by Third Persons as a Result of Another’s Personal Injury or Death

(1) Non-economic loss caused to a natural person as a result of another’s personal injury or death is legally relevant damage if at the time of injury that person is in a particularly close personal relationship to the injured person.

(2) Where a person has been fatally injured:
   (a) legally relevant damage caused to the deceased on account of the injury to the time of death becomes legally relevant damage to the deceased’s successors;
   (b) reasonable funeral expenses are legally relevant damage to the person incurring them; and
   (c) loss of maintenance is legally relevant damage to a natural person whom the deceased maintained or, had death not occurred, would have maintained under statutory provisions or to whom the deceased provided care and financial support.

Article 2:203: Infringement of Dignity, Liberty and Privacy

(1) Loss caused to a natural person as a result of infringement of his or her right to respect for his or her dignity, such as the rights to liberty and privacy, and the injury as such are legally relevant damage.

(2) Loss caused to a person as a result of injury to that person’s reputation and the injury as such are also legally relevant damage if national law so provides.
Article 2:204: Loss upon Communication of Incorrect Information about Another

Loss caused to a person as a result of the communication of information about that person which the person communicating the information knows or ought to know is incorrect is legally relevant damage.

Article 2:205: Loss upon Breach of Confidence

Loss caused to a person as a result of the communication of information which, either from its nature or the circumstances in which it was obtained, the person communicating the information knows or ought to know is confidential to the person suffering the loss is legally relevant damage.

Article 2:206: Loss upon Infringement of Property or Lawful Possession

(1) Loss caused to a person as a result of an infringement of that person’s property right or lawful possession of a movable or immovable thing is legally relevant damage.

(2) In this Article:
   (a) loss includes being deprived of the use of property;
   (b) infringement of a property right includes destruction of or physical damage to the subject-matter of the right (property damage), disposition of the right, interference with its use and other disturbance of the exercise of the right.

Article 2:207: Loss upon Reliance on Incorrect Advice or Information

Loss caused to a person as a result of making a decision in reasonable reliance on incorrect advice or information is legally relevant damage if:
   (a) the advice or information is provided by a person in pursuit of a profession or in the course of trade; and
   (b) the provider knew or ought to have known that the recipient would rely on the advice or information in making a decision of the kind made.

Article 2:208: Loss upon Unlawful Impairment of Business

(1) Loss caused to a person as a result of an unlawful impairment of that person’s exercise of a profession or conduct of a trade is legally relevant damage.

(2) Loss caused to a consumer as a result of unfair competition is also legally relevant damage if Community or national law so provides.

Article 2:209: Burdens incurred by the State upon Environmental Impairment

Burdens incurred by the State or designated competent authorities in restoring substantially impaired natural elements constituting the environment, such as air, water, soil, flora and fauna, are legally relevant damage to the State or the authorities concerned.
Article 2:210: Loss upon Fraudulent Misrepresentation

(1) Without prejudice to the other provisions of this section loss caused to a person as a result of another’s fraudulent misrepresentation, whether by words or conduct, is legally relevant damage.
(2) A misrepresentation is fraudulent if it is made with knowledge or belief that the representation is false and it is intended to induce the recipient to make a mistake.

Article 2:211: Loss upon Inducement of Breach of Obligation

Without prejudice to the other provisions of this section, loss caused to a person as a result of another’s inducement of a third person to breach an obligation is legally relevant damage only if:
(a) the obligation was owed to the person sustaining the loss; and
(b) the person inducing the breach:
   (i) intended the third person to breach the obligation, and
   (ii) did not act in legitimate protection of their own interest.

Chapter 3: Accountability

Section 1: Intention and Negligence

Article 3:101: Intention

A person causes legally relevant damage intentionally when that person causes such damage either:
(a) meaning to cause damage of the type caused; or
(b) by conduct which that person means to do, knowing that such damage, or damage of that type, will or will almost certainly be caused.

Article 3:102: Negligence

A person causes legally relevant damage negligently when that person causes the damage by conduct which either:
(a) does not meet the particular standard of care provided by a statutory provision whose purpose is the protection of the injured person from the damage suffered, or
(b) does not otherwise amount to such care as could be expected from a reasonably careful person in the circumstances of the case.
Article 3:103: Persons under Eighteen

(1) A person under eighteen years of age is only accountable for causing legally relevant damage according to Article 3:102(b) in so far as that person does not exercise such care as could be expected from a reasonably careful person of the same age in the circumstances of the case.

(2) A person under seven years of age is not accountable for causing damage intentionally or negligently.

(3) However, paragraphs (1) and (2) do not apply to the extent that
   (a) the injured person cannot obtain reparation under this Book from another, and
   (b) liability to make reparation would be equitable having regard to the financial means of the parties and all other circumstances of the case.

Article 3:104: Accountability for Damage Caused by Children or Supervised Persons

(1) Parents or other persons obliged by law to provide parental care for a person under fourteen years of age are accountable for the causation of legally relevant damage where that person under age caused the damage by conduct that would constitute intention or negligence if it were the conduct of an adult.

(2) An institution or other body obliged to supervise a person is accountable for the causation of legally relevant damage suffered by a third party when:
   (a) the damage is personal injury, loss within Article 2:202 or property damage;
   (b) the person whom the institution or other body is obliged to supervise caused that damage intentionally or negligently or, in the case of a person under eighteen, by conduct that would constitute intention or negligence if it were the conduct of an adult; and
   (c) the person whom they are obliged to supervise is a person likely to cause damage of that type.

(3) However, a person is not accountable under this Article for the causation of damage if that person shows that there was no defective supervision of the person causing the damage.

Section 2: Accountability without Intention or Negligence

Article 3:201: Accountability for Damage Caused by Employees and Representatives

(1) A person who employs or similarly engages another, is accountable for the causation of legally relevant damage suffered by a third person when the person employed or engaged
   (a) caused the damage in the course of employment or engagement, and
   (b) caused the damage intentionally or negligently, or is otherwise accountable for the causation of the damage.

(2) Paragraph (1) applies correspondingly to a legal person in relation to a representative causing damage in the course of their engagement. A representative is a person who is authorised to effect juridical acts on behalf of the legal person by its constitution.
Article 3:202: Accountability for Damage Caused by the Unsafe State of an Immovable

(1) A person who independently exercises control over an immovable is accountable for the causation of personal injury and consequential loss, loss within Article 2:202, and loss resulting from property damage (other than to the immovable itself) by a state of the immovable which does not ensure such safety as a person in or near the immovable is entitled to expect having regard to the circumstances including:
   (a) the nature of the immovable,
   (b) the access to the immovable, and
   (c) the cost of avoiding the immovable being in that state.

(2) A person exercises independent control over an immovable if that person exercises such control that it is reasonable to impose a duty on that person to prevent legally relevant damage within the scope of this Article.

(3) The owner of the immovable is to be regarded as independently exercising control, unless the owner shows that another independently exercises control.

Article 3:203: Accountability for Damage Caused by Animals

A keeper of an animal is accountable for the causation by the animal of personal injury and consequential loss, loss within Article 2:202, and loss resulting from property damage.

Article 3:204: Accountability for Damage Caused by Defective Products

(1) The producer of a product is accountable for the causation of personal injury and consequential loss, loss within Article 2:202, and, in relation to consumers, loss resulting from property damage (other than to the product itself) by a defect in the product.

(2) A person who imported the product into the European Economic Area for sale, hire, leasing or distribution in the course of that person’s business is accountable correspondingly.

(3) A supplier of the product is accountable correspondingly if:
   (a) the producer cannot be identified; or
   (b) in the case of an imported product, the product does not indicate the identity of the importer (whether or not the producer’s name is indicated), unless the supplier informs the injured person, within a reasonable time, of the identity of the producer or the person who supplied that supplier with the product.

(4) A person is not accountable under this article for the causation of damage if that person shows:
   (a) that person did not put the product into circulation;
   (b) it is probable that the defect which caused the damage did not exist at the time that person put the product into circulation;
   (c) that person neither manufactured the product for sale or distribution for economic purpose nor manufactured or distributed it in the course of business;
   (d) the defect is due to the product’s compliance with mandatory regulations issued by public authorities;
   (e) the state of scientific and technical knowledge at the time that person put the product into circulation did not enable the existence of the defect to be discovered; or
   (f) in the case of a manufacturer of a component, the defect is attributable to:
      (i) the design of the product into which the component has been fitted, or
(ii) instructions given by the manufacturer of the product.

(5) “Producer” means:
(a) in the case of a finished product or a component, the manufacturer;
(b) in the case of raw material, the person who abstracts or wins it; and
(c) any person who, by putting their name, trade mark or other distinguishing feature on
the product, presents themselves as its producer.

(6) “Product” means a movable, even if incorporated into another movable or an immovable,
or electricity.

(7) A product is defective if it does not provide the safety which a person is entitled to expect,
having regard to the circumstances including:
(a) the presentation of the product;
(b) the use to which it could reasonably be expected that the product would be put; and
(c) the time when the product was put into circulation,
but a product is not defective merely because a better product is subsequently put into
circulation.

Article 3:205: Accountability for Damage Caused by Motor Vehicles

(1) A keeper of a motor vehicle is accountable for the causation of personal injury and
consequential loss, loss within Article 2:202, and loss resulting from property damage
(other than to the vehicle and its freight) in a traffic accident which results from the use
of the vehicle.

(2) “Motor vehicle” means any vehicle intended for travel on land and propelled by
mechanical power, but not running on rails, and any trailer, whether or not coupled.

Article 3:206: Accountability for Damage Caused by Dangerous Substances or Emissions

(1) A keeper of a substance or an operator of an installation is accountable for the causation
by that substance or by emissions from that installation of personal injury and
consequential loss, loss within Article 2:202, loss resulting from property damage, and
burdens within Article 2:209, if:
(a) having regard to their quantity and attributes, at the time of the emission, or, failing
an emission, at the time of contact with the substance it is very likely that the
substance or emission will cause such damage unless adequately controlled, and
(b) the damage results from the realisation of that danger.

(2) “Substance” includes chemicals (whether solid, liquid or gaseous). Microorganisms are
to be treated like substances.

(3) “Emission” includes
(a) the release or escape of substances,
(b) the conduction of electricity,
(c) heat, light and other radiation,
(d) noise and other vibrations, and
(e) other incorporeal impact on the environment.

(4) “Installation” includes a mobile installation and an installation under construction or not
in use.

(5) However, a person is not accountable for the causation of damage under this Article if
that person:
(a) does not keep the substance or operate the installation for purposes related to that person’s trade, business or profession; or
(b) shows that there was no failure to comply with statutory standards of control of the substance or management of the installation.

Article 3:207: Other Accountability for the Causation of Legally Relevant Damage

A person is also accountable for the causation of legally relevant damage if national law so provides where it
(a) relates to a source of danger which is not within Articles 3:104 - 3:205,
(b) relates to substances or emissions, or
(c) disapplies Article 3:204 (4)(e).

Article 3:208: Abandonment

For the purposes of this section, a person remains accountable for an immovable, vehicle, substance or installation which that person abandons until another exercises independent control over it or becomes its keeper or operator. This applies correspondingly, so far as reasonable, in respect of a keeper of an animal.

Chapter 4: Causation

Article 4:101: General Rule

(1) A person causes legally relevant damage to another if the damage is to be regarded as a consequence of that person’s conduct or the source of danger for which that person is responsible.
(2) In cases of personal injury or death the injured person’s predisposition with respect to the type or extent of the injury sustained is to be disregarded.

Article 4:102: Collaboration

A person who participates with, instigates or materially assists another in causing legally relevant damage is to be regarded as causing that damage.

Article 4:103: Alternative Causes
Chapter 5: Defences

Section 1: Consent or Conduct of the Injured Person

Article 5:101: Consent and Acting at own Risk

(1) A person has a defence if the injured person validly consents to the legally relevant damage and is aware or ought to be aware of the consequences of that consent.

(2) The same applies if the injured person, knowing the risk of damage of the type caused, voluntarily exposes himself to that risk and is to be regarded as accepting it.

Article 5:102: Contributory Fault and Accountability

(1) Where the injured person contributes by their own fault to the occurrence or extent of legally relevant damage, reparation is to be reduced according to their degree of fault.

(2) However, no regard is to be had to:
   (a) an insubstantial fault of the injured person;
   (b) fault or accountability whose contribution to the causation of the damage is insubstantial;
   (c) the injured person’s want of care contributing to that person’s personal injury caused by a motor vehicle in a traffic accident, unless that want of care constitutes profound failure to take such care as is manifestly required in the circumstances.

(3) Paragraphs (1) and (2) apply correspondingly where a person for whom the injured person is responsible within the scope of Article 3:201 contributes by their fault to the occurrence or extent of the damage.

(4) Compensation is to be reduced likewise if and in so far as any other source of danger for which the injured person is responsible under Chapter 3 contributes to the occurrence or extent of the damage.

Article 5:103: Damage Caused by a Criminal to a Collaborator

Legally relevant damage caused unintentionally in the course of committing a criminal offence to another person participating or otherwise collaborating in the offence does not give rise to a right to reparation if this would be contrary to public policy.

Section 2: Interests of Accountable Persons or Third Parties

Article 5:201: Authority Conferred by Law
A person has a defence if legally relevant damage is caused with authority conferred by law.

Article 5:202: Self-Defence, Benevolent Intervention and Necessity

(1) A person has a defence if that person causes legally relevant damage in reasonable protection of a right or of an interest worthy of legal protection of that person or a third person if the person suffering the legally relevant damage is accountable for endangering the right or interest protected. For the purposes of this paragraph Article 3:103 is to be disregarded.

(2) The same applies to legally relevant damage caused by a benevolent intervener to a principal without breach of the intervener’s duties.

(3) Where a person causes legally relevant damage to the patrimony of another in a situation of imminent danger to life, body, health or liberty in order to save himself or a third person and that danger could not be eliminated without causing the damage, the person causing the damage is not liable to make reparation beyond providing reasonable recompense.

Article 5:203: Protection of Public Interest

A person has a defence if legally relevant damage is caused in necessary protection of values fundamental to a democratic society, in particular where damage is caused by dissemination of information in the media.

Section 3: Inability to Control

Article 5:301: Mental Incompetence

(1) A person who is mentally incompetent at the time of conduct causing legally relevant damage is liable only if this is equitable, having regard to the mentally incompetent person’s financial means and all the other circumstances of the case. Liability is limited to reasonable recompense.

(2) A person is to be regarded as mentally incompetent if that person lacks sufficient insight into the nature of his or her conduct, unless the lack of sufficient insight is the temporary result of his or her own misconduct.

Article 5:302: Event beyond control

A person has a defence if legally relevant damage is caused by an abnormal event which cannot be averted by any reasonable measure and which is not to be regarded as that person’s risk.

Section 4: Contractual Exclusion and Limitation of Liability

Article 5:401: Contractual Exclusion and Limitation of Liability
(1) Liability for causing legally relevant damage intentionally cannot be excluded or restricted.
(2) Liability for causing legally relevant damage as a result of a profound failure to take such care as is manifestly required in the circumstances cannot be excluded or restricted
   (a) in respect of personal injury (including fatal injury), or
   (b) if the exclusion or restriction is otherwise illegal or contrary to good faith and fair dealing.
(3) Liability for damage for the causation of which a person is accountable under Article 3:204 cannot be restricted or excluded.
(4) Other liability under this Book can be excluded or restricted unless statute provides otherwise.

Section 5: Loss within Article 2:202

Art. 5:501: Extension of Defences against the Injured Person to Third Persons

A defence which may be asserted against a person’s right of reparation in respect of that person’s personal injury or, if death had not occurred, could have been asserted, may also be asserted against a person suffering loss within Article 2:202.

Chapter 6: Remedies

Section 1: Reparation in General

Article 6:101: Aim and Forms of Reparation

(1) Reparation is to reinstate the person suffering the legally relevant damage in the position that person would have been in had the legally relevant damage not occurred.
(2) Reparation may be in money (compensation) or otherwise, as is most appropriate, having regard to the kind and extent of damage suffered and all the other circumstances of the case.
(3) Where a tangible object is damaged, compensation equal to its depreciation of value is to be awarded instead of the cost of its repair if the cost of repair unreasonably exceeds the depreciation of value. This rule applies to animals only if appropriate, having regard to the purpose for which the animal was kept.
(4) As an alternative to reinstatement under paragraph (1), but only where this is reasonable, reparation may take the form of recovery from the person accountable for the causation of the legally relevant damage of any advantage obtained by the latter in connection with causing the damage.

Article 6:102: De Minimis Rule

Trivial damage is to be disregarded.
Article 6:103: Equalisation of Benefits

(1) Benefits arising to the person suffering legally relevant damage as a result of the damaging event are to be disregarded unless it would be fair and reasonable to take them into account.

(2) In deciding whether it would be fair and reasonable to take the benefits into account, regard shall be had to the kind of damage sustained, the nature of the accountability of the person causing the damage and, where the benefits are conferred by a third party, the purpose of conferring those benefits.

Article 6:104: Multiple Injured Persons

Where multiple persons suffer legally relevant damage and reparation to one person will also make reparation to another, PECL Chapter 10 Section 2 applies with appropriate modification to their claims for reparation.

Article 6:105: Solidary Liability

(1) Where several persons are liable for the same legally relevant damage, they are liable solidarily.

(2) As between the solidary debtors themselves the share of liability is equal unless different shares are more appropriate having regard to all circumstances of the case and in particular to fault or to the extent to which a source of danger mentioned in Chapter 3 contributed to the occurrence or extent of the damage.

Article 6:106: Assignment of Claims

The injured person may assign a claim for reparation, including a claim for reparation for non-economic loss.

Section 2: Compensation

Article 6:201: Injured Person’s Right of Election

The injured person may choose whether or not to spend compensation on the reinstatement of their damaged interest.

Article 6:202: Reduction of Liability

Where it is fair and reasonable to do so, a person may be relieved of liability to compensate, either wholly or in part, if, where the damage is not caused intentionally, liability in full would be disproportionate to the accountability of the person causing the damage or the extent of the damage or the means to prevent it.
Article 6:203: Capitalisation and Quantification

(1) Compensation is to be awarded as a lump sum unless a good reason requires periodical payment.
(2) National law determines how compensation for personal injury and non-economic loss is to be quantified.

Article 6:204: Compensation for Injury as such

Injury as such is to be compensated independent of compensation for economic or non-economic loss.

Section 3: Prevention

Article 6:301: Right to Prevention

(1) The right to prevention exists only in so far as
   a) reparation would not be an adequate alternative remedy; and
   b) it is reasonable for the person who would be accountable for the causation of the damage to prevent it from occurring.
(2) Where the source of danger is an object or an animal and it is not reasonably possible for the endangered person to avoid the danger the right to prevention includes a right to have the source of danger removed.

Article 6:302: Liability for Loss in Preventing Damage

A person who has reasonably incurred expenditure or suffered other loss in order to prevent an impending damage from occurring to them, or in order to limit the extent or severity of a damage which occurs to them, has a right to compensation from the person who would have been accountable for the causation of the damage.

Chapter 7: Ancillary Rules

Article 7:101: National Constitutional Laws

The provisions of this Book are to be interpreted and applied in a manner compatible with the constitutional law of the court.


National law determines what legal provisions are statutory provisions.
Article 7:103: Public Law Functions and Court Proceedings

This Book does not govern the liability of a person or body arising from the exercise or omission to exercise public law functions or from performing duties during court proceedings.

Article 7:104: Liability of Employees, Employers, Trade Unions and Employers Associations

This Book does not govern liability of
(a) employees (whether to co-employees, employers or third parties) arising in the course of employment,
(b) employers to employees arising in the course of employment, and
(c) trade unions and employers associations arising in the course of industrial dispute.

Article 7:105: Reduction or Exclusion of Liability to Indemnified Persons

If a person is entitled from another source to reparation, whether in full or in part, for that person’s damage, in particular from an insurer, fund or other body, national law determines whether or not by virtue of that entitlement liability under this Book is limited or excluded.
TITLE I. Basic Norm

Chapter 1. Basic Norm

Art. 1:101. Basic norm

(1) A person to whom damage to another is legally attributed is liable to compensate that damage.

(2) Damage may be attributed in particular to the person
   a) whose conduct constituting fault has caused it; or
   b) whose abnormally dangerous activity has caused it; or
   c) whose auxiliary has caused it within the scope of his functions.

TITLE II. General Conditions of Liability

Chapter 2. Damage

Art. 2:101. Recoverable damage

Damage requires material or immaterial harm to a legally protected interest.

Art. 2:102. Protected interests

(1) The scope of protection of an interest depends on its nature; the higher its value, the precision of its definition and its obviousness, the more extensive is its protection.

(2) Life, bodily or mental integrity, human dignity and liberty enjoy the most extensive protection.

(3) Extensive protection is granted to property rights, including those in intangible property.

(4) Protection of pure economic interests or contractual relationships may be more limited in scope. In such cases, due regard must be had especially to the proximity between the actor and the endangered person, or to the fact that the actor is aware of the fact that he will cause damage even though his interests are necessarily valued lower than those of the victim.

(5) The scope of protection may also be affected by the nature of liability, so that an interest may receive more extensive protection against intentional harm than in other cases.

(6) In determining the scope of protection, the interests of the actor, especially in liberty of action and in exercising his rights, as well as public interests also have to be taken into consideration.
Art. 2:103. Legitimacy of damage

Losses relating to activities or sources which are regarded as illegitimate cannot be recovered.

Art. 2:104. Preventive expenses

Expenses incurred to prevent threatened damage amount to recoverable damage in so far as reasonably incurred.

Art. 2:105. Proof of damage

Damage must be proved according to normal procedural standards. The court may estimate the extent of damage where proof of the exact amount would be too difficult or too costly.

Chapter 3. Causation

Section 1. Conditio sine qua non and qualifications

Art. 3:101. Conditio sine qua non

An activity or conduct (hereafter: activity) is a cause of the victim’s damage if, in the absence of the activity, the damage would not have occurred.

Art. 3:102. Concurrent causes

In case of multiple activities, where each of them alone would have caused the damage at the same time, each activity is regarded as a cause of the victim’s damage.

Art. 3:103. Alternative causes

(1) In case of multiple activities, where each of them alone would have been sufficient to cause the damage, but it remains uncertain which one in fact caused it, each activity is regarded as a cause to the extent corresponding to the likelihood that it may have caused the victim’s damage.

(2) If, in case of multiple victims, it remains uncertain whether a particular victim’s damage has been caused by an activity, while it is likely that it did not cause the damage of all victims, the activity is regarded as a cause of the damage suffered by all victims in proportion to the likelihood that it may have caused the damage of a particular victim.

Art. 3:104. Potential causes

(1) If an activity has definitely and irreversibly led the victim to suffer damage, a subsequent activity which alone would have caused the same damage is to be disregarded.

(2) A subsequent activity is nevertheless taken into consideration if it has led to additional or aggravated damage.

(3) If the first activity has caused continuing damage and the subsequent activity later on also would have caused it, both activities are regarded as a cause of that continuing damage from that time on.
Art. 3:105. Uncertain partial causation

In the case of multiple activities, when it is certain that none of them has caused the entire damage or any determinable part thereof, those that are likely to have [minimally] contributed to the damage are presumed to have caused equal shares thereof.

Art. 3:106. Uncertain causes within the victim’s sphere

The victim has to bear his loss to the extent corresponding to the likelihood that it may have been caused by an activity, occurrence or other circumstance within his own sphere.

Section 2. Scope of Liability

Art. 3:201. Scope of Liability

Where an activity is a cause within the meaning of Section 1 of this Chapter, whether and to what extent damage may be attributed to a person depends on factors such as

a) the foreseeability of the damage to a reasonable person at the time of the activity, taking into account in particular the closeness in time or space between the damaging activity and its consequence, or the magnitude of the damage in relation to the normal consequences of such an activity;

b) the nature and the value of the protected interest (Article 2:102);

c) the basis of liability (Article 1:101);

d) the extent of the ordinary risks of life; and

e) the protective purpose of the rule that has been violated.

TITLE III. Bases of Liability

Chapter 4. Liability based on fault

Section 1. Conditions of liability based on fault

Art. 4:101. Fault

A person is liable on the basis of fault for intentional or negligent violation of the required standard of conduct.

Art. 4:102. Required standard of conduct

(1) The required standard of conduct is that of the reasonable person in the circumstances, and depends, in particular, on the nature and value of the protected interest involved, the dangerousness of the activity, the expertise to be expected of a person carrying it on, the foreseeability of the damage, the relationship of proximity or special reliance between those involved, as well as the availability and the costs of precautionary or alternative methods.

(2) The above standard may be adjusted when due to age, mental or physical disability or due to extraordinary circumstances the person cannot be expected to conform to it.

(3) Rules which prescribe or forbid certain conduct have to be considered when establishing the required standard of conduct.
Art. 4:103. Duty to protect others from damage

A duty to act positively to protect others from damage may exist if law so provides, or if the act or creates or controls a dangerous situation, or when there is a special relationship between parties or when the seriousness of the harm on the one side and the ease of avoiding the damage on the other side point towards such a duty.

Section 2. Reversal of the burden of proving fault

Art. 4:201. Reversal of the burden of proving fault in general

(1) The burden of proving fault may be reversed in light of the gravity of the danger presented by the activity.

(2) The gravity of the danger is determined according to the seriousness of possible damage in such cases as well as the likelihood that such damage might actually occur.

Art. 4:202. Enterprise Liability

(1) A person pursuing a lasting enterprise for economic or professional purposes who uses auxiliaries or technical equipment is liable for any harm caused by a defect of such enterprise or of its output unless he proves that he has conformed to the required standard of conduct.

(2) „Defect“ is any deviation from standards that are reasonably to be expected from the enterprise or from its products or services.

Chapter 5. Strict liability

Art. 5:101. Abnormally dangerous activities

(1) A person who carries on an abnormally dangerous activity is strictly liable for damage characteristic to the risk presented by the activity and resulting from it.

(2) An activity is abnormally dangerous if
   a) it creates a foreseeable and highly significant risk of damage even when all due care is exercised in its management and
   b) it is not a matter of common usage.

(3) A risk of damage may be significant having regard to the seriousness or the likelihood of the damage.

(4) This Article does not apply to an activity which is specifically subjected to strict liability by any other provision of these Principles or any other national law or international convention.

Art. 5:102. Other strict liabilities

(1) National laws can provide for further categories of strict liability for dangerous activities even if the activity is not abnormally dangerous.

(2) Unless national law provides otherwise, additional categories of strict liability can be found by analogy to other sources of comparable risk of damage.
Chapter 6. Liability for others

Art. 6:101. Liability for minors or mentally disabled persons

A person in charge of another who is a minor or subject to mental disability is liable for damage caused by the other unless the person in charge shows that he has conformed to the required standard of conduct in supervision.

Art. 6:102. Liability for auxiliaries

(1) A person is liable for damage caused by his auxiliaries acting within the scope of their functions provided that they violated the required standard of conduct.

(2) An independent contractor is not regarded as an auxiliary for the purposes of this Article.

TITLE IV. Defences

Chapter 7. Defences in general

Art. 7:101. Defences based on justifications

(1) Liability can be excluded if and to the extent that the actor acted legitimately
   a) in defence of his own protected interest against an unlawful attack (self-defence),
   b) under necessity,
   c) because the help of the authorities could not be obtained in time (self-help),
   d) with the consent of the victim, or where the latter has assumed the risk of being harmed, or
   e) by virtue of lawful authority, such as a licence.

(2) Whether liability is excluded depends upon the weight of these justifications on the one hand and the conditions of liability on the other.

(3) In extraordinary cases, liability may instead be reduced.

Art. 7:102. Defences against strict liability

(1) Strict liability can be excluded or reduced if the injury was caused by an unforeseeable and irresistible
   a) force of nature (force majeure), or
   b) conduct of a third party.

(2) Whether strict liability is excluded or reduced, and if so, to what extent, depends upon the weight of the external influence on the one hand and the scope of liability (Article 3:201) on the other.

(3) When reduced according to paragraph (1)(b), strict liability and any liability of the third party are solidary in accordance with Article 9:101 (1)(b).
Chapter 8. Contributory conduct or activity

Art. 8:101. Contributory conduct or activity of the victim

(1) Liability can be excluded or reduced to such extent as is considered just having regard to the victim’s contributory fault and to any other matters which would be relevant to establish or reduce liability of the victim if he were the tortfeasor.

(2) Where damages are claimed with respect to the death of a person, his conduct or activity excludes or reduces liability according to para. 1.

(3) The contributory conduct or activity of an auxiliary of the victim excludes or reduces the damages recoverable by the latter according to para. 1.

TITLE V. Multiple Tortfeasors

Chapter 9. Multiple Tortfeasors

Art 9:101 Solidary and several liability: relation between victim and multiple tortfeasors

(1) Liability is solidary where the whole or a distinct part of the damage suffered by the victim is attributable to two or more persons. Liability is solidary where:

a) a person knowingly participates in or instigates or encourages wrongdoing by others which causes damage to the victim; or

b) one person’s independent behaviour or activity causes damage to the victim and the same damage is also attributable to another person.

c) a person is responsible for damage caused by an auxiliary in circumstances where the auxiliary is also liable.

(2) Where persons are subject to solidary liability, the victim may claim full compensation from any one or more of them, provided that the victim may not recover more than the full amount of the damage suffered by him.

(3) Damage is the same damage for the purposes of paragraph (1)(b) above when there is no reasonable basis for attributing only part of it to each of a number of persons liable to the victim. For this purpose it is for the person asserting that the damage is not the same to show that it is not. Where there is such a basis, liability is several, that is to say, each person is liable to the victim only for the part of the damage attributable to him.

Art 9:102 Relation between persons subject to solidary liability

(1) A person subject to solidary liability may recover a contribution from any other person liable to the victim in respect of the same damage. This right is without prejudice to any contract between them determining the allocation of the loss or to any statutory provision or to any right to recover by reason of subrogation [cessio legis] or on the basis of unjust enrichment.

(2) Subject to paragraph (3) of this Article, the amount of the contribution shall be what is considered just in the light of the relative responsibility for the damage of the persons liable, having regard to their respective degrees of fault and to any other matters which are relevant to establish or reduce their liability. A contribution may amount to full indemnification. If it is not possible
to determine the relative responsibility of the persons liable they are to be treated as equally res
ponsible.

(3) Where a person is liable for damage done by an auxiliary under Article 9:101 he is to be trea
ted as bearing the entire share of the responsibility attributable to the auxiliary for the purposes
of contribution between him and any tortfeasor other than the auxiliary.

(4) The obligation to make contribution is several, that is to say, the person subject to it is liable
only for his apportioned share of responsibility for the damage under this Article; but where it i
s not possible to enforce a judgment for contribution against one person liable his share is to be
reallocated among the other persons liable in proportion to their responsibility.

TITLE VI. Remedies

Chapter 10. Damages

Section 1. Damages in general


Damages are a money payment to compensate the victim, that is to say, to restore him, so far as
money can, to the position he would have been in if the wrong complained of had not been com
mitted. Damages also serve the aim of preventing harm.

Art. 10:102. Lump sum or periodical payments

Damages are awarded in a lump sum or as periodical payments as appropriate with particular re
gard to the interests of the victim.

Art. 10:103. Benefits gained through the damaging event

When determining the amount of damages benefits which the injured party gains through the da
maging event are to be taken into account unless this cannot be reconciled with the purpose of t
he benefit.

Art. 10:104. Restoration in kind

Instead of damages, restoration in kind can be claimed by the injured party as far as it is possibl
e and not too burdensome to the other party.

Section 2. Pecuniary damage

Art. 10:201. Nature and determination of pecuniary damage

Recoverable pecuniary damage is a diminution of the victim’s patrimony caused by the damagi
ng event. Such damage is generally determined as concretely as possible but it may be determin
ed abstractly when appropriate, for example by reference to a market value.

Art. 10:202. Personal injury and death

(1) In the case of personal injury, which includes injury to bodily health and to mental health a
mounting to a recognised illness, pecuniary damage includes loss of income, impairment of ear
ning capacity (even if unaccompanied by any loss of income) and reasonable expenses, such as the cost of medical care.

(2) In the case of death, persons such as family members whom the deceased maintained or would have maintained if death had not occurred are treated as having suffered recoverable damage to the extent of loss of that support.

Art. 10:203. Loss, destruction and damage of things

(1) Where a thing is lost, destroyed or damaged, the basic measure of damages is the value of the thing or the diminution in its value and for this purpose it is irrelevant whether the victim intends to replace or repair the thing. However, if the victim has replaced or repaired it (or will do so), he may recover the higher expenditure thereby incurred if it is reasonable to do so.

(2) Damages may also be awarded for loss of use of the thing, including consequential losses such as loss of business.

Section 3. Non-pecuniary damage

Art. 10:301. Non-pecuniary damage

(1) Considering the scope of its protection (Article 2:102), the violation of an interest may justify compensation of non-pecuniary damage. This is the case in particular where the victim has suffered personal injury; or injury to human dignity, liberty, or other personality rights. Non-pecuniary damage can also be the subject of compensation for persons having a close relationship with a victim suffering a fatal or very serious non-fatal injury.

(2) In general, in the assessment of such damages, all circumstances of the case, including the gravity, duration and consequences of the grievance, have to be taken into account. The degree of the tortfeasor’s fault is to be taken into account only where it significantly contributes to the grievance of the victim.

(3) In cases of personal injury, non-pecuniary damage corresponds to the suffering of the victim and the impairment of his bodily or mental health. In assessing damages (including damages for persons having a close relationship to deceased or seriously injured victims) similar sums should be awarded for objectively similar losses.

Section 4. Reduction of damages

Art. 10:401. Reduction of damages

In an exceptional case, if in light of the financial situation of the parties full compensation would be an oppressive burden to the defendant, damages may be reduced. In deciding whether to do so, the basis of liability (Article 1:101), the scope of protection of the interest (Article 2:102) and the magnitude of the damage have to be taken into account in particular.
第九章 不法行为

3) Italian Civil Code (Articles 2049 – 2059) translated in Chinese
第 2043 条 [因不法行为的损害赔偿]
因任何故意或过失给他人造成不法损害的，行为实施者应当承担损害赔偿的责任（7、10、81、129II、872、935、939、948、949、1337、1440、1494、2395、2600、2675、2947）。

第 2044 条 [正当防卫]
为自己或他人进行正当防卫所致损害的人，不承担责任。

第 2045 条 [紧急避险]
当损害是由为保护自己或他人的人身免遭正在发生的严重危险而必须实施的行为造成的（1447），并且该危险既非行为人希望所致也非使用其他方法能够避免时，行为人应当在法官公平判定的范围内对受害人承担赔偿责任。

第 2046 条 [致损行为的可归责性]
在实施致损行为时，无判断能力和意思能力的人不承担致损行为的后果，除非无行为能力的状况是因其过失所导致（428）。

第 2047 条 [无行为能力人导致的损害]
损害是由无判断能力和意思能力人（428）导致的，应当由对无行为能力人负有监护义务的人承担赔偿责任；但是能证明其不能阻止该行为的除外（2048）。

负有监护义务的人不能赔偿损害的，法官可以根据双方当事人的经济条件判定致害人给予公平的赔偿（843、924、925、1038、1053、1328、2045）。

第 2048 条 [父母、监护人、家庭教师和师傅的责任]
父母（316）对尚未解除亲权的未成年人（316、320）的不
第九章  不法行为

法行为导致的损害承担责任，监护人（357）对与其共同生活的被监护人（343、414）的不法行为导致的损害承担责任。本规定适用于收养人（404）。

家庭教师和传授技能或手艺的人，对其学生和徒弟在其监管期间发生的不法行为导致的损害（2130），应当承担责任。

上述两款所涉的人能够证明其不能阻止该不法行为的，不承担责任。

第2049条 [主人和雇主的责任]
主人和雇主对其佣人和雇员在履行职务时的不法行为导致的损害承担责任。

第2050条 [进行危险活动的责任]
因进行危险活动而给他人造成的任何损害，根据危险的性质或运用手段的特征，行为人不能证明已采取所有适当措施以避免损害的（2054），应当承担赔偿责任。

第2051条 [由保管物引起的损害]
任何人对其保管之物所导致的损害，均应当承担责任，除非能够证明损害是意外事件所致（1218、1256、2052）。

第2052条 [动物导致的损害]
动物的所有权人或在利用期间对其管理的人，无论动物是否丢失或逃走，均应当对动物所致损害承担责任，除非能证明损害是意外事件所致（1218、1256、2052）。

第2053条 [建筑物的倒塌]
建筑物或其他建筑物的所有权人，对因该物的倒塌所致损害应当承担责任；但是能够证明倒塌并非因维修或建筑的瑕疵（1669）所致者，不在此限。

第2054条 [车辆的运送]
驾驶任何无轨车辆的司机，不能证明已尽一切可能避免损害发生的（1227、2050、2947），应当承担车辆行驶造成的人身或财产的损害赔偿责任。
车辆发生相撞的，在出现相反的证据前，推定各方司机对各自车辆造成的损害共同负有同样的责任（2055）。

车辆的所有权人或其代理人、用益权人（978）、依保留所有权的条款取得车辆的人（1523），不能证明车辆的行驶与其意思相悖的，应当与司机共同承担连带责任（1292）。

在任何情况下，上述各款所指明的人，应当对车辆的制造瑕疵或者缺乏保养所导致的损害承担责任。

第 2055 条 [ 连带责任 ]
损害行为可归责于多个人的，该多个人均应当承担连带赔偿责任（1292、1294）。

已赔偿损害的责任人，可以按照其他责任人各自的过错和依造成损害后果的严重程度所确定的价值，行使追偿权（1227）。

在有疑问的情况下，推定所有的人责任相同（1298）。

第 2056 条 [ 损失的估价 ]
对应当给予受害者的赔偿，应当依第 1223 条、第 1226 条和第 1227 条的规定进行确定。

法官基于公正的判断，可以酌情考虑对未得到的预期利益进行估价。

第 2057 条 [ 永久的损害 ]
当人身损害具有永久性时，法官根据双方当事人的条件和损害的性质，确定终身年金形式的赔偿金（1872）。在该情况下，法官可以要求提供适当的担保。

第 2058 条 [ 特殊形式的损害赔偿 ]
在全部或部分可能的情况下，受害人可以要求以完整无损的返还形式赔偿。

以修复完好的方式返还会导致债务人负担过重的，法官可以规定一个等值的赔偿。

第 2059 条 [ 非财产损害 ]
非财产损害应当仅在法律规定的情况下进行赔偿。
5) **Recommended readings/Textbooks**

1) Cees Van Daam, *European Tort Law*, Oxford University Press, Oxford (2006);


