

CHAPTER 7

TORT LAW

The Civil Code of the Philippines never used the word 'tort' in any of its provisions. Instead, the term 'quasi-delict' is used which is the nearest counterpart of the Roman law concept. Unlike the Roman law concept of 'tort', intentional and malicious acts are governed by the Revised Penal Code and not by the law on quasi-delict.¹

Quasi-delict is used to designate those obligations which do not arise from law, contracts, quasi-contracts or criminal offences. The concept of liability in quasi-delictual cases is embodied in Chapter 2, Title XVII of the Civil Code.²

The basic provision on quasi-delict, or *culpa aquiliana* or extra-contractual *culpa*, is article 2176 of the Civil Code which provides:

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 and is governed by the provisions of this chapter.

Liability for quasi-delict under this article requires the following conditions:

- (1) an unlawful act or omission amounting to a fault or negligence, imputable to the defendant;
- (2) damage or injury to the plaintiff;
- (3) such damage or injury being the natural and probable, or direct and immediate consequence of the defendant's wrongful act or omission; and
- (4) there being no pre-existing contractual relation between the plaintiff and defendant.³

Article 1173 of the Civil Code defines negligence as 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

¹ C V Sison 'An Overview of the law on Torts and Damages' (1993) Unpublished lecture.

² Civil Code, arts 2176-2194.

³ C V Sison, *op cit*.

place. 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. However, the degree of care and diligence required of a common carrier is extraordinary diligence.⁴

As a basis for liability, the negligent act or omission must be the proximate cause of the damage suffered by the plaintiff. Thus, negligence is a relative term whose application depends upon the situation of the parties and the degree of care and vigilance which the circumstances reasonably require and so where the danger is great, a high degree of care is necessary, and the failure to observe it is a want of ordinary care under the circumstances.⁵ Where the concurrent or successive negligence 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 done might not have caused the entire injury, it has been held that the owners of two vehicles are liable solidarily for the death of the passenger.⁶

Negligence on the part of the plaintiff will not defeat a claim for damages in quasi-delict, if it was not the proximate and primary cause of the injury but only contributed to his harm, the court shall mitigate the damages to be awarded.⁷ However, if the plaintiff's own negligence is the immediate and proximate cause of his injury, he cannot recover damages.⁸

The doctrine of *res ipsa loquitur* establishes a presumption of negligence in the absence of any statement by the person who has control of the object causing the injury, where the thing which caused the injury, without fault of the injured persons, is under the exclusive control of the defendant and the injury is such as in the ordinary course of things does not occur if having such control use proper care, it affords reasonable evidence, in the absence of the explanation, that the injury arose from the defendant's want of care.⁹

As recognized in American jurisprudence, the doctrine of *respondeat superior*, wherein the negligence of the employee is

⁴ CIVIL CODE, arts 1733 & 1755.

⁵ *Corliss v. Manila Railroad Co*, GR No 21291, March 28, 1969, 27 SCRA 674 (1969).

⁶ *Sabido v. Custodio*, GR No 21512, August 31, 1966, 17 SCRA 1088 (1966).

⁷ CIVIL CODE, art 2179; *Rabes v. AG & P*, 7 Phil 359 (1907), *Picart v. Smith*, 37 Phil 809 (1918); *Taylor v. Manila Electric Co*, 16 Phil 8 (1910); *Manila Electric Co v. Remoquillo*, 99 Phil 117 (1956).

⁸ CIVIL CODE, art 2179.

⁹ *Africa v Caltex (Phil)*, GR No 72986, March 3, 1966, 16 SCRA 448 (1966).

conclusively presumed to be the negligence of the employer found its way in the Civil Code.¹⁰

Pursuant to Article 2180 of the Civil Code, the following persons are liable for the acts or omissions of those persons for whom one is responsible:

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

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

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

(4) Employers are 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.

(5) The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official or to whom the task done properly pertains.

(6) Teachers and heads of establishments of arts and trade shall be liable for damages caused by their pupils and students or apprentices, so long as they remained in their custody.

However, if it is shown to the court that they observed all the diligence of a good father of a family to prevent damage, their responsibility ceases.¹¹

In several cases decided by the Supreme Court, the following are some of the defenses which have been interposed and were considered meritorious:

(a) Last clear chance - According to the doctrine, a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the act of his opponent or the negligence of a third person

¹⁰ Art 2180.

¹¹ CIVIL CODE, art 2180, last par.

which is imputed to his opponent is considered in law solely responsible for the consequences of the accident.¹²

(b) Assumption of risk – Here the plaintiff knowing the dangers involved had voluntarily assumed the risk of injury and therefore foresee the impending harm that will result if he continues.¹³

(c) Prescription – A motion may be filed on the ground that the action on quasi-delict has already prescribed if such action has been filed after four years from the day the quasi-delict was committed.¹⁴ The prescriptive period is not interrupted by the filing of a criminal complaint as the civil action is entirely independent of the criminal action.¹⁵

Aside from articles 2176 to 2194 of the Civil Code on quasi-delicts, the Civil Code chapter on Human Relations also provides for ‘special torts’ which incorporates not only principles of equity but also universal moral precepts such as:

Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.¹⁶

and

Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy, shall compensate the latter for the damage.¹⁷

It is to be noted, however, that, while article 2176 *et seq* is limited to acts or omissions causing damage or injury to another, article 20 includes both intentional and negligent acts without qualifications.

¹² *Picart v. Smith*, 37 Phil 809 (1918).

¹³ *Afilada v. Hisole*, 85 Phil 67 (1949).

¹⁴ CIVIL CODE, arts 114692) & 1150. See *Capuno v. Elordi*, GR 19331, April 30, 1965, 13 SCRA 658 (1965).

¹⁵ *Paulan v. Sarabia*, GR No 10542, July 31, 1958; *Pacheco v. Tumangday*, GR No 14500, May 25, 1960.

¹⁶ CIVIL CODE, art 20.

¹⁷ CIVIL CODE, art 21.