

Code civil Français

Delicts and Quasi-Delicts

Art. 1382. Any act whatever of man which causes damage to another obliges him by whose fault it occurred to make reparation.

Art. 1383. Everyone is liable for the damage which he causes not only by his act but also by his negligence or imprudence.

Art. 1384. One is liable not only for the damage which one caused by his own act, but also for that which is caused by the act of persons for whom he is responsible, or by things which he has in his keeping.

Art. 1385. The owner of an animal or he who avails himself of it while it is being put to his use is liable for the damage which the animal causes, whether the animal was in his keeping or whether it had strayed or escaped.

Art. 1386. The owner of a building is liable for the damage caused by its collapse if this happens as a result of default of maintenance or through a defect in its construction.

DECISION OF THE COUR DE CASSATION Civil Chamber, 15 June 1977 Mr. Cueff v. Ms. Pivaut

The Court:

- On the single ground for appeal, examined at its third subdivision:
- In view of article 1384, sec. 1 Code civil;
- Considering that the keeper of the thing which was the instrument of inflicting damage (outside the case where it constituted a completely exonerating event of higher force) is obligated, in his relations to the victim, to provide full compensation, regardless of his potential recourse against the third party that had contributed in causing the damage;
- Considering that the statement of facts in the contested invalidating judgment, namely, that in an urban area a young child, Thomas Cueff, stepped out of the car his mother had stopped in front of her house on the other side of the street, crossed the street, was hit by the car of Ms Pivaut and was hurt; that his father Armand Cueff, acting as his legal representative, demanded from Ms Pivaut compensation of the damage suffered by his son;
- Considering that in order to partially exonerate Ms Pivaut from liability incurred by her under art. 1384, sec. 1 Code civil, the Court of Appeal maintains that Ms Cueff in unloading her auto committed a certain fault by not applying all attention necessary to the acts and movements of her child and that this fault was no more unforeseeable than that committed by the victim;
- Considering that by thus viewing as cause that partially exonerated the keeper from liability the fault of a third party, the judges on appeal violated the above mentioned text; For these reasons, and without any need to pronounce on the other subdivisions of the ground for appeal:
- Quashes and annuls the decision rendered as between the parties on 18 November 1975 by the Court of Appeal of Rennes, and remands the case to the Court of Appeal of Angers.

Annotations to article 1384 para 1 code civil (Codes Dalloz, 93rd edition 1993-1994)

C. Cause étrangère

(extraneous cause)

1. Force majeure (act of God) (29) La présomption de responsabilité établie par l'art 1384, al. 1er, à l'encontre de celui qui a sous sa garde la chose inanimée qui a causé un dommage à autrui ne peut être détruite que par la preuve d'un cas fortuit ou de force majeure ou d'une cause étrangère qui ne lui soit pas imputable. Il ne suffit pas de prouver qu'il n'a commis aucune faute ou que la cause du fait

The presumption of liability established by art. 1384 para 1 against someone who has under his guard the inanimate thing which has caused damage to another cannot be rebutted by proof of accident or act of God or of an extraneous cause that might not be imputable to him. It does not suffice to prove that he has not committed any fault or that the cause of the damaging event has remained unknown.

dommageable est demeurée inconnue.

2. Faute de la victime (fault of the victim) (35) Le gardien de la chose instrument du dommage est partiellement exonéré de sa responsabilité s'il prouve que la faute de la victime a contribué au dommage.

3. Fait d'un tiers (act of a third party) (36) Le gardien de la chose qui a été l'instrument du dommage, hors le cas où il établit un événement de force majeure totalement exonératoire, est tenu, dans ses rapports avec la victime, à réparation intégrale, sauf son recours éventuel contre le tiers qui aurait concouru à la production du dommage. (Civ. 2e, 15 juin 1977, J.C.P. 1978. II. 18780 note Baudoin. 11 juill. 1977, D. 1978. 581, note Agostini. 5 févr. 1986, Bull.civ. II, no. 11. 26 avr. 1990, *ibid.* II, no 79.)

The guardian of the thing instrumental for the damage is partially exonerated from his liability if he proves that the victim's fault has contributed to the damage.

The guardian of the thing that has been instrumental for the damage, unless he has proven the occurrence of an act of God which totally exonerates him, is bound with respect to the victim to effect complete compensation, regardless of his eventual recourse claim against the third who may have concurrently caused the damage.

Abbreviations: Civ. = Arrêt d'une chambre civile de la Cour de cassation J.C.P = *Juris-classeur périodique* (Semaine juridique) D. = *Recueil Dalloz* Bull.civ. = *Bulletin des arrêts des chambres civiles de la Cour de cassation* VI. The Historical School in 19th Century Germany and the German Civil Code of 1900