

Contractual and Civil Delict Liability

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Abstract:

Today besides contracts, as a very important source of law in general and business in particular also the causing of damage appears to us as a source of particular importance. Unlike contracts, where the reconciliation between certain subjects is a general condition for establishing relations liabilities, the causing of damage the liability arises from the fact that the damage is caused to another party. This way, for this exists the obligation that the caused damage should be compensate by someone. So, the base of responsibility for the caused damage may be, the created harm and danger. Compensation can be done either by turning the situation to the situation before the damage caused, or by compensating it with money. Indemnification material can be given in all cases when the property values are damaged, however, even in case of violation of personal values, as in the infliction of death or bodily injury, the court may appoint a reward for material damage.

Key-Words: harm, offense, damage reward, civil liability.

Introduction

Regarding the liability for the damage caused, are also foreseen the opportunity for the creation of different responsibilities, such as: civil liability, which can be delict and contractual liability. In earlier times, no distinction is made between rules of delict and the contractual liability, as in both cases the subject was responding to delict action. This, because the rules delict liability are much older than the rules for contractual liability. Also, in the past, between the rules for civil and criminal liability, in case of civilian damage caused, it was confusing, the situation in imposing the sanction, since in both cases it had vindictive character. Given the theoretical and practical importance that these rules of responsibility have, we will treat the delict civil and contractual liability.

Civil and Contractual delict liability

Contractual liability consists in the obligation of the debtor to the creditor itself to compensate the damage which is caused via violation of the obligation that exists between them.

The violation of obligation exists when the debtor does not fulfil its obligation or it does not fulfil it in the manner specified by the contract.

Apart from the contractual liability, exists also the liability delict (outside contractors) as an obligation to compensate the damage suffered by the other through certain proceedings and not through breach of any previous obligation.

Contractual Liability and delict (Non contractual), delict liability defines the general notion of civil-juridical liability. Both liabilities have jointly liability of the compensation of damage caused to other, with that, the legal rules that apply to them, are not always the same. Delict and contractual liability are civil liability, but differ from the moment of creation and the rights and obligations arising for the parties.

Delict liability

Delict liability arises in the case of causing the damage. The fact of causing harm creates an obligation to reward it from the damage causer. The damage caused by human action or inaction creates liability for damage caused, respectively delict liability and from here the damaged party has the right to seek compensation either material or non-material damage. Also, even when the damage is created by the use of objects or dangerous exercise activity, which represent a source of increased risk, delict liability arises. Delict liability arises as a result of violation of the principle of not causing harm. The damaged party, in case of damage caused is in the position of the creditor, as this arises as the right to seek compensation for damage, while the responsible subject is in the position of the debtor, as he must make restitution. The obligation for Indemnification appears as the primary obligation and the only for the debtor in case of causing damage.

Contractual liability

Contractual liability arises in the case of non-fulfilment of the contract or its irregular fulfilment. So, at the moment of violating the terms of the contract, the debtor, unless compelled to fulfil the contract that is a primary obligation, for this also, arise the obligation to compensate the damage by not fulfilling the contract or improper fulfilment, which is a secondary liability in this legal relationship. In order to exist the contractual liability, there must be the contract in force between the creditor and the debtor, by which the debtor to perform the fulfilment of contractual obligations. Terms of delict liability have a wider application in practice than those of contractual liability, since the damage can occur in different circumstances and situations, while the contractual liability can arise only in case of violation of contractual obligations.

The difference between the contractual and civil delict liability

In case of causing damage, many people can answer as: the causer of the damage, the recipient, assistant, promoter, owner or the actor of the dangerous act, depending on the degree of responsibility and delict ability that have. Under the definite number of persons responsible, it can be said that the delict liability acts erga omnes. Whereas, in case of abusing the contract, responds only the contract entities, eventually their descendants. If you do not have to do with the contract intuitu in personae, this means that the effect here is inter partes.

In delict liability the author responds according his/her guilt, except when the damage is caused by dangerous items or dangerous activities. But if the author proves that it was not guilty for the damage caused, than he/she may be exempt from liability. At the contractual liability the infringer of contract responds according the assuming guilt.

Contractual liability rules are enacting (ius dispositivum), because the contracting parties have these rules, by contract they may exclude, to restrict or expand them. Here comes the will of the will of the parties. But, whenever the contract parties expand, exclude, restrict or narrow their responsibilities, they should consider the legal limits.

Delict liability rules are imperative (ius imperativum) and cannot be excluded, expanded or limited, but they should be implemented as foreseen by law.

Since at the delict liability distinguish the liability for the others, especially for damage caused by minors or persons with disabilities, this means that these entities may occur in position of causers of civil offense, and, in certain situations, also to respond to the consequences of the damage, if they were aware at the time of its cause.

Contractual liability cannot be caused by minors or persons with disabilities. This is because these may not appear as a party to the contract. Minors and persons with disabilities, always are represented by parents or guardians, as a party to the contract.

If it happens that the damage is caused by many persons, under the rules of the law of contract, they will be jointly liable, depending on the degree of guilt and the contribution of everyone in causing the effect. At the contractual liability, when the damage is caused by more subjects, it will depend on how the parties of the contract have foreseen liability for compensation, because here they cannot respond solidary, because they did not contract so.

The damaged party, its right for damage compensation may pursue by being addressed to the basic court with general jurisdiction, after the foreseen conditions for compensation are fulfilled. Like in other civil litigation proceedings, even in case of the damage caused, active legitimized, is the damaged party, while the passive legitimization has the responsible entity who can be the owner or the author of any dangerous activity.

As for the prescription, for the delict liability rules are foreseen longer terms than for the contractual liability rules. At the delict liability, the period of prescription shall be counted from the moment of causing the damage, whereas at the contractual liability (to obligations consist of freehand), the prescription period starts to run from the first day, following the day when the creditor acquires the right to request for fulfilment of the obligation and, since the same can be realized by legal means. While, in the obligations that consists in not making (*non fecere*), the prescription period shall be counted from the first day, following the day when the debtor is brought contrary to its contractual obligations. In comparative law, statutory deadlines represent problem during the damage caused in international transport. This because, not all national legislations provide the same terms.

These differences are justified by the fact that, in case of contracting, contractors evaluate the harmful consequences of which can be put through contracts fulfilment, with that, the debtor may not be imposed the damage compensation, which it could not be foreseen during the time of evaluation and valorisation.

At the Non-contractual liability, the damage causer, who requires compensation of damage, whenever, must prove the existence of damage, however, at the contractual liability, the existence of damage sometime is supposed to monetary obligations, at the so-called abstract damage, if it is contracted contracting sentence that can only be assumed at the contractual liability.

At the Non-contractual liability, usually it is for the infringement of any legal obligation or legal provision, unlike the contractual liability, which follows as a course of the infringement of contractual provision, or, contractual liability.

Conclusion

In case of damage caused, arises legal relationship between the responsible entity and the damaged party, the relationship that did not exist before the damage causing. The rules of liability for damage caused to the liable entity, create the same liability even when the damage is caused by dangerous objects and dangerous activities. This can be interpreted so, based on the constitutional principle by which is ensured the integrity of the person and his property. In case of damage caused the judicial order is violated, respectively are violated those legal provisions which guarantee the inviolability of property and the inviolability of physical and psychological integrity of a man. In justice, there is a general rule that anyone who causes damage to another person is obliged to reimburse, unless he is not able to prove that the damage was caused without his fault. Therefore, the judge, in determining the remuneration, should order generally the replacement of harmful effects from the damage caused. Otherwise, the legislator cannot realize its goal of protecting the tangible and intangible goods of the person.

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