



"NICOLAE TITULESCU" UNIVERSITY  
LAW FACULTY  
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**PhD THESIS**

**OBJECTIVE TORTIOUS CIVIL LIABILITY  
IN THE CIVIL CODE SYSTEM**

**SUMMARY**

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## 1. Research topic and its scientific importance

Civil liability in tort is one of the fundamental pillars of civil law, its main role being to compensate for damage caused by unlawful acts. Society is constantly changing and social and economic interactions are becoming increasingly complex, which is why forms of civil liability in tort are gaining in importance. In this context, it can be said that civil liability in tort is a *living* or dynamic institution that was, is and must remain anchored in the realities of the social and economic times.

This research topic covers only one form of tort liability, namely, strict tort liability. But before arguing the importance of the institution and the research topic, we will briefly review the role and importance of tort liability in general.

A first rationale for the importance of tort law stems from the need to protect individual rights and legitimate interests. Every person has the right to physical and mental integrity, the right to enjoy his or her possessions without being disturbed by the unlawful actions of others. Tort liability provides a legal framework whereby victims of such actions can obtain adequate compensation, thus restoring the social balance that has been disturbed.

Secondly, civil liability also has the function of discouraging unlawful behaviour. The threat of a civil pecuniary sanction serves as a strong deterrent to potential offenders. This function creates an environment in which social and legal norms are respected, thus contributing to public order and security.

Tort liability also promotes individual responsibility. In a democratic society, each person must be responsible for their actions and their consequences. Tort mechanisms emphasise the importance of responsible behaviour and respect for the rights of other members of society.

The study of tortious civil liability is also essential for the development of the legal system as a whole. Analysing specific cases, case law and doctrines helps to develop and refine legal rules. Research in this field thus helps to adapt legal rules to new social and economic realities, ensuring fair and adequate protection for all parties involved.

Therefore, throughout the research we will see references both to previous civil law and to the rules on strict tort liability in other countries.

The old Civil Code had borrowed many elements from the way in which the forms of strict civil liability in delict were regulated in the French Civil Code. However, with the

passage of time between the entry into force of the Old Civil Code and its repeal, heated debates arose in doctrine and case law on the most diverse situations and the most creative ways of interpreting the legal provisions.

However, the legislator of the current Civil Code has not remained indifferent to all these debates, to the shortcomings of the institution or to the strong need for revision felt in the practice of the courts, in some cases, non-unitary, and has creatively capitalised on the most important and relevant opinions or theories. In this way, strict civil liability in tort has been *improved* and adapted to the social needs that have arisen over time.

Although in a new architecture, even in the current regulation, strict civil liability in tort does not escape doctrinal debate. The following are the forms of strict liability in tort that have been analysed: the liability of parents or guardians for the act of a minor or of a person under a guardianship measure, namely legal counselling or special guardianship; the liability of the principal for the act of his or her agent; liability for damage caused by animals; liability for damage caused to property in general; liability for the ruin of a building; and liability for property that has fallen or been thrown from a building.

Thus, each of these types of responsibility corresponds to a particular area of a person's life: family relations, relations of subordination to authority; relations of economic dependence; the individual's relationship with the goods in his or her care, etc.

Given that objective civil liability in tort transcends several dimensions, it is natural that the importance of the subject matter of this study stems from the very role that liability plays in the life of each individual.

At the same time, strict civil liability contributes to clarifying and establishing standards of behaviour in various fields of activity. Through specific regulations and case law, clear limits of acceptable behaviour are established, thus facilitating the harmonious coexistence of private and collective interests.

In conclusion, civil liability in tort is an indispensable legal instrument for maintaining order and fairness in society. By ensuring compensation for damages, discouraging unlawful behaviour and promoting individual responsibility, this legal mechanism contributes to the general welfare and stability of interpersonal and economic relations.

## **2. Research aims and objectives**

The main purpose of this paper is to analyse as comprehensively as possible the institution of objective tortious civil liability in the regulation conferred by the current Civil Code, which is presented in a new architecture compared to the regulation of the Old Civil Code. At the same time, in the current regulation, objective civil liability in tort brings a new impetus and crystallises or codifies the most important doctrinal debates and jurisprudential practices that have proved worthy of being taken up in the current structure of this institution.

The proposed topic also aims to deepen the understanding and clarification of the legal mechanisms governing strict tort liability. In a dynamic, ever-changing society, where risks and damages are unavoidable, it is essential to have a solid and well-founded legal framework governing liability for damages caused by the behaviour of another person, by things in general, by animals, by the ruin of buildings. At the same time, we have endeavoured to trace the evolution of the forms of strict liability, which in the beginning was closely linked to the notion of fault.

One of the main objectives of the research is to clarify the concept of strict tort liability in the light of the current Civil Code, under various aspects such as the basis of liability, the conditions for its incurrance, etc. This approach involves a detailed analysis of existing legal doctrines and theories, as well as the historical development of this institution. Through a thorough understanding of the theoretical foundations, the research will be able to provide a solid basis for proposals to improve the current legislation and adapt it to the modern needs of society.

Another pillar of the paper is the comparative perspective between the Romanian regulations and those of other European jurisdictions, in particular the French legislation, given that it has been an important source of inspiration for national practice and doctrine. This comparative analysis aims to identify the strengths and shortcomings of the Romanian legislation, as well as the best practices that could be implemented.

The research also has a significant practical objective, as hundreds of court judgments from courts of all levels of courts concerning the application of objective tort liability have been analysed and reproduced, by way of example. The aim of this analysis is to establish the current state of case law, possible inconsistent practices and to identify possible solutions or responses to the needs of practice. The theme of the study aims to

provide more effective and equitable solutions in some cases, which protect the interests primarily of the injured parties but also those of the persons liable.

Finally, we aimed to contribute to the improvement of specialised literature and legal education resources on the topic of strict tort liability. In this way, the present research will be an important resource for legal theorists and practitioners, for deepening the analysed topic and for identifying possible answers to questions that may arise in practice.

### **3. Research methodology**

In relation to the aims and objectives proposed and outlined above, several research methods have been considered, among which can be highlighted: the logical method, the historical-teleological method, the comparative method and, finally, the interdisciplinary method.

In order to shed light on strict tort liability in the Civil Code, the research started with a rigorous theoretical analysis. This involved, first of all, the study of the legislation, examination of the relevant specialised literature and academic works in an objective manner. The fundamental principles of strict tort liability and the historical development of strict tort liability from this perspective were analysed in detail. This theoretical approach has been complemented by a subjective, critical analysis of current legislation and the theories in the specialised literature in order to identify aspects in need of clarification or reform.

To achieve the comparative objective, the research required a comparative analysis of Romanian legislation in relation to other European legal systems. This method entailed the selection of relevant jurisdictions for comparison, the analysis of regulations, the various theories issued in foreign specialised works and the identification of good practices that could be implemented in national legislation.

In order to achieve the proposed practical objective, the research aimed at finding and analysing case law, selecting relevant cases from Romanian judicial practice to illustrate the concrete application of the principles of strict tort liability.

In order to propose concrete solutions to improve legislation, the research utilised normative methods. This involved formulating recommendations based on critical analyses of existing legislation and national practice. Proposals for legislative amendments

addressing the identified shortcomings and streamlining the system of strict liability in tort have been developed.

In order to ensure a comprehensive perspective on strict tort liability, the research also involved an interdisciplinary approach. This meant integrating knowledge from related fields such as criminal law or administrative law.

#### 4. Structure of the paper

In relation to the structure of the work, it can be observed that it is presented in a clear and coherent way, being divided into three large Sections, which mainly follow the structure of the Civil Code.

The **first Section** is entitled *Introductory Aspects of Civil Liability*, divided into two chapters. The *first chapter* begins with an exposition of the notion of *Liability* in general. For the realisation of the present work, we considered it particularly important to review the notion and concept of *Liability*, based on a historical-teleological method. Thus, we have shown how liability has evolved from a purely social form to a legal liability. We then analysed the traceability of legal liability and its division according to areas of law.

In this context, the main differences between civil liability, on the one hand, and criminal or administrative liability, on the other hand, were summarised.

At the end of this chapter we have set out the main similarities and differences and doctrinal discussions on contractual civil liability and tortious civil liability.

*The second chapter* of the first section looks at tortious civil liability in general under multiple aspects, from its historical development to the foundations of liability and the conditions necessary for its engagement. Under this last aspect, we have set out the general conditions for incurring civil liability in tort, namely: the existence of damage, the wrongful act, fault and causation.

The **second Section** deals with *tortious civil liability for the behaviour of another person*, divided into three chapters following the structure designated by the Civil Code. The section begins with the general aspects of the two forms of liability for the acts of another, and then develops into two specific chapters, namely *Liability for the acts of a minor or a person under special guardianship or legal counselling* and *Liability of the principal for the acts of a person who is a principal*.



In these chapters, the two types of liability have been analysed in a symmetrical way, from their evolution, in a comparative perspective between the old and the current regulation, to the effects that this liability produces or triggers. At the same time, the conditions that must be met in order to incur liability for the offences of others have been set out in a way that combines practice and doctrine.

The **third section** is devoted to *civil liability in tort for damage caused by things in general, by animals or by the ruin of buildings*. In this context, the section has been divided into six chapters.

*The first chapter* is an introductory one, which gives a brief history of the development of these forms of liability and presents the general location of the subject matter in the current regulation.

*The second chapter* deals with *civil liability in tort for damage caused by things in general*. Under this aspect, the scope of application, the concept of legal defence, the persons entitled to invoke liability for things, the basis of liability, its effects and its correlation with other forms of liability were considered.

Subsequently, almost symmetrically, the same steps were followed in *Chapter Three on Tort liability for damage caused by animals*.

In *Chapter Four* we have analysed *Liability for the ruin of buildings*, where we have presented the evolution of the regulation, the scope, the basis of liability, the effects and the right of recourse. In this chapter one can notice the numerous practical situations that we have identified in order to capture the meaning of the notion of building.

*Chapter Five* deals with *Liability for damage caused by falling or being thrown from a building*. This new type of liability is analysed in the present work from the same angles, covering the conditions necessary for incurring liability, the basis of liability provided for by art. 1379 Civil Code. and the correlation with other liabilities.

Finally, the last chapter presents the procedural aspects relating to strict civil liability in tort from the perspective of active and passive procedural standing, extinctive prescription, material and territorial jurisdiction of the court for the resolution of disputes, having as object strict civil liability in tort, as well as evidence and stamp duty.

The paper concludes with a brief presentation of the conclusions drawn from this research.

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## **7. National case law**

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#### **7.4. Court case law**

##### **7.4.1. Judgements**

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#### **7.5. Court case law**

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