

NEGLIGENCE AND DAMAGES INVOLVING TOURISM AND HOSPITALITY

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Learning Outcomes

- ▶ Define Tort
- ▶ List the Major Purposes of Tort Law
- ▶ Differentiate Fault and Negligence
- ▶ Identify the Persons Liable for Damages Arising from Quasi-delicts/Torts
- ▶ Define Damage

Introduction

- ▶ This chapter is an attempt to equip the students with the necessary knowledge of law about torts and damages that the students may deal with when they are already in the practice of their profession pertinent to the industries of tourism and hospitality.

Concept of Tort

- ▶ Tort is a legal wrong committed upon person or property independent of the contract (Black's law dictionary). It is taken from the word "**torque**" meaning "**to twist**" Art 2176 of the Civil Code also defined it as the fault or negligence of a person who, by his act or omission, connected or unconnected with, but independent from, any contractual relation, causes damage to another person.

Major Purposes of Tort Law

1. To provide a peaceful means for adjusting the rights of parties who might otherwise take the law into their own hands;
2. Deter wrongful conduct;
3. Encourage socially responsible behaviour, and
4. Restore the injured parties to their original condition, insofar as the law can do this, by compensating them for their injury.

Fault and Negligence

- ▶ **Fault** signifies voluntary act or omission causing damages to the right of another giving rise to an obligation of the actor to repair such damage. **Negligence** consists in the omission to do certain acts which result to the damage to another.

Persons Liable for Damages Arising from Quasi-delicts/Torts

Article 2180. (Vicarious Liability).
The obligation imposed by Article 2176 is demandable not only for one's own acts or omission, but also for those of persons for whom one is responsible.

Persons Liable for Damages Arising from Quasi-delicts/Torts continuation...

1. The **father**, and, in case of death or incapacity, the **mother**, are responsible for the damages caused by minor children who live in their company.
2. **Guardians** are liable for the damages caused by the 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 occasion of their functions.

Persons Liable for Damages Arising from Quasi-delicts/Torts continuation...

4. **Employers** shall be 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 likewise manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable.
6. Lastly, **teachers** or **heads** of establishments of arts or trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

Doctrines in Negligence Cases

- ▶ The following doctrines may be applied in most negligence cases involving hospitality management:
 - A. Doctrine of Proximate Cause.** This was defined as that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.
 - B. Contributory Negligence.** If the negligence of the plaintiff was merely contributory to his injury, the immediate proximate cause of the accident causing the injury being the defendant negligence, such negligence would not be a bar of recovery , but the amount recoverable shall be mitigated by the court. (Art 2179)
 - C. Doctrine of imputed Negligence.** It pertains to the rule whereby the negligence of certain person in a transaction or act which gave rise to the injury complained of is imputable or chargeable against the person whom he was acting his associates.

Doctrines in Negligence Cases continuation...

- D. Doctrine of Last Clear Chance.** Otherwise known as the doctrine of discovered peril or the humanitarian doctrine, may be stated as follows: Where both parties are negligent in such a way that it would be impossible to determine whose negligence was the proximate cause of the accident; whose party had the last clear chance or opportunity to avoid the accident by the use of proper care but failed to do so.
- E. Doctrine of Res Ipsa Loquitur.** Under this doctrine, where a thing is shown to be under the management of the defendant or of his servants, and the accident is such as in the ordinary course of events does not happen if those who have management had used proper care; it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care.

Damaged Defined

- ▶ Damage has been defined by the Supreme Court in the case of People vs. Ballesteros as the pecuniary compensation, recompense, or satisfaction for an injury sustained, or as otherwise expressed, the pecuniary consequences which the law imposes for the breach of some duty or violation of some rights.
- ▶ Damage is awarded to a person to see to it that whenever a right is transgressed, every manner of loss or injury is compensated for in some way or another.

