

217

Title VIII

UNJUST ENRICHMENT

2041. General cause of action for unjust enrichment. A person who has enriched himself without cause at the expense of another shall, to the extent of the enrichment, indemnify the other for his correlative financial loss.

If the enrichment consists of a specified thing, the person who received it is bound to return it in kind if it is still in existence at the time of the demand.

2042. Ancillary character of action. An action for unjust enrichment cannot be instituted if the person injured can exercise another action to obtain compensation for the injury suffered.

Title IX

UNLAWFUL ACTS

2043. Compensation for unlawful acts. Any fraudulent, malicious, or negligent act that causes an unjustified injury to another obliges the person who has committed the act to pay damages.

2044. Self-defense. A person who causes injury in the exercise of self-defense or the legitimate defense of another is not liable for the injury.

2045. State of necessity. If a person who commits an act which causes injury was compelled by the necessity of saving himself or others from a present danger of serious personal injury, and the danger was neither voluntarily caused by him nor otherwise avoidable, the person injured is entitled to compensation in an amount equitably established by the judge.

2046. Person not chargeable with injury. A person who was incapable of understanding or intending at the time he committed the act causing injury is not liable for its consequences, unless the state of incapacity was caused by his own fault.

2047. Injury caused by person lacking capacity. If an injury is caused by a person incapable of understanding or intending, compensation is due from those who were charged with the custody of such person, unless they prove that the act could not have been prevented.

If the person injured is unable to secure compensation from the person charged with the custody of the person lacking capacity, the judge, considering the financial conditions of the parties, can order the person who caused the injury to pay an equitable compensation.

2048. Liability of parents, guardians, teachers, and masters of apprentices. The father and mother, or the guardian, are liable for the damage occasioned by an unlawful act of their minor unemancipated (390) children, or of persons subject to their guard-

ianship (343 ff., 414 ff.) who reside with them. The same provision applies to a parent by affiliation (404 ff.).

Teachers and others who teach an art, trade, or profession are liable for the damage occasioned by the unlawful act of their pupils or apprentices while they are under their supervision.

The persons mentioned in the preceding paragraphs are only relieved of liability if they prove that they were unable to prevent the act.

2049. Liability of masters and employers. Masters and employers are liable for the damage caused by an unlawful act of their servants and employees in the exercise of the functions to which they are assigned.

2050. Liability arising from exercise of dangerous activities. Whoever causes injury to another in the performance of an activity dangerous by its nature or by reason of the instrumentalities employed, is liable for damages, unless he proves that he has taken all suitable measures to avoid the injury.

2051. Damage caused by things in custody. Everyone is liable for injuries caused by things in his custody, unless he proves that the injuries were the result of a fortuitous event.

2052. Damage caused by animals. The owner of an animal, or one who makes use of it, for the period of such use, is liable for damage caused by the animal, regardless of whether the animal was in his custody or strayed or escaped, unless he proves that the damage was the result of a fortuitous event.

2053. Collapse of buildings. The owner of a building or other structure is liable for damages caused by its collapse, unless he proves that such damages were not caused by defective maintenance, or by a defect in construction.

2054. Circulation of vehicles. The operator of a vehicle which is not guided by rails is liable for the damage caused to persons or to property by operation of the vehicle unless he proves that he did all that was possible in order to avoid the damage.

In the case of collision of vehicles, it is presumed, until proof to the contrary is offered, that each operator contributed equally toward causing the damage suffered by each vehicle.

The owner of the vehicle, or in his place the usufructuary (978) or purchaser with reservation of ownership (1523), is liable *in solido* (1292) with the operator of the vehicle, unless he proves that the vehicle was being operated against his will.

In any case, the persons indicated in the preceding paragraphs are liable for damage arising from defects in the manufacture or maintenance of the vehicle.

2055. Liability in solido. If the act causing damage can be attributed to more than one person, all are liable *in solido* (1292) for the damages.

The person who has compensated for the damage has recourse against each of the others in proportion to the degree of fault of each and to the consequences arising therefrom.

In case of doubt, the degree of fault attributable to each is presumed to be equal.

2056. Measure of damages. The damages owed to the person injured shall be determined in accordance with the provisions of articles 1223, 1226, and 1227.

The damage arising from loss of earnings shall be equitably estimated by the judge according to the circumstances of the case.

2057. Permanent injury. When a personal injury is of a permanent nature, a settlement in liquidation thereof can be ordered by the judge in the form of a life annuity (1872), taking into account the conditions of the parties and the nature of the injury. In such a case, the judge shall order suitable precautionary measures.

2058. Specific redress. The injured party can demand specific redress when this is wholly or partially possible.

The judge, however, can order that the redress be made only by providing an equivalent, if specific redress would prove to be excessively onerous for the debtor.

2059. Non-patrimonial damages. Non-patrimonial* damages shall be awarded only in cases provided by law.

* See Foreword