

things in the same manner had they been in the power of the person that delivered them.

Art. 1897. A person who receives in good faith an undue payment of a certain and determinate thing shall be liable for the impairments and losses thereof, and for its accessions, only insofar as he has profited from them. If he has alienated it, he shall make restitution of the price or assign the action to recover it.

Art. 1898. Concerning payment for improvements and expenses made by one who unduly received the thing, the provisions of Title V of Book II shall govern.

Art. 1899. A person who, believing in good faith that payment was being made on account of a legitimate and existing credit and who, subsequently, destroys the title thereof, or allows the action to prescribe, or abandons things given in pledge, or cancels the securities of his right, shall be exempt from the obligation of restitution. The person who has unduly made the payment may proceed only against the true debtor or the sureties with respect to which the action may still be enforceable.

Art. 1900. The burden of proof that payment was effected falls on the person that claims to have made it. The latter shall also bear the burden of proving that it was made in error, unless the defendant denies receiving the thing that is claimed from him. In such a case, where plaintiff proves the delivery, he is relieved of all further proof. This shall not limit the right of the defendant to show that what he supposedly received was due to him.

Art 1901. It shall be presumed that there was error in the payment when a thing that was never owed, or which was already paid, is delivered; but the person from whom the return is demanded may

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prove that the delivery was made as a liberality or for another just cause.

Chapter II Of Obligations Arising through Fault or Negligence

Art. 1902. A person who, by act or omission, causes damage to another by fault or negligence must repair the damage caused.

Art. 1903. The obligation imposed by the preceding article is demandable not only for personal acts or omissions, but also for those of persons for whom others must respond.

Parents are responsible for the damage caused by their children who are under their guard. Tutors are liable for the damage caused by minors or incapacitated persons under their authority who live with them.

The owners or directors of an establishment or enterprise are liable for the damage caused by their employees in the service of the branches in which they are employed or on account of their duties.

Persons or entities that own an educational institution that is not of higher learning shall be liable for the damages caused by their minor students during the time periods in which such students are under the control or supervision of the teachers of the institution, while engaged in curricular or extracurricular activities and those complementary thereto.

The liability referred to in this article shall cease when the persons mentioned in it prove that they employed all the diligence of a prudent administrator to prevent the damage.

As amended by Law 11/1981 of May 13, and Law 1/1991 of January 7.

Art. 1904. A person that pays the damage caused by his subordinates may recover from the latter what he has paid.

In cases involving educational centers not of higher education, the owners thereof can demand the sums paid from the teachers, if the latter have engaged in willful misconduct or gross fault in the exercise of their function that caused the damage involved.

As amended by Law 1/1991 of January 7.

Art. 1905. The possessor of an animal, or one who makes use of it, is liable for the damage that it may cause, even if it escapes or is lost. This liability ceases only where the damage is caused by *force majeure* or the fault of the person that sustained it.

Art. 1906. The owner of a game preserve shall be liable for the damage caused by the game to the neighboring estates, when he has not done what is necessary to prevent the increase of the same or where he has hindered the efforts of the owners of said neighboring estates to hunt the game.

Art. 1907. The owner of a building is liable for the damage caused by the total or partial ruin thereof if it arises as a result of the lack of necessary repairs.

Art. 1908. Owners shall also be liable for the damage caused:

- 1) By the explosion of machines that were not cared for with due diligence, and by the kindling of explosive substances that were not placed in a secure and adequate place.
- 2) By excessive smoke that is harmful to persons or properties.
- 3) By the fall of trees located in places of transit, when not caused by *force majeure*.
- 4) By the emanations of sewers or deposits of infectious matters, when constructed without the proper precautions for the place where they are located.

Art. 1909. If the damages considered by the two preceding articles result from a construction defect, a third party suffering this damage shall only have an action against the architect or, where appropriate, against the builder, within the legal period.

Art. 1910. The head of a family that inhabits a house or a part thereof is responsible for the damage caused by the things thrown, or falling, from the same.

Title XVII Of the Concurrence and Priority of Credits

Chapter I General Provisions

Art. 1911. A debtor is liable for the performance of his obligations with all his present and future property.

Art. 1912. A debtor may judicially request from his creditors a reduction in the amount and an extension of time for the payment of his debts, or either of the two things; but the exercise of this right shall produce no legal effects, except in the cases and the manner provided in the Law of Civil Procedure.

Art. 1913. A debtor whose liabilities are greater than his assets, and who has failed to pay his current obligations, must file a petition of insolvency in the competent court from the time he becomes aware of that situation.

Art. 1914. A declaration of insolvency disables the insolvent from the administration of his assets and