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The Evolution Of 'RESPONSABILITE DU FAIT DES CHOSES' In French Tort Law:: An overview and comparison with Maltese Tort Law on the indirect liability for things

N.P.(Dip.), LL.D., Dr Samuel Bezzina LL.B.

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This book will compare various different European Tort law regimes with emphasis on indirect liability for things. French courts seem to have developed the notion of responsibility without fault in such a way and to such an extent that it seems, prima facie, that the custodian is responsible for any damage which is caused by the thing under his custody, and that he cannot simply prove the absence of his fault in order to escape liability. The thesis looks at the mechanisms of this notion, together with the possible exonerations available as a defence for the defendant. The rigorous approach to civil responsibility in the Code Civil had to be revised by jurists at the end of the nineteenth century. This is mainly because the precarious condition of victims of accidents of work necessitated such re-evaluation. In most countries, liability is based on the classical notion of fault. Germany was the first country to deviate from the principle of fault, although this was originally very limited and only a closed group of victims could benefit. Originally, the wording of the French article, on which today liability without fault is based, was interpreted as referring only to liability for animals and buildings. Eventually, however, the meaning was extended to include all things which cause harm, and not only buildings or animals. In French law the position is very clear. There are only three conditions for exoneration: force majeure, acts of third parties, contributory fault. At Common Law, we find the court-developed concept of ‘res ipsa loquitur’. This maxim means that the thing speaks for itself. It allows the claimant to succeed in an action for negligence even when there is absolutely no evidence as to what caused the accident and therefore of whether it was attributable to negligence on the part of the defendant. Under Austrian Law, while the principle of fault is the most important pillar of the law of delict, it is to be observed that the Austrian court has applied by analogy the provisions of strict liability to circumstances not provided for by the law. The position in Malta seems to be that the sections of fault liability cannot be extended by analogy to other instances not found in the law. The thesis will arrive to a conclusion as to whether the principle of liability without fault would be a better alternative to Maltese fault liability.

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