JUSTIFYING GENERAL RULES OF LIABILITY FOR THINGS

A COMPARATIVE ANALYSIS OF THE FRENCH, ITALIAN, PORTUGUESE, AND BELGIAN MODELS

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CONTEXT

Liability for things is a category of liability present in numerous legal systems, both European and non-European, sharing the common feature of being based on the occurrence of a harmful event caused by a thing. While most systems list specific dangerous things (e.g. vehicles), some adopt a general rule extending liability to all "things" under one's control — a regime present, among other jurisdictions, in the French, Italian, Portuguese and Belgian Civil Codes. The peculiarity and severity of this general rule of liability for things, vis-à-vis potential defendants, call for an explanation of its existence and maintenance, especially in the context of European cultural and economic integration and legal harmonisation.

OBJECTIVES

- To compare the French, Italian, Portuguese and Belgian regimes of general liability for things
- To analyze the justifications behind the existence and maintenance of these general rules.

COMPARATIVE ANALYSIS OF NATIONAL SYSTEMS

Aspect / Country	France	Italy	Portugal	Belgium
Legal basis	Art. 1242, al. 1 CC	Art. 2051 CC	Art. 493º, nº1 CC	Art. 6.16 CC
Concept and causal role of the "thing"	An inanimate object causing damage, either when in motion, or, if static, due to its abnormal position or defective condition	The inanimate object causing damage, whose characteristics play an important role in establishing causation	An inanimate object that causes damage independently of any direct use by a person	An inanimate, material, and defective object that causes damage
Key element of imputation	Strict liability based on the *garde* of the thing	Strict liability based on the *custodia* of the thing.	Presumption of fault based on *culpa in vigilando*	Strict liability based on the *garde* of the thing
Individual liable	The custodian, defined by the power of use, direction, and control over the object; the owner is presumed to hold this role.	The custodian, who is empowered to monitor and control the object (*effettivo potere fisico*)	The possessor of the object with a duty of supervision	The custodian, defined by the non-subordinate power of direction and control over the object; the owner is presumed to hold this role.
Defenses	*Force majeure* as well as the victim's fault and third-party act, may operate as exonerating causes only when they exhibit the features of *force majeure.* Otherwise, they may rarely lead to partial exoneration	*Caso fortuito*, victim's act, third-party act	No fault; proof that the harm would have happened regardless of fault; *force majeure*, victim's act, third-party act	An external cause breaking the causal link between the defect and the damage. Events giving rise to any of the elements of liability do not exonerate the custodian, except in cases of the victim's fault
Conceptual boundaries	No other general strict liability regime	Coexists with a strict liability regime for hazardous activities	Coexists with a presumption-of-fault regime for hazardous activities	No other general strict liability regime

SCALE OF STRICTNESS

Flexible — Strict

- Models based on specific rules and fault-based liability
- Portuguese model
- Italian and Belgian models
- French model

Key insight: Despite differences in content, form, and intensity, all four models share a broad liability framework, facilitating application to a wide range of current and future situations.

JUSTIFICATIONS FOR A GENERAL RULE

Historical Justifications

French influence

- **Napoleonic Code**: In Italy (Civil Codes of 1865 and 1942), in Portugal (Seabra Code of 1867 and Civil Code of 1966), and in Belgium, with the Napoleonic Code itself.
- **Court decisions influence**: Teffaine and Jand'heur (to a lesser extent) court decisions.

19th-century mechanization: Especially labor accidents in the context of industrialization and, subsequently, transport accidents (railways, automobiles).

Contemporary Justifications

- **Victim protection**: Emphasis on facilitating victim compensation, particularly in cases involving personal injury.
- **Risk theories**: The approaches relate, to varying degrees, to theories of created risk and benefit-based risk (*cuius commoda eius et incommoda*).
- **Deterrence**: A broad and stricter liability would encourage preventive measures to avoid harm.
- **Adaptability**: The application of a general rule provides flexibility to the legal system when confronted with technological uncertainties and possible harm.
- **Loss spreading**: The development of insurance fosters and safeguards both the sustainability and fairness of these broad liability models.