



## TU 122 LAW IN EVERYDAY LIFE

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## Basic Principles of Contract & Tort (Cont'd)

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### Basic Principles of Contract

*[Insert after slide No 12 of the previous handout]*

#### **The communication of intention**

***Distant communication*** – Section 169

The intention takes effect when it reaches the recipient.

***Face-to-face communication*** – Section 168

The intention takes effect when the recipient knows of it.

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### Basic Principles of Contract

#### **Invalidity of contracts**

A **void** contract (objects / forms / intention) = a contract which has no legal force or effect; not legally binding or enforceable.

A **voidable** contract (intention / capacity) = A voidable contract, unlike a void contract, is a valid contract. At most, one party to the contract is bound. The unbound party may avoid the contract, at which time the contract is void. He may also ratify the contract which makes the contract unavoidable.

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### Basic Principles of Contract

#### **Breach of Contract**

When a contracting party fails to perform the contract without justification, he breaches the contract.

#### **Remedies for Breach of the Contract**

- (1) Damages (Section 215)
- (2) Interest (Section 224)
- (3) Termination of contract (Section 387-389)

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### Basic Principles of Contract

#### **(1) Damages**

Section 215. When the debtor does not perform the obligation in accordance with the true intent and purpose of the same, the creditor may claim compensation for any damages caused thereby.

Two general rules:

1. Damages must be compensatory.
2. Damages must be monetary.

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## Basic Principles of Contract

### Scope of Damage

Section 222. The claim of damages is for compensation for all such damage as **usually** arises from non performance. (**Normal damage**)

The creditor may demand compensation even for such damage as has arisen from **special** circumstances, if the party concerned foresaw or ought to have foreseen such circumstances. (**Special damage**)

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## Basic Principles of Contract

### (2) Interest (Monetary debt ONLY)

Section 224. A money debt bears interest during default seven and half percent per annum. If the creditor can demand higher interest on any other legitimate ground, this shall continue to be paid.

Interest for default shall not be paid upon interest.

Proof of further damage is admissible

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## Basic Principles of Contract

### (2) Termination of Contract

A contract may be terminated either by agreement or by law.

Termination by Law

**Section 387** – Normal breach → Giving a period of grace before termination

**Section 388** – Time is of essence → Instant termination

**Section 389** – Impossibility of performance due to the debtor's fault → Instant performance

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## Basic Principles of Tort

### General Rule

Section 420. A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.

Section 421. The exercise of a right which can only have the purpose of causing injury to another person is unlawful.

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## Basic Principles of Tort

### Some specific torts

Section 425. An employer is jointly liable with his employee for the consequences of a wrongful act committed by such an employee in the course of his employment.

Section 426. The employer who has made compensation to a third person for a wrongful act committed by his employee is entitled to reimbursement from such employee.

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## Basic Principles of Tort

### Some specific torts

Section 427. The two foregoing sections shall apply mutatis mutandis to principal and agent.

Section 428. An employer is not liable for damage done by the contractor to a third person in the course of the work, unless the employer was at fault in regard to the work ordered or to his instructions or to the selection of the contractor.

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## Basic Principles of Tort

### Some specific torts

Section 427. The two foregoing sections shall apply mutatis mutandis to principal and agent.

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## Basic Principles of Tort

### Some specific torts

Section 429. A person, even though incapacitated, on account of minority or unsoundness of mind is liable for the consequences of his wrongful act. The parents of such person are, or his guardian is, jointly liable with him, unless they or he can prove that proper care in performing their or his duty of supervision has been extended.

Section 430. A teacher, employer or other person who undertakes the supervision of an incapacitated person either permanently or temporarily, is jointly liable with such person for any wrongful act committed by the latter whilst under his supervision, provided that it can be proved that he has not exercised proper care.

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## Basic Principles of Tort

### Some specific torts

Section 433. If damage is caused by an animal, the owner, or the person who undertakes to keep the animal on behalf of the owner, is bound to compensate the injured party for any damage arising therefrom, unless he can prove that he has exercised proper care in keeping it according to its species and nature or other circumstances, or that the damage would have been occasioned notwithstanding the exercise of such care.

The person responsible under the foregoing paragraph may exercise a right of recourse against the person who has wrongfully excited or provoked the animal or against the owner of another animal which has caused the excitement or provocation.

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## Basic Principles of Tort

### Some specific torts

Section 436. An occupier of a building is responsible for damage arising from things which fall from it or are thrown into an improper place.

Section 437. A person is responsible for injury caused by any conveyance propelled by mechanism which is in his possession or control, unless he proves that the injury results from force majeure or fault of the injured person.

The same applies to the person who has in his possession things dangerous by nature of destination or on account of their mechanical action.

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## Basic Principles of Tort

### Scope of Damage

Section 438. The Court shall determine the manner and the extent of the compensation according to the circumstances and the gravity of the wrongful act.

Compensation may include restitution of the property of which the injured person has been wrongfully deprived or its value as well as damages for any injury caused.

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