

# Tort Law of Ukraine



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By

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# TABLE OF CONTENTS

Foreword .....	x
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## SECTION 1: GENERAL PROVISIONS ON TORT

Chapter 1 .....	2
The Legal Nature of Tort in the Law of Ukraine	

§ 1: The Essence of Tort Liability .....	3
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§ 2 The concept of tort and its elements .....	5
2.1. Damage .....	6
2.2. Tortious behavior .....	10
2.3. Causal link between the damage and the person's behavior ...	12
2.4. Fault.....	13

§ 3 Content of a Tort.....	15
3.1. Parties to a tort.....	16
3.2. Determination of the amount of damage compensation. The right of recourse.....	22
3.3. Exemption from tort liability.....	26

Chapter 2 .....	29
Sources of Tort Law in Ukraine	

§ 1. Codification of Tort Law in Ukrainian Legislation .....	29
§ 2. Special Legal Acts in Tort Law .....	30
§ 3. Soft Law in the Law of Torts of Ukraine.....	35

## SECTION II. SPECIAL TORTS IN THE LAW OF UKRAINE

Chapter 1 .....	42
Compensation for Damages from Lawful Actions	

§ 1. Compensation for Damage Caused by a Person in the Exercise of the Right to Self-Defense.....	42
--	----

1.1. The concept and remedies of self-defense of rights against unlawful encroachments .....	43
1.2. Conditions of Liability for Damage Caused by a Person Acting in Self-Defense .....	45
§2. Compensation for Damage Caused in Extreme Necessity .....	46
2.1. Causing harm in a state of extreme necessity. Limits of permissibility of harm in a state of extreme necessity.....	46
2.2. Conditions of liability for damage caused in a state of extreme necessity .....	50
§ 3. Compensation for Damage Caused by the Adoption of a Legal Act on the Termination of Ownership of Certain Property. Property Torts.....	52
3.1 Legal grounds for termination of property ownership.....	53
3.2. Mechanism for compensation for damage caused by property torts .....	61
§ 4. Compensation for Damage Caused by a "General Average" .....	61
4.1 The concept of "general average" in maritime law .....	62
4.2. Principles of distribution of general loss and compensation for damage caused by maritime tort .....	65
Chapter 2 .....	67
Third-Party Indemnification	
§ 1. Compensating the Damage Caused by the Employee or any Other Person. Employments.....	68
1.1. Grounds for compensating damage caused by an employee or other person .....	68
1.2. Conditions for compensation for damage caused by an employee or other person in a legal relationship with them .....	70
§ 2. Compensation for Damage Caused by a Child .....	72
2.1. Compensation for damage caused by a minor under the age of 14 .....	73
2.2. Compensation for damage caused by a juvenile aged 14 to 18.....	76

§ 3. Compensation for Damage by Persons with Restricted Capacity ...	77
3.1. Compensation for damage caused by an incapacitated individual .....	78
3.2. Compensation for damage caused by a person with restricted legal capacity .....	81
3.3. Compensation for damage caused by an individual who was unaware of the significance of his or her actions and/or could not control them.....	83
§ 4. Compensation for Damage Caused to Individuals by Criminals.....	84
4.1. Liability for damage caused to a person by criminals .....	85
4.2. Terms and Conditions of State Liability for Damage Caused to a Person by Criminals.....	86
Chapter 3 .....	90
Strict Liability	
§ 1. Damage Caused by a Source of Increased Danger.....	91
1.1 Concepts and types of sources of increased danger.....	92
1.2. Conditions of liability for damage caused by a source of increased danger .....	94
1.3. Compensation for nuclear damage .....	98
1.3.1. Subjects of nuclear damage compensation .....	103
1.3.2. Grounds for exemption from liability for nuclear damage .....	104
§ 2. Compensation for Damage Caused by a State Authority, an Authority of the Autonomous Republic of Crimea or a Local Self-Government Body in the Field of Rule-making .....	105
2.1. Types of rule-making activities and subjects of liability for rule-making torts .....	106
2.2. Conditions for compensation for damage in the field of law-making.....	108
§ 3. Compensation for Damage Caused by a State Authority, an Authority of the Autonomous Republic of Crimea or a Local Government Body .....	110
3.1. The concept of public administration tort. Subjects of liability for damage.....	111
3.2. Conditions of liability for the tort of public administration...	114

§ 4. Compensation for Damage Caused by Unlawful Decisions, Actions or Inactions of a Body Conducting Operational Investigation, Pre-trial Investigation, Prosecutor's Office or Court .....	116
4.1 Subject of a tort in the field of decision, action or inaction of a body conducting operational and investigative activities, pre-trial investigation, prosecutor's office or court. Subjects of damage and its compensation.....	118
4.2. Ways to compensate for damage caused by unlawful decisions, actions or inactions of the body conducting operational and investigative activities, pre-trial investigation, prosecutor's office or court .....	121
§ 5. Compensation for Damage Caused by Defects in Goods, Works or Services .....	125
5.1. Nature of consumer tort, its subject and structure .....	126
5.2. Subjects of liability for damage caused by defects in goods, works and services .....	129
§ 6. Compensation for Damage in the Field of Corporate Governance. Corporate Torts .....	131
6.1. Conditions of tort liability of a legal entity in business. The principle of "through the corporate veil" in the tort law of Ukraine .....	132
6.2. Terms of liability in corporate governance.....	135
6.3 Tort liability of individuals associated with the bank.....	138
6.4. Tort liability of individuals in bankruptcy proceedings .....	141
Chapter 4 .....	145
Compensation for Damage to Human Health	
§ 1. Damages for injury or other damage to health.....	146
1.1 The concept of damage caused by injury or other harm to health and the grounds for liability .....	146
1.2. Mechanism of compensation for damage. Changes in the amount of compensation.....	148
§ 2. Compensation for Damage Caused by the Death of an Individual .....	151
2.1. Subjects of compensation for damage caused by the death of a person .....	152



2.2. The procedure for compensation for damage, determination of the amount of compensation .....	154
§ 3. Torts In Medical Practice .....	155
3.1. Liability of healthcare professionals for damage caused to a patient's health in the system of free healthcare institutions ...	156
3.2. Liability of healthcare professionals for damage caused to the patient's health when the patient receives paid healthcare services on the basis of a contract.....	160
 <b>SECTION III. EXTRAORDINARY TORTS IN THE LAW OF UKRAINE</b>	
Chapter 1 .....	164
Torts of War	
§ 1. Compensation for Damage Caused by Military Aggression of Another Country .....	165
1.1. The Legal Grounds for the Liability for the Damage Caused to Ukraine by the Aggressor State .....	166
1.2. Waiving the judicial immunity of a state.....	170
Chapter 2 .....	175
Torts in Private International Law	
§ 1. Tort liability governed by conflict of laws.....	176
1.1. Collision clause in general indemnity terms.....	177
1.2. Collision clause in special indemnity terms .....	180
§ 2. International conventions regulating tort liability .....	181
2.1. Conflict of Laws in international tort law .....	182
2.2. Direct regulation of torts in private international law .....	183
Afterword .....	186
References .....	188

## FOREWORD

The study of comparative legal systems, which examines the unique regulations of various social relations across different countries, is increasingly important in modern legal science. Scientific works that explore legal phenomena across different legal families are especially interesting. In the context of modern European integration processes and recent tragic events, the law of Ukraine is a phenomenon that receives significant attention from legal scholars.

Globalization has caused changes in modern civil law, in particular in tort law, which is considered a part of civil law in Ukrainian jurisprudence. However, it is important to note that compensation for damages is subject to national and cultural norms, which can vary significantly.

Therefore, to successfully resolve modern civil law cases, it is necessary to thoroughly examine its unique characteristics and provide clear explanations of its technical terms. In tort law, the complexity of concepts and their specific applications can often hinder understanding. In civil tort law, the complexity of concepts and their applications can often hinder understanding. Therefore, it is important to develop a uniform terminological apparatus and common legal concepts that can be universally understood and applied in the ever-changing society landscape to ensure clarity and consistency. In the context of international integration, it is important to consider legislation unification.

The legal nature of torts has been extensively discussed by various scholars of national and private law, including Prof. Valentina Vasylieva, Prof. Roman Maydanyk, Prof. Ina Spasibo-Fateeva, Prof. Evgen Kharytonov, Prof. Mykola Haliantych, Prof. Roman Shyshka. This study aims to analyze certain types of torts.

The term “tort law” is not commonly used in the Ukrainian civil law doctrine. However, Ukrainian scientists often use terms such as “tort liability”, “tort relation”, “tort”, etc. Researchers refer to tort law in different ways, such as a field of damage compensation, a segment of tort liability, or liability for causing damage. This general identification of concepts is due to the absence of definitions in the Civil Code of Ukraine. “Tort”, “tort

liability", and "non-contractual obligations" are terms used in the Civil Code of Ukraine to refer to the obligation to compensate for damage. The second subsection of the special part of this Code devoted to non-contractual obligations specifically uses the term "compensation for damages".

The European doctrine of tort law, which was previously hidden behind a foreign language, has been incorporated into legal science. Prof. Simon Deakin, Prof. Helmut Koziol, Prof. Jean-Sébastien Borghetti, Prof. Olaf Riss, Prof. Attila Fenyves, Prof. Ernst Karner, Prof. Elisabeth Steiner, and Prof. Bernhard A. Koch have made significant contributions to the development of the social nature of tort.

Their ideas have allowed for a practical understanding of tort, particularly in terms of identifying differences in certain types of torts and formulating general development trends.

Current trends in Ukrainian legislation have highlighted the necessity for a comprehensive reform of Ukraine's civil law, in particular, the Civil Code of Ukraine (2003). Despite notable modifications over the last two decades, there is a dearth of conceptual clarity in the context of international integration processes. In this regard, tort law needs improving. The European integration processes in Ukraine and the need to harmonize legislation with other European countries in this area are important aspects.

The monograph systematically analyzes the theoretical foundations of tort liability in Ukrainian law. Through empirical and theoretical analysis, this monograph identifies the nature of tort and examines its elements. The author presents their classification of torts and explores the mechanisms of compensation for damage based on the results of a comprehensive analysis. The presentation of theoretical material departs from a purely scientific approach and includes a detailed analysis of Ukrainian tort legislation. The monograph provides general information about the current state of tort law in Ukraine.

The author would like to express their gratitude to the University Paris 1 Pantheon - Sorbonne and the Institute of European Tort Law of the Austrian Academy of Sciences, particularly to Professors Philippe Dupichot, Anne - Marie Leroyer, Jonas Knetsch, Helmut Koziol, and Ernst Karner, for their support of the creative initiatives of Ukrainian scholars and their assistance in publishing this monograph.



## **SECTION I.**

### **GENERAL PROVISIONS ON TORT**

# CHAPTER 1

## THE LEGAL NATURE OF TORT IN THE LAW OF UKRAINE

Article 15 of the Civil Code of Ukraine enshrines the right of every person to protect his or her civil rights in case of their violation, non-recognition, or challenge, as well as the right to protect his or her interest that does not contradict the general principles of civil law. One of the most effective civil remedies to protect the rights and interests of a person is compensation for damage (losses), which is carried out through protective legal relations, including tort liabilities.

An obligation resulting from damage, like other obligations, arises in the presence of certain legal facts. The legal fact with which the law links the emergence of this tort liability is the fact of causing damage, i.e. a tort.

The occurrence of a tort results in a person's liability for the caused damage. Such a liability consists of the obligation to compensate for the damage caused and to restore the property and non-property status of the victim.

Under a tort obligation, the offender is obliged to fully compensate for the damage caused, and the other party has the right to demand that the offender fulfill this obligation. The result of such compensation should be the full restoration of the property and non-property situation that existed before the violation of the victim's right.

In comparison to contractual liability, tort liability arises from a breach of the general rule of 'not to harm another, i.e. the absolute right of a person. The result of tort liability is the restoration of the victim's original state. Obligations to compensate for damages are regarded as non-contractual obligations that stem from the violation of the victim's personal non-property and property rights. These obligations are absolute and intended to ensure the fullest possible restoration of these rights, either at the expense of the party responsible for the harm or at the expense of other individuals who are legally obligated to provide compensation (Otradsnova 2009. 240)

When considering liability for damage, the law follows the principle of general tort in the doctrine of tort law of Ukraine. This principle states that the mere fact that one person causes damage to another is a sufficient basis for the obligation to compensate for the damage. Therefore, the victim is not required to prove the unlawfulness of the actions of the tortfeasor or his or her guilt. In this regard, it is important to note that the tortfeasor can only be released from liability by proving their absence.

It is widely acknowledged that the principle of general tort is most fully expressed in Article 1382 of the French Civil Code, which states that “any action of a person who has caused damage to another obliges the person whose fault caused the damage to compensate for the damage”.

It is worth noting that in addition to the general tort, the doctrine of tort law in Ukraine distinguishes special torts that contain exceptions to the rules of the general tort. Such exceptions relate to the subjects of the tort and such conditions of liability as the presence or absence of fault, unlawfulness or lawfulness of the damage, which together may change the general rule established by the general tort.

For instance, damage caused by a source of increased danger is subject to special rules of compensation. These rules stipulate that the person responsible for the damage is liable, regardless of their fault. Furthermore, special rules of compensation apply in cases where the damage was caused by a minor. In such cases, the minor's parents are responsible for paying compensation.

## **§ 1. The Essence of Tort Liability**

In civil law, obligations are divided into two groups depending on the grounds for their occurrence, namely: contractual and non-contractual.

Contractual obligations arise from an agreement (contract) signed by the parties. They are aimed at regulating normal property relations for people both in business activities and in satisfying personal, family, and household needs. As a rule, parties to contractual obligations under civil law determine the terms of the contract at their discretion such as subject matter, quantity, quality, price, terms and procedure for fulfilling the agreement, and the liability of the parties for non-fulfillment or improper fulfillment of the obligations assumed. The parties shall agree in advance on the content of their rights and obligations under the agreement.

When the parties act within the framework of their contractual obligations, a breach of contract has consequences clearly defined by the terms of the contract. These may include payment of a fine or penalty, termination of the contract, or refusal to perform it.

The range of social relations between individuals is not limited to positive regulation. Therefore, social conflicts may acquire legal significance due to violations of the rights and obligations of others.

It is worth noting that a violation of a person's rights may occur even in the absence of a contract between the parties. Such a violation has non-contractual consequences since they arise in the absence of legal relations between the parties.

Non-contractual obligations are fundamentally different from contractual ones in terms of their nature, origins, and content. They arise not so much from the contract of the parties but on other grounds provided for by law.

Nevertheless, the absence of a contract between the parties does not preclude the existence of obligations between persons. However, the scope of such obligations is significantly limited. They exist only in the event of a need to compensate for damage. In other words, causing damage to a person has corresponding legal consequences related to its compensation.

Whereas other parts of civil law establish legal forms for entering into normal legal relations, the institution of compensation for damage is a legal formulation of society's reaction to violations of the existing legal system. The mechanism of compensation for damage does not perform an independent legal function, such as the institutions of property, contract, or inheritance, but rather establishes auxiliary rules that ensure that these institutions can fulfill their purpose without hindrance. Therefore, it is entrusted with a special, restorative function, which guarantees that the victim's property is restored to the state that existed before the offense.

Within Roman law, tort liabilities are non-contractual obligations and arise from offenses. It is worth noting that this type of obligation was historically the first. Since ancient times the state authorities did not interfere in the relations of private persons at all, it was up to the victims to respond to violations of their interests (Tort Obligations, 2021).

Non-contractual obligations resulting from damage received their name from the Latin word *delictum*, which means offense. Therefore, these obligations are often referred to as tort obligations in the literature and case



law. The classification of obligations based on their origin into obligations from contract (*ex contractu*) and obligations from torts (*ex delicto*) was developed by Roman lawyers and adopted by the legal systems of many ancient states. In the 2nd century AD, jurist Gaius Gaius, presenting this classification in the Institutes (3. 38), called it the basic division of obligations (*summa divisio*): "The basic division of obligations is reduced to two kinds, namely: any obligation arises either from a contract or from a tort". Thus, a contract was understood as an agreement recognized by civil law and enforceable by the courts. A tort was an unlawful act that caused damage." (Borisova 2019, 193 - 200).

In other words, if the contract is a form of entering into normal legal relations, compensation for damage is a legal consolidation of the state's response to violations of the virtuous behavior of persons, which is enshrined in the legal requirements of society.

## **§ 2. The Concept of Tort and Its Elements**

In the doctrine of civil law of Ukraine, a tort is defined as a legal fact of causing damage that triggers legal and factual consequences. These consequences include the obligation to provide full compensation for the damage caused.

The factual consequence of a tort is the restoration of a person's position that existed before the violation of his or her right in the manner prescribed by law.

In turn, the legal consequence of a tort is the obligation of the tortfeasor to compensate for the damage caused and the corresponding right of the victim to demand reasonable compensation. The legal nature of these consequences is due to the availability of legal instruments of state coercion. For example, if the tortfeasor refuses to compensate for the damage, the injured person has the right to go to court and demand compensation.

It is worth noting that a tort exists outside the contract between the parties, i.e., it is a non-contractual obligation of the tortfeasor. In the event that the damage is caused during the performance of the contract between the parties, the mechanism of its compensation is established in accordance with the contract provisions and triggers the relevant legal consequences related to the breach of the contract.

It should be noted that a tort, unlike a contract, does not perform an independent legal function. Thus, the independent significance of a contract is that it regulates legal relations between contractors independently of national legislation. Pursuant to Article 6 of the Civil Code of Ukraine, the parties are entitled to enter into a contract that is not provided for by acts of civil law but complies with its general principles. The parties have the right to regulate contract relations provided for by civil law at their discretion.

In turn, a tort serves a remedial function that aims to restore the normal state of affairs that existed before the damage was caused and normalize relations between members of society. The compensatory function of a tort is generally acknowledged in law.

The principles of tort law in Ukraine stipulate that tort liability arises when specific conditions, referred to as elements of a tort, are met. These elements are 1) damage, 2) behavior, 3) a person's fault, and 4) a causal link between the behavior and the damage. The obligation to compensate for damage caused by a source of increased danger may be complete or reduced depending on the type of tort (Mishchuk, 2013, 146 - 151).

Generally, all four elements mentioned above must be present for the obligation to arise. For certain types of torts, referred to as special torts, only three elements are required to establish an obligation to compensate for damages. For instance, when a public authority causes damage, fault is not a mandatory element of the tort. In such cases, compensation for the damage is provided regardless of fault, i.e., a set of elements required for this tort is reduced.

## 2.1. Damage

Damage is the main element of a tort. It is noteworthy that a tort arises from a certain set of legal facts, damage being the key one. Although other elements of the tort may not be present, the existence of damage is a mandatory basis for compensation.

In the tort law of Ukraine, damage is defined as adverse consequences of a property or non-property nature suffered by the injured person as a result of the tortfeasor's actions or omissions.

**Property damage.** Property damage is expressed in the physical impact on a person's property, which results in a change in its quality and value characteristics. This, in turn, may lead to a decrease in its functional

abilities. In other words, property damage results in damage to property or its complete destruction.

In the civil law of Ukraine, in addition to the term "damage", the term "losses" is also used. However, despite their similarity, there are fundamental differences between them. Thus, Article 22 of the Civil Code of Ukraine defines losses as follows:

- 1) those losses that are incurred by a person in connection with the destruction or damage of a thing and expenses that a person has made or must make to restore *his or her* violated right (real damages);
- 2) the income that a person could have received under normal circumstances if *his or her* right had not been violated (lost profit).

Thus, the term "losses" is broader than the term "damage" since losses also include potential future profits that the injured person will no longer be able to receive due to damage to his or her property. In turn, the tort law of Ukraine does not recognize the income a person could have received under normal circumstances if his or her right had not been violated (lost profits) as damage and limits the amount of compensation to actual losses. Such real losses may include losses associated with the restoration of the damaged property or the costs of medical treatment associated with the restoration of a person's damaged health.

**Non-pecuniary damage.** In addition to the material sphere, damage may not relate to property. As a result of damage, not only property consequences may arise, but also consequences that cannot be esteemed in monetary terms. Thus, as a result of unlawful actions, damage may also be caused to the life or health of a person and lead to his or her death. In this case, such damage is called non-pecuniary damage since it is not the property that suffers, but a person.

Non-pecuniary damage should be understood as physical and moral suffering caused by the tortfeasor's misconduct and violating the personal rights of the injured person (right to life, health, dignity, and business reputation, etc.). However, regardless of whether it is property or non-property damage, the amount of compensation is determined in material form. In other words, regardless of the nature of the damage caused to a person (damage to health or damage to property), compensation is payable in the form of money.

The tort law doctrine considers non-pecuniary damage to be damage to human health (damage caused by injury, other damage to health or death of a person) and moral damage. Thus, damage to human health is a change in the state of full physical, psychological, and social well-being of a person under the influence of the person's behavior or other external factors (occupational disease, injury, mutilation, or any other damage to health).

Such damages in all cases cannot be compensated in the form of in-kind benefits or cash. However, in case of damage to the victim's health, he or she usually suffers property losses, is temporarily or permanently deprived of the possibility of receiving his or her former earnings or other income, and is forced to incur additional treatment costs. In the event of a citizen's death, such losses may also be suffered by persons close to the victim who are deprived of a source of income or maintenance, especially minor children or disabled family members.

Moral damage refers to losses of a non-property nature resulting from moral or physical suffering or other negative phenomena caused by unlawful acts or omissions of other individuals or legal entities.

Moral suffering is defined as an emotional and volitional experience that includes feelings of humiliation, irritation, depression, anger, shame, despair, inferiority, psychological discomfort, and similar experiences. Non-pecuniary damage through suffering refers to negative mental consequences that affect the victim's mind. These consequences are the determining indicators of the non-pecuniary damage occurrence. The concept of mental suffering is complex because this is a process that takes place in the human mind and thus it is almost impossible to define it using only legal terminology (Petrenko, 2019, 60-64).

An interesting definition of non-pecuniary damage is provided in the Resolution of the Plenum of the Supreme Court of Ukraine "On the Practice of Consideration of Civil Cases on Claims for Consumer Protection" of 12 April 1996, No. 5. Thus, according to paragraph 2, clause 23 of this Resolution, non-pecuniary damage means losses of a non-property nature that the consumer suffered as a result of moral or physical injuries or other negative phenomena that occurred due to illegal actions of the seller, manufacturer, performer or due to their inaction.

Under Article 23 of the Civil Code of Ukraine, moral damage consists of the following elements:

- 1) physical pain suffered by an individual due to an injury or other damage to health;
- 2) mental distress suffered by an individual in connection with unlawful behavior towards him or her, members of his or her family or close relatives;
- 3) mental distress suffered by an individual in connection with the destruction or damage to his or her property;
- 4) humiliation of the honor and dignity of an individual, as well as damaging the business reputation of an individual or legal entity.

Given the abstract nature of non-pecuniary damage, it is currently quite difficult not only to procedurally document it when applying to court but also to collect and record evidence proving the fact of non-pecuniary damage and the amount of such damage.

Even though non-pecuniary damage does not have a clearly defined monetary value as compared to damage to property, it is compensated mainly in a monetary form. Due to the uncertainty of this amount, it is determined by the court, unlike compensation for property damage, the amount of which is determined by the cost of restoration or the actual value of the destroyed property.

In other words, current legislation does not provide a clear method for calculating non-pecuniary damage. The traditional understanding of tort law in Ukraine is that specialized knowledge is required to determine the amount of non-pecuniary damage, as each case has its distinctive features.

The amount of monetary compensation for non-pecuniary damage is determined depending on the nature of the offense, the level of physical and mental injuries, the deterioration of the victim's capacities, the degree of fault of the person who caused non-pecuniary damage if the fault is the basis for compensation, as well as other important circumstances.

It is also noteworthy that non-pecuniary damage is compensated regardless of property damage by a one-time payment. In addition to monetary compensation, compensation for non-pecuniary damage is also made by performing non-property actions (public apology, public refutation of false information about a person, etc.).

## **2.2. Tortious behavior**

In contrast to cases of damage caused during the performance of a contract, where a guilty party is obliged to compensate for the damage as agreed upon in the contract, non-contractual damage has legal consequences for compensation by law. This is attributed to the fact that the tort arises against the will of the injured person and in the absence of any agreed legal relationship between the parties.

In other words, a tort is mainly unlawful behavior by its legal nature.

Unlawful behavior refers to any action, whether active or passive, that violates the rights of another person (the injured person) and the provisions of the national legislation of Ukraine.

The unlawfulness of a person's behavior is predominantly associated with the commission of active actions that lead to harmful consequences. However, unlawful behavior can also be expressed in the inaction of a tortfeasor. When a person is lawfully bound to perform a particular action but fails to do so, such an inaction is considered unlawful. An example of unlawful inaction can be a failure to act by a healthcare professional who is obligated to provide first aid to a person in need, leading to suffering harm.

The national legislation of Ukraine proceeds from the fact that any behavior of a person that leads to harm is presumed to be unlawful. This implies that the injured person has to prove only the fact of damage. The tortfeasor is presumed to be guilty of such damage by virtue of the mere fact that the victim suffered it. Thus, the tortfeasor is obliged to prove that the damage caused to the victim was not his or her fault.

However, the multifaceted nature of a tort and the conditions for its formation are so varied that the unlawfulness of a person's behavior is not the sole element. A tort may be committed through the lawful behavior of the tortfeasor.

The term "lawfulness" is defined as an act of a person who behaves within the limits of forms that are not prohibited by law. Since such behavior is carried out in accordance with the relevant legal provisions, it cannot be deemed unlawful. However, such lawful behavior may also have relevant negative (harmful) consequences for the injured person. This raises the issue of whether compensation should be provided for damage to a person even if caused by lawful behavior.

An example of lawful infliction of damage can be described in the following situation.

According to Article 353 of the Civil Code of Ukraine, in the event of a natural disaster, accident, epidemic, epizootic, and other extraordinary circumstances, the property may be forcibly alienated from the owner for the public needs on the ground of a relevant decision of the authority, provided prior and full compensation of its value (requisition).

In the case of martial law or a state of emergency, property may be forcibly alienated from the owner followed by full compensation of its value.

The adoption of a law or other legal act on the termination of ownership of certain property of a person is a legal action undertaken by a public authority within its competence established by law. At the same time, any compulsory deprivation of property, although it will be considered lawful under the above conditions, harms the owner. This harm shall be reimbursed with the actual value of the property in favor of the owner.

The right to self-defense is also exercised in the form of lawful behavior. However, in contrast to the previous case, the damage caused by a person while exercising the right to self-defense against unlawful attacks, including in a state of necessary defense, shall not be compensated if its limits are not exceeded. Nevertheless, when a person causes damage to another person while exercising the right to self-defense, this damage shall be compensated by the person who caused it, regardless of the lawfulness of the behavior (*Article 1169(2) of the Civil Code of Ukraine*).

An example of lawful damage is damage caused in conditions of extreme necessity.

Article 1171 of the Civil Code of Ukraine stipulates that damage caused to a person in connection with actions aimed at eliminating a danger threatening the civil rights or interests of another person or legal entity, when this danger could not be eliminated by other means under the circumstances (extreme necessity), shall be compensated by the person who caused it.

An example of lawful damage in maritime law is a “*general average*”.

A “general average” stands for the intentional and reasonable incurring of extraordinary expenses or donations to save a vessel, its freight, and the

cargo it carries from a common danger (*Article 277 of the Merchant Shipping Code of Ukraine*).

Therefore, damage can be considered the main feature of a tort, whether a person's actions that caused it are deemed lawful or unlawful, and whether they are active or passive. This indicates that a person's behavior is mainly conditional. This element of the tort becomes essential only when determining the amount and procedure for compensation for the damage caused. Lawful infliction of damage includes cases when no compensation is provided for (*self-defense*). In addition, the lawful infliction of damage may provide for the distribution of the amount of compensation between the injured persons and the tortfeasor (*general average*).

### **2.3. Causal link between the damage and the person's behavior**

Causation is an objective, specific relationship between two phenomena, namely: the cause and the effect. The cause precedes and triggers the effect, while the effect is the result of the action of the cause. Causation is necessary for the imposition of the obligation to compensate for damage.

The problem of causation in law should be resolved via general philosophical categories, given that causation in civil law is one of the types of phenomena interconnection.

In this regard, causation is an objective relationship between phenomena that exists in reality regardless of people's subjective perception. It does not change its essence depending on the perceptions of society or an individual. This element of the tort consists of the cause and the effect, in which the cause always precedes the effect and causes it, and the effect is always the result of the cause.

In addition, causation is always concrete and can only be tied to a particular life situation, since a specific cause and a specific effect relevant to a particular case can be found in daily life. Creating an abstract possibility of an outcome does not give rise to a legally significant causal link.

According to the tort law doctrine, causation must be established not only in the case of an active action but also in the case of damage caused by unlawful inaction, when the victim suffers damage due to the failure of the responsible person to fulfill his or her duties.

Within the tort law of Ukraine, the obligation to establish causation is always mandatory because the tortfeasor is liable only for the damage



caused by his or her behavior. As a general rule, the absence of a causal link excludes a person's liability, as this may indicate that the damage was not caused by the tortfeasor's behavior but occurred as a result of other causes. Unlike other elements of tort (fault), this one is characterized by the fact that its existence must be proved by the injured person.

## **2.4. Fault**

While these three elements of the tort are objective, the fault is a subjective one. The fault is defined as the mental attitude of a person to his or her behavior and its consequences.

According to Article 614 of the Civil Code of Ukraine, a person who breached an obligation is liable if he or she is guilty (by intent or negligence) unless otherwise provided by the contract or law. This provision regulates the liability for violation of subjective rights that constitute the content of a legal relationship of obligation. However, the fault is a prerequisite for any type of civil liability.

The tort law doctrine of Ukraine provides for a presumption of guilt of the person who committed the tort. According to Article 1166 of the Civil Code of Ukraine, a person who caused damage is exempt from compensation if he or she proves that the damage was not caused by his or her fault.

It is worth noting that the Civil Code of Ukraine does not define fault, but only specifies its forms and establishes that a person is innocent if he or she proves that he or she took all possible measures to properly fulfill the obligation.

The division of fault into forms and types is dictated by the need to differentiate various intellectual and volitional models of a person's behavior. Under different circumstances, these models may be given different legal significance, i.e., they may be recognized as sufficient to establish the condition of liability or not (Primak., 2008, 432).

Article 614 of the Civil Code of Ukraine names two forms of fault, such as intent and negligence, although the criteria for their distinction are not provided. Thus, intent is defined as a person's mental attitude to his or her unlawful actions and their consequences, which is manifested in the foresight of negative consequences of unlawful behavior and the desire or deliberate allowing of its occurrence. The main psychological characteristic of intent is the intention to commit an unlawful act. Therefore, intent is

recognized as the most serious form of guilt. At the same time, negligence is a milder form of guilt, which is defined as a person's attitude to his or her behavior, characterized by a lack of due care, concern, and foresight. The main psychological characteristic of negligence is the lack of intellectual and volitional activity of the offender.

The civil law of Ukraine does not divide intent into direct and indirect intent, as is the case in criminal law. Meanwhile, it distinguishes between gross (simple) and slight negligence. However, in torts, this distinction is relevant only in relation to the assessment of the victim's behavior. The gross or simple negligence of the tortfeasor does not affect his or her liability to the victim. Thus, any fault of a person who caused damage to the health of another, regardless of its form, is sufficient to give rise to the obligation to compensate for this damage.

In tort law, neither the form of fault nor the degree of fault affects the amount of liability, except in cases specifically provided for by law, such as the consideration of the victim's fault in determining the amount of compensation. The amount of compensation depends not on the severity of the tortfeasor's fault but on the amount of damage caused.

Thus, damage caused to the victim as a result of his or her intent is not compensated. In turn, if the victim's negligence contributed to the occurrence or increase of damage, the amount of compensation is reduced depending on the degree of his or her fault. In addition, the victim's fault is not taken into account in the case of compensation for additional expenses, for damage caused by the death of the breadwinner, and for funeral expenses.

Despite the fact that fault is a prerequisite for compensation for damages, the tort law of Ukraine provides for conditions of liability regardless of fault.

Certain types of special torts require compensation for the damage caused regardless of the fault of the tortfeasor. For example, damage caused by a source of increased danger is compensated regardless of the tortfeasor's fault, even in its absence (*Article 1187 of the Civil Code of Ukraine*).

In addition, liability for non-pecuniary damage arises regardless of the fault of the state authority, the authority of the Autonomous Republic of Crimea, a local self-government body, an individual, or a legal entity that caused it (*Article 1186 of the Civil Code of Ukraine*). Moreover, damage caused to an individual or a legal entity by an unlawful decision, action, or inaction of an official or employee of a state authority, the authority of the Autonomous

Republic of Crimea, or a local self-government body in the exercise of their competences is compensated by the state, the Autonomous Republic of Crimea, or a local self-government body.

The question of guilt and innocence is determined by analyzing the person's attitude to his or her rights and obligations. If he or she shows the necessary care and prudence that can be required of him or her in a particular situation, he or she cannot be found guilty of causing damage.

Furthermore, damage often arises not only as a result of the actions (or inaction) of the tortfeasor but also of the victim's behavior. In such cases, it would be unfair to impose a full liability for damage only on the person who caused the damage. In this regard, the law contains rules on taking into account the victim's fault, as follows:

“...Damage caused to the victim as a result of his or her intent shall not be compensated. If the gross negligence of the victim contributed to the occurrence or increase of damage, the amount of compensation shall be reduced depending on the degree of the victim's fault (also depending on the degree of the offender's fault in case of his or her fault)” (Article 1193 of the Civil Code of Ukraine).

At the same time, the victim's fault is not taken into account in the case of compensation for additional expenses, for damage caused by the death of the breadwinner, and for funeral expenses.

Consequently, the legal position of the victim should be qualified as follows: since he or she contributed to the occurrence or increase of damage, he or she should be considered an offender. Thus, in this case, a sanction for the victim's misconduct should be determined taking into account the victim's fault in causing or increasing the damage.

### **§ 3. Content of a Tort**

In addition to the mentioned elements, a tort has its content. The content of a tort encompasses the subjects involved, the legal mechanism for determining the amount of compensation for damage, and the conditions that exempt from such compensation.

Thus, while the mentioned elements of a tort show the essence of the violation of human rights and the material assessment of the consequences of such a violation, the content of a tort reveals the scope of relations within which the compensation mechanism for damage is provided. In other words,

the content of a tort ensures the implementation of legal relations on compensation for damage.

### 3.1. Parties to a tort

Any party engaged in civil legal relations may be held liable for a tort. This traditionally includes an individual, a legal entity, and the state of Ukraine.

A natural person becomes a party to a tort if he or she acquires either incomplete or full civil capacity. A natural person who is aware of the significance of his or her actions and can control them has a civil capacity. *(A civil capacity of a natural person is defined as the ability to acquire civil rights for oneself and to exercise them independently, as well as the ability to create civil obligations for oneself, to fulfill them independently, and to bear responsibility in case of failure to do so).*

A person who has reached the age of eighteen (majority) has full civil capacity. In the case of marriage, a person who has not yet reached the age of majority acquires full civil capacity from the moment of marriage registration *(Article 34 of the Civil Code of Ukraine)*. A person who has reached the age of sixteen and is employed under an employment contract may be granted full civil capacity; the same applies to a minor who is registered as the mother or father of a child.

Individuals aged from fourteen to eighteen (juvenile) have incomplete civil capacity.

A natural person under the age of fourteen (minor) is not liable for any damage caused by him or her and is not a party to a tort.

A legal entity, from the moment of its registration, acquires civil rights and obligations and exercises them through its bodies acting in accordance with its constituent documents and the law *(Article 92 of the Civil Code of Ukraine)*.

It should be noted that the theory of civil law recognizes the state of Ukraine as an independent subject of legal relations.

Articles 167 - 169 of the Civil Code of Ukraine stipulate that the state of Ukraine, the Autonomous Republic of Crimea, and territorial communities act in civil relations on equal terms with other participants in these relations.

The constitutional and legal status of the Autonomous Republic of Crimea and the territorial communities is determined by special legislation of Ukraine, including the Law of Ukraine “On Local Self-Government in Ukraine” of 21 May 1997 No. 280/97-BP and the Law of Ukraine “On the Autonomous Republic of Crimea” of 17 March 1995 No. 95/95-BP. However, their private legal status is enshrined in the Civil Code of Ukraine. Thus, the state of Ukraine, the Autonomous Republic of Crimea, and territorial communities in Ukraine are granted the right to participate in civil legal relations to ensure their constitutional status. These entities may act as parties to various types of contracts. For example, in order to exercise their constitutional powers to ensure sanitary and epidemiological well-being, territorial communities may enter into contracts with third-party companies for the removal of garbage and waste from the territories of villages and cities.

The distinguishing feature of the above persons is that they acquire and exercise rights and obligations through the relevant authorities (ministries, city halls, etc.) within their competence established by law (*Articles 170 - 173 of the Civil Code of Ukraine*).

There is no doubt that the relevant persons may cause property and non-property damage to other persons (individuals or legal entities) and suffer damage from other persons while exercising their powers (*Articles 174 - 176 of the Civil Code of Ukraine*). It should be borne in mind that the state and territorial communities are liable for their obligations with their property, except for property that cannot be recovered under the law.

The state, the Autonomous Republic of Crimea, and territorial communities are not held liable for the obligations of legal entities established by them. Legal entities established by the state, the Autonomous Republic of Crimea, and territorial communities are not liable for the obligations of the state, the Autonomous Republic of Crimea, and territorial communities, respectively.

The state is not held liable for the obligations of the Autonomous Republic of Crimea and territorial communities. The Autonomous Republic of Crimea is not held liable for the obligations of the state and territorial communities. Similarly, a territorial community is not liable for the obligations of the state, the Autonomous Republic of Crimea, and other territorial communities.

In the civil law of Ukraine (*Article 510 of the Civil Code of Ukraine*), these parties to a tort are referred to as a creditor and a debtor.

In contrast to contractual obligations, where each party may act either as a creditor or a debtor, in tort obligations, only one party (the one who suffered the damage) is a creditor, while the other party is a debtor (the person who caused the damage). Since the parties to a contract have mutual rights and obligations, they are both a creditor and a debtor in relation to each other. In contrast to a contract, while one party to a tort receives only rights (the right to claim damages), the other party receives only obligations (the obligation to compensate for the damage).

In order to determine the party to a tort, the doctrine of tort law also uses the concepts of “person who caused the damage” and “victim,” which are used in Chapter 82 “Compensation for Damage” of the Civil Code of Ukraine. However, the doctrine of tort law, based on Western legal traditions, employs the term “tortfeasor” to refer to the person who caused the damage and the term “injured person,” respectively.

In order to ensure the clarity and intelligibility of the legal information, I will use all of these verbal interpretations to define the parties to a tort.

**A creditor** is a person who suffered damage (the victim). It can be any person with legal capacity, i.e., a citizen of Ukraine, regardless of age and the extent of legal capacity, a foreigner, or a stateless person. The creditor may also be a legal entity, the state of Ukraine, the Autonomous Republic of Crimea, and territorial communities.

An individual may be the victim regardless of his or her age, health status, or other circumstances. For example, if the property owned by a three-month-old child as an heir is damaged, the child will be the victim of a tort obligation although some adult person (the guardian) will represent his or her interests.

It is worth noting that the tort law of Ukraine is based on the fact that compensation for damages is made directly in favor of the injured person. At the same time, in the event of the victim's death, Article 1200 of the Civil Code of Ukraine the following:

*the victim's child gets compensation until he or she reaches the age of eighteen (pupil, student until graduation, but not more than until he or she reaches the age of twenty-three);*

*the husband, wife, and parents (adoptive parents) who have reached the retirement age established by law are entitled to compensation for life;*