

Montesquieu Law Review: Key Texts

Articles 1382 to 1386-18

The French Civil Code

Chapter II: Of Delicts and Quasi-delicts/Of Torts

Article 1382

Any act whatever performed by a person which causes damage to another, shall compel/oblige the person by whose fault it occurred to repair the same.

Article 1383

Each person is liable for the damage they have caused not only by their action but also by their negligence or their recklessness.

Article 1384

A person is liable not only for the damage that they cause by their own actions but also for that caused by the actions of those persons for whom they are answerable, or of items which they have in their custody.

However, a person who, on any basis whatsoever, owns all or part of the building or movable property in which a fire has originated shall only be liable towards third parties for damage caused by said fire where it is proved that it is attributable to their negligence or the negligence of those persons for whom they are responsible.

This provision does not apply to dealings between landlords and tenants, which remain governed by Articles 1733 and 1734 of the Civil Code.

Parents, as far as they exercise parental authority, are jointly liable for the damage caused by their underage children residing with them.

Masters and employers, for the damage caused by their servants and employees in the posts/functions in which they have been employed;

Teachers and craftsmen, for the damage caused by their pupils and apprentices during the hours in which they are under their supervision;

The above liability is incurred unless the parents and craftsmen prove that they could not prevent the act that gives rise to said liability.

As regards teachers, the negligence, recklessness or carelessness invoked against them as having caused the damaging act shall have to be proved at trial by the plaintiff, in accordance with ordinary law.

Article 1385

The owner of an animal, or the person using said animal, while using the same, is liable for any damage caused by the animal, whether the animal was in their custody or whether it was lost or had escaped.

Article 1386

The proprietor of a building is liable for damage caused by its collapse, where this arises as a result of a failure to maintain or a defect in its construction.

Title IV *bis*: Of liability for defective products

Article 1386-1

The producer is liable for damage caused by a defect in their product, be they bound or otherwise by a contract with the injured party.

Article 1386-2

The provisions under the present Title apply to compensation for damage resulting from personal injury.

They also apply to compensation for damage greater than a sum determined by decree, resulting from damage to a good other than the defective product itself.

Article 1386-3

A “product” is any movable good, even where incorporated into a building, including products of the soil, farming, hunting and fishing. Electricity is considered a product.

Article 1386-4

A product is defective within the meaning of the present Title where it does not offer the safety which may legitimately be expected.

In assessing the safety which may legitimately be expected, consideration must be given to all circumstances and particularly to the presentation of the product, the use of the same which may reasonably be expected and the time of its entry into circulation.

A product shall not be deemed defective by the mere fact that another, improved product has subsequently been put into circulation.

Article 1386-5

A product is put into circulation where the producer has voluntarily parted with it.

A product may only be put into circulation once.

Article 1386-6

A producer, where acting in a professional capacity, is the manufacturer of a finished product, the producer of a raw material or the manufacturer of a component part.

Shall be treated as a producer, for the purposes of this Title, any person acting in a professional capacity:

1. Presenting themselves as a producer by placing their name, brand or other distinctive feature;
2. Importing a product into the European Community for sale, hire, with or without a promise to sell, or any other form of distribution.

Shall not be considered as producers, within the meaning of the present Title, any persons whose liability may be established on the basis of Articles 1792 to 1792-6 and 1646-1.

Article 1386-7

Where the producer cannot be identified, the vendor, hirer, with the exception of the lessor or hirer similar to the lessor, or any other professional supplier, is liable for the lack of safety of the product, on the same terms and conditions as the producer, unless they appoint their own supplier, or the producer, within a period of three months as of the date on which notice is received of the action brought by the injured party.

The remedies available to the supplier against the producer are subject to the same rules as the action brought by the direct victim of the defect. However, they must act within the year following the date of their being summoned.

Article 1386-8

In the event of damage caused by a product incorporated into another, the producer of the component part and the person who carried out the incorporation are jointly and severally liable.

Article 1386-9

The injured person must prove the damage, the defect and the causal link between the defect and the damage.

Article 1386-10

The producer may be liable for a defect even where the product has been manufactured in compliance with the existing accepted rules or standards, or has already been subject to administrative approval.

Article 1386-11

The producer is fully liable unless they prove:

1. That they did not put the product into circulation;
2. That, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by them or that this defect came into being afterwards;
3. That the product was not intended for sale or any form of distribution;
4. That the state of scientific and technical knowledge at the time when they put the product into circulation was not such as to enable the existence of the defect to be discovered;
5. Or that the defect is due to compliance of the product with mandatory legislative or regulatory measures.

Nor is the manufacturer of the component part liable where they establish that the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product.

Article 1386-12

The producer may only invoke the exoneration provided under Article 1386-11, paragraph 4, where the damage has been caused by an element of the human body or by the products of the same.

Article 1386-13

The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or a person for whom the injured person is responsible.

Article 1386-14

The liability of the producer shall not be reduced when the damage is caused both by a defect in product and by the act or omission of a third party.

Article 1386-15

Clauses intended to exempt producers from or limit their liability for defective products are prohibited and deemed null and void.

However, for damage caused to goods that are not used by the injured person primarily for their own use or their private consumption, the clauses stipulated between professionals are valid.

Article 1386-16

Except for fault on the part of the producer, the liability of the latter, based on the provisions of the present Title, shall be extinguished ten years from the date on which the producer put into circulation the actual product which caused the damage, unless the victim has in the interim instituted proceedings against the producer.

Article 1386-17

A limitation period of three years shall apply to proceedings for the recovery of damages brought on the basis of the present Title, which period shall begin to run as of the day on which the plaintiff became aware of the damage, defect and the identity of the producer.

Article 1386-18

The provisions of the present Title are without prejudice to the rights which an injured person may claim on the basis of the law governing contractual or extra-contractual liability or on the basis of a special liability scheme.

The producer remains liable for the consequences of their fault and that of those persons for whom they are responsible.