

# ARGUMENTS FOR THE RE-ESTABLISHMENT OF THE INSTITUTION OF TORT LIABILITY

-abstract for the habilitation thesis-

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Established two centuries ago and based on the idea of the fault of the liable person, the institution of tort liability has become gradually more vulnerable taking into consideration the condition of the innocent victims exposed to the danger of having to abide unfairly with the consequences of the anonymous damages. Thus, the development of human society challenged by the industrial revolution, by the technical and scientific revolution and by the information revolution helped amplify the risks and hazards more likely to affect the life and body integrity respectively their property. This imposed the increasing demands for action on the protection of citizens, the prevention of producing damages or the restore of social balance.

The analysis of this institution by its fundamentals in terms of contemporary society status has offered us the opportunity to determine the objectification tendency of such liability to match the interests of victims of the harmful events in their quest for obtaining redress and the restoration of social stability. Through the evolutionary and analytical study of the rules of positive law but also through the doctrinal interpretations research we tried to demonstrate *the need to reconstruct this major institution of our private law* in relation to economic and social realities, by resizing the objective foundation of risk, assurance or equity and the re-examination of the restorer function which has become a priority in relation to educational sanctioning function.

The fundamental idea which justifies the civil liability of the liable person respectively *the liability foundation*, is an essential reference for the researcher but also for the practitioner of law, who sets out the most important coordinates in identifying the liable person, the damage assessments and the terms of compensation to the victim.

From this perspective, *the evolution of the institution of tort liability has caused a radical change in the concept of fault, traditional foundation of tort liability*. The doctrine and jurisprudence have nuanced the psychological valences of imputability and enshrined the idea of an *objective fault*, by reference to the abnormality of the injurious behavior, transferring the analysis on an objective, causal layout. The content of fault was remodeled according to the interests of victims, which demonstrated the versatility of the legal institution of civil liability by harmonizing its rules to the requirements of social life.

According to these coordinates, we are witnessing *the re-establishment of the institution of tort liability*, based on the enshrined traditional legal values, the laborious experience of case law and the new doctrinal interpretations regarding the social-economic needs<sup>1</sup>. The defining characteristic of this laborious process is established by the *disappearance of the initial coherence within the institution of tort liability built on the sole moral foundation of fault of the liable person and the recognition of the objective foundations*.

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<sup>1</sup> C. Grare, Recherches sur la cohérence de la responsabilité délictuelle. L'influence de la responsabilité sur la réparation, Dalloz, Paris, 2005, p. 227 and ff.

But this cannot lead to the extinction of harmony within this legal institution, but requires *the establishment of a new coherence*, adapted to the new social realities.

By harnessing creatively the doctrinal and jurisprudential resolutions, *the reconstruction of tort liability will establish a new harmony and consistency* providing another orientation towards the foundations and proceeding to the resizing of its restorer function. The coordinates of this process are *the reassessment of specific legal categories* and the establishment of certain clear rules regarding the *conditions of compensation to the victim*.

In this study we intend to present the main coordinates of the re-establishment of the institution of tort liability to conclude on the significance of this process by updating the legal norm and the impact it will have on the orientation of the jurisprudential resolutions.