



# **THE RULES ON LIABILITY AND COMPENSATION**

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# Legal frame

- In 2001 the Assembly of the Republic of Macedonia adopted the Law on Obligations. It is codification of the contract and torts law.
- The Law consists of two parts: the General Part and the Special Part. The General Part contains provisions relating to the foundations of obligation relations (contracts and torts): their origin, the effect, and termination. The provisions concerning the interpretation of contracts found in this part apply regardless of the kind of contract in question.
- The Special Part is composed of various kinds of contracts.
- In 2008 with the adoption of the Novella the entire system of non contractual liability was reformed. The aim was development and clarification of the existing system , having in mind the need of the legal practice and the contemporary legal tendencies.

# Scope of the Law on Obligations

## Contractual liability

- There are several provisions that regulate liability for damage in case of existing obligation. They are found in the section CONTRACTS.
- Liability of Person at Fault for Nullity of Contract
- Liability for Nullification of a Contract
- Liability of a Person with Limited Business Capacity

## Non contractual liability

- It is consisted in the Section Civil Wrongs (torts)
- It contains:
  1. general principles
  2. Types of liability (fault liability, strict liability, liability for another, third party liability of legal persons and
  3. Special cases of liability

# Contractual liability characteristics

## The general rule

- The debtor in case of breach of contract is obligated to compensate only the **predictable damage** - the rule taken from the English and French laws (since the Law on Obligations from 1978 ) by which liability of a debtor violating the contract is limited to the damage which was his duty to foresee at the time of entering into contract as a possible consequence of such violation, while taking into consideration the facts known, or likely to be known, to him at the time.
- The predictable damage is consisted with simple damage, profit loss and fair monetary compensation for non-pecuniary damage.

## The special rule

- If he violated the contract by wilful misconduct, dolus or gross negligence – culpa lata than he is obligated to compensate the **overall damage** that includes the predictable damage and the future material damage consisted with simple damage and profit loss.



## Statute of limitation

Statute of limitations for damages caused by breach of contract is same as the statute of limitations for the breach of the same contract



## When Duty of Compensation is due

Compensation for damage shall be due from the moment of the damage taking place.

# Scope of indemnity for material damage

- The amount of damages shall be determined according to prices at the time of the rendering court's decision, unless something else be ordered by law.
- In assessing the amount of the profit lost the profit which was reasonably expected according to the regular course of events or particular circumstances, and whose realization has been prevented by an act or omission of the tortfeasor shall be taken into account.
- Where an object is lost or damaged by a criminal offence committed wilfully, the court may determine the amount of indemnity according to the value the object had for the person sustaining damage.

# Indemnity for non-material damage

## Making a Public Sentence or a Correction

- In case of violation of an individual right, the court may order that, at the expense of the tort-feasor, the sentence, namely the correction, be made public, or it may order that the tort-feasor take back the statement causing the violation, or order something else which would reach the purpose, otherwise apt to be achieved by indemnity.

## Money Indemnity

- For physical pains suffered, for mental anguish suffered due to reduction of life activities, for becoming disfigured, for offended reputation, honor, freedom or rights of personality, for death of a close person, as well as for fear suffered, the court shall, after finding that the circumstances of the case and particularly the intensity of pains and fear, and their duration, provide a corresponding ground thereof – award equitable damages, independently of redressing the property damage, even if the latter is not awarded.



# Criteria for money indemnity for non-material damage

- In deciding on the request for redressing nonmaterial loss, as well as on the amount of such damages, the court shall take into account the significance of the value violated, and the purpose to be achieved by such redress, but also that it does not favor ends otherwise incompatible with its nature and social purpose.