Hellas

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The Author

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Preface

A. Law, Courts and Legal Theory

The aim of the International Encyclopaedia of Laws is the collection and presentation of numerous national law monographs of different parts of the law. The monographs on Torts aimed, too, as I understand it, to present the main rules on torts of every country. I tried to do more than this, I think: I tried to depart from the domain of the tort law of my country and make some comparisons with the law of other countries, when I thought it would be useful, necessary and in line with the overall purpose of a publication like the International Encyclopaedia (usually, I refer to the common law, as common law is the 'other side'). Secondly, I also tried to depart from the domain of Torts in Greece, as the law is today, and point towards the direction our law is taking. This is an attempt to somehow predict the future of Torts in Greece. Thirdly, I tried to show, where applicable and necessary, the differences amongst the law, legal theory and the courts.

These are indeed three different sources. For a citizen, claiming her rights, what is important is always court decisions. It would be lamentable and totally useless to support, before an injured victim, that the law says one thing, legal theory another, both favour her interests, but the courts have a different view. Truly, a citizen is only interested in the result: even a favourable judgment, which nevertheless is not subject to execution (for example, against an insolvent party, or until extremely recently, against the Greek State) means nothing to the winner. Actually, on second thought, it does mean something: the failure of the system and the futility of a costly and long trial. This is the reason why I did not 'stay' with the law, coupled with legal theory in many cases, but I researched extensively through jurisprudence.

One might go as far as to support that the living law is, in reality, the court judgments anyway. (The power of court decisions, especially those of the supreme courts even in our civil law system, is common knowledge.) This is not necessarily a treason of the civil law system; it is not equal to supporting that common law, with its preference of court opinions as sources of the law, is a better system. The claim is only that, if one wrote a monograph on the Greek tort law and stayed with the statutes and legal theory, the picture of the tort law in Greece would simply be untrue.

One should add here yet another danger, against the picturing of the reality of the law of torts in Greece: the facts, as we see them described in the court opinions, have already passed through a long procedure of fact-finding, through the perception and recording by perhaps many different minds: this means that, all we get in

the end, is the reflection of the facts, as they might have happened, but we will never know with any claim of certainty, that they did take place, as they are described in the cases. I suppose there is nothing to overcome this particular issue of concern, but I think it can do no harm to mention it here.

Leaving the judgments, it is absolutely necessary to stress that the courts in Greece, as I believe in virtually every country, have not always reached the speculations of legal theory – sometimes to the point of not even coming close to the nature of a problem. When the courts do 'listen' to theory, this happens usually some time after the theory points in a certain direction. Sometimes issues on which legal theorists all agree are ignored by the courts for years and years. Why this happens is entirely outside the ambit of this preface, but this phenomenon, coupled by the undisputable fact that the courts habitually refer to sources of legal theory to support their judgments, means that legal theory is just invaluable, not only because it serves as a foundation for the legal solutions judicially enforced (so, affects reality decisively), but more importantly, because it creates a great hope for the future of particular legal problems, as legal theory is the source which has the most opportunities to reach the courts, to persuade judges of the truth of its assertions, and so, to realize major changes.

B. The Monograph

As for every monograph of the International Encyclopaedia of laws, the table of contents is given to the author beforehand. I tried to follow it as faithfully as possible, and I did not in fact omit anything, but rather added some parts, where I thought it was necessary. I also tried to check with the Torts monograph 'sister book', the Contracts monograph for Greece, which has been published some years ago. As Torts and Contracts form one separate branch of law in Greece, the Law of Obligations, I thought it best to adhere to the main features of the Contracts text. People who are no interested in the one, could also be interested in the other; some uniformity can do no harm. On the other hand, one will definitely see, I think, the differences between the two monographs, coming from two different authors (actually the teacher and his pupil): differences in style, language and sometimes, views. I only hope that these texts, read together, offer an analytical and clear picture of the Law of Obligations in Greece.

C. Sources

When I started writing some central topics of the monograph, as fault, I had not realized where the torts subject would take me. The truth is that tort law clearly escapes the boundaries of the chapter on torts of the Civil Code; issues on torts are found in many parts of the Code: first and foremost, in Articles 297–300CC (the general part of the law of damages), then in the law of contracts, unjust enrichment, the general principles of laws, property law, even family and inheritance law. Apart from the Civil Code and the special statutes on several distinct torts, tort law is connected with civil procedure, environmental law, unfair competition and intellectual

rights law, private maritime law and, as a latest possible evolution, constitutional law. The major concepts of tort law (wrongfulness, fault, capacity, damages etc.) definitely surpass the subject. I tried to present what 'tort law' really is today in Greece, so that the reader acquires an image as accurate and exhaustive as possible.

D. Gender Issues

The question of gender arises in much more important settings than choice of language, so as to include the female sex. I usually preferred the female, like many writers do, before a choice of he or she, etc., because I believe that it is good to remind the readers that persons may be female too. Apart from this, though, I tried to see and describe how women fare in the tort system of Greece. In order to detect this, what was important, initially, was the implications of the family law reform of 1983; additionally, one should go through the cases and see what the treatment of women is in tort cases. Unfortunately, as there are no available statistics, I could not come to any conclusion as to whether women plaintiffs, for example, unjustly receive lower damages awards or not for personal injury, or whether damages awarded for the tortious death of a woman are less than for the death of a man. I did include, though, a chapter on family law and torts, usually missing in torts books, where the status of a woman before these laws is made clearer. And wherever an informative comment on gender issues was possible, I made it.

E. Intangible Injuries and Torts

The Greek law of torts today protects tangible, economic interests better than intangible, non-economic interests. I describe in the text with detail why this statement is accurate. It is fair to mention that the law has progressed in this matter, allowing damages for moral harm in instances where they were not allowed. The courts, moreover, have begun to award higher amounts as non-pecuniary damages, reluctantly, but rather steadily. The latest statutes on personal data protection and privacy contribute to a new 'view' of how non-economic interests should be valued in money terms: an illegal processing of another's personal data means that the harmed party may claim at least 5,869 euro as damages for moral harm, which the court is obliged to award. In this case, also the independency of a claim for economic damage and a claim for non-economic damage is absolutely clear. Other relevant statutes (on data and telecommunication systems, on intellectual property infringements etc.) also reflect a novel attitude towards non-economic injuries. They clash, in fact, with the 'traditional' Civil Code system, as its rules have been interpreted until today and they represent a harmonization with European and international regulations.

The courts have not yet 'internalized' these evolutions, as they continue to apply the law, especially of personal injury, as they did some decades ago. The effect is that there are court decisions awarding, for example, 11,000 euro as damages for the wrongful death of a 17 years old minor, to the parents (Corfu DC 31/1999), whereas when a Clinic wrongfully released the address of the mother of a newly-born in the Clinic to sellers of products, the Clinic paid a 14,000 euro fine (judg-

ment by the Authority for the Protection of Personal Data n. 251/2001). These flagrant discrepancies are a sign of a system, which has not yet integrated changes coming from, usually, European Directives. Probably, it is still early for this integration. Harmony and symmetry in a legal system, though, are positive features and indicative of a certain idea of justice for all. The natural direction of the judgments is towards a more effective protection from intangible injuries.

F. Torts and Ethics

In every legal order, it is always interesting and indicative where the line between law and ethics is drawn. In jurisdictions as the US, which are multi-ethnic and extra diverse, the legislator or the judge is in a much more uncomfortable position, when necessity dictates the enactment of a substantive ethical rule. In Greece, society, at least until today, is mostly homogenous and the courts have not faced extreme difficulty in applying the solution in line with what is sometimes called 'the ideas and perceptions of an ethical person'. We see ethics entering law through clauses like Article 288CC, the principle of good faith, Article 281CC, which forbids the abuse of rights, Article 178CC and Article 179CC, which invalidate legal acts against good morals, Article 919CC, which declares an injurious and intentional act against good morals a tort, Article 197CC–Article 198CC, on precontractual liability, Article 907CC, which precludes the return of unjust enrichment, when the claimant was involved with the immoral act, statutory provisions for equitable damages and others. Besides, ethical reasoning usually hides behind the awards for moral harm; their calculation has to be expressly founded upon ethical concepts (as, for example, the different social and financial position of the parties and, of course, the degree of fault). Latest developments in tort law, essentially allowing punitive damages in certain cases may also be justified because of ethical concerns.

It follows, therefore, that the Greek civil law, and in particular, the Greek law of torts, is tightly connected with ethics, even if this relationship is not instantly apparent. Fears that a judge may 'use' her own moral ideas, against the uniformly accepted rule that she may not (but use the commonly recognized moral ideas) are mostly unfounded, because, as I already mentioned, Greece is, until today, a homogenous society, where people share, generally, their moral ideas. An attempt to enforce the custom for the Roma people, expressed in the obligation to marry a woman, with whom the defendant engaged into a sexual relationship, failed (Athens Multi-Member DC 3100/1999). As judgments coming from foreign jurisdictions are not recognized, if they clash with internal public order or morality, Greece remains 'safe' from the imposition, as laws, of foreign rules, which for us, are immoral. Even the recognition of a foreign court judgment allowing punitive damages for breach of contract, where the original jurisdiction of the court was not in dispute, was met with some difficulties and reservations (AP 17/1999).

G. Legal Translation and Globalization of Law: Ethical Dilemmas

Writing this monograph included constant translation of legal terms from Greek

into English. Legal translation is unique in the kingdom of different kinds of translations, in the sense that it involves a linguistic transfer of concepts which do not share a universal acceptance, but which were created in the minds of the lawyers of every jurisdiction. When a Greek and an English doctor speak of a 'vein', they speak of a tangible 'object', which cannot be taken for another, so translation here is easy. In law, though, the translator is almost always confronted with the choice of which jurisdiction she should approach, leaving the other further away. One feels a bit awkward, when the choice is made in favour of the language/jurisdiction which is not her own; in my case, I did feel 'guilty', when I preferred the American term used for the institution, legal concept etc. and did not opt for the exact translation of the Greek work into English. For example: the word 'συντρέχον πταίσμα' in Greek could be translated as (a) concurrent fault ('συντρέχον' is concurrent) or (b) contributory fault, as the term of art is in common law. In these cases (and some were much more difficult than the example I offer here), I chose to move towards the jurisdiction of the target language, and therefore 'abandon' my own, believing that the overall purposes of legal translation, that is, the rational transmission of legal information (the English speaking lawyers-readers of the monograph should be facilitated as much as possible in their understanding of the legal text) justified this choice. Besides, the advancement of a globalization of legal concepts, a parallel procedure to the process of the globalization of law, supported this movement towards the target language too.

I believe one understands immediately that behind these choices, a positive view of the globalization of law is hiding. Nowhere have I seen the allegation 'legal translation is always applied comparative law' as true as in this case. Perhaps the majority of people would also support globalization, generally, or/and globalization of law. People in Greece are content, I believe, that the European Union is a common and powerful source of several common legal rules for all European Union countries. Still, is a writer allowed to 'impose' upon every reader her agreement with globalization, by the very act of choosing the words, which further this aim? Is one allowed to advance specific policies through writing, perhaps even attacking a totally innocent, and totally unaware of what is exactly going on, reader? Who should judge whether the word chosen by the lawyers of one jurisdiction to express a legal concept is the 'correct' one, and the word chosen by the lawyers of another one, to express the same legal concept is 'wrong' or 'worse', when they differ, as in the example I offered above? What if a European civil law writer leaves the domain of Europe, where legal uniformity at least enjoys a wide consensus, and approaches in her translation of texts on domestic law, the common law world? And where are the boundaries of these 'dangers', since a whole class of perfectly interested parties, as for example, Greek lawyers who do not speak this target language or simply, lawyers who will never read the monograph anyway, but who do oppose language options such as these above, or globalization in its entirety, for absolutely decent and deserving reasons? This monograph is not even an entirely 'personal' affair; it is not a 'personal' book; it is supposed to present the Greek law of torts before an international audience; the answer 'if you disagree, do not buy it and do not read it' is not as available as in other kinds of books. After all, one is not allowed to write the history of her country as she sees true; the same is valid in law. The author's responsibilities here are much heavier than in other cases.

Although I did read in detail Kluwer's 'Instructions for Authors', of course, there was nothing in the booklet to help me out with these questions. Publishers do not tell authors the words they are supposed to use; apart from the given table of contents, which contains a few given legal terms (needless to say, one could disagree even with these!), the authors are free to wrestle with themselves.

I am completely aware of all these ethical reservations. I did as best as I could, and as I believed that I should do; at least, I do present the whole question in the preface, so that the readers are aware of the 'why' and 'how' of the legal translation herein. And I do have to note here that, had I not been a teaching member of the Ionian University (Department of Foreign Languages, Translation and Interpretation) and also, had I not been a faculty fellow researcher at the Center for Ethics and the Professions at Harvard, I would not even have been able to detect the ethical problems I had to confront in practice, writing this book (and hopefully, others too). For this, I am grateful to all the people who honoured me by embracing me in both the above Institutions.

I owe many thanks to my family, firstly and more than anyone else, who supported me through the entire long period of writing this monograph. This book is dedicated to my husband Anthony and my children Andreas and Marianne. My appointment as faculty fellow at the University of Harvard 2000–2001 and the resulting invaluable experience I gained during my stay in the US greatly enlightened my views of several torts issues. Many thanks are, again, owed to the Center for Ethics and the Professions of Harvard, where I was offered excellent working conditions and a friendly environment dedicated to serious research. I will be eternally grateful to Prof. Ioannis Mazis, Head of DFLTI, who granted me leave to accept my appointment at Harvard. I have to thank people who helped me out in difficult times: Prof. Michael Stathopoulos, ex-Minister of Justice, for his invaluable help, Athina Kontogianni, lawyer, PhD (cand.), Athens, for her continuous support (both material and moral) and my students of the Ionian University, Corfu, Greece, who through their clever questions and comments gave me the opportunity to see things differently, through their clear minds, 'uncorrupted' by any formal legal training.

List of Abbreviations

AED	Highest Special Court – Ανώτατο Ειδικό Δικαστήριο
AP	Supreme Court (Areios Pagos) – Αρειος Πάγος
ArchN	Jurisprudence Archives – Αρχείο Νομολογίας (law review)
AthLR	Athens Law Review – Νομική Επιθεώρηση Αθηνών
C	Constitution – Σύνταγμα
CA	Court of Appeals
CC	Civil Code – Αστικός Κώδικας
CCivPr	Code of Civil Procedure – Κώδικας Πολιτικής Δικονομίας
CCrPr	Code of Criminal Procedure – Κώδικας Ποινικής Δικονομίας
CommLRev	Commercial Law Review – Επιθεώρηση Εμπορικού Δικαίου
CompLRev	Comparative Law Review – Επιθεώρηση Συγκριτικού Δικαίου
CoS	Council of State Supreme Administrative Court
CrC	Criminal Code – Ποινικός Κώδικας
CPrMarL	Code of Private Maritime Law – Κώδικας Ιδιωτικού Ναυτικού Δικαίου
CRT	Code of Road Traffic – Κώδικας Οδικής Κυκλοφορίας
D	Dike – Δίκη (law review)
DC	District Court
DEE	Bulletin of Corporations and Partnerships Law – Δίκαιο Επιχειρήσεων και Εταιρειών (business law review)
D/ni	Dikaiosyni Justice – Δικαιοσύνη (law review)
EEN	Efimeris Ellinon Nomikon – Εφημερίς Ελλήνων Νομικών (law journal)
EnvLRev	Environmental Law Review
ErmAK	Commentary of the Civil Code, article-by-article, editors: Stathopoulos M. & Georgiadis A.
FEK	Government Gazette Page, where all the statutes are printed – ΦΕΚ
Harm	Armenopoulos – Αρμενόπουλος (law journal)
HellD/ni	Helliniki Dikaiosyni – Ελληνική Δικαιοσύνη – Greek Justice (law journal)
IntrLCC	Introductory Law of the Civil Code – ΕισΝΑΚ
IonLRev	Ionian Law Review – Ιόνιος Επιθεώρηση του Δικαίου
KNB	Κώδικας Νομικού Βήματος (monthly statutes report)

List of Abbreviations

KrE	Journal of Legal Theory and Practice – Κριτική Επιθεώρηση Νομικής Θεωρίας και Πράξης (law journal)
L.	Law, act
LabLRev	Labor Law Review – Επιθεώρηση Εργατικού δικαίου
LD	Legislative decree – νομοθετικό διάταγμα
NDik	New Law – Νέον Δίκαιον (law journal – now discontinued)
NoB	Nomiko Bima – Νομικό Βήμα (law review)
Nomos	lawdb.intrasoftnet.com – legal database
PD	Presidential decree – προεδρικό διάταγμα
PoinChron	Penal Chronicles – Ποινικά Χρονικά (criminal law journal)
PoinD	Poiniki Dikaiosini Criminal Justice – Ποινική Δικαιοσύνη (law review)
RD	Royal decree – βασιλικό διάταγμα
Th	Themis – Θέμις (law review)
TranLRev	Transport Law Review – Επιθεώρηση Συγκοινωνιακού Δικαίου

General Introduction

§1. The General Background of the Country

I. Geography – Economy – People

1. Greece lies at the Southeastern tip of Europe occupying a total area of 131,900 sq. km. The country shares borders to the north with Albania, ex-Yugoslavia, Bulgaria and to the east with Turkey, a total length of 1,228km. Approximately 9,000 islands account for 19 per cent of Greece's area. 114 of these islands are inhabited. Some 80 per cent of Greece is mountainous with ranges extending into the sea as peninsulas or chains of islands. Mount Pindos traverses the Greek mainland from N.W. to S.E. dividing it in two. 23 per cent of the land is arable, 40 per cent is meadows and pastures, 20 per cent is forests and woodlands. According to a Greek myth, when God created the world he distributed all the available soil through a sieve and when he had provided every country with enough of it, God tossed the remaining stones from the sieve over his shoulder – and there was Greece.

2. Greece is divided into ten regions of which the largest is Macedonia in the north with an area of 34,177sq. km and a population of 2,263,099. The highest Greek mountain is Mount Olympus (2,917m), believed to be the seat of the 12 Gods of ancient Greek mythology. The largest river is the Aliakmon (297km). The largest city and capital is Athens with a population of over three million. The city took its name from the goddess Athens, goddess of wisdom and knowledge. Piraus is the main port. The second largest city, Thessalonica, capital of Macedonia, with a population of nearly one million is an important seaport functioning as the gateway to the Balkans and a major economic and cultural center for the whole of northern Greece. The city of Patras, the third largest city in Greece, is a major port that links Peloponnese with Italy.

3. Greece's climate is temperate and Mediterranean. Winters are mild with limited rainfall though snow and low temperatures are common in the north. Spring is short, summer is hot and autumn long and warm. Greece is full of spearheaded cypresses, chestnuts, pines, fir and olive trees. In Greece live at least 358 species of birds and 246 species of marine life have been identified in the Greek seas.

Under the 1991 census, Greece had a population of 10,244,598. More than four million Greeks are estimated to live abroad, including over 2,000,000 in America. The Greeks of the diaspora though live from all over Europe to Australia and Africa.[1] In Greece, the male population is 49.2 per cent and the female 50.8 per cent. The population is 57.7 per cent urban and 42.3 per cent rural. More than half of the population lives in Athens and Thessalonica. This is the result of a trend towards urbanization in the second half of the twentieth century, although the rate of increase was slowed in the 1980s by decentralization policies. The population's density is 77.8 inhabitants per sq. km. Males' life expectancy in Greece is 72.2 years in 1985 and females' 76.4.

1. Art. 108 of the Greek Constitution refers to the Greeks of the diaspora: 'The State shall take care of the Greek people who reside abroad and with the maintenance of their ties with their homeland'. It is estimated that more than 2,000,000 Greeks live in the US, around 350,000 in Canada, 300,000 in Germany, 300,000 in Albania, 300,000 in the former Soviet Union, 600,000 in Australia etc.

4. Of all citizens of the Hellenic Republic 97.6 per cent are Greek Orthodox, 1.3 per cent Muslim, 0.4 per cent Roman Catholic and 0.1 per cent Protestant, 0.6 per cent other including Jews. The Greek Orthodox Church is autocephalous, with its own Charter but insolubly united in doctrine with the Great Church of Constantinople, the Ecumenical Patriarchate. On the peninsula of Chalkidiki, in southeastern Macedonia, is the famous Mount Athos, where a number of monasteries form an autonomous monastic community.

The Greek language with a documented record spanning three and a half millennia is a strong element of national community. Modern Greek derives from the same idiom used by Homer. Greek is also the language of the Gospels. The Greek alphabet and the Greek language have contributed much to all western languages.

5. Greek registered and Greek owned ships constitute the largest merchant fleet in the world. Greece has traditionally run a large deficit on merchandise trade. European Community countries absorb nearly 64 per cent of all Greek exports while Greek imports from the European Community represent 64 per cent of all total imports. The leading trade partner is Italy, followed by Germany and France. Greece relies heavily on agriculture, textiles and fresh produce for its exports, but as the trade with EU countries grows, the proportion of its exports of manufactured goods has increased.

6. Greece joined the European Community in 1981. The country's commitment to the Union enjoys overwhelming political support. The national currency was the drachma until Greece adopted the euro, as a member of the European Monetary System (1 January 2002). GDP growth in Greece was around 3.5 per cent in 1999, one of the highest rates of growth in the European Union. Greece is a member of the United Nations, the International Monetary Fund, NATO, the Western European Union, the OECD, the Black Sea Economic Cooperation Group and the Council of Europe.

7. Greece spends 4.5 per cent of its GDP on education, which is compulsory for

nine years and free of charge at all levels in any state institution. Private parties are not constitutionally allowed to institute universities. Two main insurance organizations know by their Greek acronyms as IKA (for labourers) and OGA (for farmers) cover more than 80 per cent of the working population. Every insured Greek has free access to all state hospitals and clinics.

The national flag consists of four white and five blue alternating horizontal stripes with a white cross on the upper inner corner. Blue and white are the national colours of Greece.

II. History

8. The history of Greece can be traced back to Stone Age hunters, around 700,000 years ago. Later came early farms and the civilizations of the Minoan and Mycenaean kings. This was followed by a period of wars and invasions, known as the Dark Ages. In about 1100BC, a people called the Dorians (Δωριείς) invaded from the north and spread down the west coast, conquered the island of Crete and the south west coast of Asia Minor. In the period from 500–336 BC, Greece was divided into small city-states, each of which consisted of a city and its surrounding countryside. The city-states were built with a fortified acropolis ('high city') at the highest point, which contained the cities' temples and treasury and served as a refuge during invasions. Outside the acropolis was the agora (the market) and beyond it, the residential area.

The people of the mainland, called Hellenes, organized great naval and military expeditions and explored the Mediterranean and the Black Sea, going as far as the Atlantic Ocean and the Caucasus Mountains. One of those expeditions, the siege of Troy, is narrated in the first great European literary work, Homer's Iliad. Numerous Greek settlements were founded throughout the Mediterranean, Asia Minor and the coast of North Africa as a result of travels in search of new markets.

9. During the Classical Period (5th century BC), Greece was composed of city-states, the largest being Athens, followed by Sparta and Thebes. Athens was a democratic city-state, where all citizens were allowed to elect magistrates and vote on legislation in the general assembly, the ecclesia. Sparta, in Peloponnese, was a very different city-state, not really a city but a group of free villages, one of the few states that remained a monarchy, ruled by two kings. Athens was powerful due to trade and Sparta due to its military machine; these were the most important city-states.

A fierce spirit of independence and love of freedom enabled the Greeks to defeat the Persians in battles famous in the history of civilization – Marathon, Thermopylae, Salamis and Platea. In this period, Athens reached its highest political and cultural heights; the full development of the democratic system of government under the Athenian statesman Pericles, the building of the Parthenon on the Acropolis and the creation of the tragedies by Sophocles, Aeschylus and Euripides and the founding of the philosophical schools of Socrates and Plato. Athens experienced a golden age with unprecedented cultural, artistic and scientific achievements; still, soon Athens engaged in wars with Sparta, the first and second Peloponnesian wars.

Athens lost. The wars had exhausted the city-states, so they were ready for another leader: Macedonia. Macedonia gained control of the city-states, but its king, Alexander was not satisfied by this conquest.

10. In the second half of the 4th century BC (the Hellenistic period), the Greeks, led by Alexander the Great, conquered most of the then known world and sought to hellenize it. Alexander reached as far as Syria, Palestine, Egypt, Uzbekistan, Bactria, Mesopotamia where he settled in Babylon. But at the young age of 33, Alexander fell ill and died and his empire fell apart and Macedonia even lost control of the city-states in Greece.

In 146 BC Greece fell to the Romans. For the next 300 years Greece, as the Roman province of Achaea, experienced an unprecedented period of peace. The Romans always venerated Greek art, literature and philosophy and aristocratic Romans sent their children to Athenian schools. This period of peace was the 'pax Romana'.

In 324 BC Emperor Constantine moved the Capital of the Roman Empire to Constantinople, founding the Eastern Roman Empire, which was renamed the Byzantine Empire or Byzantium in short by western historians in the 19th century. The Saint Sophia, church of the divine wisdom, was built in Constantinople and many more churches were also built in Greece. Byzantium transformed the linguistic heritage of Ancient Greece into a vehicle for the new Christian civilization. While Rome went into terminal decline, the eastern capital grew in wealth and strength, long outliving its western counterpart.

11. The Byzantine Empire fell to the Turks in 1453 under Mohammed II the Conqueror. Once more, Greece became a battleground, this time fought over by the Turks and the Venetians. Only the Ionian Islands escaped the Turks. The Greeks remained under the Ottoman rule for nearly 400 years. During this time, their language, their religion and their sense of identity remained strong. The Turks, though, imposed high taxation; also, one of their most callous practices was to take one of every five male children of each Greek family to become a janissary, personal bodyguard of the sultans. Greek girls were also taken as women in the sultans' harems. Atrocities also took place; in 1570, the Turks massacred 30,000 inhabitants of Nicosia in Cyprus.

On 25 March 1821, the Greeks revolted against the Turks and by 1828 they had won their independence. The fighting broke out in Peloponnese and escalated throughout the mainland and the islands. At first the western powers were reluctant to intervene, but help did come from the philhellenes, aristocratic young men who were willing to fight to liberate the descendants of a glorious civilization. At last, the western powers also intervened and the Russian, French and British fleets destroyed the Turkish-Egyptian fleet at Navarino in 1827. Russia also sent troops and fought the Turks. In 1829, the sultan accepted the Greek Independence by the Treaty of Constantinople.

12. As the new state comprised only a tiny fraction of the country, the struggle for the liberation of all the lands inhabited by Greeks continued. In 1864, the Ionian islands were added to Greece; in 1881 parts of Epirus and Thessaly. Crete, the

islands of the Eastern Aegean and Macedonia were added in 1913 and Western Thrace in 1919. After World War II, the Dodecanese islands were also returned to Greece.

The first governor of Greece was the Corfiot Ioannis Kapodistrias. Kapodistrias immediately suspended the Constitution of 1827 and the Parliament resigned. The competence of the 27-member Senate, formed in 1829, was only advisory. All powers were in fact vested in the governor. This authoritarian regime provoked people who fought to drive the Turkish rule away and Kapodistrias was assassinated in 1831. Kapodistrias had though already set the foundations of a modern Greek state.

In the ensuing anarchy, Britain, France and Russia intervened and soon Greece had a king, king Otho, a 17 years old prince from Bavaria. Greece saw a period of absolute monarchy (1833–1843), then a period of constitutional monarchy (1843–1862), then a period of parliamentary monarchy, until 1924. Another foreign king, King George I, former prince Christian Wilhelm of Denmark, ruled Greece for 50 years. The Greek Assembly accepted King George as King of the Greeks, and not as King of Greece, showing that it was the people who opted for his kingdom.[1] Greece had by then a new Constitution, in 1864, which established the power of democratically elected representatives.

During the first world war, Greece sided with the Allied troops. After the 1922 Turkish massacre of more than a million Greeks in Smyrna of Asia Minor in a day, known as the 'Asian Minor catastrophe', the Treaty of Lausanne in 1923 called for a population exchange of the surviving Greeks who returned to Greece as refugees. This was followed by a period of a political instability, King George was forced to leave Greece in 1923, the second Republic followed (1924–1935). The Constitution of 1927 established, once again, the republican democracy. But in 1933, after an unsuccessful coup d'etat by Plastiras, the country entered yet another political and constitutional crises. In 1935, another coup d'Etat by Papagos restored the Crown and revived the Constitution formed in 1911. King George returned to Greece. In 1936, the general Metaxas declared a dictatorship in cooperation with King George. All constitutional provisions were suspended and the Assembly was dissolved.

1. *See* Spyropoulos P., Constitutional Law in Hellas, 1995, p. 22.

13. During World War Two, Greece did not allow Mussolini's troops to enter the land, fought ferociously but the Italians and the Germans occupied Greece in a month and remained for four years. During the occupation, the Greek government had fled to Cairo and fought the war from Egypt. After the Germans were pushed out in 1944, a catastrophic civil war followed. This war ended in 1948. King George II who was forced to leave Greece, returned in 1946 after a referendum and was succeeded by his brother, King Paul. The Constitution of 1952 established a parliamentary democracy, based on the separation of powers but did not safeguard individual and social rights. Due to conflict with the King, the Prime Minister Georges Papandreou resigned in 1965.

In 1967, a new dictatorship was declared by George Papadopoulos, which ended in 1974. This regime fell after it had lead to the Turkish invasion of Cyprus. Constantine Karamanlis was then called from Paris to become the first Prime

Minister after the military regime and to restore democracy. A new Constitution was brought into force in 1975. The Monarchy was abolished. Greece signed the Treaty of Accession to the European Communities in 1979. The Greek Parliament ratified the Treaty, though not unanimously (by a majority of 193 from 200 votes).

III. Political System

14. Greece is a constitutional republic and multi-party parliamentary democracy. The Greek Constitution was voted in 1975, right after the military junta ended and was amended in 1986 and again in 2000. The guiding principles of the Greek Constitution are:

– the principle of the presidential parliamentary democracy[1]
– the principle of the separation of powers[2]
– the principle of the rule of law[3]

1. Art. 1 of the Constitution reads: The form of government of Greece is the parliamentary democracy. Sovereignty of the people is the foundation of the government. All powers stem from the people, exist for the people and the nation; they are exercised as specified by the Constitution.
2. Art. 26 of the Constitution reads: Legislative power is exercised by the Parliament and the President of the Republic. Executive power is exercised by the President of the Republic and the Cabinet. Judicial power is exercised by the courts, the decisions of which are executed in the name of the Greek people. As in every system of law, the separation of powers is relative, not absolute; there is in fact interdependency between the legislative and the executive power.
3. There is no particular article safeguarding the rule of law. Rather, a combination of several articles in the Constitution results in its force in the Greek state. All state power is limited and controlled by legal rules. An exhaustive list of human rights is constitutionally protected (Arts. 1–25 C) and the judiciary has the power and duty to review all administrative actions (Arts. 94–94C) and all statutes and laws (Art. 93). Every citizen has access to the courts (Art. 20).

A President heads the Republic. The President of the Republic used to have extensive powers under the Constitution (Σύνταγμα) of 1975,[1] but after the amendment of 1985, these powers were lessened. The President is elected to serve a five-year term by two-thirds majority of all members of Parliament. If no candidate secures this majority, a general election must be held after which a simple majority will elect the President. The President has no powers to initiate legislation and is required to appoint as Prime Minister the leader of the political party with an absolute majority of seats in Parliament. Emergency powers formerly held by the President (including the ability to dissolve Parliament if the President felt it was in obvious discord with public sentiment) were removed by constitutional amendment in 1985. The current President Constantine Stephanopoulos was elected twice, lastly in 2000. Parliament consists of 300 members elected by universal national elections every four years under a system of reinforced proportional representation, which favours major parties. Recent electoral amendments require a party to capture 3 per cent of the national vote to secure seats in the Parliament. This had the effect of making it more difficult for parties campaigning on regional issues and for independent candidates to attract enough support to be represented for a maximum of four years.

1. For example, the President of the Republic could dismiss the Cabinet even if the Cabinet enjoyed the confidence of the Parliament and could dissolve the Parliament, initiate referenda and declare a state of emergency, curtailing constitutionally guaranteed fundamental rights.

15. Legislative powers are exercised by the Parliament (Βουλή) and executive powers are vested in the Government and the President of the Republic. The Prime Minister, now Mr. Spiros Simitis, has extensive powers. The Prime Minister is responsible for the implementation of the government policy. The Prime Minister freely appoints the Ministers or Vice-ministers, decides upon their competences, arbitrates between them and releases them from their duties at will anytime. The Government is subject to parliamentary control.

The Government has to enjoy the confidence of the Parliament. Under Article 84, the Government has to request a vote of confidence within fifteen days after the Prime Minister has taken the oath. The Parliament may also, at any time, withdraw its confidence in the Government. This article in fact contains the heart of the Greek parliamentarism. The opposition has proposed several times the withdrawal of the confidence in the Government due to various reasons.

A. Decentralization of Government

16. The Constitution (Art. 101) dictates the decentralization of government. Therefore, Greek land is divided in several districts ('περιφέρειες'), regions ('νομαρχίες') and cities ('δήμοι'). Every one is governed by the governor ('περιφειάρχης'), the nomarch ('νομάρχης') and the mayor ('δήμαρχος'). Because the governors have acquired great competences, perhaps in the future the institution of the regions will be abolished, leaving the decentralized government to the governors and the cities. A previous statutory division of the land in much smaller communities and cities (κοινότητες/δήμοι), each having its own head (πρόεδρος κοινότητας/δήμαχος) was abolished by a specific statute, implementing the 'Kapodistrias' plan (named after the first governor in Greece after the Turkish occupation) was received quite negatively by a major part of Greece, but stood nevertheless. The situation, though, with the new cities has not cleared yet and it remains to be seen whether the new system will achieve decentralization of government as effectively as it aims. Simultaneously, we currently see the creation of a series of public agencies, entirely independent of the government with extensive powers. Included in these public agencies are the Citizen's Advocate and the Greek Data Protection Authority.

B. Political Parties

17. PASOK is the descendant of the Panhellenic Resistance Movement (PAK). It was founded as a political party in 1974 by the late Andreas Papandreou, who remained its leader until his death in June 1996. Although PASOK initially opposed Greece's accession to the European Union and espoused some hard-line left-wing positions (such as the closure of all US military bases in Greece), it gradually

acquired the characteristics of a center-left party. PASOK governed Greece throughout the 1980s, lost power in 1990 but regained government in 1993 until today. During Mr. Simitis' leadership, PASOK moved closer to the political center. The party enjoys a comfortable majority in the Parliament despite polling a bare 1 per cent ahead of New Democracy at the April 2000 elections.

The conservative New Democracy party (ND) was founded by Constantine Karamanlis in 1974 and held office from 1974 until 1981 and again from 1990 until 1993. The party advocates a free market economy and privatization of industry. Today the leader is Costas Karamanlis, the nephew of the founder, secure as opposition leader after steering ND to within 1 per cent of government at the 2000 elections.

Other parties include the Communist Party of Greece (KKE), the third largest party with around 5 per cent of the votes and the Coalition of Left and Progressive Forces (Συνασπισμός της Αριστεράς και της Προόδου), another left party, which barely achieved a 3.2 per cent in the last elections, the Democratic Social movement (4 per cent), the Political Spring, the Liberals (these last two parties did not make it in the Parliament during the last elections) etc.

C. Judiciary

18. Faithfull to the principle of the separation of powers, the judiciary is independent. Judges serve their tenures for life. They may be discharged from their duties only if they have been convicted for an important crime, or for other serious reasons (illness, serious breach of discipline, professional incompetence). To protect the public sentiment from suspicions against the judiciary, the judges are required to serve their terms in various parts of the Greek territory, usually for two or three years every time, at least at the beginning of their careers. Changes in professional status (for example, a promotion) may only be achieved through the Highest Judicial Council ('Ανώτατο Δικαστικό Συμβούλιο'). These last years, the state imposed the law school graduates who desire to become judges the obligation to succeed in exams and follow a two year course in the Judge's School. This requirement, in combination with the hard life of a judge, especially in the beginning of their career, has decreased the number of lawyers who compete for a position as a judge.

IV. History of the Greek Civil Law – The Law of Torts

19. Greek law and legal thought have a history of more than 3,000 years. Ancient Greek law started as a tribal and primitive law, confused with religious powers. By the middle of the sixteenth century BC, the city-states had already written statutes and even codes, drafted by lawgivers like Solon of Athens. By the 5th century BC, the law was in a way freed of its religious influences and institutions of private law began to flourish, as the law of natural persons and, among others, the law of torts.

Torts were one of the first matters of concern for the archaic Greek jurists and

one of the first interpersonal relationships to be regulated.[1] The meaning of the verb 'αδικείν', from which the Greek word for a tort derives, 'αδικοπραξία', was, firstly, the breach, the disruption of cosmic order in general, and of the legal order in particular. This couples with the meaning of wrongfulness, as the meaning of engaging in an illegal action ('παρανομείν') was limited to actions breaking a certain statute. But 'αδικείν' came to symbol the breach of both statutory and customary rules, also of both private and public law, of a contractual obligation and of the duty not to harm another. So, in the complaint, the classic starting phrase 'αδικούμαι υπό τινός', 'I am wronged by someone', could be followed by the description of very different wrongs, as factual grounds for this complaint: the husband's breach of the customary obligation to offer his wife clothes and food, unfair competition actions, the demand of an overpayment for services rendered,[2] also, notably, the breach of a contractual obligation. Liability from a contract and liability from a tort, in short, were not separated.

1. Compare to the common law, where '...tort is a fairly old branch of law; its common law rules go back to the middle ages...the law of torts did not loom large in the common law before the nineteenth century. Not a single treatise on the subject was published in English before the middle of this century...', Friedman L., Total Justice, 1994, 53.
2. Data for this part come from Grounds of Responsibility, Generation and Disputation of Obligational Engagement, (in Greek), Velissaropoulou-Karakosta I., 1993.

20. Simultaneously, ancient Greek law resembles to the common law of torts in the clear division between intentional and negligent torts, a division entirely non-existent in the Modern Greek law of torts. A tortfeasor who intentionally harmed another's rights or interests, is obliged to pay double the loss: one part to the victim of the injury, and one part into the public funds. An intentional tort was therefore considered as a tort not only against the person of the victim, but also against the common good; without rectification of this second injury, there can be no restitution to the *status quo*, the cosmic order as it was before the breach. Specific causes of action were also available for non-economic losses (i.e. 'δίκην αικίας' for violence against the person, 'γραφή ύβρεως' for harm to reputation).

21. Roman law, in contrast with Ancient Greek law, conserved the casuistic character of the archaic and preclassical law. The 'Twelve Tables' ('Δωδεκάδελτος') and the *Lex Aquilla* were the main sources of the law of torts; torts like *furtum* (theft) had a strong penal character. The first and third chapter of *Lex Aquilla* became later a part of the codification of Justinian, the *Corpus Iuris Civilis*. Tribonian executed the *Corpus* under the direction of Justinian. This was a major codification of Roman law, an attempt to reduce it to order and systematize it after a thousand years of development. *Corpus Iuris Civilis* became the ultimate model and inspiration for the legal system of virtually every continental European nation;[1] Byzantine-roman law was applied in Greece for centuries. Another extremely influentional 'codification' was the *Exabiblos* ('Εξάβιβλος') by Constantine Armenopoulos, compiled in 1345; this was a six-part systematic collection of the whole of civil (substantive and material) and criminal law. The *Exabiblos* had an impressive effect for centuries after it was written: it was the law in modern Greece until 23 February 1946, the date of the implementation of the Greek Civil Code.

King Otho in 1835, following an earlier statement by the Greeks to apply the civil law of the Christian Emperors of Byzance until a new Code would have been compiled, edited a decree providing that these civil laws by the Byzantine emperors, which were codified in the *Exabiblos* of Armenopoulos, should apply as the law of the Greek land, again until the promulgation of the (new) Civil Code. The *Exabiblos* was chosen because it was a comprehensible text; it certainly was not the exclusive source of the civil law, as all the laws by the Christian Byzantine emperors were deemed applicable and valid. The truth was, however that it was impossible for the jurists to search through all these legal sources, even the Latin ones, so the Greek jurists accepted tacitly the teachings of the German Pandektists (Windscheid, Regelsberger and Dernburg) which were translated in Greek and became as influential as the law. So, this German influence became more important than the influence of the French Napoleonic Code in Greece, even if this French Code served in many respects as a model for the drafters of the Greek Civil Code.

1. *See* Jolowicz H. F., Historical Foundation to the Study of Roman Law (2nd ed. 1952) and Roman Foundations of Modern Law (1957), also Von Mehren, The Civil Law System (1957).

22. In the meantime, that is until the final Civil Code would be ready for implementation, it was impossible for the state to function with the old laws of the Byzantine emperors. The authorities started issuing a number of statutes on specific matters (the registration of titles to land; the treatment of minors; the liability from automobile accidents; on associations; on divorce; on intestate succession). These statutes became in their turn a source for the Civil Code. In parallel, some local Codes were applied: notably the Ionian Civil Code, for the Ionian Islands and the Samiac Code.

The long awaited Civil Code, entered into force in 1946, after a series of different regimes, governments, the German occupation, the Greek civil war etc. This Code though, did not radically alter the law as it was applied until then and as the German Pandektists interpreted it; still, the Code was not a pure codification of roman law, or a copy of the German or the French or other Code. The Greek Civil Code had as a model the German Code, but there are Sections coming from the French Code, or the Swiss Code; also, it incorporated the Greek statutes mentioned above. It also contained a series of novelties: the principle of good faith in transactions (Art. 288CC), the principle against the abuse of rights (Art. 281CC), the protection of personality as a distinct interest (Art. 57CC) and strict liability in certain cases. The main themes under the lines of the Code's articles are self-determination, freedom of transactions, the protection of private property, the equality of the parties but also, the protection of the weakest party.

23. The law of torts in the Civil Code (the Code remains the main source of tort law, despite the several statutes on specific torts etc.) is a part of the law of obligations. Two thousand years after the Roman Gaius, in his Institutes, described the *obligatio ex delictu* and the *obligatio ex contractu*, this distinction is still a fundamental feature of the Greek law of torts – a betrayal, truly, of the ancient Greek laws, that made no such distinction, but regarded every cause of action as a disruption of the cosmic and legal order demanding rectification. The ongoing debate

about the abolishment of the various grounds of civil liability (contract; tort; unjust enrichment; other causative event) and their unification did not affect the Greek legal thought in any major way.

V. Values

24. Greece is a free market economy, although the public sector is truly large in comparison to other European countries. The right to private property is constitutionally guaranteed (Art. 17C). The whole legal system is built on the principles of private property, freedom of contract, inheritance freedom, informality of legal acts, autonomy and self-determination. The abstract nature of the Civil Code rules and the general clauses of civil law permit a flexible legal system, where the judge is able to interpret the law in accordance with the people's morals and the social-economic social situation.

Abortions were regularly performed in the hospitals and clinics, even before the Criminal Code was amended and liberalized the conditions of legal terminations. Today, abortion until the end of the third month of pregnancy is essentially free; during the second semester, termination may be performed for reasons of fetus' malformations and illness, or to protect the life or health of the mother. It is only after the fourth month of pregnancy that termination is prescribed by the Criminal Code. Passive euthanasia is a common procedure in the hospitals, but as yet, no case of active euthanasia has reached the courts. Old cases on whether a father who is a Jehovah's witness may legally stop the physicians from transfusing blood into his child in order to save its life were resolved in favour of the child's life.

Although Greeks are in their absolute majority Greek orthodoxes, they are not generally religious practitioners and they visit the Church only two or three times a year (Easter Saturday, Christmas etc.). The new statute by the Greek government abolishing the registration of the religion for the Greek identity cards was met with great resistance by the Greek Church, which did not hesitate to call for a great demonstration in Athens, where four million people from all over Greece declared their opposition to the statute. The Church also managed to secure the signature of three million people against the law. However, constitutional order dictated that the government have the power to enact laws such as the statute banning the registration of the religion on the identity cards. The church's refuge to the President of the Republic in the autumn of 2001 was to no avail, as he sustained the constitutional order and declined to propose a referendum on the matter. People generally did not seem to care much about what is written on their identity cards. Had it not been for the major opposition by the head of the Church, chances are that the statute would have been met with indifference by most of the Greeks. The same indifference for matters of pure form, as also the true sentiment of a truly religious people, surfaced after these events in 2001. The Greek Church is autonomous, in the sense that it has own property and administration.

Greece – a litigious society? Judging from the number of cases in the courts' dockets, Greece is a country where too many disputes end up before a judge. As yet, there is no legislative institution of alternative dispute resolution, although some cases are resolved by arbitration (usually, important commercial cases). The

time necessary for the ultimate resolution of a case may even reach a decade. For these reasons, the new statute by the Ministry of Justice, voted by the Greek Parliament in 2001 (L. 2915/2001), abolished certain procedures (most importantly, the interlocutory decree, which allocated the matters to be proven and the relative burdens of proof between the litigants, for cases pending before the Multi-Member District Courts). It is expected that the result of this statute will be an important abbreviation of the final resolution of a very large number of cases. The fact remains that the relatively low cost of the filing of an application for review by the Supreme Court and the Council of State, coupled with the flexibility of the legal grounds conditions for review form a major pro-litigation factor. At the moment, though, these problems in the administration of justice are being addressed and we expect a number of measures against them.

§2. Primacy of Legislation and Codification

25. Greece is a civil law country. Article 1 of the Greek Civil Code provides that the sources of law are legislation (the statutes) and customs. We do not find any rule of priority in the text of the article, between legislation and customs; however, there is no doubt that the most important source by far is legislation. The fundamental and most powerful source of the law is the Greek Constitution, voted in 1975 and amended in 1985/1986 and again in 2001.

The State has the exclusive power to create laws, because the use of customs as a source of law is severely limited. The Greek Parliament also has the exclusive power to vote statutes. Due to the immense needs for regulation of specific matters, which the Parliament cannot meet, the Parliament may vote for a framework-law ('νόμος–πλαίσιο', in French 'loi-cadre'), thereby instituting the general guidelines for a legislation to follow, by lower competent authorities.

Statutory law and customs are not the two exclusive sources of law; the generally recognized rules of international law are, according to the Constitution (Art. 28 Sec. 1) a source of Greek law, moreover a source that 'predominates over every contrary provision of law'. Also, international treaties, from the moment that they are ratified by statute, also become a part of internal law. The rules of these treaties, after their ratification, also predominate over every contrary rule of (internal) law. Therefore, international law plays a very important part as a source of law. Greece is a country that deeply respects international law; only international law rules that contravene the Greek Constitution cannot prevail over it as rules of law.

26. Therefore, the order of the sources of law according to their power is as follows:

a. constitutional provisions
b. generally recognized rules of international law and the rules of international treaties ratified by statute
c. statutes voted by the Parliament and customs
d. presidential decrees (by the President of the Republic) which contain rules of material law
e. rules of law enacted by other organs or bodies, by special authorization of the Parliament (usually these rules are enacted by organs of the executive power, as the Ministers, administrative agencies etc.)

A distinct source of law in Greece is European community law. This is not only true for the initial conventions, founding the European community but also for the secondary European community law, that is the regulations, directives etc. issued by the European community. The European regulations do not need any ratification by the Greek Parliament, but are valid in Greece from the moment they are enacted; the directives, however, need to be transformed as internal statutes through a certain instrument (statute voted by Parliament, ministerial decree etc.) and their validity when compared to other internal laws will depend on the relative validity of this instrument.

The question of whether the Greek Constitution or the European community laws is the highest source of law has not had as yet an unequivocal answer. Especially the jurisprudence of the European Community Court (Δικαστήριο Ευρωπαϊκών Κοινοτήτων, ΔΕΚ) has been supported as being higher in power than the Constitutions of the various European community countries, as this Court invokes arguments from international law, interpreting European law as a common, uniform and mandatory to all European community member countries and as a law essentially restricting the principle of the nations' sovereignty. In Greece, the supremacy of the Court's jurisprudence over the Greek Constitution has been debated.[1]

1. The Greek Parliament, which voted for the membership of Greece in the European Community, did not have the power, also, to amend the Constitution, as any constitutional amendment has to follow a certain procedure and there exist also constitutional provisions that are not subject to amendment. The Greek Constitution has not granted any competence to the European community organs to amend our constitutional provisions. These and other legal reasons lead to the opinion that there is no higher source of law in Greece than the Greek Constitution, *see* Stathopoulos in Stathopoulos M. & Avgoustianakis M., eds., Introduction to Civil Law, 1992, p. 33.

I. Major Greek Codifications

27. Greece has a large number of codified statutes, the most important of them being the following:

1. The Civil Code
2. The Code of Civil Procedure
3. The Criminal Code
4. The Code of Criminal Procedure
5. The Commercial Code
6. The Military Criminal Code
7. The Code on Civil Servants
8. The Code of Greek Citizenship
9. The Agricultural and Forest Code
10. The Code on Private Maritime Law
11. The Code on Taxation of Income
12. The Code on Stamp Taxes.

The Constitution provides for a special procedure on the implementation of codes (Art. 76). The above codes have been enacted for a considerable number of years and have fulfilled their purpose as clear and stable regulation. Their amendments have been rather limited.[1]

Customs though are very rarely a real source of law. A custom is a rule of law, which has been observed for a long period of time and has always been regarded as just. This second condition means that the members of the society, who have been observing this rule, also believe that the rule is correct (*opinio iuris* and *necessitatis*). Customs, under Article 1CC are primary sources of law. In reality, the current legal system leaves a very small space for the operation or the development of customs. Customs could seldom have any practical significance at all, as they do

for example in the case that a custom results in a fixed solution in a matter, which had previously been under dispute, through a series of identical court judgments, as far, of course, as there is also *opinio iuris*. Customs of minorities in Greece, when they conflict with internationally recognized rules and with Greek, moral and public order rules, are not recognized as law.[2]

1. A major amendment of the Civil Code occurred in 1983 (L. 1329/1983), when articles of family law were replaced to reflect, among others, the equality of the sexes and the protection of women' rights. The main points of the amendments were:

   a. the abolishment of the codified status of the father as the head of the family
   b. the enactment of the ex-spouse's right to a fraction of property acquired by the other spouse during marriage
   c. the enactment of divorce by consent and of no-fault divorce ('automatic' divorce when the spouses have lived apart for four years – irrebutable presumption of irretrievable breakdown)
   d. the equation of legal treatment of children born in and out of wedlock, for children born out of wedlock who have been voluntary or judicially recognized by the father.

   See in detail, Koumantos G. and Papachristou T., A Guide to the New Family Law, 1983, also Georgiadis A., and Stathopoulos, Civil Code Commentary, Family Law, Vol. VII, 1991, Vol. VIII, 1993. In 1982, L. 1250/1982 instituted the civil ceremony of weddings as a valid alternative to the ecclesiastical form.

   The Greek Civil Code, which is now more than 50 years old, has generally been a success as a legislative instrument. Family law was essentially the only part that had to change at some point in time, as the Greek society changed in its turn. The success of the Civil Code is due to the comprehensible and systematic nature of its articles, to the generality of its provisions, which afford the judiciary an ample opportunity of interpretation and to the general clauses of the Code (mainly, the principle of good faith, Art. 288 and the principle against the abuse of rights, Art. 281). Perhaps the most 'successful' article is Art. 57 CC, on the (independent) protection of personality.
2. Argument from Athens Multi-Member DC 3100/1999, NoB 1999, 1600. The custom of the Roma people, that the man who has had sexual relations with a woman is obliged to marry her, is not recognized as special customary law in Greece, as it conflicts with the internationally recognized principles of law and with the moral or public order rules. *See also* relative commentary, by K. A. Christakakou, NoB 1999.

II. Opinions by Administrative Agencies

28. Another source of legal rules has lately been the opinions issued by the administrative agencies, created by statute, as, for example, the Authority for the Protection of Personal Data. These agencies are independent and enjoy a wide range of powers, to legislate and to impose administrative penalties etc. This is a novelty in Greece and it would be challenging to see how rules by these agencies are going to be created, along with the traditional legislative power of the Greek Parliament. A close inspection of what happened, years before, in the common law world, where administrative agencies have been born many decades ago, would offer us some vague signs for the future.

III. Jurisprudence

29. As a civil law system, the Greek system does not regard jurisprudence as a

source of law. Not even the decisions of the Supreme Courts, such as the *Areios Pagos* (the supreme court for civil and criminal justice) or the Council of State (the supreme court for administrative justice), are considered as having any power as laws at all. Judges do not legislate; judges apply and may also – indeed are obliged to – interprete the laws. Their opinions in a case are binding, but for the particular case in question only – there is *res judicata* only for that case. Another judge, confronted with similar facts, may interprete the applicable law differently and issue a different opinion.

Still, the influence of the judgments of the higher in rank courts should not be underestimated. No matter what is the personal opinion of a judge on a certain question of law, where there is a stable relevant opinion in, say, a series of Supreme Court decisions, more probably than not the judge will adhere to this opinion, or else the judgment will, again, more probably than not, be overturned on appeal. So, trial lawyers do not 'stick' to the Code's provisions, but always research the Supreme Courts opinions on the legal questions involved. Therefore, the impact of the higher courts jurisprudence is very strong, no matter what legal theory may support on sources of law.

IV. Legal Theory

30. The work of the lawyers and the theorists of law is also not considered as a source of law, even if, in fact, there are certain authors who are influential and who are constantly cited, in the judicial decisions, along with the Code provisions. Their work, anyway, is of course important in helping the judges to interprete and apply the laws correctly.

Lastly, the general principles of law (for example the principle of good faith, the principle of the protection of the most vulnerable party etc.) are not sources of law. The real source of law is the written legal provision, which expresses these general principles of law (as for example CC 288, for the principle of good faith).

§3. Public Law, Private Law and Torts

31. In Greek law, the distinction public/private law is crucial and is reflected in the most powerful source of Greek law, the Constitution, where Article 94C explicitly refers to 'administrative disputes' as opposed to 'private disputes', and also institutes two classes of courts, the civil courts, competent to hear private actions, governed by private law, and the administrative courts, competent to hear actions governed by public law.[1] The standard determining whether public or private law shall govern a particular legal relationship is whether one of the parties is a public authority and, additionally, whether this party acts in the capacity of a public authority, exercising public power in a relationship where there is no doubt that this authority is the sovereign party. This public power is sometimes called *imperium*, a Roman term surviving until today; the question is, therefore, whether the State exercises this *imperium* in its relationship with a citizen.

When the State orders a citizen to pay taxes, the State certainly exercises its sovereign power over this citizen. On the other hand, a University, which is a public authority, may rent a building; the relationship, though, between the landlord and the tenant (the University) in this case shall be governed by the principles of the private law on leases (the Civil Code's relevant articles); this is so, because it is considered that the University does not exercise any public authority (*imperium*) when it rents a building and both parties are deemed to be engaged into a private law relationship ('σχέση ιδιωτικού δικαίου') – the parties are equal in power. The same is true when a citizen trespasses on public property and the State files a claim for damages, these damages being the equivalent of the rent that the trespassor would pay, had she rented the space legally. There again, the State and the trespasser are said to form a relationship of private law. Answers to these questions have not been clear-cut in the past, unfortunately causing many miscarriages of justice, when the courts selected held sometimes that they were not competent to hear the suits, as public law related controversies belong to the administrative courts and private law to the civil courts. Sometimes the Council of State or the Supreme Court of Civil and Criminal Justice, *Areios Pagos*, had to resolve specific questions, after many years of disputes whether certain relationships involving public authorities nevertheless belonged to the civil courts and were governed by civil law.

1. The criminal courts apply criminal law, which definitely belongs to public law. The judges are the same persons in civil and criminal cases, applying civil and criminal law depending on the case they hear. The district attorney is added to the panel of judges in criminal court days. So, the distinction between courts applying private law and courts applying public law is not so sharp.

32. That the line separating private from public law is grim is today in every legal order a fact. This is evident especially in Greek environmental law, which started as a branch of public law in Greece.[1] It was soon understood that the private civil law could be an effective tool against environmental torts, especially through the general clause of Article 57 on the protection of personality. So, what began as

a fundamental constitutional right, the right to the environment (explicitly recognized in the Art. 24C, 'the protection of the natural environment is an obligation of the State') as a right of the citizen towards the State, was transformed into, or at least seen also as, a private right of the citizen against the environmental tortfeasor. The end result was that, in theory, both public law and the private law (Art. 914CC on torts, Art. 57 on personality) were seen as applicable towards the protection of the environment in close connection with each other.[2] The case of an environmental tort is, therefore, an intermediate case of a tort satisfying in principle the conditions of (private) tortious liability, but also heavily bearing the sign of public law.

14. *See* Karakostas I., Environment and Civil Law, 1986, Siouti G., Environmental Law, General Part, Public Law and Environment, 1993.
15. *See* Stathouli S., Public and Private Law: Two Laws Fighting Each Other in Protection of the Environment Cases?' EnvLRev 1, 1999, p. 31.

33. The law of torts in general is a classic part of private law, dealing with wrongs (that caused injuries) between private persons. If a public person caused, instead, an injury to a private person while acting beyond her duties as a public official, the question arises whether it is possible to file a private law suit against this public person for damages; and the answer is positive. Article 105 of the Introductory Act to the Civil Code provides that the State is, along with the responsible officer of the State, also jointly and vicariously liable in damages for this tort. What I want to stress here is, though, that, even if it is the State that will play here the role of the defendant, the relationship between the State and the victim of the tort is a relationship of private law and shall be governed by private law. There is no question that the State official, who acted in her public authority, but beyond her duties, is personally liable in damages, but with the following condition: that the law or the statute or the rule etc., that the plaintiff complains that it has been breached (this as a satisfaction of the condition of wrongfulness/illegality for purposes of the foundation of a damages claim) was not a law/statute/rule aiming at the protection of the good of the public in general, nor a law aiming at the protection of the State's interests – this rule, in short, must have been designed to protect an individual in the plaintiff's position and not just about everybody. An incidental harm to individual interests does not suffice.

34. If the above is correct, can we speak today in Greece of 'constitutional torts'? This is a term coming from the common law, especially the jurisprudence on the well known Section 1983 (42 US), which provides that 'every person who under color of any state law subjects or causes to be subjected any person to the deprivation of any constitutional rights shall be liable to the party injured in an action at law, suit in equity or other proper proceeding of redress'. This is regarded in the US as a species of tort liability, founded in as early of 1871, liability of a public official who commits a tort 'acting under color of law'. The term 'constitutional tort' in Greece today would probably cause an immediate negative reaction, as if there is something left untouched in our public law, it has to be the Constitution. A tort is a private wrong; the Articles 1–25 of the Constitution, our human rights list, are the embodiment of the citizen's defense against the State.

After all, Article 105 of the Introductory Act to the Civil Code, which is the traditional ground of liability of the State for the illegal act or omission of a public official, who is also jointly responsible, who committed a tort against a citizen, never reaches as far as a 'constitutional tort', at least in its American sense. It covers situations where the public official, or the public authority in general, for example, neglected to take the appropriate health and safety measures to protect the animals of a certain region which died as a result, or where a teacher neglected to supervise a student who suffered injury in the school, where a judge was paid a salary calculated under a unconstitutional statute. The fundamental restriction that the action has to invoke the breach of a legal provision *not* existing to protect the public in general, but (as an interpretation) a provision that somehow is linked specifically with the person of the victim also seems to leave outside the scope of the protection of 105ILCC a very wide range of cases. This article was one more sword for the victim, who could elect to sue the State instead of a, say, poor public official; but if the Greek State was to be responsible in damages, perhaps because it is also a State as poor as its officials, especially in 1941 when this Act was passed, then there should be a clear limitation of this liability in benefit of the State. The unquestioned jurisdiction of the administrative courts in these cases also points towards an approach of public law of the relevant cases, even if their substance is governed by very well known concepts of traditional tortious liability (loss; causal connection etc.) – moreover, the article is titled 'Civil Liability of the State'.

35. Lastly, after the question of whether a citizen may sue a public official for a tort, a relevant but exactly opposite question arises, whether the *citizen* may sue another citizen for an offense traditionally committed by public officials (something like an unlawful search and seizure, a breach of the confidentiality of correspondence, an unlawful deprivation of freedom etc.). Under the old theory of the 'applicability of constitutional provisions in private law relations', 'τριτενέργεια' (a German theory of 'Drittwirkung', borrowed in Greece), fundamental constitutional clauses were also applicable in private law relations, either by themselves (theory of absolute applicability) or through the general clauses of the civil law (theory of relative applicability), as far as the interpretation of these general clauses of private law permitted this applicability. This was, in effect, a legal method used to achieve the effect of a constitutional protection, ordinarily designed to protect the citizen from the State, as a tool of protection from the injurious actions of a private party (acting, of course, as a private party). So, if someone breached another's privacy, in the suit against the offender the victim could invoke Article 9 of the Constitution on privacy, either alone, if the absolute version of the theory was accepted, or through Article 57CC (the claim in this latter case was that Article 9C was applicable *through* Article 57CC, on the protection of personality). This theory was useful in cases were we had a lack of legal rules on the case and needed to invoke the constitutional provisions in private law actions. But this was just a legal method, a certain interpretation, not necessarily accepted and applied by every judge; this was a method liable to a number of possible exceptions and, in some cases, highly subjective. In the last revision of the Constitution of 2001, the Parliament explicitly incorporated the theory now as part of the Constitution itself, accepting the direct applicability of the provisions and resolving an old problem in our constitutional

and private law jurisprudence. Article 25, in the chapter on individual rights, was replaced by the following clause: 'Human rights as rights of an individual and as rights of a member of society and the principle of the social State of law shall be guaranteed by the State. All organs of the State shall secure the free and effective exercise of human rights. Human rights are applicable in all relationships between private parties where feasible...' There is absolutely no room left, after this revision, for an interpretation of human rights as applicable only between the State and the individual; only those human rights that, by their nature, can only be violated by the State do not bound a private party as such.

What remains to be seen is the effects of this revision. First, it freed the plaintiffs complaining of an offense that resembled a constitutional offense by a public officer, but committed by a private party, from the task of invoking a whole theory to sustain their claim. If the constitutional articles, especially the human rights provisions, are simply, in and by themselves, applicable in private law relations, the result has to be a new 'branch' of private law: constitutional torts, not in the Anglo-Saxon sense (torts committed by a public official acting under colour of law) but in the sense of a violation of a constitutional right by a private party, against another private party.[1]

1. *See* p. 152.

§4. Relationship Between Torts and Criminal Law

36. In old times, there was in fact no difference between a 'tort' and a 'crime' – these legal classifications did not exist. In ancient Greece, every wrongful act was in essence criminal, as the offender had to pay damages to both the victim and the State. Criminal law did not form a separate branch of law until much later. Even today, the teacher of law finds it hard to explain what the difference in nature is between an act that constitutes a 'tort' and an act that constitutes a 'crime'; that the intentional destruction of another student's pen, for example, is a 'crime' is difficult for the criminal law class to believe, and if the wrongful killing of a pedestrian is a tort *and* a crime, what is the need for two classes of wrongful behaviour, when the one coincides with the other so often? The teacher goes on to explain the very large number of instances, where, in Greece, both civil and criminal courts deal with a case, usually staying one procedure until the other one has produced a certain judgment – it certainly sounds unnecessarily perplexed, and it is also strange that one act may be, at the same time, a breach of contract, a tort, a crime and also may fulfil the conditions of unjust enrichment (not to mention any other causes of action).[1] Therefore, the complex system certainly needs strong justification.

But before attempting this justification, we may start with some very clear legal differences between a tort and a crime. The main difference between them is the consequences of each: compensation for a tort and penalty for a crime. The main purpose of the law of torts is to compensate the victim for the loss the victim suffered. The person of the tortfeasor is irrelevant, as is, generally, the degree – and sometimes even the existence – of the tortfeasor's fault. The basic purpose of the criminal law is (general and specific) deterrence – not compensation. Criminal law protects mainly public interests; tort law protects private rights and interests.

1. The situation is no different in the common law world: '...Even though today tort law is recognized as a proper subject, a really satisfactory definition of a tort is yet to be found...tort is a field that pervades the entire law, and is so interlocked at every point with property, contract and other accepted classifications, that, as the student of law soon discovers, the categories are quite arbitrary...', Prosser and Keeton, *id.*, pp. 1–3.

37. The foundation of a tort and a crime is quite different. No crime exists unless there is a special criminal provision (i.e. a Criminal Code provision) to institute it; this is a constitutional provision. Criminal law is, therefore, casuistic, while any tort may be founded in the general clause 914 of the Civil Code. The interpretation of this general clause permits the acceptance of illegal behaviour as tortious, even when the same behaviour was not accepted as tortious before; no such interpretation of criminal law provisions is allowed. There can be no crime by analogy to another crime already provided for in the Criminal Code, or in another special criminal law (principle of *nullum crimen nulla poena sine lege scripta*, Arts. 7C, 1CrC).

As a principle, almost every crime qualifies as a tort; tort is a wider category of wrongdoing, which generally includes all crimes. The same act or omission may constitute both a tort and a crime, as e.g. theft, although torts cover a wider specter

of cases. There are many torts that do not constitute crimes, as i.e. the negligent damage of the property of another. Also, there can be a crime, which does not constitute a tort, as i.e. an attempt to murder that did not cause any loss. This action, still, would be a wrongful act (a wrong) but unable to generate an obligation for compensation. But these last cases, of course, are very rare.

38. Criminal liability always presupposes fault, intention or (more rarely) negligence. Tortious liability is independent from the intention or negligence of the tortfeasor; even slight negligence is usually enough to sustain liability. Also, only tortious liability can be strict (no-fault liability).

Criminal liability is strictly individual; it cannot be transferred to another or inherited. Tortious liability is generally transferable (with the exception of the claim to compensation for non-economic loss, so called 'moral harm' – this claim is only transferable after it has been successful in court).

39. To return to our initial question, how to justify the two branches of the law of torts and criminal law, when they overlap so usually, we have to return to the essential difference between a tort and a crime. This difference is not qualitative but quantitative. A behaviour that happens to offend the legal order 'too much' will be, at a point or another, criminalized. But a tort is no different in essence from a crime, it is only less 'offending'. This 'less' depends on the value harmed by the relevant behaviour (is it an absolute value, like freedom, life etc., or a less important one?), the intensity and kind of the injury (threat or concrete injury? is it a behaviour contributing to a general social dysfunction?) the means selected by the actor and, last, the actor's psychological connection to these injured interests and values.

40. Regardless of the classic civil law theory, that the purpose of the law of torts is only to compensate the victim, and not to deter or punish the tortfeasor, the amounts of money satisfaction for non-pecuniary losses have been rising lately, so as to permit the thought that at least deterrence was in some way in the 'mind' of the courts. More explicitly, among other factors determining the non-pecuniary damages award in consumer class actions for products liability (L. 2251/1994, Art. 10), is listed (as last) the need for both specific and general deterrence – a notion traditionally criminal. The instances where an award of punitive damages is permitted mark a clear departure from the traditional hostility of the civil law towards any other aim but compensation.

41. Actions for crimes and civil wrongs are brought before different courts where different procedures are followed. We have to note, though, that the same judges handle civil and criminal cases, changing their 'hats' as criminal or civil judges according to the cases. Only District Attorneys have nothing to do with civil disputes. Only statutory crimes are actionable; the Constitution itself states that there can be no crime and no punishment without written and certain law. Tort liability, in contrast, depends on the interpretation of a general clause and covers a wider spectrum of cases. The standard of proof in a criminal court (beyond reasonable doubt) is much higher than the standard of proof in a civil court (more probably than not). As an exception, the victim of a crime may sue for damages before

the criminal court (Art. 63 CCrPr); this is also the only case where the criminal's court judgment is *res judicata* for the civil court as well.

Lastly, we should note that in personal injury cases, which form a large Section of all tort suits, the usual procedure for the victim is first, or at least simultaneously, to file a (criminal) complaint against the offender. In medical malpractice this has become almost a norm. The criminal court then rules on the question of criminal responsibility and the civil action follows. The outcome of this is that civil responsibility is in essence determined according to the rules of a criminal suit, most favourable to the defendant (higher burden of proof, stricter procedural rules etc.), because if the defendant is found not guilty in a criminal action for personal injury, then the civil suit against this defendant is barred (*res judicata* on the question of responsibility). Of course, the plaintiff may always pass the criminal complaint and proceed directly with a civil suit; however, the advantages of 'pressing' a defendant with a criminal case against her usually make the lawyers file a criminal complaint.

§5. Civil Law, Commercial Law and Torts

42. In Greece, commercial law is a special branch of law, quite apart from civil law. Commercial law regulates business relationships, with company law as one of its major components; also, commercial law regulates generally business relationships. The Commercial Code is a collection of statutes on companies, unfair competition etc. The same civil courts have competence over commercial law matters and that in cases on, for example, unfair competition, the applicable law is not only the particular statute, but also the civil code article of torts (Art. 914CC etc.). It follows that there is a close connection of commercial law and civil law, not only in terms of courts, which is a procedural matter, but also in terms of applicable material law, which is a substantive matter. We could compare broadly the situation with the applicability of the general civil law of contracts on every commercial contract, no matter whether the parties are, or are not, businessmen under the law. So, again, when a case of unfair competition comes before the court, the court shall determine loss/injury, wrongfulness, causal connection etc. according to the teachings of the law of torts (as unfair competition is a tort) and, of course, of any special rules of commercial law.

I. Unfair Competition and Torts

43. L. 146/1914 on unfair competition institutes, in fact, a special tort, the tort of unfair competition. The Unfair Competition Law protects not only the competitors, but also the consumers. The question is, however, whether the consumer, and not only the (fair) competitor, has a direct action against the unfair competitor. If the tort law is without any qualification applicable, then a claim against the unfair competitor to cease her illegal behaviour and a claim for damages is offered to an offended consumer. Until now, however, this position has not been accepted and the consumer has to invoke other causes of action, apart from L. 146/1914. Legal theory has, however, supported the direct claim of the consumer against the unfair competitor and this opinion has gained some ground.

Intellectual property and torts is explained in detail in para. 247– 255.

§6. Torts and Property Law

44. Property law is a branch of the civil law. It is mainly contained in the third 'book' of the Civil Code, titled 'Property Law' and deals with the real rights of people over chattels and real property. The law of obligations, the law of property and the law of inheritance consist the body of the (general) law of the estates (περιουσιακό δίκαιο).[1]

Apart from the special claims that the property law offers the person who had a proprietary interest in a thing, a claim in tort will also be sustained where a thing was tortiously taken from its owner of legal possessor or a thing tortiously suffered damage. This claim is a claim in tort, quite separate from a claim in property aiming at the return of the thing to its owner or legal possessor. Still, the possessor may not ask for damages instead of the return of the thing to her, unless this return is impossible for some reason (e.g. complete destruction of the thing), or the return is not any more in the interest of the owner/possessor. Articles 987CC and 989CC explicitly mention the possibility of a claim in tort in the above cases.[2]

Article 1097CC, an article in the part of the property law on the protection of the owner, refers to liability for the destruction or worsening of a thing. This liability depends, among other factors, on the intentional or negligent nature of the illegal possessor's act, of the time of the destruction or worsening (before or after the lawsuit was served) etc. The question whether this claim, under Article 1097CC, concurs with a claim under Article 914CC (whether the owner may file a suit on both these claims-tort and special protection of property cause of action) is one of the most hotly debated questions in the Greek civil law. (The same debate relates to the concurrence of the claim under 1097CC and the claim of unjust enrichment, Article 904CC). The view that the Article 1097CC provisions are special and therefore, exclude the general tort claims caused so many problems that its supporters admitted a great number of exceptions. The view for the concurrence of these claims has been increasingly accepted. The truth is that, when the conditions of a claim in tort (illegal culpable behaviour causing a loss) have been met, there is no scientific reason to support that, because another action may co-exist, the injured party is denied the protection of the law of torts. Lastly, because it is in the very text of Article 1099CC that, if a person acquired the possession of a thing with an illegal act, then this person is liable in tort for every loss (even for losses not causally connected with the act), it follows that the owner of a thing is always afforded the protection of the law of torts against an illegal possessor, as above.

1. This classification stems from the Roman law distinction between the law of persons and the law of things *ius quod ad personas pertinet* and *ius quod ad res pertinet*. We have to note, though, that a thing was, for the Romans, not only an object with an individual natural existence, but also every right, property right, contractual right etc. French and Austrian law are closer to this division of the civil law, but the Greek civil law followed the German five parts system, as the Greek legal science followed the German Pandektists in the interpretation of the Byzantine-Roman law.
2. Also, Art. 1132CC protects the right to an easement and provide for compensation, if this right was tortiously injured.

45. A noted omission in the Greek tort law is the absence of a claim in tort for trespass to land or for trespass to chattels, when the owner of the land or the chattels has suffered no loss ('ζημία'), as loss is accepted and interpreted in the Greek legal science today. The absence of loss defeats instantly any claim in tort. The common law action, though, for trespass to land could be maintained without proof of any actual damage; only the common law action on the case for trespass to land required proof of actual damage and could not be maintained without it. In both cases, loss or no loss, the action for trespass is, and was, in the common law world, designed to protect the interest in exclusive possession of the land in its intact physical condition.[1] The case of a wrongful entry in another's real property is the classic example of the tort of trespass, and these facts could never support a claim in tort in Greece. In Greek law, if someone walks through another's garden, the owner has no claim in tort against the trespasser, indeed, usually, no claim at all, unless this consists a repetitive behaviour, in which case the owner may sue and ask that this ends. On chattels, trespass to chattels in the common law world is the act of committing, without lawful justification, any act of direct physical interference with a chattel possessed by another. In Greece, mere interference with another's chattel, without loss (as loss is understood, analyzed and accepted by the courts and legal theory today, in the torts context) cannot sustain a claim in tort.

1. Prosser and Keeton on Torts, fifth edition, 1984, p. 77.

46. The result of this comparative analysis is that the Greek law affords protection to the owner who suffered trespass but no loss through other civil law provisions, as those designed to protect possession or ownership in the relevant part of the civil law of property, but denies protection through the law of torts. It follows that in the list of the protected interests in the law of torts, the exclusive possession of a thing is not protected as such. Additionally, if the owner of a thing is deprived of its use for a particular time, and then regains it, as in the case where someone takes your car away from you for a month and then returns it, say intact, then there is in Greece no tort claim in trespass, not even aiming at an award of nominal damages. This is the result of the generally accepted purpose of tortious liability in Greece, namely the compensation for loss suffered and not deterrence, or punishment of the wrongdoer.

§7. Torts and Family Law

47. Family law, contained in its substance mainly in the fourth book of the Civil Code, is usually not referred to in the law of torts. Family law is a law presenting *sui generis* difficulties and problems, which sometimes reach the very limit of the law, in the sense that one may claim that it is not the law's 'business' to deal with the internal problems of a family.[1] However, family as an institution is so fundamental that civil law has always dealt with the regulation of family related matters. Most of family law has absolutely nothing to do with torts; there are, however, instances where certain behaviour could constitute a tort, and where this behaviour is related to family law problems.

These instances are (all under certain conditions): the breach of marital obligations, the abusive exercise of the right to a divorce and the unjustified canceling of an engagement. A very interesting, now abolished, instance of tortious liability, closely connected with the question of marriage, was Article 921CC (damages for the fraudulent or violent sexual relation and offense of a woman's honor); lastly, Article 931 CC is also related to a damages award, for a disfigurement or disability, which lessen the chances to marry (amended in 1983).

1. 'In one case, there was a bitter struggle between two groups of relatives of one family...by the time the case went to the jury, the opposing lawyers and their assistants were yelling at one another, as if they were part of the family too. The jurors went out for two days before sending word that they could not reach a verdict. The judge told them to keep trying. Two more days passed and there was no decision. This time the judge called them back to ask them what the problem was. With family members staring daggers at each other, he asked the foreman for an explanation: Well frankly, your Honor, said the kindly looking old man, we feel this is the sort of case we should not mix in...', Grutman, Lawyers and Thieves, 1990, 172.

§8. Relationship between Contractual Responsibility and Tortious Responsibility

48. Tortious liability is primary, because it derives directly from the law; contractual liability is secondary, because it presupposes a pre-existing (contractual) obligation to perform, which is, in cases of breach, usually transformed in a (secondary) obligation to pay damages, so that the losses by this breach are covered.

The purpose of both cases of liability, contractual and tortious, is (only) the compensation of the injured party. Even tortious liability does not aim, as in other countries (i.e. the US, where punitive or exemplary damages may be awarded) to deter or punish the wrongdoer, but only to award to the victim such damages as to restore him at the position he would have had the tort not been committed. Damages in both cases, contract and tort are, therefore, only compensatory.

The computation of damages in contract and tort. The nature of damages (compensatory) is, as we said, the same, in contract and tort, but the quantification is different. In contract, the court has to put the successful plaintiff back to the same position the plaintiff would have been in, had the contract been fulfilled (had a *positive* fact occurred); this means that the plaintiff may ask for the profits expected by the completion of the contract. In tort, the court shall put the successful plaintiff back to the position the plaintiff would have been in, had the tort *not* been committed (had a *negative* fact *not* occurred).

> Example. A owns land where B promises to build A a house. During the completion of the plans, B cancels the building contract because she believes that A is flirting her husband (breach of contract as legal basis of liability). B was ready and eager to fulfil her contractual obligations. A has to pay as damages the fees for the plans and the profits B expected to make out of the building contract. If A had defrauded B, that the state laws allowed A's plot of land to be built, whereas the law prescribed buildings in the area (tort as legal basis of liability), then A would have to pay B only the costs of the preparation of the plans, hiring personnel etc. but not the profit expected by the contract, because had the fraud not been committed, there would have been no contract to execute.

49. Breach of a contractual obligation may, or may not, constitute a tort. This breach will constitute a tort only if the same act or omission would be a tort even if there never was any contract at all.[1] So, the act (or omission) causing the breach will be examined, for the purposes of discovering tortious liability, independently of the contract. The main, therefore, case, which may not be characterized as wrongful/illegal for the purposes of Article 914CC, is the breach of a contractual obligation. For example, if the debtor does not pay the debt, her failure is a breach of his contract, but not a tort. Unless an act of breach of contract is illegal, because this act also conflicts with other rules of law (apart from the rule that one is obliged to fulfil one's contractual obligation), i.e. the criminal code provisions, which

happen to protect private interests etc., the consequences of a breach that does not also constitute a tort will be governed (only) by the special relevant rules of the Civil Code on remedies for breach of contract.

However, in many cases the same act or omission that breaches a contract also constitutes a tort. For example, when the lessee damages the lessor's apartment intentionally, this act is not only a breach of the contract of lease, but also a tort, since it is an illegal act even if the actor is not connected to the victim with any kind of contract. In these cases, the two claims run concurrently, that is the injured party can proceed with both of them. The courts have, therefore, 'found' both a breach of contract and a tort when the builder stops abruptly the execution of his contractual obligation to construct and deliver a completed building,[2] when one issues a 'bad' check,[3] when the employer omits to promote an employee, as dictated by the regulation of work,[4] when the employer omits to promote an employee, but other less qualified employees are nevertheless promoted,[5] when the lessee refuses to surrender the premises leased after the lease has expired,[6] when the seller sold a defective thing, but did not inform the buyer about the defect,[7] and when the architect breached the regulations on anti-earthquake protection and built a house which did not respond to the legal standards (the architect designed the building with a wrong factor of earthquake aggravation – 0.04 instead of 0.08 to 0.12).[8]

In both these claims, in contract and in tort, the plaintiff and the defendant coincide; also, the legal aim of both claims, as mentioned above, is (only) to compensate the defendant. The prevailing view in jurisprudence[9] is that, in these cases, the two claims are independent from one another and that each one is governed by the relevant Civil Code rules. The plaintiff may select any of these two claims, but the plaintiff will only be awarded compensation once. If one claim is satisfied, the other claim is extinguished, unless damages are greater than those already awarded, in which case, the plaintiff may sue for the remaining damages under the other claim.[10] The claims follow their own rules of limitations of actions (5 years for a tort, 20 years for a breach of contract, generally), but sometimes, the contractual claims are prescribed earlier.[11]

1. AP 986/1995, EEN 63, 821.
2. One-Member DC 213/86 EEN 1987, 390.
3. Athens CA 1775/91 CommLRev 44, 70.
4. Thess CA 789/90, Harm 44, 33.
5. AP 935/90 LabLRev 50, 729, AP 2056/90 LabLRev 50, 730.
6. Thess One-Member DC 1736/92, Harm 46, 707.
7. Athens CA 9000/88, HellD/ni 31, 159.
8. AP 47/1996, NoB 1998, 206.
9. AP, in plenary session, 967/1973, NoB 22, 505, AP 18/1993, NoB 41, 1069, AP. 47/1996, NoB 1998, 206.
10. Athens CA 3488/80, NoB 29, 110.
11. AP in plenary session 967/1973 and 79/1966.

50. Another view in legal theory, though, supports[1] that there are no concurrent claims in this case, but concurrent (legal) grounds of (one) claim – concurrent causes of action, but only one claim. The distinctive features of any claim are the identity of the parties and the relief requested; that the same claim could be grounded in several legal provisions is irrelevant to its individuality. If the provi-

sions of these two legal grounds of the claim conflict, as a principle, the provision that best protects the creditor (i.e. a longer statute of limitations) should apply; still, all provisions are to be interpreted according to their legal purpose, which does not rule out the possibility that, if necessary, the provision that mostly protects the debtor will be selected.

1. Georgiadis, Law of Obligations 1999, p. 585.

51. In conclusion, the following are the main differences between a claim in contract and a claim in tort:

1. Burden of Proof: in contract, the fault of the breaching party is presumed (but, of course, this burden is reversible). Therefore, the burden to prove fault shifts to the defendant, the party who breached the contract, to prove that it was not at fault. In tort, the plaintiff is generally (i.e. strict liability cases apart) obliged to prove all the facts that constitute the conditions of tortious liability, therefore also the tortfeasor's fault, intention or negligence.
2. Calculation of damages: only in contractual cases may the expected profit of the contract be awarded as compensatory damages (*see above*).
3. Non-pecuniary damages (non-economic, 'moral' damages): only in tort claims may this kind of damage be awarded. Under Article 299CC, non-pecuniary damages may only be awarded if they are especially provided for in law, as they are in torts and injuries of the right to personality (Article 57–59CC).
4. Fault: usually, the same degree of fault applies in both cases. Still, a tortfeasor is responsible, even in cases where his negligence was slight, while there are contract or quasi-contract cases where the debtor is by law responsible only for intentionally or gross negligently caused losses (i.e. donor's liability, Art. 499CC para. 1), or only for losses caused by slightly negligent illegal actions (e.g. partner's liability, Art. 746CC).
5. Statute of limitations: The claim in contract is barred, as a rule, after twenty years from its conclusion (Art. 249CC), unless a special relevant rule applies (i.e., six months, Art. 602CC, etc.); the claim in tort is barred after five years from the time that the injured party learned the damage and the identity of the injurer (Art. 937CC). But, as a rule, there can be no tort claim twenty years after the tortious action took place. There are also special provisions on limitations in certain cases (e.g. products liability: all claims are barred three years after the injured party was or should be informed of the loss, the product's defect and the identity of the producer, L. 2251/1994, Art. 6, para. 13).
6. Vicarious Liability: In contract claims, fault of the third person, the auxiliary performer of the contractual obligation, is more easily transferred to the debtor than in tort claims. In a contract case, no special 'relationship of dependency' between the auxiliary performer and the main, original debtor is necessary, so that contractual liability may be transferred by the first to the second. However, if such a 'relationship of dependency' does not exist between the (real) tortfeasor and the party sued in tort for his tort, this party is not liable for damages.

§9. Unjust Enrichment and Torts

52. As is happens with tort and contract, a claim in tort may concur with a claim for unjust enrichment. Actually, there are cases where an illegal and culpable act that caused loss to another (a tort) consists also an act that resulted in the unjust enrichment of another (that is, in an enrichment through another's estate or an enrichment that caused loss to another, and also an enrichment that lacked a legal justification and is therefore called unjust). The classic case of stealing another's property necessarily fulfils the conditions of both tortious liability under Article 914CC and unjust enrichment under Article 904CC.[1] These two fundamental articles are only ten articles of the Civil Code apart.

The question is therefore transformed from whether these claims may concur at all (they may), into when there is a meaning in adding the unjust enrichment claim to the tort claim, and whether the plaintiff may prefer to select only one between the two. On the latter question, because today the Greek jurisprudence supports, contrary to legal science, that the claim of unjust enrichment is a secondary claim, an auxiliary claim, that is a claim sustainable only when no other claim exists to protect the harmed party, it follows that the plaintiff in an unjust enrichment claim will be defeated, if a claim in tort could be applied in her case, but nevertheless, she did not plead in tort.

1. On unjust enrichment in general, *see* Stathopoulos M., The Claim for Unjust Enrichment, Athens 1972.

53. On the practical meaning of adding a claim in unjust enrichment to a claim in tort, this should be examined in the cases where (even) the (abstract) loss of the plaintiff is less than the enrichment gained at her expense. The defendant, that is, gained more through her wrongful act, than the loss she caused the plaintiff. In this case, though, the return of the enrichment through Article 904CC may not be a larger award than the compensation for loss through Article 914CC, with one exception: the restitution of abstract loss is allowed, under Article 904, whereas the interpretation of Article 914CC allows for the restitution only of the concrete loss of the plaintiff. The restitution of an abstract loss, impossible under the law of torts, is allowed in rare cases, where for example the plaintiff would *not* use the car that was in fact used by the defendant, or the plaintiff would *not* use her cottage at the beach, where the defendant stayed for a month, or the plaintiff would *not* publish and sell her stolen by the defendant manuscript (no concrete loss of profits). In these cases, the abstract loss (rent for the use of a thing, royalties – at least – for the stolen manuscript) is different from the concrete loss of the plaintiff (which is in our examples zero). The unjust enrichment remedy is in these cases the only remedy that could end in restitution, as without (concrete) loss, there is no tort. This is a situation comparable to the trespass cases; no loss, no tort

of trespass, no damages. The different interpretation of loss in different parts of the civil code, although lamentable,[1] at least offers a remedy to a plaintiff who suffered abstract, but not concrete losses, from a tort (or any other unjustifiable cause).

1. *See* Kallimopoulos G., The Non-Genuine Management of Another's Affairs, 1978, p. 102.

54. Anyway, there are cases where even the claim for unjust enrichment cannot help a plaintiff in quite similar situations with the above. If A steals B's car and sells it, at a price higher than its market value, then B's loss is lower than A's enrichment. In a case where both claims are sustained, the Court will order the return of the enrichment through B's property (her car) to B, but the award may not be an amount higher than her loss (the car's market value). This is the absolutely prevailing opinion in Greek legal theory and jurisprudence. The justification for this interpretation of Article 904CC, especially of what is 'enrichment', is that what is returned is the real and concrete enrichment at another's expense; this does not include the amounts gained because of personal abilities, or work, or other contribution of the enriched party. The concepts of 'loss' (even the most abstract loss) and 'enrichment' are not the same; the concept of loss may be abstract in the law of unjust enrichment (only), whereas the concept of enrichment must be absolutely concrete.[1] Another way to state the same idea, is to demand causal connection between the unjustified act that produced the unjust enrichment and the enrichment itself; it is supported that, any amount over and above the amount that the plaintiff could have earned herself, with her own abilities and means, is not causally connected to the enrichment. Therefore, the claim is defeated as to this surplus.

1. *See* Stathopoulos, in ErmAK 904CC, paras. 21–22.

55. This upper limit of the returnable enrichment as the actual loss suffered by the plaintiff does not follow from any logical necessity, nor is it an unquestionable and ethical solution of the problem. The justification that the enrichment *at the plaintiff's expense* has to be her actual loss, that is, in our example, the market value of the car, otherwise there can be no restitution, is subject to the criticism that the law of unjust enrichment aims at the return of the enrichments and not at the compensation for losses. To separate from the whole of the enrichment actually caused through another's property (because there is no logical reason to support that the consideration of the sale of B's car was not the whole enrichment caused through her property, because of her property) and to award to the 'used' plaintiff only what she could have gained, with her own means and ways, had she been in the position of the unjustly enriched party, means that the law condones this illegal behaviour and actually, supports the wrongdoer more than her victim. This could be in the mind of the drafters of the relevant article of the German Civil Code, as there (Art. 816, Sec.1, subsec. 1) the restitution of the whole of the enrichment is provided, without any qualification whatsoever. And the Greek law of unjust enrichment, as this is interpreted by the courts, does not allow the offset between what the plaintiff gained because of the defendant's acts (for example, fame, because her manuscript was published, commercial success despite an unconsented publication etc.) and the plaintiff's losses.[1] The denial of an offset between gains and losses in

the above situations conflicts with the denial of the return of the whole of the enrichment to the plaintiff.

At the very least, in cases where the unjust enrichment was also intentional, the whole of the enrichment should return to the plaintiff. When the courts will accept this interpretation of the Article 904CC by the Court, then there will be a clear advantage in adding an unjust enrichment claim to the tort claim under Article 914CC, when the enrichment was produced by an intentional tort.

1. *See* Stathopoulos M., The Claim for Unjust Enrichment, p. 201.

§10. Torts and Other Sources of Obligations

56. The well known four-fold division of the *Institutiones* of Justinian (obligations derive from a breach of contract, a tort, quasi-contract and quasi-delict) is not employed in Greek law. Another division is 'obligations stemming from the law', *ex lege* and obligations stemming from a contract, *ex contractu.* The justification for this proposition is that, in contract cases, what is important is self-commitment of the parties and the autonomy of the private will, as a morally and constitutionally guaranteed principle. On the contrary, all other obligations lack any self-commitment and are founded solely on the law. It follows that the standard of the classification of a particular obligation as an obligation *ex lege* or an obligation *ex contractu* is self-commitment and the expression of a private will to bound oneself; autonomy or heteronomy are the standard.

I will not attempt here to resolve a philosophical, in fact, and very old, and ever modern, debate. The classification of all obligations according to the existence (or not) of a private will of the persons involved is in fact quite objectionable – not the least because, as noted by the supporters of this standard themselves, it is the law that gives a contract existence and actionability. Not even because in the interpretation of contracts one finds or invents a whole series of contractual promises and terms and obligations that were absolutely never, even remotely, in the minds of the contracting parties (so there never was any will at all) – not even because there exists an immense number of contracts where people simply adhere to, in a position of absolute submission, cases where the very words of free will and autonomy sound ridiculous. (This last has served as an argument against the separate existence of a law of contract and for a law of 'Contorts').

57. But the classification under the standard of a private will suffers from more criticism than the above classic one. The distinction as stated tends to ignore the different *nature* of obligations. A contractual obligation, a tortious obligation and an obligation under unjust enrichment are obligations different *in nature.* It is one thing to promise something to someone and then breach your promise; another thing to violate the law, hurt someone's rights and cause losses; and quite another thing to gain unjustly through another's estate, or injure someone, and then be obliged to return this enrichment. This difference in nature may be the cause that the tripartite division has survived for centuries in the common law world, and ours. I say in ours too, even if typically, these classifications are not applied in our system. The fact remains that every lawyer knows that a civil suit for damages will be founded on contract, on tort, on unjust enrichment or on subcategories of these, like an action for precontractual fault (close to both contract and tort), or injury to personality (tort), or defrauding of creditors (tort), or management of another's affairs (closer to unjust enrichment) etc. That some claims may run concurrently is a natural consequence of a complicated world; after all, in medicine, the same set of symptoms may point towards different illnesses, and the same antibiotic may cure more than one; and lawyers

have contributed to this 'mess', manipulating different causes of action so as to serve their own needs.

58. It is perhaps this manipulation, lamentable as it may sound in theory (because in practice, a lawyer has to protect a client, and that is that), that has led some commentators to wonder whether the radical solution of the abolishment of the categories was not, indeed, a good idea. But the way the system was, and is, misused, has nothing to do with the vastly different policy messages the lawmaker wishes to send, when she classifies an action as a tort and opens the way (in the common law world, usually) to a suit for punitive damages; the misuse of the system has nothing to do with a different measure of damages awarded for a breach of contract, because the injured party had *relied* upon a broken promise.[1] Additionally, it is not any more accurate, today, in Greece, to claim that we have a general part of the law of damages, applicable in all civil suits, and that an award of damages has always the same purpose (one and only, compensation), regardless of the cause of action behind it. The objective of deterrence, for example, as foreign as it used to be in the Greek civil legal order, has entered the picture of the Greek civil law, through at least three statutes, which permit quasi-punitive damages for a certain tort (violation of intellectual property and breach of statutory obligations to safeguard personal data). But the standard of classification, again, is not to be found at the 'end' of the cause of action (purpose of damages) but at the very beginning (nature of the wrong): to ignore the different nature of the legal beings that are called causes of action, to ignore the different characteristics of the different wrongs, and, in consequence, the different responses the legal system needs to give to every one of them is, I believe, perhaps something we should avoid.

1. Another classification of the most important legal causes of civil action is:
   a. contract
   b. tort
   c. precontractual fault
   d. deception of faith that a valid legal act was concluded
   e. a direct contract for damages (an insurance contract)
   f. the law: all cases unable to be classified in one of the above classes and
   g. risk liability.

   See Georgiadis, Law of Obligations, *id.*, pp. 138–139. This classification, I think, is rather a presentation of the most usual legal grounds of tortious liability in the Greek Law of Obligations and did not aim at clarifying the standard of their separation.

59. I also wonder whether the notion of a private will (serving as standard to distinguish an action *ex contractu* from all other actions) is totally lacking in an action in tort. After all, to take an automobile accident, one knows when one drives that one may collide with another car, and the undertaking of this task has to mean that there is, or should be, a will to bear the consequences of one's actions – an implied will, let us say, but at least as good as an implied will in implied contract cases, to engage in some action and take risks. A citizen may know much more positively that she will have to pay damages, if she injures a pedestrian, than that she will have to pay a number of hidden costs in a contract with a bank (in the latter case, she may be much more surprised to read the Bank's complaint and discover what she had in fact promised); and a physician may be much more aware of the possi-

bility of a malpractice suit for negligence, than a contractual suit for breach of an implied contractual clause in the physician-patient contract that promised certain information. That I drive, or that I practice medicine expresses my private will to bear certain consequences – no Court will seriously listen to me, if I claim that I did not know of my possible liability in tort. In short, and to end a philosophical discussion not totally in line with a monograph on law (and not philosophy), it is highly debatable that a private will and a person's autonomy are unrelated to a claim in tort, as we all live in the society of others, as citizens, and we all are bound by sets of rules that are in principle, in theory, the result of our collective private wills (because we sent the members of the Parliament to the Parliament to vote these rules). So, the political reality necessarily embraces the legal one[1] – and any clear-cut distinctions like 'here is the will' and 'here is the law' are at least, put into some doubt.

1. *See*, for example, one of the four great charters of English liberty (3 Car. 1628) establishing that 'no man be compelled to make or yield any gift, loan, benevolence, tax or such like charge with common consent by act of parliament'. It is our collective consent that legitimates the validity of all statutes, and it is the statutes that legitimate the validity of our wills. This is, therefore a constant interaction and it is impossible to clearly separate the law from the will.

60. It follows that the triangle contract – tort – unjust enrichment (I classify quasi-delicts with torts) holds true in essence in both common and civil law worlds. One wonders, however, whether it is the Anglo-Saxons, who have as entirely separate these laws, the law of contracts, the law of torts and the law of unjust enrichment (or law of restitution), or us, who have a (general civil) law of obligations, in which, regardless of the particular cause of action, damages, causal connection and fault are dealt with in the same articles. This may sound as a matter of an individual legal 'taste', but of course it is not. That it is not just a matter of taste is much more evident in the common law world, where, for example, you can ask for punitive damages in principle only in a tort claim. A similar restriction exists in the Greek law of damages: you can ask for damages for moral harm (non-economic loss) only if your claim is founded on tort (or injury to personality, a tortious action in essence). A breach of contract will not suffice. The conclusion of these few initial observations is that, again, even if we, in Greece, declare that our law of damages is the same, a general part, for all civil causes of action, some rules do change depending on the suit's nature-not to mention the whole jurisprudence on contracts, or torts, or unjust enrichment, which definitely differs according to the gist of the action. I have mentioned above that the deterrence objective has been introduced in the law of damages. But quite apart from the statutory deviations from the norm of general law of damages, it would be very interesting, indeed very enlightening, to see in detail how the courts treat 'causal connection' in contracts and how they treat it in torts; in which class of cases foreseeability of harm plays a major role, and in which it does not; in which cases reliance damages are awarded and in which they are not. The idea that the courts treat differently general abstract concepts depending on the cause of action is absolutely true in, at least, the concept of 'loss': what is loss in a breach of contract is not loss in unjust enrichment.

§11. Good Faith, Fair Dealing and Torts

61. The general civil law clauses of good faith and fair dealing, as expressed in Article 288CC, are usually invoked in breach of contract or comparable cases. A major part of the applicability of this general clause form the duties that stem from a contract because of its existence; duties not expressly mentioned anywhere in the contract, or even ever existing in the mind of the parties, but duties that become contractual obligations because this is what the principle of good faith and fair dealing dictates.

On the other hand, the existence or not of a contractual relationship does not determine whether there are duties not to harm another's interests that, because of this general clause, acquire a legal character. The courts have increasingly accepted that certain duties, stemming (only) from Article 288 on good faith, (always, though, in relation to a previous or not yet born obligation to perform) when breached, may sustain not only a claim in contract, but also a claim in tort. This has been accepted usually in the interpretation of the meaning of illegality. What may be illegal may derive from what the principle of good faith dictates. Some omissions, for example, may be held illegal, not because a statute, an act, or even the general spirit of the law support this characterization, but (only) because the principle of good faith proscribes them. There is a list of many instances when the courts accepted this conclusion: for example, that the railway organization had an obligation to keep the rails without grass, so that there is no danger of fire, was held as a situation where the principle of good faith dictated a particular act, whose omission sustained a claim in tort.[1] Also, a previous risky action of the defendant, may sustain a claim in tort against her, again because the principle of good faith proscribed, for example, the omission to repair a hole in the street opened by the defendant. The practical applicability of this interpretation of the principle of the good faith is evident when there is no statute covering a particular case (that is, a statute from which the illegal character of the defendant's act or omission could derive).

On fair dealing and torts, it is accepted that L. 146/1914 on unfair competition institutes a special tort claim protecting not only the competitors, but also the consumers.[2] (More on this in Commercial Law and Torts, 2-IV). Additionally, in relation with precontractual fault actions (Arts. 197–198CC), it is accepted that unfair dealing before a contract is concluded may sustain a claim in both *culpa in contrahendo* and in tort (e.g. a seller knowingly negotiates the sale of a defective product and the prospective buyer is injured while the seller demonstrates the product). (More on this in Precontractual Liability and Torts, §12). In both the above cases, the claims concur.

1. Athens CA 127/1979 NoB 27, 1127.
2. *See* among others Georgakopoulos L., Commercial Law, 1954, p. 128.

§12. Precontractual Liability and Torts

62. Articles 197–198CC regulate liability of the negotiating parties, when the negotiation did not result in a contract, but one party wrongfully injured another during the negotiations (*culpa in contrahendo* – precontractual fault cases). Article 197CC provides that during negotiations, both parties are obliged to engage in the behaviour dictated by the principle of good faith and the ethics of transactions. Article 198CC provides that the party who caused through her fault loss to the counterparty during negotiations is obliged to restitution. It is generally accepted that this special form of liability is an *ex lege* cause of action, which concurs with tortious liability. On the prescription of the claim, Article 198CC explicitly refers to the same prescription as the claims in tort. Because the Civil Code devotes only these two articles to cases of precontractual fault, the interpretation of the applicable rules in every case will necessarily refer to the relevant solutions of the civil law of torts.

§13. Function of the Law of Torts

63. The law of torts comes to cover a particular, large and increasingly important, domain of civil liability. Contract liability aims at the protection of a single, limited interest, the interest of having the promise of others performed. Liability under unjust enrichment aims at the return of a benefit unjustly gained at another's expense or through another's estate – the function of the law of unjust enrichment in Greece is (most unfortunately, I believe) secondary and limited. The criminal law aims at the vindication of the interests common to the public at large, as they are represented by the State. What is left is the law furnishing the legal tools to the individuals, and not the public, to obtain compensation for losses suffered within the scope of their legally recognized rights and interests. This is the law of torts.

The range of interests protected through the law of torts is wide and becomes wider every day. Behaviours, which did not fulfil the condition of 'wrongfulness' yesterday and could not support a tortious action in damages, today may form a steady flow of civil lawsuits. This evolution is easier, I believe, in the Greek legal system, in comparison with the casuistic common law, where new torts undergo great difficulties before the judges allow them to be born,[1] and then, they need a specific name, if they are to survive – a fact due, perhaps, among other reasons, to the general law of inertia. The 'blank' nature of the main article on tort liability, Article 914CC ('every one who wrongfully and culpably harmed another is obliged to compensation') allows an interpretation of what is 'wrongful' in every instance a case is brought before the courts.[2] One should not assume, however, that in Greece new torts arise every day. To return to the range of interests protected, the blank nature of Article 914CC mentioned above also means that the law is equipped to follow the diverse and quick scientific evolutions, which sometimes create risks to people's interests.

1. Take as an example the medical informed consent actions in the American tort law.
2. One of the latest examples of this judicial possibility is the Supreme Court's decision 5/2001, on a civil case, where the omission of a super market to take safety measures for protection of the customers in its parking lot, even before the customer entered into the super market, marked a new interpretation of what is the duty of care (a wider one). The petitioner in this case was a woman who was attacked in the super-market's parking lot. In 2001, the Athens Court of Appeals also held that to enter a customer's name in a Bank's 'black list' by mistake, and to cause relevant losses, is an illegal act under Art. 914CC (therefore a tort, sustaining a claim for damages. Athens CA 2214/2001). These are rare cases when the meaning of illegality/wrongfulness of action is expanded.

64. Admittedly, specific statutes more usually than not, address the above situations (e.g. the new Greek law on data protection, etc.). These statutes become by their nature a part and parcel of the law of torts. The fact remains that, even without these statutes, the Civil Code offers the legislative grounds of liability, due to the abstract nature of its provisions. Also, usually the statutes refer to the Code to resolve issues as the quantum of damages, fault etc.

Tort law generally meets the compensatory needs of persons harmed in an immense variety of ways: those injured in an automobile, aircraft, train accident;

people harmed through the press or the mass media; people suffering from an environmental tort; people who received faulty services by doctors, lawyers, civil engineers or other professionals; workers injured at work (there is no workers' compensation system in Greece, as in the United States); people whose property was wrongfully interfered with, whose privacy was invaded, whose personality was harmed; consumers harmed by defective products; people bitten by dogs or kicked by horses. The social importance of civil liability is therefore, exceedingly great, not only because it allows the victims of a tort to sue for compensation, but also because it serves as a deterrent, even if not admitted as a necessary, goal of tort law, but only as a welcomed by-product of tort liability, in the sense that tort law rules make most people alert to the danger of a suit in tort damages, with the net result that they take certain precautions against tortiously harming others. As damages awards become greater in time (because they were notoriously low and particularly degrading in the past, especially those for emotional harm, pain and suffering), people will tend to avoid wrongful behaviours causing risks of harms. The insurance system, no doubt, may ease the deterrent effects of civil liability, as insurance also spreads in Greece; however, that tortious liability makes people generally more careful cannot be ignored.

§14. Protected Interests

65. The law of torts protects a variety of interests. The general provision of the Article 914CC, selected as a solution between a casuistic system of tortious liability (as in the US) and a system based mainly on one clause (as ours), has been interpreted so as to protect against and to provide compensation for the injury of many different rights and interests. Specific enumeration of protected interests can be found in other statutes, which complement Article 914CC as torts legislation (e.g. L. 2251/1994, on consumer protection etc.).

A first approach to the research on the rights and interests protected by the law of torts would be to describe the kinds of behaviour, or effect, considered illegal for the purposes of the Article 914CC (or the other articles – of course secondary to Art. 914CC – of the Civil Code dealing with tortious liability, as e.g. Art. 919CC). But this approach, which concentrates on the idea of illegality, does not offer a clear picture of all the protected rights and interests; this entails a thorough research of two of the other conditions of tortious liability, namely (a) causal connection and (b) loss. This research clarifies not so much which interests are protected, but rather which are not; for one reason, because the courts have not yet been willing, in some cases, to accept that there is indeed a causal connection between an illegal behaviour or effect and a certain loss, or, alternatively, that there was, in the specific case, an injury cognizable by the law of torts – to put it simply, that there was a loss for which the law offers compensation.

66. The enumeration of rights and interests protected by the law of torts will start, therefore, in a positive way and end with a negative one – first come the protected interests, then those that are not. The research of illegality also points to some kinds of illegal behaviour or effect, which do not qualify as illegal for the purposes of tort law compensation. So, also the function of illegality is both positive and negative.

Article 914 provides that anyone who illegally caused harm to another, due to his fault, is obliged to compensate for this loss. This is the main clause of the Civil Code on tortious liability. The rights and interests protected by this clause derive firstly from the interpretation of 'illegality'[1] as accepted by the courts.

1. I translate the word 'παράνομα' as illegally, because this is the meaning of the word; however, the truth is that the interpretation of the word has moved from the strict violation of a statute or a law, to the general concept of a behaviour, which breaches the general obligation not to harm another. In this sense, the word illegality here is also wrongfulness, and this is how we should understand the clause.

67. The injury of rights awarded by a certain provision of law is the clearest case of illegality. These rights may be absolute or relative. Absolute rights are considered those which everyone is obliged to respect and abstain from harming; relative are those which only certain parties are obliged to respect, as e.g. the classic case of contractual rights (privity of contract doctrine).

68. Personality comes as the first and most important interest protected by Article 914CC. Greek law has established, in another Civil Code provision (Art. 57CC), a right to personality, which protects against a variety of injuries to personality. The same injuries are also illegal, in the sense of Article 914. This injury has to concern any of the interests, which constitute or express an individual's personality. The protection is really wide. These interests are twofold:

a. interests in physical safety and well-being (interest in life, in health etc) and
b. interests in privacy, in dignity, in confidentiality, in freedom from emotional distress, in a person's own image, in freedom of movement, of expression, and generally, in freedom in the constitutional sense, e.g. freedom of development of personality (Art. 5C).

Injuries held illegal in the above sense: shooting a person and rendering him disabled for life,[1] publication of false information harming the claimant's dignity,[2] the use of a person's photograph without the person's consent,[3] forcing a person to a blood test to check paternity,[4] imitation of a trademark belonging to another,[5] intentional concealment of a previous marriage from the second spouse,[6] refusal to promote a qualified employee for promotion.[7]

All real rights are, under Greek law, absolute, therefore any injury of real rights by any party is illegal. The taking of another's property[8] or the intentional seizure and auction of things not belonging to the real debtor, but to a third party[9] have been recognized by the courts as injuries to be protected, under Article 914CC, rights. The right to an easement is also protected (Art. 1132CC), as is the right to possess a thing (e.g. unlawful eviction of a lessee: the eviction injured the absolute right to possession of the rented property.[10] The expectation right is also tortiously protected.[11] Intellectual property rights, i.e. rights to trademarks, to inventions etc., inheritance rights[12] also fall within the protection by the law of torts.

1. AP 209/1966.
2. AP 89/58, EEN 25/685.
3. Athens CA, 2149/78 Harm 32/786).
4. Thess CA, 486/69 Harm 23/831.
5. Athens DC 11465/84, CommLRev 36/181.
6. Athens CA 9754/86, NoB 35/549.
7. AP 25/83, EED 42/380.
8. AP 301/1963.
9. Volos DC 201/1962, NoB 11, 1154.
10. Thess CA 51/1955, EEN 22, 785).
11. Athens CA 3606/81, Athens CA 4110/84, NoB 32, 1226: party wrongfully excluded from a ballot for the distribution of different realties among the members of a building partnership has a right to compensation, as this party lost the right to the expectation of a gain.
12. AP 1038/1973.

69. On family rights, normally, the breach of spousal obligations does not by itself constitute a tort; but if the facts alleged as tortious, do constitute a tort, irrespective of the spousal relationship, then the suit under Article 914CC is possible. Family rights are a particular kind of rights, rights, which are of course not contractual nor real, but an intermediate class; on the other hand, the parent's right to exercise parental care and custody over a minor is an absolute right. The question

whether the harm of this right by a third party constitutes an illegal act under Article 914CC has not yet been answered by the courts; in fact, the Supreme Court, in a Section's session, confronted with the question ruled that the matter is so important, that only the plenary session of the Court could decide.[1] The court below (the Court of Appeals) had dismissed the action, holding that these facts do not constitute a tort against the parents, who did not sustain direct emotional harm, as what the defendant's harbouring did not offend their right to parental custody. The plenary session of the Supreme Court did make the step forward and fully recognized that the parent's right to the care and custody of their children, should also be protected in the law of torts. Now the road is open for a great number of suits against people outside the family, who offend the parent-child relationship.

1. AP 1323/2001, Nomos. In this case, the parents asked for damages for moral harm, because the owner of a games entertainment coffee shop harboured their son, when he was a minor, therefore against the law, with the result that the police arrested the minor.

70. Contractual rights are relative, so their injury (as a breach) by the contracting party is illegal but not in the sense of Article 914CC; there exist in the Civil Code special provisions governing the evolution of the contractual relationship. These provisions are exclusively applied. Only if the injury of the contractual right would by itself, and with no regard to the contract, constitute a tort, this injury is also protected by Article 914CC.

Injury of a contractual right by a non-contracting, a third, party is not normally considered as an injury to rights protected under 914CC. Third parties are not obliged to respect a contract between others.[1] Theory has, however, supported that when a third party intentionally intervenes in *the connection* between the contracting parties and prevents one of them from acquiring the relevant contractual right, then this action is illegal in the sense of Article 914CC. Also, Article 919CC, which forbids intentional actions against good morals causing harm to others has been considered as forbidding any intentional, third party interference with contractual relations (between others) causing harm to these parties' rights. So, in a way, there is legal coverage for what common law calls 'tortious interference with contractual relations', or specifically, 'inducement of breach of contract', in Greek law as well (*see* specific chapter).

1. *See also* Athens CA 2896/1977, NoB 26, 223.

71. Protected are also interests deriving by laws, which do not award specific rights to persons, but have a 'protective' action, protective in the sense that these laws recognize some interests as legal, therefore able to sustain causes of action. By definition, it is much more difficult to identify these interests than to enumerate rights whose injury is illegal under the Article 914CC, for this identification always entails an interpretation of the law in question.

Therefore, laws controlling environmental pollution or the urban planning laws aim at the protection of the interests of all citizens, as a whole, and not at the protection of private individuals as units, even when they are harmed by another's breaking of these laws. So, the interest of the owner of a building, harmed by the neighbour's constructing one illegal floor right in front of him, depriving him of the view, is not protected under Article 914CC, because the law prohibiting the floor in

question did not aim at the protection of the neighbours, but at the protection of interests of the public in general.

72. Courts, when asked to answer to the protected interests question, examine whether the legal provision violated is a 'protective' statute, that is whether it was enacted so as to protect private interests or not.[1] But illegality, and the resulting protection of (private) interests will be upheld, even if the statute did aim at the protection of private interests along with public ones; so, private interests do not have to be the exclusive object of the statutory protection.[2] So, the (criminal) statute prohibiting perjury has been held as protecting private interests as well,[3] while the (criminal) statute on espionage does not;[4] and the owner of a (legal) movie theatre was denied compensation for lost profits against another owner of the same district, who operated in violation of the law on projection licenses.[5]

1. AP 427/1958, 214/1972, 692/1953, 964/1975, Athens CA 3114/1077, NoB 26, 235, Athens CA 348/1977, NoB 25, 525.
2. *See* AP 427/1958, 760/1964, Athens CA 775/1960 NoB 8, 510.
3. AP 692/1953.
4. AP 427/1958.
5. Patras CA, 171/1959, NoB 8, 1095.

73. Interest in freedom from emotional distress. Non-physical interests (against insult, indignity, shock, confinement, generally emotional distress etc.) are protected by the law of torts. Policy questions (such as whether compensation for non-physical, non-economic loss should be afforded, because this loss cannot or should not be evaluated in terms of money; or because too many frivolous actions could result, if the door was open to any complaint for emotional distress) were in fact resolved selecting to provide money satisfaction for non-economic loss, but only in specific cases (Art. 299CC). These cases are: (a) non-economic loss due to (any) tort (Art. 932CC). (b) non-economic loss due to injuries to the right to personality (Art. 59CC). These are the two cases where the law especially provides for pecuniary satisfaction for non-economic loss. Notably, the major case where no satisfaction can be awarded for the injury of such interests is breach of contract. In contrast, economic loss is always recognized as compensable.

Freedom of emotional distress, as a distinct interest, is though in some cases *in fact* not recognized by the courts, through the function of other restraining mechanisms, like causal connection (remoteness of damage). Also, in wrongful death or injury cases, courts specify in terms of (objective) affinity the persons connected to a victim who can claim protection of their non-physical interests. However, a baby or a person conceived but not born when the wrongful death of its parent occurred, may receive monetary satisfaction for the wrongful death of her parent.[1] First cousins and uncles or aunts of the deceased sometimes are and sometimes are not considered as members of the 'family' of the deceased (Art. 932, Sec. 3) who are entitled to protection of their emotional interests.[2] The modern trend in jurisprudence, though, is towards the acceptance of the relevant claims.[3]

1. This consists of a rather modern jurisprudential development, as until fairly recently such satisfaction was regularly denied.
2. Athens CA 1707/1997, 5411/1996.
3. Paterakis, Monetary Satisfaction for Moral Harm, 1992.

74. The environment has not (yet) been recognized as a clear and distinct interest protected as such in civil law.[1] Still, theory has insisted that the interest should be recognized and that Article 57CC (protection of the right to personality) and that Article 914CC (general protection against torts) could be used as a legal basis for actions against environmental torts. Already, courts have recognized the interest in free use of things common to all citizens (the sea, the pavements, the mountains etc.) and have afforded civil law protection against injuries to this right through Article 57CC, so the right to personality, according to the courts, encompasses the interests in the free use of the above. Special statutes, as L. 314/1976 on liability for petrol pollution, L. 1650/1986 on liability from environmental pollution and L. 1758/1986 for liability from a nuclear accident accentuate the protection of the interest in the environment.

1. Karakostas, The Protection of Interests in the Environment through Jurisprudence, NoB 41, 1993, 45.

75. Under L. 2251/1994, Article 1, Sec. 2, the following interests of consumers in general are protected:

a. health and safety
b. economic interests
c. the right to associate and form consumers' protection societies
d. the right to be heard in relevant matters and
e. information and training in consumer topics.

These interests are connected (for purposes of tortious liability) to products' liability (Art. 6) and liability for services rendered (Art. 8).

76. Article 281CC prohibits the abusive exercise of (private) rights (abusive meaning the exercise of these rights against good faith, good morals or against their social-economic purpose). This article belongs to the 'protective' statutes mentioned above).[1] The abusive exercise of a right is, therefore, illegal under Article 914CC, it is a tort, so all interests against this exercise are protected.

1. AP 289/1974, 555/1974.

77. From the above discussion it is apparent that tort law protects a variety of rights and interests, ranging from real rights to things to interests in freedom from emotional distress etc. One of the latest judicial decisions, for example, awarded damages to a passenger, when he sued the state bus corporation for the loss of his time (40 minutes) due to an unreasonable delay (the driver refused to change course when he met an illegal parade in the street which was bound to delay the bus). The Court reasoned that the free will of the passenger to devote his time as he pleased was harmed and awarded 120,000 Dr (352 euro) as damages for moral harm. The cause of action was harm to personality combined with the main clause for tortious liability, Article 914CC.

§15. Sources of the Law of Torts

78. The Greek Civil Code is the main source of the law of torts. The Code is divided in five parts (General Principles, Law of Obligations, Law of Property, Family Law and Law of Inheritance). The (general) law of obligations covers the law of contracts, the law of torts and the law of unjust enrichment; the special part of the law of obligations contains specific rules on a series of different legal acts (sale; donation; lease; contract for work; contract for services; mandate etc.). The law of torts is therefore a part of the (general) law of obligations. The main articles on tortious liability are Articles 914–938CC, but the law of torts is completed with the help of many more articles in the Civil Code and beyond.

The articles in the first Book of the Code on protection of personality (Arts. 57CC, 58CC, 59CC, 60CC), on fraud and threat (Art. 149CC, Art. 152), the limitation of actions (Arts. 240–246CC) and on the prescription and peremption (Arts. 247–280CC) are a 'part' of the law of torts (and contracts etc.). Also from the first Book, Article 281CC, on the abuse of rights, Articles 282–280CC, on justification of wrongful acts (self-redress, self-defense, emergency) apply in the law of torts. Article 288CC on the principle of good faith is directly applicable in the law of torts. What we may call the 'general part' of the law of damages (Arts. 297–300CC), that is articles applicable in every claim for damages, irrespective of the cause of action sustaining the claim, is of course also a part of the law of torts (as it is a part of the law of contracts etc.). Also, specific cases of (tortious) liability are regulated in the Civil Code or in its Introductory Act:

a. Management of another Person's Affairs (Art. 739CC on non-genuine management of another's affairs)
b. Hotelkeepers liability (Arts. 834–839CC)
c. Defrauding of Creditors (Arts. 939–946CC)
d. Precontractual Fault (Arts. 197–198CC).
e. Art. 105 Int. Act to the Civil Code, Civil Liability of the State (for torts of civil servants).
f. From the Law of Property, Articles 987CC and 989CC (liability of the illegal possessor) and Article 1097CC – Article 1108CC (protection of ownership), Article 1132CC (protection of the right to an easement) and Articles 1284, 1299 (liability for the culpable worsening of the condition of a mortgaged real estate).
g. Inheritance law (Art. 1878CC, criminal acquisition of the possession of an item belonging to an inheritance).

79. The recent revision of the Greek Constitution (2001) and the express implementation of the theory of the applicability of human rights provisions to private law relations opens a new area of tort law, that is the possibility of civil law tortious actions against private parties who breached constitutional civil rights provisions. It is too soon to note any jurisprudence on the matter, or even legal theory, but at least now we may refer to the relevant constitutional provisions on civil rights as a legitimate part of the law of torts, in its broad sense. The general spirit of the law may

serve, in a particular case, as a source of the law of torts, as it is, for example, for the justifications of consent and conflict of duties (*see* chapter on justification of a tortious action).

80. Almost the whole of the Criminal Code, may be considered as a stable reference to crimes that simultaneously constitute torts, so far as they aim at the protection of the victims and not (only) of the public at large. These crimes are regulated by specific rules and justifications in the text of the Criminal Code. In these cases, when a civil court has to determine civil tortious liability and award damages, the criminal code rules applicable in the particular crime shall apply also in the civil court, when it comes to i.e. a particular justification of this crime etc. In this sense, the criminal law is, at the very least, a stable reference for the law of torts; most importantly, every crime of the Criminal Code that has also caused loss, in the civil law sense, is also always a tort. So, the condition of illegality (necessary to the determination that there was a tort), *stricto sensu*, is automatically satisfied, when it is proven that the alleged tortfeasor has committed a crime.

81. L. 146/1914 on unfair competition, L. 1998/1939 on the protection of trademarks and L. 2527/1920 on the protection of patents may also be considered largely as a part of the law of torts, in its widest possible concept.

82. A series of statutes also regulates specific torts, such as:

1. L ΓΠΝ/1911 on liability for automobile accidents
1. L 551/1915 on liability for workmen's accidents
2. L 314/1976 on liability for petrol pollution
3. L 1650/1986 on liability from environmental pollution
4. L 1758/1986 for liability from a nuclear accident
5. L 2472/1997 on liability for the processing of personal data
6. L 2774/1999 on the protection of personal data in the telecommunications Section
7. L 2251/1994 on products liability, liability for services, etc. on consumer pro tection
8. L 2121/1993 on protection of intellectual property (including software)
9. L 2328/1995 on regulation of private television stations
10. Article 3, P.D. 350/1985 on liability of the underwriter
11. L 1815/1988, Article 106–121, on liability from airplane enterprise.

It is of course impossible and unnecessary to list all the specific statutes on torts. The above statutes are only offered as an example, they do, though, constitute the main body of statutes on tortious liability, apart from the Civil Code.

83. Jurisprudence and legal theory in Greece are not considered as a source of law. Nevertheless, they form a part of the law of torts in its broadest possible sense. It would be highly unusual for a court judgment not to refer in its text to other court judgments, or to books and articles by the Greek legal theorists. There is a stable

interaction between the lawmakers (statutes etc.), the judges (opinions) and the legal theorists (books and articles). The law of torts is therefore in a constant dynamic state.

84. The conclusion of this reference to the main sources of the law of torts is that it is a very complex part of the Greek law, ruled by several very general principles (what is loss, what is causal connection etc.) but is also fractioned. This work attempts the most possible inclusive report of the law of torts in a monograph, but it is also possible that, while the text goes to print, a new statute will be voted in the Greek Parliament, a new European Directive on a tort will be issued, a Greek court may accept a new tort, or even a constitutional tort for the first time. In this respect, the reader shall at least be warned, and any legal evolutions shall be included in the later editions of the monograph.

85. Statutes are published in the Government Gazette. They are also reported in a major collection of legislation, published monthly, called 'Kodikas Nomikou Vimatos'. Most Greek lawyers now are subscribed in the electronic law database called 'Nomos' (from the ancient Greek word for law, 'νόμος'). Nomos contains not only the State's statutes, but also court judgments, legal articles etc. Nomos has in fact replaced 'Raptarchis', a statutory collection named after its founder, setting out legislation by subject matter in a loose-leaf publication. Lastly, there are many law reviews in Greece and the most important among them are listed in the selected bibliography, which follows.

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Part I. Liability for One's Own Acts

Chapter 1. General Principles

86. Tort liability in Greece is a matter analyzed under the special part of the law of obligations.[1]. A tort[2] is a wrongful and culpable act that injured another (Art. 914CC). The law of obligations is a major branch of private law. An obligation (in Latin, *obligatio*) is the legal relationship under which a party, the debtor[3] has towards another party, the creditor,[4] an obligation, that is, a duty of performance. The rule has its roots back in Roman law. One may be obliged to perform a contract (contractual obligation – obligation to pay money, to deliver goods, to render services etc.) or to return the enrichment gained at another party's expense or through another's estate (obligation born because of unjust enrichment, Art. 904CC); but for what is important in the law of torts, one may be obliged to pay damages (because this will be the usual 'performance' in this case), because one has committed a tort against another party or because one is strictly liable for another's tort. In addition, more rarely, a party may be obliged to abstain from a specific act, because this act constitutes a tort; again, this abstention will be the performance owed to the creditor.

1. In Greek, 'ενοχικό δίκαιο','δίκαιο των ενοχών' where 'ενοχή' means 'obligation', usually to pay damages. I speak of 'the law of torts' in Greece; however, there is no specific and complete part of the civil law named 'the law of torts', containing all rules on tort liability. By 'the law of torts' I mean all the statutory and other rules that refer to tortious liability and I do this as a matter of pure convenience. Torts, as contracts, are one of the recognized legal grounds of civil liability, one cause of action for damages in civil law. Apart from this, rules on fault, causal connection, measure of damages etc. are common in both contracts and torts. So, while recognizing that it would be quasi-problematic to refer to the 'law of contracts' and to 'the law of torts', and that it is much more accurate to speak of 'the law of obligations' in Greece, I use the term 'law of torts' as a term achieving to specify the subject-matter of this monograph and I apologize to my civil law colleagues, if this term tends to sound closer to common law notions and classifications than to civil law ones.
2. In Greek, there are two words for tort, 'αδικοπραξία' and 'αδίκημα' where 'αδικοπραξία' is every wrongful act, irrespective of fault/culpability and 'αδίκημα' every wrongful act that caused injury and was also culpable. In this sense, an act by an incompetent that caused a loss is 'αδικοπραξία' but not 'αδίκημα'. The terminological distinction does not seem to serve any practical need.
3. In Greek, 'οφειλέτης'.
4. In Greek, 'δανειστής'.

87. In Greece there is no law of torts entirely separate from the law of contracts. The Civil Code contains separate provisions on both the conditions of liability for breach of contract and on the conditions of tort liability; however, this distinction ends when the question of liability (who and when is liable?) has been resolved. From this point onwards, the consequences of liability (liable for what? obliged to do what?), mostly the amount of damages etc. are dealt with in provisions applicable in both contract and tort. In this sense, contract and tort are just two, among other, less important in nature – unjust enrichment apart – and more rarely used, different legal grounds of liability.[1] The concepts of 'fault', 'loss' and 'causal connection', as conditions to liability, have exactly the same meaning, irrespective of the cause of action. Also, the law of damages is supposed to serve the same ends (compensation, not deterrence, not punishment) irrespective of the cause of action (contract, tort, other).

1. In Greek, 'νόμιμοι λόγοι ευθύνης', a term used because it represents better than others ('λόγος αποζημίωσης'='grounds for damages' etc.), because it includes the word 'legal' and therefore stresses that there may be no liability without an express legislative provision to this end. On the contrary, loss and causal connection are concepts that are strongly influenced by factual and non-legal concepts. *See* Stathopoulos, ErmAK, Art. 297 n. 2.

88. The system of tortious liability in Greece is grounded on the principle of fault (Arts. 330, 335, 337CC and Art. 382CC). Tortious liability is primarily fault liability; strict liability remains, mostly, the exception. On fault, we should mention at the outset that the distinction between the intentional or negligent nature of the (unlawful) action that caused injury (a crucial distinction in legal systems as e.g. in the US/UK) is generally of no real practical significance, as in principle, the measure of damages is, as a rule, the same in both cases. This rule, which may sound completely incomprehensible, or even wrong in principle, to a common lawyer, is justified in Greece because of the purpose of the law of damages (again, compensation, not deterrence, not punishment). When the sole objective is to put the injured party exactly at the same position this party would have been had there been no breach of contract or no tort, then there is no room for an award of damages as punitive, or vindictive.

Apart from the condition of fault, unlawfulness of the alleged tortfeasor's conduct is an entirely separate condition of tortious liability. As we shall see, fault and unlawfulness coincide in some cases, this meaning that the same set of facts, the same conduct, satisfies both conditions; but, even if they become one, they are still two in concept and both are required to ground liability in tort.

§1. Unlawfulness and Torts

89. Unlawfulness (an unlawful act or omission which caused the injury) and fault (intention or negligence by the tortfeasor) are two separate conditions of tortious liability. The central provision of the Civil Code on torts (Art. 914CC) is a general clause (preferred by the lawmaker a casuistic system of tortious liability). This general clause contains the following conditions of tortious liability (Art. 914CC):

a. loss or injury
b. unlawful behaviour (action or omission)
c. causal connection between the unlawful behaviour and the loss.

Therefore, the rule is that there can be no tortious liability without both unlawfulness of an action/omission and fault. Of course, there are exceptions, as e.g. strict liability cases.

90. Apart from the above central provision, there are specific Civil Code provisions on particular torts (e.g. Art. 920CC, defamatory rumors, Art. 739CC, on spurious management of another's affairs etc.). Also, statutes may 'institute' specific torts, in the sense that the statute will proscribe certain behaviour as illegal, therefore satisfying the condition of illegality of tortious liability. But Article 914CC remains the basic general provision on tortious liability and in a complaint for damages, as legal grounds of liability, Article 914CC is steadily reported joined by whatever other articles, statutory provisions etc. may serve as a cause of action.

91. A literal translation of the Article 914CC would force us to translate the adjective 'παράνομο' as illegal, namely against a specific statute. Still, the proper interpretation of the article compels a wider concept than 'strict' illegality. What is crucial is the conflict of the action in question, which caused the injury, with the law in general, and not with a particular statute. Therefore, the correct translation is 'unlawful' or 'wrongful'('άδικο'), instead of 'illegal'.[1]

1. *See* Stathopoulos M., Law of Obligations, 1998, 297.

92. A matter which has caused a debate in case law is what exactly should be wrongful/illegal for purposes of the application of the Article 914CC, the conduct of the tortfeasor or, rather, the consequences, the result of this conduct. If the conduct is crucial, then any action contravening the law shall be held wrongful; if the result is crucial, then there will be control of the unlawfulness of the action, but as wrongful will be held any action which in fact injured another's right or interest. This means that the interpreter's concern will move from the tortfeasor and his conduct to the consequences of this conduct.

The prevailing view in case law seems to be that wrongfulness should be judged by the illegal result, namely the illegal loss or injury of another's right or interest.[1] As an argument for this view, it is supported that a perfectly legal behaviour may nevertheless cause an illegal, wrongful injury such as e.g. a driver who drives at the legal speed but injures a pedestrian. The question, however here, is whether the wrongful behaviour is not the normal speed driving, but the injury of the pedestrian.[2] Legal theory has in the past supported the view that both the conduct and the injury, as a result, must be wrongful.[3] Also, some courts have adopted this 'double' wrongfulness requirement,[4] probably as a 'comfortable' solution to the problem. Legal theory currently supports, though, that the question of wrongfulness should be answered in relation to a conduct and not to a result of this conduct. This conclusion is in harmony with the prevailing objective theory of unlawfulness, which supports exactly that a conduct will be held unlawful if it contravenes a certain rule of

law, and not any action in general which causes an injury and is justified by a specific right of action (the subjective theory of unlawfulness). After all, damage or injury consists a separate condition of tortious liability; there can be no liability without damage. There are, finally, Supreme Court judgments supporting this view and referring to an unlawful conduct, and not to an unlawful damage.[5]

1. *See* AP 417/1996, NoB 46, 706, Athens CA 298/1995 HellD/ni 38, 1146, Athens CA 298/1995, HellD/ni 38, 1146, Athens CA 3114/1977 NoB 26, 235, Thess CA 326/1971, Harm 25, 515.
2. *See* Georgiadis, Law of Obligations, 1999, p. 601.
3. *See* Balis, General Principles, Sec. 171, n. 1, Zepos II, p. 270.
4. Athens MDC 15598/1975 NoB 24, 335, 731/1970 NoB 18, 1367.
5. AP 47/1996, NoB 46, 706.

93. There are two theories on unlawfulness: the subjective theory, which supported that every action which caused an injury and which was not an exercise of a right is unlawful, and the objective theory, which supported that only if a conduct contravenes a specific rule of law, or the general 'spirit of the law', is unlawful.

The objective theory has prevailed. Article 914CC does not define what is unlawful; it only provides for the obligation of the tortfeasor to pay damages, in every case where he has engaged in unlawful conduct. To find out if she has in fact engaged in such conduct, we must resort to other rules of law which forbid this conduct or obliged the tortfeasor to the action he omitted.[1] In this sense, Article 914CC is frequently called a 'blank' rule of law, because it does not define what is illegal or what is not; it refers to the laws in their entirety (civil, criminal, administrative etc).[2]

It is, though, in fact, an oversimplification to declare that every time that a conduct contravenes any rule of law, then this conduct is unlawful. This interpretation does not reflect the true spirit of the law. Therefore, two 'corrective' measures are accepted, to remedy this problem of unlawfulness; one to restrict the concept and one to enlarge it.

1. AP 1286/1976, AP 1249/1976 NoB 26, 906, 739, Athens DC 985/1975 NoB 23/532, also Stathopoulos, Law of Obligations, 1998, p. 298, Georgiadis, Law of Obligations, 1999, p. 596.
2. AP 854/1974, NoB 23, 479, AP 343/1968 NoB 16, 943.

94. The 'blank' nature of Article 914CC notwithstanding, not every rule of law, or statute, when violated, qualifies as a rule of law for the purposes of its application. There are rules aiming at the protection of specific interests. If their violation happens to injure other interests as well, then the injured party has no standing to claim compensation for this loss. Especially for this party, there is no unlawfulness. The easy case is when the rule violated granted a right to the injured party (for example, in theft, the tortfeasor violated the real owner's right to property of the thing stolen). Still, a further distinction is necessary, between the injury of absolute rights and the injury of relative rights.

When absolute rights are injured, as the right to life, to health, to bodily well-being and security, or to property, possession, right to intellectual property etc., there is no doubt that the conduct which caused the injury will be held unlawful. Case law has extended this absolute right protection to violations of the right to a

person's estate in its entirety – this meaning the total of a person's rights, contractual or *in rem* and a person's clientele etc. This however is incorrect, for the notion of an 'estate' is not recognized in Greek law as a distinct legal interest deserving the protection offered to other, recognized interests. Injuries of a (whole) estate could be regarded as injuries to the right to personality (Art. 57CC), if willful, as conduct against good morals (Art. 919CC), or as contravening the duty of care every citizen has toward everybody else, or the 'spirit' of the law.

Injury of relative rights, as are the contractual rights, normally does not qualify as an 'unlawful' injury and Article 914CC does not apply in these situations. Breaches of contract are regulated in specific (other) Civil Code provisions (e.g. Art. 335CC). If the breach of contract, however, also constitutes a tort, because the conduct is tortious in itself, then the two claims in contract and in tort are concurrent and the injured party may select how to proceed.

Contractual rights, may be infringed by a party not party to the contract, a third

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