

PETL use. Summary of Court Judgments years 2007-2011 *

Abbreviations

STS: Supreme Court Judgment (Sentencia del Tribunal Supremo)

SAP: Principal Court of a Spanish Province Judgment (Sentencia de la Audiencia Provincial)

STSJ: Judgment of the High Court of an Autonomous Region (Sentencia del Tribunal Superior de Justicia)

CC: Civil Code (Código Civil)

PETL: Principles of European Tort Law

2005-2007 Judgments

STS March 6, 2007 (1446/2007)

Liability of a company for its employees' actions. Certified cheques by the debtor acting in his capacity of director of a bank office: exceeding one's authority. Required standard of conduct. Integrating function of the PETL.

LEGAL PRINCIPLES: In a case of employer liability for employee conduct, the Supreme Court interpreted the requirement of article 1903.4 CC, according to which the employee should be acting "within the course and scope of his functions". This requires determining the negative limits of this liability and verifying if he was in breach of the duty to supervise in the same sense as article 6:102 PETL describes the "required standard of conduct in supervision".

STS July 17, 2007 (831/2007)

Domestic accident: injuries due to a fall in the home of some friends caused by tripping on a toy left in the hallway. Correction of the subjective criteria of article 1902 of the Civil Code: integrating function of article 4:102 PETL.

LEGAL PRINCIPLES: The Supreme Court upheld the integrating function of article 4:102.1 regarding the general formulation of the principle of liability based on fault as established in article 1902 CC in the area of non-contractual liability. The due care required of hosts who are parents of a small child, regarding their guests, cannot cover any danger, however remote, but rather should be shaped in the same sense and on the basis of the same circumstances set out by the PETL with the required standard of conduct. (art.4:102.1 PETL).

STS October 10, 2007 (1091/2007)

Sportsman who assaulted the hall porter of the hotel where he was staying. Employer liability for employee conduct: not attributable to the sports club: required standard of conduct. Integrating function of the PETL.

LEGAL PRINCIPLES: In a case of employer liability for employee conduct, the Civil Code required that the employee be acting "within the course and scope of his functions" (art. 1903.4 CC). According to the Supreme Court, its application requires determining the negative limits of this liability and verifying if the duty of supervision has been breached in the same sense as article 6:102 PETL describes

* Universidad Carlos III de Madrid. Departamento de Derecho Privado. GRUPTL

the "required standard of conduct in supervision". The court ruled that this was not the case here.

SAP, Madrid, September 7, 2007 (640/2007)

Fall in a shopping centre: the victim slipped on an unidentified object or substance in the floor which had not been cleaned since 9.00 am. Liability not found: ordinary life risks. Interpretation of the general conditions of liability based on fault of article 1902 CC: integrating function of the PETL.

LEGAL PRINCIPLES: The system of liability of article 1902 CC requires that the damage caused, as a result of an action or omission, be by fault or negligence, interpreted in the same sense as article 4:102-1 PETL, in other words, on the basis of the standard of a reasonable person in these same circumstances, with special attention to article 4:102-1 PETL. Outside of these limits, liability does not exist.

SAP, Asturias, September 27, 2007 (336/2007)

Fall in a shop: the victim slipped because the floor had been recently mopped with no warning signs. General system of liability according to article 1902 CC.: requires breach of due care standard in agreement with art. 4:102-1 PETL. No liability found: ordinary life risks.

LEGAL PRINCIPLES: The system of liability of article 1902 CC requires that the damage caused, as a result of an action or omission, be by fault or negligence, interpreted in the same sense as article 4:102-1 PETL, in other words, on the basis of the standard of a reasonable person in these same circumstances, with special attention to article 4:102-1 PETL. Outside of these limits, liability does not exist.

SAP, Asturias, October 19, 2007 (369/2007)

Fall in a shopping centre because of the impact of an automatic door on closing. Applicability of the general system of non-contractual liability: liability exists if the damage caused is due to fault or negligence (art.1902 CC). Fault and due care standard: integrating function of the PETL.

LEGAL PRINCIPLES: The system of liability of article 1902 CC requires that the damage caused, as a result of an action or omission, be by fault or negligence, interpreted in the same sense as article 4:102-1 PETL, in other words, on the basis of the standard of a reasonable person in these same circumstances, with special attention to article 4:102-1 PETL. Outside of these limits, liability does not exist.

SAP, A Coruña, November 27, 2007 (425/2007)

Deferred capital with reimbursement of premiums contract through an agent. The insurance company is found liable for damage attributed to the agent during the contractual relationship. Required standard of conduct if acting within the course and scope of his functions (art. 1903 CC): Required standard of conduct in supervision: art. 6:102 PETL.

LEGAL PRINCIPLES: In a case of employer liability for employee conduct (art.1903 CC) it should be verified that the employee acted in the course and scope of his functions. If this was so and the damage caused to the customers could only be due to, in this case, that the bank had not complied with article 6:102 PETL and the so-called "required standard of conduct in supervision".

SAP, Badajoz, December 21, 2007 (467/2007)

Fall in an establishment open to the public: case of liability governed by Art. 1902 CC. Liability exists if the damage caused is due to fault or negligence (art.1902 CC). Fault and due care standard: integrating function of the PETL. No liability found: ordinary life risks.

LEGAL PRINCIPLES: The system of liability of article 1902 CC requires that the damage caused, as a result of an action or omission, be by fault or negligence, interpreted in the same sense as article 4:102-1 PETL, in other words, on the basis of the standard of a reasonable person in these same circumstances, with special attention to those set out in article 4:102-1 PETL. Outside of these limits liability does not exist.

SAP, Guipúzcoa, December 21, 2007 (333/2007)

Fall of a homeowner on stairs. A case of liability governed by article 1902 CC. Liability exists if the damage caused is due to fault or negligence (art. 1902 CC). Fault and due care standard: integrating function of the PETL.

LEGAL PRINCIPLES: The system of liability of article 1902 Cc requires the damage caused, as a result of an action or omission, be by fault or negligence, interpreted in the same sense as article 4:102-1 PETL, in other words, on the basis of the standard of a reasonable person in these same circumstances, with special attention to those set out in article 4:102-1 PETL. In the case, the Homeowner's Association was not found liable because it was not proven that the only cause of the fall was the state of the staircase.

2008 Judgments

SAP, Pontevedra, February 21, 2008 (117/2008)

Fall in the toilet of a restaurant. Required standard of conduct. Ordinary life risks. Integrating function of the PETL.

LEGAL PRINCIPLES: The court uses the PETL again in its integrating function of the law, to integrate both article 1902 CC, and the parameter of due care provided for in article 1104 CC. Specifically, article 4:102 is applied in this case of a fall in a public establishment, to establish the required standard of conduct in these cases. According to the above mentioned article, the required standard of conduct is that of a reasonable person in these same circumstances and depends on various factors (the nature and value of the protected interest, the danger involved in the activity, etc.) which are enumerated in said article.

SAP, Huelva, March 17, 2008 (21/2008)

Fall in a building under works. Required standard of conduct. Ordinary life risks. *Conditio sine qua non*.

LEGAL PRINCIPLES: After conducting a detailed review of the requirements for civil liability (among these, the causal link, where the court alluded to the theory of *conditio sine qua non* established in article 3:101 PETL), the court applied article

4:102-1 of the PETL, regarding the required standard of conduct, as a reference to integrate both the formulation of article 1902 CC, and the parameter of due care set out in article 1104 CC. The aforementioned principle defines the required standard of conduct as that of a reasonable person in these same circumstances and depends on various factors (the nature and value of the protected interest, the danger involved in the activity, etc.) which are enumerated in said article.

SAP, Ciudad Real, April 14, 2008 (57/2008)

Injuries suffered as a result of glass breaking after pushing open a glass door. Required standard of conduct. Integrating function of the PETL.

LEGAL PRINCIPLES: In a case of damage derived from ordinary life risks, the court used article 4: 102-1 of the PETL, to integrate the parameter of due care provided for in article 1104 CC, therefore attempting to interpret it according to the reality of the times in which it was to be applied. The article cited, upon establishing the required standard of care, enumerated a series of circumstances that must be taken into account when establishing a model of care valid in the majority of cases.

SAP, Pontevedra, April 24, 2008 (266/2008)

Fall in a senior citizen centre. Required standard of conduct. Ordinary life risks. Integrating function of the PETL.

LEGAL PRINCIPLES: The court applied article 4:102-1 of the PETL, regarding the required standard of conduct, to deny compensation for the damages suffered while taking part in sports activities under the supervision of an instructor in a centre for senior citizens. Once again, the court used the article cited to integrate articles 1902 and 1104 CC and to thus establish a model of care valid in the majority of cases. The aforementioned article defines the required standard of conduct as that of a reasonable person in these same circumstances and depends on various factors which are enumerated in said article.

SAP, Asturias, May 29, 2008 (133/2008)

Fall in a building: required standard of conduct. Integrating value of the PETL.

LEGAL PRINCIPLES: The court applied article 4:102-1 of the PETL, regarding the required standard of conduct, as a reference to integrate both the laconic formulation of article 1902 CC, as well as the parameter of due care provided for in article 1104 CC, so as to establish a model of due care valid in the majority of cases. The aforementioned article defines the required standard of conduct as that of a reasonable person in these same circumstances and depends on various factors (the nature and value of the protected interest, the danger involved in the activity, etc.) which are enumerated in said article.

SAP, Barcelona, September 10, 2008 (445/2008)

Compensation for damages suffered in an automobile which was not repaired at the time of the assertion of a claim. Restitutio in integrum.

LEGAL PRINCIPLES: The court applied articles 10:101 and 10:104 of the PETL, that established the complete restoration of the victim, in support of their decision that the plaintiffs be compensated for the entire amount of the estimate for repair

provided by a garage, although the repair work had not yet been undertaken or even if it was not known if it would be undertaken. According to the court, the complete compensation of the victim provided for in article 1902 CC can consist of both the reimbursement of the expense that he had to undertake to restore him to the position s/he would have been in if the wrong had not been committed, as well as the possible cost of a future repair, even if the victim decides not to carry this out.

SAP, Ciudad Real, October 24, 2008 (210/2008)

Liability for breach of contract. Application of the PETL to determine pain and suffering.

LEGAL PRINCIPLES: The court applied the concept of compensation established in the PETL (article 10:101), in a case claiming damages for pain and suffering derived from breach of contract. In the judgment the court stated that the concept of the PETL, which included both contractual and non-contractual liability, attempts to restore the victim to the position he would have had if the damage had not occurred. Upon transferring this concept from the PETL to the case law of the Supreme Court, the judgment concluded that the compensation for pain and suffering does not attempt to make pecuniary reparation but rather contribute to bearing the pain and anguish, suffering and sadness, of the injured party.

SAP, Huelva, October 29, 2008 (233/2008)

Disproportionate compensation in comparison to the market value of the damaged object. Use of the PETL as an authoritative criterion.

LEGAL PRINCIPLES: Faced with the absence of a principle in our body of law such as article 251 BGB (German Civil Code) which resolves the problem of assessing damages when the amount of the reparation of the object is extraordinarily disproportionate to its value, the court applied the PETL as "authoritative criterion", because they are not legally binding. In these cases, article 10:203 PETL requires taking into account the value of the lost or destroyed thing or its damage, regardless of whether the owner is willing to repair it or not. This article adds that if the victim has already replaced or repaired it (or is willing to do so) he would have to be reimbursed for the highest expenditure incurred if it is considered reasonable.

STS, November 24, 2008 (1085/2008)

Aggression suffered on the premises of the underground. Contracting private security companies. Non-delegable duties: duty of care in choosing the contractor.

LEGAL PRINCIPLES: The court stated that certain duties of care cannot be excluded due to the fact that the contract is carried out by a third party. Certain "non-delegable duties" exist, among which is the duty of care in choosing the contractor, whose breach caused the duty to compensate. This norm is included in article 8:107 of the PETL which states that "the party that entrusts performance to another continues to have a duty".

2009 Judgments

STS March 2, 2009 (102/2009)

Objective attribution: closeness in time or space between the damaging activity. Protective purpose of the norm.

LEGAL PRINCIPLES: In this judgment, the Supreme Court ruled that the damage was not attributable to the defendant based on two ideas of interest: A) citing article 3:201.a) PETL, it is pointed out that when a direct and immediate relationship between the action of the agent and the damage caused cannot be established, and therefore it cannot be said that the damage originated in the exclusive and excluding sphere of the defendant, damage cannot be attributed to him and B) damage cannot be attributed to the defendant when his activity, although it was not carefully performed, did not have as its aim to avoid the damage which is at question (citing article 3:201.c) PETL).

SAP, Castellón, January 21, 2009 (22/2009)

Required standard of conduct. Ordinary life risks. Negligence.

LEGAL PRINCIPLES: The court used the definition of required standard of conduct contained in article 4:102 PETL as an instrument to aid in specifying the element of "fault" provided for in article 1902 of the Civil Code as criteria for attributing damage. All activities objectively damaging that are outside the scope of control defined by said standard impede attribution of the act, and its damaging consequences, to a third party when the liability is on the basis of fault. Ordinary life risks, whose materialization in damage does not permit attributing liability to anyone, are therefore limited per contra. Thus the victim of the damage must bear it.

SAP, Pontevedra, February 12, 2009 (60/2009)

Fall in a home. Ordinary life risks. Assumption of risk by the victim.

LEGAL PRINCIPLES: The court rests its ruling on, among others, the STS of 27-VII-2007, which employed article 4:102 PETL as an integrating element of the requirement of fault, stated in article 1902 of the Civil Code. The foreseeability of the damage by the victim impedes that, once established, it can be attributed to the defendant even though for him it was also foreseeable. This implies, according to the court's criteria, including the damaging activity within ordinary life risks, which leads to stating that the victim must assume the damage, without it being possible to transfer it to a third party.

SAP, Asturias, March 18, 2009 (96/2009)

Fall in a public place. Ordinary life risks.

LEGAL PRINCIPLES: The court argues its ruling explicitly on the doctrine of article 4:102 PETL, using it as an integrating element for the idea of fault provided for in article 1902 of the Civil Code. In the opinion of the court, the damage suffered in the fall of the victim when he tripped on a rug placed at the entrance of the business was a general life risk because it was something normal, and for this reason the victim must assume the damage. Nevertheless, it seems that the court

left a door open with the idea that if it had been proved that the rug was in bad condition it could have been considered a source of risk beyond the usual that is, ordinary life risk, and would have made it possible to attribute liability to the defendant.

SAP, Castellón, May 8, 2009 (163/2009)

Pavement in bad condition. Negligence. Forseeability of the damage.

LEGAL PRINCIPLES: The principle that can be extracted from this ruling is that damage which could have been avoided by taking greater care when performing an activity that does not require this, are not considered ordinary life risks. In this case, the cause of the damage is within the scope of functions of a third party (the Public Administration), which implies indirectly the limitation of the standard of care required of third parties within this scope. Therefore, the damage that these third parties suffered while acting within the standard of care that is required of them is attributable to the person who controlled the activity from which the damage originated.

SAP, Cantabria, May 20, 2009 (356/2009)

Fall in a public place. Slippery floor. Ordinary life risks.

LEGAL PRINCIPLES: The court uses as legal grounds the definition of required standard of care contained in article 4:102 PETL as an instrument to help establish the element of “fault” provided for in article 1902 of the Civil Code. The foreseeability of the damage by the victim impedes that, after establishing this, liability can be attributed to the defendant. In the opinion of the court, this falls within ordinary life risks, and even if the damage is legitimate, liability is excluded. The victim has to bear his loss.

SAP, Madrid, May 27, 2009 (337/2009)

Due care. Employer liability for employee conduct.

LEGAL PRINCIPLES: The criteria enumerated in article 4:102 PETL are used as a integrating element of the concept of fault in article 1902 of the Civil Code to determine the required standard of care, beyond which the attribution of fault, required to attribute liability, is possible. This pattern of behaviour is also present when the defendant must respond for the agent who caused the damage, as in cases of employer liability for employee conduct.

SAP, Girona, May 28, 2009 (242/2009)

Fall on stairs. Ordinary life risks.

LEGAL PRINCIPLES: The court ruling rests on the doctrine that uses article 4:201 PETL as an integrating element of article 1902 of the Civil Code to assert that performance of normal daily chores, like mopping stairs, does not require the agent to adopt measures disproportionate to the risk involved in performing the activity. In this way, the scope of activities included within ordinary life risks is indirectly broadened and that which the victim must bear.

SAP, Cantabria, June 11, 2009 (413/2009)

Fall in a public place. Slippery floor. Ordinary life risks.

LEGAL PRINCIPLES: The court supports the argument of the judgment with the definition of required standard of care contained in article 4:102 PETL as an instrument to help establish the element of “fault” provided for in article 1902 of the Civil Code. The foreseeability of the damage by the victim impedes that, after establishing this, liability can be attributed to the defendant. In the opinion of the court, this falls within ordinary life risks, and even if the damage is legitimate, liability is excluded. The victim has to bear his loss.

SAP, Pontevedra, June 18, 2009 (273/2009)

Fall in a home. Ordinary life risks.

LEGAL PRINCIPLES: The court rests its ruling on, among others, the STS of 27-VII-2007, which employed article 4:102 PETL as an integrating element of the requirement of fault, stated in article 1902 of the Civil Code. The foreseeability of the damage by the victim impedes that, once established, it can be attributed to the defendant. The trust and friendship between the plaintiff and defendant adds to the foreseeability of the damage by the defendant and therefore, linking damage within the scope of ordinary life risks, which leads to confirming that the victim has to bear his loss.

SAP, Madrid, September 15, 2009 (487/2009)

Fall of a product set up in a public establishment. Negligence of the owner.

LEGAL PRINCIPLES: Citing the STS of 21-XI-2008, the Court adhered to the doctrine that attributes a possible integrating element to article 4:102 PETL of the requirement of fault provided for in article 1902 of the Civil Code. In this sense, avoiding that a minor knock down a worktop set up in a public establishment, falls within the measures required of the persons in charge. Therefore, the damage suffered by the minor on whom the worktop fell is completely attributable to them, even when it was proven that the accident took place because the minor attempted to climb up on top of the worktop that fell on him and caused the injuries for which the compensation discussed here is due.

SAP, Ávila, September 17, 2009 (176/2009)

Standards of conduct. Negligence. Causation. Objective Attribution.

LEGAL PRINCIPLES: The court uses as legal grounds the definition of required standard of conduct contained in article 4:102 PETL as an instrument to help establish the element of “fault” provided for in article 1902 of the Civil Code. In this sense, one who carries out works without complying with one of the necessary requirements to avoid the risk of damaging a third party, assumes that risk, making it part of his circle of control, and therefore, permitting the attributability of the damage to he who has acted accordingly.

SAP, Barcelona, November 18, 2009 (583/2009)

Damage assessment when the proof of this assessment is too difficult.

LEGAL PRINCIPLES: Unlike in other rulings, the court seems to be invoking the PETL, in particular article 2:105, as authorizing provision to assess recoverable damages according to what would be reasonable and normal in this specific case.

Said article 2:105 states that “the court may estimate the extent of damage where proof of the exact amount would be too difficult or too costly”.

2010 Judgments

STS, May 14, 2010 (269/2010)

Employer liability for employee conduct. Existence. Hazing. Breach of the required standard of conduct in supervision. . Required standard of conduct if acting within the course and scope of his functions.

LEGAL PRINCIPLES: This case raises the question of determining if a company is responsible for the damage caused by one of its volunteers to another underage volunteer when thrown into the water, an act of hazing, when he was bailing water from a lifeboat. The court, although it recognized that an act of hazing does not fit exactly with the scope of functions of the aggressor, turned to article 6:102 of the PETL to determine that the company was in breach of the required standard of conduct in supervision, that is, in breach of the due care standard.

STS, June 15, 2010 (366/2010)

Moral and physical suffering during the closing of a business due to wilful breach of contract by the defendant. Pain and suffering. Causation with breach. It is sufficient to objectively attribute the pain and suffering to the breach.

LEGAL PRINCIPLES: In determining if there should be compensation for the pain and suffering of the plaintiff because of the closing of his business due to breach of contract by the defendant, the court took into account the concept of personal injury contained in article 10:202 of the PETL. Likewise, it uses articles 9:501 and 9:503 of the PETL to extend the compensation of pain and suffering to include all injury resulting from the breach if this has been wilful.

STS, November 3, 2010 (366/2010)

Pain and suffering. Nullity of the sanction imposed already covers possible pain and suffering.

LEGAL PRINCIPLES: A member of the military had been sanctioned by a higher ranking official for a petty offense. The case was dismissed in the sense that the sanction was set aside, but he was not granted compensation for pain and suffering, which was the reason why he appealed to the Supreme Court. The Supreme Court dismissed the case because they asserted that the damage had already been compensated with the setting aside of the sanction, finding inspiration in the concept of pain and suffering in article 10:301 of the PETL as a psychological or spiritual suffering that distresses the subject, not including aspects of material damage at the moment this has occurred, exclusively, when an immaterial personal right has been violated.

STS, November 22, 2010 (786/2010)

Traffic accident: Different determination of injury to bodily health and cosmetic damage. Financial assessment will be made in accordance with the values in force, not at the time of the court's ruling but rather at the moment the victim receives medical discharge. Concept of recoverable monetary losses in the PETL.

LEGAL PRINCIPLES: The court takes into account article 10:202 of the PETL in considering if compensation for future medical costs for the damage caused by a traffic accident should be allowed. They use this article to support the ruling that the medical costs, brought on by the accident since they have as their purpose to restore health and are intended to assure the victim a minimum quality of life, can be compensated as monetary losses.

SAP, Cantabria, February 4, 2010 (84/2010)

Non-contractual breach. Injuries suffered when a finger was caught in the door of a bar closed by another client. Required standard of conduct. Ordinary life risks.

LEGAL PRINCIPLES: The court uses the PETL as an integrating element of the law to determine the parameter of required care in non-contractual breach applying article 4:102.1 of the PETL to a case of injury to a finger caught in the door of a bar when closed by a third party. In accordance with article 4:102.1 of the PETL, the required standard of conduct is that of the reasonable person in the circumstances, and depends on various factors (the nature and value of the protected interest involved, etc). Having the door to the bar open is not a necessary and sufficiently intense cause to produce the injuries of the plaintiff.

SAP, Granada, February 12, 2010 (70/2010)

Non-contractual breach. Flooding as a result of a broken pipe. Multiple activities where each of them alone was sufficient to cause the damage. Solidary liability.

LEGAL PRINCIPLES: Some business premises were flooded as a result of a broken water pipe which was the responsibility of the company Emasagra, S.A. The company and its insurer admitted the break but alleged that the water had entered in the premises through a ditch dug by Endesa, S.A. which was in bad condition. The court upheld the appeal on the basis of the guidelines on causation in the PETL, especially in article 3:103.1 ("in case of multiple activities, where each of them alone would have been sufficient to cause the damage, but it remains uncertain which one in fact caused it, each activity is regarded as a cause to the extent corresponding to the likelihood that it may have caused the victim's damage").

SAP, Madrid, March 2, 2010 (181/2010)

Non-contractual breach. Fall caused by slipping on a manhole cover. Poor condition of the manhole cover: insufficient roughness necessary to avoid slipping.

LEGAL PRINCIPLES: A woman sought compensation for damage suffered because of a fall on a rainy day when she slipped on a manhole cover, whose

upkeep was the responsibility of the defendant. It was shown that the manhole cover had not been kept in adequate conditions. The court used articles 4:101 and 4:102.1 of the PETL to integrate article 1.902 CC and establish a model of careful conduct valid for the majority of cases. For this reason, the conditions required in article 1902 of the Civil Code are found to exist, especially the fault of the defendant, because through its employees, the state of the manhole should have been checked in the frequent inspections that were to have been carried out.

SAP, Barcelona, March 12, 2010 (138/2010)

Non-contractual breach. Damage to a caravan because of the explosion of a gas cylinder in another caravan parked alongside. Financial assessment. Recoverable damages cannot exceed the value of the vehicle at the time of the accident.

LEGAL PRINCIPLES: There were damages to a caravan because of an explosion in the caravan parked beside it. In first instance the extent of damage was estimated to be the cost of repair of the damage. The court found that when the cost of reparation exceeds the intrinsic value of the vehicle, the compensation will be the sales value of the vehicle at the time of the accident, adjusted slightly higher because of expenses and bother; a theory endorsed by article 10:203 of the PETL that establishes that the basic measure of damages is "the value of the thing" and that the victim can only recover the highest expenditure thereby incurred "if it is reasonable to do so".

SAP, Lérida, May 13, 2010 (202/2010)

Non-contractual breach. Fall in a shower. Required standard of conduct. Ordinary life risks.

LEGAL PRINCIPLES: The court uses the PETL as an integrating element of the law to determine the parameter of required care in non-contractual breach applying article 4:102.1 of the PETL to a case of a fall in the shower of a cooperative, where the plaintiff alleged that the floor, which was non-slip, was wet. In accordance with article 4:102.1 of the PETL the required standard of conduct is that of the reasonable person in the circumstances, and depends on various factors (the nature and value of the protected interest involved, the dangerousness of the activity, the expertise to be expected, the foreseeability of the damage, the relationship of proximity or special reliance between those involved, as well as the availability and the costs of precautionary or alternative methods). Article 1902 of the Civil Code is integrated to exclude from its scope the small risks that life requires us to bear.

SAP, Cantabria, May 17, 2010 (334/2010)

Non-contractual breach. Fall in the toilet of a restaurant. Required standard of conduct. Ordinary life risks.

LEGAL PRINCIPLES: The court uses the PETL as an integrating element of the law to determine the parameter of required care in non-contractual breach applying article 4:102.1 of the PETL to a case of a fall in the toilet of a restaurant. In accordance with article 4:102.1 of the PETL the required standard of conduct is that of the reasonable person in the circumstances, and depends on various

factors (the nature and value of the protected interest involved, the dangerousness of the activity, etc.). Article 1902 of the Civil Code is integrated to exclude from its scope the small risks that life requires us to bear.

SAP, Zaragoza, September 30, 2010 (436/2010)

Non-contractual breach. Liability of the owner of hunting grounds is liability with fault. The necessity for olfactory signals not shown.

LEGAL PRINCIPLES: A suit had been brought against the company owning the hunting grounds claiming compensation for damage caused by the species of that land because there were no olfactory signals. The court uses the PETL as an integrating element of the law to determine that the liability of the company owning the hunting grounds is liability with fault (beyond the circumstances of a hunting suit, in which case it is strict), for which article 5:101 PETL is mentioned where it is pointed out that for an activity to be considered strict liability, it must be abnormally dangerous.

SAP, Barcelona, November 16, 2010 (582/2010)

Non-contract civil liability. Use of a substitute vehicle for an unreasonable period of time.

LEGAL PRINCIPLES: A vehicle was involved in a minor accident. The owner of the vehicle used a substitution car for six days, including a weekend. The substitute car company considered this to be too long and claimed an appropriate amount. The court stated that the victim and the repair shop should take every precaution to ensure that the stay of the vehicle corresponded to the small entity of the repair, for which it turned to the definition of recoverable pecuniary damage in article 10:201 of the PETL (diminution of the victim's patrimony caused by the damaging event).

SAP, Barcelona, December 9, 2010 (645/2010)

Non-contractual breach. Damage to an automobile in a traffic accident. Financial assessment. The recoverable damage cannot exceed the value of the vehicle at the time of the accident.

LEGAL PRINCIPLES: An automobile suffered damage due to a traffic accident. In first instance damages were awarded for the value of the car the day of the accident. The plaintiff appealed seeking that the extent of damage be set at the cost of repairing the car which was much higher. The court found that when the cost of reparation exceeds the intrinsic value of the vehicle, the compensation will be the sales value of the vehicle at the time of the accident, adjusted slightly higher because of expenses and bother; a theory endorsed by article 10:203 of the PETL that establishes that the basic measure of damages is "the value of the thing" and that the victim can only recover the highest expenditure thereby incurred "if it is reasonable to do so".

SAP, Pontevedra, December 10, 2010 (905/2010)

Non-contractual breach. Injuries suffered by a minor when his hand was mashed in a hydraulic door. Required standard of care. Ordinary life risks.

LEGAL PRINCIPLES: The mother of a minor whose hand was mashed by a hydraulic door (in good working order and that had a bar to stop it) brought a suit against the homeowners association and its insurer. The court uses the PETL as an integrating element of the law to determine the parameter of required care in non-contractual breach. In accordance with article 4:102.1 of the PETL the required standard of conduct is that of the reasonable person in the circumstances, and depends on various factors (the nature and value of the protected interest involved, the dangerousness of the activity, etc.). Article 1902 of the Civil Code is integrated to exclude from its scope the small risks that life requires us to bear.

SAP, Asturias, December 10, 2010 (419/2010)

Non-contractual breach. Injury suffered to a toe upon hitting it with the entrance door of a bank. Required standard of care. Ordinary life risks.

LEGAL PRINCIPLES: The court uses the PETL as an integrating element of the law to determine the parameter of required care in non-contractual breach applying article 4:102.1 of the PETL to a case of injury to a toe upon hitting it with the entrance door of a bank. In accordance with article 4:102.1 of the PETL the required standard of conduct is that of the reasonable person in the circumstances, and depends on various factors (the nature and value of the protected interest involved, the dangerousness of the activity, the expertise to be expected, the foreseeability of the damage, the relationship of proximity or special reliance between those involved, as well as the availability and the costs of precautionary or alternative methods).

STSJ, Galicia, December 14, 2010 (Auto nº 280/2010)

Enterprise liability. Liability on the basis of fault. Solidary liability of the company with its insurer.

LEGAL PRINCIPLES: This case deals with a petition for clarification in which a company sought to declare void the decree of solidary liability between it and its insurer for damage suffered by a worker and that the insurer be declared directly liable for paying the worker. Without prejudice to the dismissal of the case for using an inadequate judicial proceeding, the court referred to the PETL to recall that the norm is that of liability on the basis of fault (art. 4:101: "a person is liable on the basis of fault for intentional or negligent violation of the required standard of conduct"). The court also pronounced on the existence of solidary liability of the company with its insurer.

SAP, Coruña, December 17, 2010 (501/2010)

Non-contractual breach. Solidary liability. Negligent conduct of several liable parties such as the case of the building company and the property developer of a building whose construction produced damage to another. PETL: art. 3:201.

LEGAL PRINCIPLES: Damage to a nearby building which occurred as a result of the construction of a building was the motive for the lawsuit brought by the owner of one of the dwellings in the damaged building against the building company. The company argued that it was not responsible for the damage because it had limited itself to following the project of the property developer. The court found that there

could be others liable (solidary liability), but that this did not exclude the liability of the construction company on the basis of the criteria of objective attribution established in article 3:201 of the PETL (foreseeability of the damage, nature of the protected interest, basis of the liability, ordinary risks of the activity, and protective purpose of the rule).

SAP, Barcelona, December 20, 2010 (690/2010)

Liability for breach of contract. Injuries sustained when chasing a thief who had stolen his mobile phone in an underground station. The company licensee of the transport service found not liable for lack of security. Force majeure.

LEGAL PRINCIPLES: The licensee of the transport service had been sued for the injuries sustained by the plaintiff when chasing a thief who had stolen his mobile phone in an underground station. The security service had been subcontracted to a third party. The court cited article 8.107 of the PETL (regarding the liability of he who entrusts the compliance of the contract to a third party) referring to other cases with the intention of justifying not applying the same principle to this case because in the others the lack of adequate security measures had been proven, which the court asserted had not occurred in the case being tried. It was deemed force majeure because a third party's deliberate act broke the causal connection between the conduct of the agent and the security provided by the entity sued.

2011 Judgments

STS, June 8, 2011 de 2011 (383/2011)

Traffic accident. Recoverable expenses.

LEGAL PRINCIPLES: The norm dealing with pecuniary damage contained in the PETL (article 10:201 and, referring concretely to personal injury, article 10:202) serves as support, according to the court, to cover the possibility of compensating as pecuniary damage the medical costs incurred from an accident understood broadly as they were costs from remedial medical care, pain palliation, rehabilitation, etc. and that were directed at restoring the right to health, at least, meant to assure the victim a minimum quality of life in answer to the loss of health that the psychological and physical impairment suffered entailed.

SAP, Granada, January 21, 2011 (17/2011)

Negligence in the maintenance of a building. Required standard of conduct. Integrating function of the PETL.

LEGAL PRINCIPLES: The court applied article 4:102 of the PETL, where the required standard of conduct is established and defined alluding to that of a reasonable person in the circumstances, taking into account criteria such as the nature and value of the protected interest involved or the dangerousness of the activity, among others. These guidelines are taken as a reference to integrate both the succinct formulation of article 1902 CC and the parameter of care of article 1104 CC and, thusly, construct a model of due care valid for the majority of cases.

In this case, its application determined that the collapse of the roof of a house was the result of a negligent conduct in the obligation to maintain the building.

SAP, A Coruña, January 24, 2011 (26/2011)

Damage resulting from a fire. *Conditio sine qua non*.

LEGAL PRINCIPLES: Causation is determined by the application of *conditio sine qua non* and the aim pursued by the standard violated, principle also set out in article 3:101 of the PETL. According to this, the court determined that an activity or conduct is a cause of the victim's damage if, in the absence of the activity (automobile fire), the damage would not have occurred (damage to vehicles parked nearby). The aim of article 1902 CC is to restore the patrimony of the persons affected by the actions of third persons as well, unless there are concurrent causes of force majeure or there is some legal norm that requires compensation even in these circumstances.

SAP, Madrid, February, 2011 (80/2011)

Construction liability. Liability under a contract. Pain and suffering.

LEGAL PRINCIPLES: As a result of a case of liability under a contract, the court employed article 10:301 of the PETL to define pain and suffering, frequently associated with physical or psychological suffering by case law, as that which affects the integrity, dignity or liberty of the person, or other personality rights. The court did not grant compensation for pain and suffering because this is oriented toward reparation of the same pecuniary damages that are already considered to be assigned in the building in the case at hand, without having justified the basic situation that gives rise to compensation for this type of damage.

SAP, Castellón, March 4, 2011 (71/2011)

Fall of a truck scale. Required standard of conduct. Ordinary life risks. Integrating function of the PETL.

LEGAL PRINCIPLES: The court applied article 4:102 of the PETL, where the required standard of conduct is established, as an integrating element of the law to determine the parameter of required care in the case of a fall of some truck scales when someone was walking on the platform. The standard contained in this article, that of a reasonable person in the same circumstances, depends on various factors such as the nature and value of the protected interest involved, the dangerousness of the activity, the expertise to be expected, the foreseeability of the damage, among others, which leads to the conclusion that the fall was due to the distraction of the victim or can be explained within the parameter of ordinary life risks.

SAP, Zaragoza, March 17, 2011 (125/2011)

Liability of the owners of a game preserve for damage caused by hunting species. Abnormally dangerous activities. Liability based on fault.

LEGAL PRINCIPLES: The court ruled out the possibility of applying the principle of risk because this criterion of attribution can only be applied with abnormally dangerous activities, according to the PETL (article 5:101). This was not the case: using a plot of land for hunting not only does not generate a risk of damage, but

rather if it is run in an organized manner, it can lessen the likelihood of this. From here, it is stated that attributing liability to hunting grounds for damage caused by hunting species is based on fault, referring to compliance with the obligations of maintaining the hunting grounds.

SAP, Pontevedra, March 22, 2011 (156/2011)

Fall on the stairs of an apartment block. Required standard of care. Integrating function of the PETL.

LEGAL PRINCIPLES: In order to determine if there was some kind of fault in the conduct of the defendant, the court took into consideration the required standard of conduct provided for in article 1104 CC and, more specifically, in article 4:102.1 of the PETL. According to this article, the standard of conduct is that of a reasonable person in the circumstances, bearing in mind certain criteria such as, the nature and value of the protected interest involved, the dangerousness of the activity, the expertise to be expected, the foreseeability of the damage, among others. Although pouring water down some stairs without warning users could, in principle, be considered failure to take due care, there is no evidence to support this fact.

SAP, A Coruña, March 29, 2011 (172/2011)

Liability for breach of contract. Traffic accident on a motorway for lack of cleaning. Criteria of causation.

LEGAL PRINCIPLES: Having determined the immediate cause (spot of diesel fuel on the roadway for lack of cleaning), one should look no further for remote causes. According to the court, this conclusion and contractual liability can be arrived at by applying the criterion of closeness between the damaging activity and its consequence, pursuant to the criteria of causation set out in article 3:201 of the PETL which establishes the scope of liability.

SAP, A Coruña, April 5, 2011 (201/2011)

Acoustic emissions. Infringement of the privacy of the home. Pain and suffering.

LEGAL PRINCIPLES: The court decided that the definition provided for in article 10:301 of the PETL of non-pecuniary damages coincided with the case law that considered pain and suffering as the type of damage not susceptible to being evaluated from a patrimonial standpoint. This is because it consists of an impairment which may fall within the bounds of mental distress, but also in the psychological and physical realm, and that consists of, paradigmatically, suffering or impairment that do not have a direct or sequential financial translation. Given that the noise generated in the case at hand did in fact affect the privacy of the home, causing a psychological affectation, the damage should be compensated as pain and suffering.

SAP, A Coruña, April 7, 2011 (151/2011)

Liability for breach of a combined travel contract. Application of the PETL to determine pain and suffering.

LEGAL PRINCIPLES: The court made reference to the definition of non-pecuniary damage contained in article 10:301 of the PETL to determine the existence of pain

and suffering originating from breach of contract. The court deduced from this article, among others, that pain and suffering, frequently associated by case law to physical and psychological suffering, are those that affect the integrity, dignity or liberty of the person, or other personality rights. The evident suffering, uncertainty and bother endured by the plaintiffs on their trip give rise to the existence of recoverable pain and suffering.

SAP, A Coruña, April 12, 2011 (213/2011)

Non-payment of insured loan. Negation of the compensation by the insurer. Non-existent pain and suffering.

LEGAL PRINCIPLES: The court cited article 10:301 of the PETL and its definition of non-pecuniary damage upon considering it to coincide with the case law definition of pain and suffering as those not susceptible to being evaluated from a patrimonial standpoint. This is because it consists of an impairment which may fall within the bounds of mental distress, but also in the psychological and physical realm, and that consists of, paradigmatically, suffering or impairment that do not have a direct or sequential financial translation.

SAP, Jaén, April 27, 2011 (107/2011)

Water damage to a dwelling. Required standard of conduct. Integrating function of the PETL.

LEGAL PRINCIPLES: The attribution of fault must refer to conduct which does not conform to the established standard of conduct, regarding which the court cited the PETL and its patterns of required standard of conduct (article 4:102), paying special attention to the criteria established therein. To this effect, the due care required of the owner of a home is to maintain it in good repair with the aim of not causing damage to a third party but not that of visiting it more or less frequently to prevent the possible aggravation of the damages which might affect a third party.

SAP, A Coruña, May 27, 2011 (292/2011)

Liability for breach of a hotel management contract. Pain and suffering.

LEGAL PRINCIPLES: The court alluded to the definition of non-pecuniary damage set forth in article 10:301 of the PETL, because of a claim for pain and suffering due to breach of contract. The court decided that the definition coincided with the case law that considered pain and suffering as the type of damage not susceptible to being evaluated from a patrimonial standpoint. This is because it consists of an impairment which may fall within the bounds of mental distress, but also in the psychological and physical realm, and that consists of, paradigmatically, suffering or impairment that do not have a direct or sequential financial translation.

SAP, A Coruña, November 11, 2011 (587/2011)

Fall from a horse. Inherent risk of horseback riding. *Conditio sine qua non*.

LEGAL PRINCIPLES: In order to establish the cause of damage, the court turns to the theory of equivalence of conditions and cites the principle of *conditio sine qua non* contained in article 3:101 of the PETL according to which, and although later nuanced, an activity or conduct is the cause of the victim's damage if, in the absence of the activity, the damage would not have occurred. The primary cause

of the victim's injuries was that the horse shied and that as a result the victim was unable to maintain his balance - a risk assumed and accepted as part of the activity of horseback riding which is not exempt of danger - and not the action of the horse.

SAP, Valencia, May 27, 2011 (332/2011)

Fall for tripping on a duvet on the ground. Required standard of conduct. Ordinary life risks. Integrating function of the PETL.

LEGAL PRINCIPLES: The court applied article 4:102 of the PETL, where the required standard of conduct is established and defined alluding to that of a reasonable person in the circumstances, paying special attention to the criteria contained herein. These guidelines are taken as a reference to integrate both the succinct formulation of article 1902 CC and the parameter of care of article 1104 CC and, thusly, construct a model of due care valid for the majority of cases. The small ordinary risks that life obligates us to bear are to be excluded from the scope of article 1902 CC.

SAP, Pontevedra, June 8, 2011 (314/2011)

Fall on pavement. Lack of due care upon not warning of an obstacle in an area of transit. Required standard of conduct. Integrating function of the PETL.

LEGAL PRINCIPLES: The existence of fault in the actions of the company sued should be ascertained bearing in mind the required standard of conduct, which the court arrived at through article 1104 CC and, more specifically, of the PETL (article 4:102 (1)), identifying said standard of conduct with that of the reasonable person in the circumstances, which depends, bearing in mind certain criteria such as the nature and value of the protected interest involved or the dangerousness of the activity, among others. In applying these criteria, the court concluded that there was a lack of due care upon not warning adequately of the obstacles in an area of pedestrian transit.

SAP, Barcelona, June 15, 2011 (380/2011)

Traffic accident. Pecuniary damages. Medical expenses.

LEGAL PRINCIPLES: The norm dealing with pecuniary damage contained in the PETL (considering, in general, recoverable all diminution of the victim's patrimony caused by the damaging event and applying, in particular, the criteria of article 10:202 regarding compensation for personal injury) serves as support, according to the court, to cover the possibility of compensating as pecuniary damage the medical costs incurred from an accident. These costs must be understood broadly, since they were costs from remedial medical care, pain palliation, rehabilitation, etc. and were directed at restoring the right to health, at least, meant to assure the victim a minimum quality of life in answer to the loss of health that the psychological and physical impairment suffered entailed.

SAP, A Coruña, June 17, 2011 (346/2011)

Damage to a building because of excavations in the adjacent lot. *Conditio sine qua non.*

LEGAL PRINCIPLES: In order to establish the cause of damage, the court turns to the theory of equivalence of conditions and cites the principle of *conditio sine qua non* contained in article 3:101 of the PETL according to which, and although later nuanced, an activity or conduct is the cause of the victim's damage if, in the absence of the activity, the damage would not have occurred. Applying this principle to the case in question, if the new works had not been carried out, the damage to the facade, terrace and roof would not have occurred nor would the dampness due to the use of concrete have appeared.

SAP, A Coruña, June 27, 2011 (358/2011)

Damage to a home because of refurbishment works in the building. *Conditio sine qua non.*

LEGAL PRINCIPLES: The court applied the principle of *conditio sine qua non* contained in article 3:101 of the PETL to determine the liability of the defendant for the damage. According to the aforementioned article, and except for nuances, an activity or conduct is a cause of the victim's damage if, in the absence of the activity, the damage would not have occurred. The cracks in the home were produced as a consequence of the wrought iron coming down. The damage was foreseeable, and could have been avoided by placing a beam to support the wrought iron and impede that it come down.

SAP, Barcelona, July 13, 2011 (447/2011)

Uneconomical repair of a vehicle. Unique vehicle with no replacement on the market. PETL as a basic measure of compensation.

LEGAL PRINCIPLES: The court took note, from a strictly doctrinal point of view, of article 10:203 of the PETL as a basic measure of compensation –the value of the thing-, asserting that the victim could only claim the higher cost of the reparation if such action was reasonable. Therefore, the thesis that the recoverable damage can in no case exceed the value of the vehicle at the time of the accident is seconded. Although in the case at hand, the only option to fully restore the damage that is provided for in article 1902 CC is recovering the price of repair for being an irreplaceable vehicle.

SAP, Barcelona, July 14, 2011 (384/2011)

Right to rectify information. Absence of pain and suffering.

LEGAL PRINCIPLES: The court alluded to the definition of non-pecuniary damage contained in article 10:301 of the PETL. The court made reference to the definition of non-pecuniary damage contained in article 10:301 of the PETL. The court deduced from this article that pain and suffering, frequently associated by case law to physical and psychological suffering, is that that affects the integrity, dignity or liberty of the person, or other personality rights. In the case at hand, nevertheless, it cannot be considered that any harm has been caused to the plaintiffs that can be considered pain and suffering.

SAP, Madrid, September 15, 2011 (418/2011)

Intervention of notary public in a loan document. No defect found in the power of attorney. Causation not established.

LEGAL PRINCIPLES: The court applied the criterion of closeness between the damaging activity and its consequence, recognized both academically and in case law and contained, among others, in article 3:201 of the PETL, as one of the parameters to establish the causal link. There is no closeness between the intervention of a policy and the damage claimed, above all when the intervention dates from the year 1995 and the complaint was lodged almost fifteen years later.

SAP, A Coruña, September 16, 2011 (453/2011)

Works in an exclusive area of an apartment block. Existing causal link. *Conditio sine qua non.*

LEGAL PRINCIPLES: In order to establish the cause of damage, the court turned to the theory of equivalence of conditions and cited the principle of *conditio sine qua non* contained in article 3:101 of the PETL, according to which, and although later nuanced, an activity or conduct is the cause of the victim's damage if, in the absence of the activity, the damage would not have occurred. The circumstance that the roof, lacking the lower support, collapsed and cracks appeared is a phenomenon that is routinely warned about in this type of refurbishment.

SAP, A Coruña, September 23, 2011 (479/2011)

Damage to a building as a consequence of works on pipelines in the street. Causal link not proven. *Conditio sine qua non.*

LEGAL PRINCIPLES: The court did not consider proven the existence of the causal link between the works carried out in the street and the appearance of fissures in the facade and stains on the door of the building. In order to establish the causation, the court alluded to the principle of *conditio sine qua non* contained in article 3:101 of the PETL, according to which, and although later nuanced, an activity or conduct is the cause of the victim's damage if, in the absence of the activity, the damage would not have occurred.

SAP, Madrid, October 4, 2011 (486/2011)

Fall caused by a top that protruded from the pavement. Maintenance obligations of the property owner. Required standard of conduct. Integrating function of the PETL.

LEGAL PRINCIPLES: The court asserted the integrating element of the PETL regarding the concept of fault necessary to demand non-contractual liability and that some patterns of required conduct for all (reasonable person) must be referred to, according to a series of circumstances contained in article 4:102 of the PETL. These guidelines are taken as a reference to specify the content of article 1902 CC, and thus, formulate a model of due care of reparation or maintenance. As the manhole was an element integrated into the business activity of the defendant, she has the obligation to maintain it and to sufficiently warn about the works.

SAP, A Coruña, October 14, 2011 (519/2011)

Traffic accident. Event that caused the damage. *Conditio sine qua non.*

LEGAL PRINCIPLES: In order to establish the cause of the damage, the court turned to the theory of equivalence of conditions and cited the principle of *conditio sine qua non* contained in article 3:101 of the PETL, according to which, although later nuanced, an activity or conduct is a cause of the victim's damage if, in the absence of the activity, the damage would not have occurred. The cause of the accident was not travelling at a speed greater than the limit, but that one of the two automobiles did not respect the obligation to yield.

SAP, A Coruña, October 26, 2011 (561/2011)

Damage due to water leaks from neighbour. *Conditio sine qua non.*

LEGAL PRINCIPLES: In order to establish the cause of the damage, the court turned to the theory of equivalence of conditions and cites the principle of *conditio sine qua non* contained in article 3:101 of the PETL, according to which, although later nuanced, an activity or conduct is a cause of the victim's damage if, in the absence of the activity, the damage would not have occurred. The action (lack of due care and not replacing the gutter), the result (damage to the back facade of the adjacent building) and the causal link are unquestionable in this case.

SAP, A Coruña, November 4, 2011 (293/2011)

Fall in a ditch. Absence of the due precautions in carrying out works. Required standard of conduct. Integrating function of the PETL.

LEGAL PRINCIPLES: The court asserted the integrating element of the PETL regarding the concept of fault necessary to demand non-contractual liability and that some patterns of required conduct for all (reasonable person) must be referred to, according to a series of circumstances contained in article 4:102 of the PETL. These guidelines were taken as a reference to incorporate both the laconic formulation of article 1902 CC, as well as the parameter of due care provided for in article 1104 CC, so as to establish a model of due care valid in the majority of cases, concluding in the case at hand that the absence of the necessary measures to avoid pedestrians falling had been proven.

SAP, Madrid, November 10, 2011 (39/2011)

Traffic accident. Recoverable expenses.

LEGAL PRINCIPLES: The norm dealing with pecuniary damage contained in the PETL (article 10:201 and, referring in particular to personal injury, article 10:202) serves as support, according to the court, to cover the possibility of compensating as pecuniary damage the medical costs incurred from an accident, understood broadly, as they were costs from remedial medical care, pain palliation, rehabilitation, etc. and that were directed at restoring the right to health, at least meant to assure the victim a minimum quality of life in answer to the loss of health that the psychological and physical impairment suffered entailed. These recoverable expenses should also include the cost of transfer of the patient to the hospital for rehabilitation.

SAP, A Coruña, December 2, 2011 (625/2011)

Damage to a dwelling due to construction of an adjacent building. Causal link not proven. *Conditio sine qua non.*

LEGAL PRINCIPLES: In accordance with the applicability of article 1902 CC, the court investigated the reason for the damaging event (fissures in a dwelling) to be able to attribute the result. In this process, they cite the principle of *conditio sine qua non* contained in article 3:101 of the PETL according to which, although with nuances, an activity or conduct is the cause of the victim's damage if, in the absence of the activity, the damage would not have occurred. There is no proof that the adjacent work was sufficient to cause the fissures, whereas, there are grounds for exclusion, such as the beginning of works in the very building.