LIABILITY FOR DAMAGE CAUSED BY THINGS
From the Civil Law Point of View

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The problem that we are considering from a comparative point of view is the following: How do the civil law and the common law handle problems of liability where a thing is involved in an accident causing injury. Does the fact that a thing has contributed to, or even has caused, the injury sustained by the plaintiff, have any special significance in the common law and in the civil law.

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1 Communication présentée le 5 juin 1961 lors du Congrès de l'Association canadienne des professeurs de droit. Le texte a été considérablement revisé afin de tenir compte, entre autres, de la Loi de l'indemnisation des victimes d'accidents d'automobile, S.Q., 1960-61, c. 65, entrée en vigueur, en ce qui concerne les dispositions mentionnées dans le texte, le 1er octobre 1961. Paper delivered at the Annual Meeting of the Association of Canadian Law Teachers on June 5th, 1961. The text has been considerably revised in order to take into account the recent Highway Victims Indemnity Act, S.Q., 1960-61, c. 65. The provisions mentioned in the article came into force on October 1st, 1961.
systems of liability? Does it bring into operation any special rules of substantive or adjectival law?

I. Preliminary Observations.

Before attempting to describe the civil-law approach to this particular question of civil liability, three preliminary observations of a general character should, I think, be made: the first one relates to the general conditions of civil responsibility; the second deals with the duality of regimes of liability; the third concerns the burden of proof of liability.

1. General conditions of civil responsibility

An action in damages will not succeed under the civil law unless the three following conditions are established to the satisfaction of the court: (i) fault of the defendant; (ii) damage sustained by the plaintiff—which may be a bodily or pecuniary or moral type of injury, and (iii) a causal connection between fault and damage. 2

A fault may broadly be defined as a violation of one's pre-existing duty whether it be one voluntarily assumed by contract (contractual obligation) or one imposed by law (legal or extra-contractual obligation). Fault is, generally speaking, a necessary and essential ingredient of civil responsibility under the civil law of Quebec. 3

It should be understood that fault, in the civil-law meaning of the term, does not necessarily mean negligence, absence of reasonable care, or conduct not up to the standard of a "bon père de famille". It means simply any breach of one's duty, whatever the duty may be. In some cases, this duty may be what is known as an "obligation of means" (obligation de moyen). In such cases, the

2 See A. Nadeau, Traité de droit civil du Québec (t. 8, 1949), no. 53 et seq., p. 35 et seq. L. Baudouin, Le droit civil de Québec (1953), p. 753 et seq.

3 The theory of liability without fault was introduced, however, at the beginning of the century under the form of professional risk in the first of the Quebec Workmen's Compensation Act, (S.Q., 1909, c. 66), see A. Nadeau, op. cit., ibid., no. 327, p. 293; Ville de Jonquieres v. Brassard, [1928] S.C.R. 165. In the 1931 version of the Act (S.Q. 1931; c. 100), see R.S.Q., 1941, c. 160 as am., the theory was maintained at least where the employer must himself compensate the injured employee, see s. 3, sub-s. 3 and 6 of the Act; also United Provinces Insurance Co. v. Boulton, [1958] S.C. 433. In the field of automobile accidents, the recent Highway Victims Indemnity Act, supra, footnote 1, also introduces the concept of liability without fault against the owner of an automobile: see s. 3 (a) of the Act, and on this subject: Cl. A. Sheppard, La loi de l'indemnisation des victimes d'accidents d'automobile (1962), 22 R. du B. 73; P.-E. Bisaillon, La loi de l'indemnisation des victimes d'accidents d'automobile (1962), 22 R. du B. 96; M. Pourcelet, La responsabilité du propriétaire d'automobile au regard de la loi du 10 mai 1961 (1962), 22 R. du B. 104.
duty of the debtor, whether it be contractual or extra-contractual, is to take the reasonable care and attention which the “bon père de famille” would ordinarily take so as not to cause damage to his neighbours. Several examples of this type of duty are to be found in the Code and in our “Jurisprudence”. For instance, a doctor’s or a surgeon’s duty is not to cure, but merely to bring, in the discharge of his professional activities, all the reasonable skill, care and attention which a reasonably competent practitioner would bring under similar circumstances. Therefore, in such cases, fault means absence of reasonable care or negligence.

In other cases, the duty of the debtor might be, what is known as an “obligation of result”, that is a duty to achieve a definite result, for instance, an obligation to deliver an object at a particular date and place. Fault then, in the absence of a fortuitous event preventing performance, simply means absence of delivery at appointed time and place.

The main practical differences between these two kinds of obligation lie in the burden of proving fault or breach of duty.

2. Duality of regimes of liability

Although fault, whether it be contractual or extra-contractual, may be defined as a violation of one’s duty, the law of Quebec, and of France, provide that the practical rules of indemnification of the plaintiff’s injury will vary according to whether the damage caused to the victim resulted from a breach of contract or from a

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4 See art. 1053 C.C.: “Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.” Also the various contractual “duties to keep”. Art. 1064 C.C.: “The obligation to keep the thing safely obliges the person charged therewith to keep it with all the care of a prudent administrator”. Art. 1626 C.C.: “The principal obligations of the lessee are: 1. To use the thing leased as a prudent administrator, for the purposes only for which it is designed and according to the terms and intention of the lease; 2. To pay the rent or hire of the thing leased;…” Art. 1766 C.C.: “The borrower is bound to bestow the care of a prudent administrator in the safe-keeping and preservation of the thing loaned. He cannot apply the thing to any other use than that for which it is intended by its nature or by agreement...” Art. 1802 C.C.: “The depositary is bound to apply in the keeping of the thing deposited the care of a prudent administrator.”

5 See art. 1053 C.C.: “Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.” Also the various contractual “duties to keep”. Art. 1064 C.C.: “The obligation to keep the thing safely obliges the person charged therewith to keep it with all the care of a prudent administrator”. Art. 1626 C.C.: “The principal obligations of the lessee are: 1. To use the thing leased as a prudent administrator, for the purposes only for which it is designed and according to the terms and intention of the lease; 2. To pay the rent or hire of the thing leased;…” Art. 1766 C.C.: “The borrower is bound to bestow the care of a prudent administrator in the safe-keeping and preservation of the thing loaned. He cannot apply the thing to any other use than that for which it is intended by its nature or by agreement...” Art. 1802 C.C.: “The depositary is bound to apply in the keeping of the thing deposited the care of a prudent administrator.”


7 For instance, art. 1675 C.C. dealing with the duty of the carrier of goods.

violation of a legal duty. In other words, there are in Quebec, as in France, two regimes of civil responsibility:

—one, *ex contractu*, applying when the defendant has violated a contractual obligation;

—the other, *ex delicto*, when the defendant has violated a legal or extra-contractual duty.

The differences between the two regimes lie in such rules as those relating to prescription or limitation of actions, quantum of damages, jurisdiction of courts, solidarity of co-defendants’ liability joint and several liability), choice-of-law rules, and so on.  

3. General rules relating to burden of proof

The third preliminary observation concerns the general rules relating to the burden of proof.

It is generally agreed, as I have already indicated, that if a plaintiff is to succeed in an action in damages he must satisfactorily establish his case and this means that, whatever may be the regime of liability, be it contractual or extra-contractual, he must prove the existence of the defendant’s duty, a breach of such duty causing damage and a causal connection between breach and damage.

The plaintiff must then, *in all cases*, prove non-performance or inexecution of duty by the defendant. The burden of proof will of course be much heavier for the plaintiff in the case where the defendant’s obligation was one of “means” than it would be in the case where the defendant’s obligation was one of “result”.

Indeed, when the defendant’s duty is one of “result” as in the case of a carrier of goods, the mere proof of damage resulting from the defendant’s act or omission is sufficient to establish a *prima facie* fault, or inexecution, and the latter can only exculpate himself by proving, according to article 1072 of the Civil Code, that the damage resulted from either an irresistible force or fortuitous event or from the plaintiff’s own fault. When, however, the defendant’s duty is merely one of “means” or of reasonable care, the plaintiff, in order to establish the defendant’s fault, must prove absence of reasonable care, or negligence. This is, at times, a very heavy burden; indeed, in some cases, it is an impossible onus to discharge.

It is precisely for the purpose of alleviating the plaintiff’s

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burden that the civil law provides that, in certain circumstances and under certain conditions, proof of fault may be made by presumptions, the purpose of which is to shift the burden of proof onto the defendant.

Under the civil law, there are two kinds of presumptions: presumptions of law and presumptions of fact. Article 1238 of the Civil Code states that:

Presumptions are either established by law or arise from facts which are left to the discretion of the Courts.

Legal presumptions must be established by an express provision of law. Presumptions of fact simply arise from the particular facts of the case and may be applied whatever the regime of liability, be it contractual or extra-contractual.

Presumptions of fact will generally operate in the following circumstances: when, in the ordinary course of events, an act causing damage occurs that would not normally occur unless there be a probability of negligence, then a court, before which plaintiff has satisfactorily established the damage sustained by him, may declare that the facts, as proved, raise an inference of negligence on the part of the defendant. In such a case, the defendant is presumed to be at fault and the burden is shifted to him. To exonerate himself, he must rebut this presumption of negligence and show that the injury sustained by the plaintiff did not arise through his negligence.

Presumptions of fact, I would venture to suggest, operate under the civil law, at least in practice, in a way not dissimilar to that of the common-law rule of res ipsa loquitur. Indeed, Mr. Justice Taschereau in the Supreme Court case of Parent v. Lapointe, where the operation of such presumptions was examined,
expressly referred to the common law leading case of *Scott v. London and St. Katherine Docks Co.*\(^\text{13}\) and to the later common law Supreme Court case of *Ottawa Electric v. Crépin.*\(^\text{14}\)

With these general notions in mind, let me now attempt to describe the civil-law approach to the problem of liability for damage caused by things. I propose to discuss this problem under the two following headings: liability *ex contractu* and liability *ex delicto.*

**II. Contractual Liability for Damage Caused by Things.**

Under contract, the fact that a thing is involved in an accident or injury does not bring into operation any special rule of law.

The gist of the action is solely the *fault* of the defendant, not the damage caused by a thing under his care. In other words, the defendant will be held contractually liable not because a thing in his care and control has caused the damage, but essentially because he was at fault in the keeping or in the use of the object involved. We are, in contract, concerned not with the damaging "*act of a thing*" (fait de la chose), but rather with the faulty act of the defendant (fait de l'homme). And according to the normal rules of evidence, the plaintiff must establish fault (breach of a contractual duty) and also damage and causality.

This question has recently arisen in a number of malpractice suits which are now more and more generally considered to come within the scope of contractual liability\(^\text{15}\) and where instruments or appliances are often involved in an accident causing injury to a patient. Our courts have reiterated the basic rule that because the doctor's duty is but one of means, it is for the patient to prove his fault.

In the case of *X. v. Mellen,*\(^\text{16}\) Mr. Justice Bissonnette, of the Court of Appeal, said:

> Le patient, s'il subit un préjudice du fait personnel de son médecin doit rapporter la preuve d'une faute établissant un lien de causalité. Le seul secours que procure la loi à celui-ci, c'est que les tribunaux exigent la preuve certaine et concluante de sa faute.

This is the general rule. There are cases, however, where it is extremely difficult, if not even at times quite impossible, for a

\(^\text{13}\) (1865), 3 H. & C. 596.

\(^\text{14}\) [1931] S.C.R. 407. See, however: *X. v. Mellen, supra,* footnote 5, at pp. 397, 413-414, where the use of term *res ipsa loquitur,* in civil-law cases, was criticized by the Quebec Court of Appeal.


\(^\text{16}\) *Ibid.*
patient-plaintiff to establish affirmatively the cause of the injury and also to link it with a fault on the part of the defendant-doctor. This situation is particularly obvious when a patient is under anaesthesia. Because of this, the courts of Quebec have, in recent years, adopted a more liberal attitude by allowing proof by presumptions of fact. For instance, they have held that the presence of a swab, or of a six inch clamp in the patient’s abdominal cavity, or the presence of part of a needle in a patient’s arm, or back, or again the use of an outdated method of traction causing pressure sores on a patient’s foot, was sufficient to raise a presumption of negligence and to require of the defendant-practitioner proof of absence of fault.

It must be remembered, however, that in these cases and, indeed, generally in all cases founded on contract, where things are involved, the basis of the action is not damage caused by a thing but fault of the defendant through the mere instrumentality of a thing.

III. Extra-contractual Liability for Damage Caused by Things.
Under the regime of delictual or extra-contractual (tort) liability, the question of liability, when a thing is involved in some accident, may be examined within the framework of either of two categories of obligations:

—general obligation of care concerning one’s personal acts based on article 1053 of the Civil Code.

—special obligation of care concerning damage caused by things based on article 1054, paragraph 1, and on article 1055 of the Civil Code.

1. General duty of care concerning one’s personal acts

Article 1053 of the Civil Code establishes the basic rule of delictual and quasi-delictual liability in Quebec. Looked at from a different point of view, it might be said that this article imposes upon all persons “capable of discerning right from wrong” a general duty of reasonable care, an obligation of means, so as not unjustifiably to cause damage to others.

The general duty of care imposed by this article is very broad indeed. In fact, it is so broad that it now really means very little

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18 G. v. C., supra, footnote 15.
19 Cité de Montréal v. Cardin, supra, footnote 12.
20 Vézina v. Durand, supra, footnote 5.
22 See supra, footnote 4.
unaccompanied by a mass of cases which have given it some precise contours. And in this respect it has often been said, and I believe rightly so, that the common law and the civil law are closer than might at first sight be expected.

When an action is taken under article 1053 of the Civil Code, the situation is generally the same as the one already explained in the case of contractual liability. The fact that a thing is involved in an accident does not bring about the application of any special rules of law. The basis of the action is solely the fault of the defendant, not the act of a thing. And as the duty of the defendant is one of reasonable care, the plaintiff in an action for damages must prove fault, that is, absence of reasonable care or negligence, damage, and causation.

To this general rule, there are two important exceptions, where presumptions of liability will operate when a thing is involved.

A) Legal presumption of fault of the Highway Victims Indemnity Act.

Article 3 of this new Act provides *inter alia*:

The owner of an automobile is responsible for all damage caused by such automobile or by the use thereof, unless he proves

a. that the damage is not imputable to any fault on his part or on the part of a person in the automobile or of the driver thereof, or
b. that at the time of the accident the automobile was being driven by a third person who obtained possession thereof by theft, or

c. that at the time of an accident that occurred elsewhere than on a public highway the automobile was in possession of a third party for storage, repair or transportation.

The driver of an automobile is responsible in like manner unless he proves that the damage is not imputable to any fault on his part.

This section of the Act goes much further than section 53, paragraph 2 of the Quebec Highway Code, which it replaces, in protecting victims of automobile accidents. It creates, on the one hand, against the driver of an automobile, a legal presumption of fault defeasible by proof of absence of fault; but, on the other hand, it also creates an irrebuttable presumption of liability against the owner of a car for any damage caused by the fault of the driver or of any person in the car unless the owner brings himself within the terms of paragraphs b and c of the article.

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24 See, supra, footnote 3. Art. 3 of this new Act only came into force on the 1st of October 1961.
B) **Cases of presumptions of fact**

I have indicated that under article 1053 of the Civil Code, the general rule is that the burden of proof rests on the plaintiff to show fault. But, as under the regime of contractual liability, there are cases where proof of fault might be extremely difficult if not impossible. The courts, conscious of this difficulty, have also allowed proof of fault by presumptions of fact in order to alleviate the plaintiff’s burden and to shift the onus from the plaintiff to the defendant.

Proof by presumptions of fact have frequently been allowed where the injured plaintiff was a gratuitous passenger in a car driven by the defendant. In such case, in view of the fact that the legal presumption of liability enacted by the former paragraph 2 of section 53 of the Highway Code did not apply, the courts resorted to presumptions of fact which shifted on the defendant’s shoulders the burden of proving absence of fault.

It must be understood, however, that when an action in damages is taken either under article 1053 of the Civil Code or under article 3 of the Highway Victims Indemnity Act, the ensuing liability, whether proved or presumed, is based solely upon the fault of the defendant and not the act of a thing.

2. **Special obligation of care concerning damage caused by things**

Let us now turn to a field of liability the basis of which is, properly speaking, damage caused by the act of a thing (le fait de la chose) independently of the direct intervention of some human agency.

The first paragraph of article 1054 of the Civil Code states:

*He [every person capable of discerning right from wrong] is responsible not only for the damage caused by his own fault, but also for the damage caused . . . by things he has under his care.*

Article 1055 adds:

The owner of an animal is responsible for the damages caused by it, whether it be under his own care or under that of his servants, or have strayed or escaped from it.

He who is using the animal is equally responsible while it is in his service.

The owner of a building is responsible for the damage caused by its

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ruin, where it has happened from want of repairs or from an original defect in its construction.

These two articles may be considered as the basis for a special obligation of surveillance, a duty of “garde” of the thing that one has under one’s control in order to prevent damage from being caused to others as a result of the “autonomous act” of such thing.

In order to understand the scope and characteristics of this special obligation of care, one must bear in mind the remarkable evolution that took place in this area of the civil law due to a judicial re-interpretation of paragraph 1 of article 1054 of the Civil Code in the first quarter of this century.

Throughout the nineteenth century, both in France and in the Province of Quebec, the scope of this special obligation of care was very limited. Indeed, it was generally thought and taught that the first paragraph of article 1054, corresponding to the first paragraph of article 1384 of the Code Napoléon, had no particular meaning of its own, and that it merely introduced the following paragraphs of the article and also article 1055.2

For instance, it was believed that, as the terms “persons under his control”, found in the first paragraph, merely referred to the “father,” “tutor,” “curator”, “schoolmaster and artisan” and “master and employer” mentioned in the following paragraphs of the article, so also the terms “things under his care”, solely referred to those things provided for under article 1055, namely, animals and ruined buildings. These were the only two things for which the owner or keeper came under a special obligation of care. The result was that where a thing other than those mentioned in article 1055 was involved in an accident, it was not given any special attention and was not considered separately from or independently of the act of the owner, keeper or user of it. The victim could only sue the defendant on the basis of the latter’s breach of his general duty of care under article 1053 of the Civil Code, the gist of the action being the faulty act of the defendant, not the damaging act of a thing. This, of course, meant that the plaintiff had the burden of proof according to the general principles of civil liability.

With the advent of industrialization, the increasing number of accidents suffered mainly by employees, and the greater difficulties which the victims of such accidents were experiencing in trying to prove their cases, that is, to prove negligence on the part of the

28 See for instance, Mignault, Le droit civil Canadien, (Vol. 5, 1905), p. 338, where the “things under one’s care” merely refer to the things mentioned under article 1055, C.C.; also on this subject, A. Nadeau, op. cit., footnote 2, no. 446, p. 393.
defendant employer, led the French jurists of the end of the nineteenth century, to seek new theories of liability to cope with these new problems.

Two solutions were proposed: one took the form of legislation—Workmen's Compensation Acts were enacted in France in 1898 and in Quebec in 1909; the other took the form of a "discovery" of the first paragraph of article 1384 of the Code Napoléon (the first paragraph of article 1054 of the Quebec Civil Code). I shall only be concerned with the latter, although I might say that both solutions were based on a new and famous theory of liability: professional risk, which found its clearest and most concise expression in the Latin maxim: ubi emolumentum ibi onus.

The new theories of French authors, such as Saleilles and Jossersand, found their way across the Atlantic, and gave rise to a great controversy between the exponents of the classical and of the new doctrines. Time does not permit me to deal with the details of this controversy at this juncture. Suffice it to say that the new doctrine gradually prevailed in the Supreme Court of Canada and was finally accepted by the Privy Council in the celebrated Vandry and Watt and Scott decisions. The Quebec judges, like their French brethren, had also "discovered" the first paragraph of article 1054 of the Civil Code and so, by judicial interpretation, there came to exist, side by side with, and quite distinct from, the general obligation of care under article 1053 of the Civil Code, two special obligations of care concerning damage caused by things, each with its own rules concerning the burden of proof:

— a new obligation based on paragraph 1 of article 1054 of the Civil Code that imposes a legal obligation of care—an obligation of means—upon the "gardien" of things other than animals and ruined buildings; such "gardien" being subject to a legal and rebuttable presumption of fault;

— the traditional obligation founded on article 1055 of the Civil Code that imposes a legal obligation of care—an obligation of result—upon the "gardien" of animals and upon the owner

29 Loi du 9 avril 1898; see H. et L. Mazeaud et A. Tunc, op. cit., footnote 7, no. 78, p. 82.
30 Supra, footnote 3.
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of ruined buildings; such "gardien" and owner being subject to an irrebuttable presumption of fault from which they can only be relieved by proving a fortuitous event, an irresistible force or a fault of the victim.

Let me briefly examine each of these two special obligations of care.

A) Obligation of the "gardien" of things under paragraph 1 of article 1054 of the Civil Code.

In order to enable a victim to sue on the basis of a breach of the defendant's special duty of care under article 1054, paragraph 1, of the Civil Code and thereby take advantage of the legal presumption of fault provided by paragraph 6 of the article, two conditions are required:

—an "autonomous act" (le fait autonome) by a thing causing the damage;
—the "garde juridique" of such a thing being with defendant.

i) "Autonomous act" of a thing causing damage

It is essential that the damage be caused by the "autonomous act" (le fait autonome) of a thing other than animals and buildings covered by article 1055 of the Civil Code.

To explain this, two questions may be asked: what things are included in the term "thing" used in paragraph 1 of article 1054?; what is meant by the "autonomous act" of a "thing"?

a) "Things" included under article 1054, 1, of the Civil Code

Since the Privy Council judgments in the cases of Quebec Rly. Light, Heat & Power Co. v. Vandry and of City of Montreal v. Watt and Scott, the courts have had numerous occasions to apply the first paragraph of article 1054 of the Civil Code, and they have given it a very wide extension indeed.

I think it can be stated that the term "things" under article 1054, paragraph 1, of the Civil Code may comprise any inanimate object, whether corporeal or incorporeal, movable or immovable, except such immovable as may come within the terms of article

33 Art. 1054, para. 6, C.C.: "The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which has caused the damage."
35 The term "garde juridique" is a difficult one to translate, but as I shall later explain, it roughly means legal control.
36 Supra, footnote 33.
37 Supra, footnote 34.
1055, paragraph 2, of the Civil Code. For instance, Quebec courts have held that electricity, gas, fire, motor vehicles, furnaces, sewage systems, scaffolds, particles flying off a lathe, may be "things" within the meaning of article 1054, paragraph 1 of the Civil Code.

b) "Autonomous act" of a "thing" causing the damage

Quebec courts—and here is a striking difference between the French and the Quebec interpretations of the corresponding Code articles—have always maintained that the application of the special regime of responsibility under article 1054, paragraph 1, of the Civil Code is subject to the condition that the damage complained of must have been caused by the "autonomous act" of the thing. Quebec courts, unlike the French courts, have always tried to maintain a sharp distinction between, on the one hand, the "act" (le fait) of a thing, in which case the plaintiff has the benefit of the legal presumption of liability attached to paragraph 1 of article 1054, and on the other hand, the "act" (le fait) of a person through the mere instrumentality of a thing, in which case the plaintiff can only sue under article 1053 and must, therefore, bear the onus of proof.

Anglin C.J. very clearly set out the foregoing distinction in the case of Pérusse v. Stafford.

Our view is that this provision [Art. 1054, 1, C.C.] has no application where the real cause of the accident is the intervention of some human agency—the question whether such human agency is at fault being a question of fact. Damage is not caused by a thing which is in the control of the defendant within the meaning of Art. 1054, 1, C.C., where it is really due to some fault in the operation or handling of the thing in control of it.

What then is the "autonomous" act of a thing causing damage? This is not an easy problem of characterization, but it would seem that such an act can be described both in negative and in positive terms. In negative terms, it would mean that paragraph 1 of article 1054 cannot be applied if, at the moment of the accident, the thing was in a state of inertia, of complete passivity. The damage then was not caused by a thing and liability must be proved under article 1053. For instance if a person slips on a sidewalk or trips

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41 See L. Baudouin, op. cit., supra, footnote 23, p. 186 et seq.

42 See supra, footnote 26, at p. 418.

on the root of a tree, the sidewalk or the root cannot be said to be "things" within the scope of paragraph 1 of article 1054; any action must then be taken under article 1053 where the burden of proof is on the plaintiff. In positive terms, the application of paragraph 1, of article 1054 requires that a thing have actively caused the damage as a result of its own dynamism, of its own motion, without the direct intervention of man.

For instance, in the case of Lacombe v. Power, the appellant's son was working for the respondent repairing an automobile, when suddenly it started in the direction of the open shaft of an elevator and fell to the bottom causing fatal injuries to the appellant's son. The Supreme Court held that the respondent could not be held liable. On the question of the application of paragraph 1 of article 1054, Mr. Justice Anglin quite clearly expressed the distinction between the "act of a thing" and the "act of a person" in the following terms:

If the proper inference from the evidence was that the automobile started of itself, i.e., without the intervention of human agency, and owing to something inherent in the machine, the ensuing damage might be ascribable to it as a "thing" and be within the purview of Art. 1054, C.C. But if its movement was due to an act of the deceased, conscious or unconscious, the damage was caused, not by the thing itself, but by that act, whether it should be regarded as purely involuntary and accidental or as amounting to negligence or fault. On the latter hypothesis, the provision of Article 1054, C.C. does not apply: either the case was one of pure accident entailing no liability; or if there be liability, it must rest upon fault to be proven and not presumed.

Of course, this distinction is not always easy to ascertain. In the final analysis, it is a question of fact to be decided according to the particular circumstances of each case.

ii) "Garde juridique" of the thing causing damage

The application of paragraph 1 of article 1054 of the Civil Code requires not only that the damage be caused by the "autonomous act" of a thing, but also that such thing be in the "garde juridique" of the defendant.

In order to understand the meaning of this second requirement,

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46 Ibid., at p. 412. If an accident occurs when a car follows the directions of a careless driver, the damage is not caused by the act of the thing but by the fault of the driver which must be proved. If, however, the accident occurs because the car refused to follow the directions of a careful driver as a result, let us say, of a blow out, the damage is caused by a thing within the meaning of art. 1054, 1, C.C. and liability is presumed. Now, under the Act of 1961, supra, footnote 1, the driver is presumed to be liable in both cases.
the concepts of the "garde juridique" and of the "garde matérielle" of a thing must be clearly distinguished.

The "garde juridique" implies a power of control and direction over a thing that a person exercises on his own behalf; on the other hand, the "garde matérielle" implies a merely physical power of control, but not necessarily exercised on one's own behalf.

The owner or any person to whom the owner has transferred his right of control, for instance a borrower, a lessee, an independent contractor, is the "gardien juridique" of the thing. Quebec courts have also held that the thief is a "gardien juridique", and this seems to be a reasonable solution for, as he has usurped for his own benefit the power of control, it is only just that he should bear the corresponding duty of care.

A servant, however, has only the "garde matérielle" of the object, for his control is but a purely physical one on behalf of his master. And so, although he is subject to the personal obligation of care under article 1053 of the Civil Code, he cannot be sued under paragraph 1 of article 1054.

When the plaintiff has proved the existence of the two above-mentioned conditions required for the application of paragraph 1 of article 1054, the defendant is then legally presumed to be responsible for the damage caused. He may, however, invoke the exculpatory clause of paragraph 6 of article 1054, which, as interpreted by the courts, now reads as follows:

The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable (by reasonable means) to prevent the act which has caused the damage.

In the recent Supreme Court decision of *Cloaks Ltd. v. Cooperberg*, Mr. Justice Taschereau explained the operation of the exculpatory paragraph in the following manner:

... le gardien juridique de cette chose est responsable du dommage qu'elle cause, mais il peut s'exonérer en démontrant l'intervention d'une force majeure, d'un cas fortuit, de l'acte d'un tiers ou qu'il n'a pu par des moyens raisonnables empêcher le fait qui a causé le dommage.

B) Obligation of the "gardien" of animals and of the owner of a ruined building under article 1055 of the Civil Code

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47 Nadeau, *op. cit.*, footnote 2, no. 461, p. 403 et seq.
50 See *City of Montreal v. Watt and Scott*, supra, footnote 34.
52 See text of article, *supra*. A. Nadeau, *op. cit.*, footnote 2, no. 471 et seq., p. 413 et seq. G. V. V. Nicholls, *op. cit.*, footnote 40, p. 75 et seq.
As I have previously indicated, until the early years of this century, the only things that came within the purview of paragraph 1 of article 1054 were the "animal" and the "ruined building" specifically mentioned in article 1055 of the Civil Code. Today, article 1055 must be considered separately.

Before a person may be allowed to sue under article 1055, two conditions must also be met, and the burden of proving their existence is upon the plaintiff. He must prove that the damage was caused by an animal or by the ruin of a building and that the "garde juridique", in the case of an animal or the ownership, in the case of the ruined building, rests upon the defendant.

i) Damage caused by an animal or by the ruin of a building

As far as the "act" of an animal is concerned, paragraph 1, of article 1055 of the Civil Code covers the damaging act of any animal whatever, wild or tame, small or big, be it the sting of a bee, the kicking of a horse, or the biting of a dog or of a lion, provided of course that, as in the case of paragraph 1 of article 1054, the damage be caused by the animal without the direct intervention of a human agency. In other words, the act of the animal must also be an "autonomous" one.

With reference to the "ruin of a building", paragraph 2 of article 1055 will only apply, it seems, if the building itself or large portions of it crumble as a result of want of repairs or of an original defect in its construction.

ii) "Garde juridique" of an animal or ownership of the building causing damage

The duty of care imposed by paragraph 1 of article 1055 of the Civil Code, relating to animals, is imposed upon whoever, at the time of accident, is the "gardien juridique" of the animal. The rules applicable in the case of the "gardien" under paragraph 1 of article 1054 prevail here.

On the other hand, the obligation imposed by paragraph 2 of...
article 1055 with respect to ruined buildings, is imposed upon whoever, at the time of the accident, is the owner of the building.

These again are the two conditions of application of article 1055 of the Civil Code and as I have already indicated, the onus of establishing their existence is upon the plaintiff. But once these two conditions of article 1055 have been met, a very strict regime of liability applies to the “gardien” of the animal or the owner of the ruined building. Indeed, whereas under paragraph 1 of article 1054, the “gardien” of a thing could invoke the exculpatory clause of paragraph 6 of the article and rebut the legal presumption of liability by proof of “reasonable means”, in the case of article 1055, on the contrary, the “gardien” or “owner” can only exculpate himself by proof that the damage resulted from a fortuitous and irresistible event or from the fault of the victim.  

Voilà décrites, certes trop sommairement, les règles générales du droit civil québécois en matière de responsabilité civile résultant du fait des choses.

J’ai tenté de montrer comment notre droit aborde le problème de responsabilité civile lorsqu’un objet participe de quelque manière à la réalisation du dommage. Une vue ordonnée du système québécois exige—ce que ne font pas toujours les tribunaux—que l’on précise d’abord le régime juridique de la responsabilité civile du défendeur.

S’agit-il du régime contractuel de responsabilité civile, on se trouve alors nettement en présence d’un régime de faute prouvée dont le fardeau variera selon la nature de l’obligation assumée par le défendeur. S’agit-il, au contraire, du régime extra-contractuel de responsabilité civile, alors il faut distinguer entre les deux hypothèses suivantes:

1) Si le fait dommageable est essentiellement un fait de l’homme par l’intermédiaire d’une chose, alors, sauf cas exceptionnels, le régime de faute prouvée de l’article 1053 du Code civil trouve son application.

2) Si la fait dommageable résulte du fait autonome d’une chose, il convient alors de préciser le domaine d’application respectif des articles 1054, 1, et 1055 du Code civil: le dommage fut-il causé par le fait autonome d’une chose inanimée, l’article 1054, alinéas 1 et 6 du Code civil instituent à l’encontre du gardien juridique un régime de responsabilité présumée qu’il peut cependant écarter.

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par la preuve qu'il a pris les moyens raisonnables pour prévenir l'accident; le dommage fut-il, au contraire, causé par le fait autonome d'un animal ou par l'écroulement d'un immeuble en ruine, alors l'article 1055 du Code civil édicte également un régime de responsabilité présumée, mais un régime plus sévère car le gardien de l'animal ou le propriétaire de l'immeuble ne peut écarter la présomption que par la preuve du cas fortuit, de la force majeure ou de la faute de la victime elle-même.

Ces règles du droit civil québécois qu'elles nous viennent d'une époque lointaine ou d'un passé récent, n'ont qu'un seul but: servir les fins de la Justice. L'examen des règles du common law canadien nous permettra maintenant de voir si, et dans quelle mesure, elle remplissent adéquatement la fin qui leur est assignée.