Master's Degree in **Digital Transformation Management**

EU LAW
OF ALGORITHM

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Jean Monnet Module **"EULA – EU Law for Algorithm"**
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For more information on the project: *https://site.unibo.it/eula/it*

LIABILITY RULES

general rules of (civil) liability

Under the basic **«fault-based»** liability regime, the harmed person must prove all elements …

"Fault" is a type of liability in which the plaintiff must prove that the defendant's conduct was either negligent or intentional; fault-based liability is the opposite of strict liability (Oxford definition)

Failure to prove any of these elements?

NO COMPENSATION **!**

DAMAGE

BREACH OF A "DUTY OF CARE"

CAUSATION *(proximate cause)*

NEGLIGENCE *(fault)*
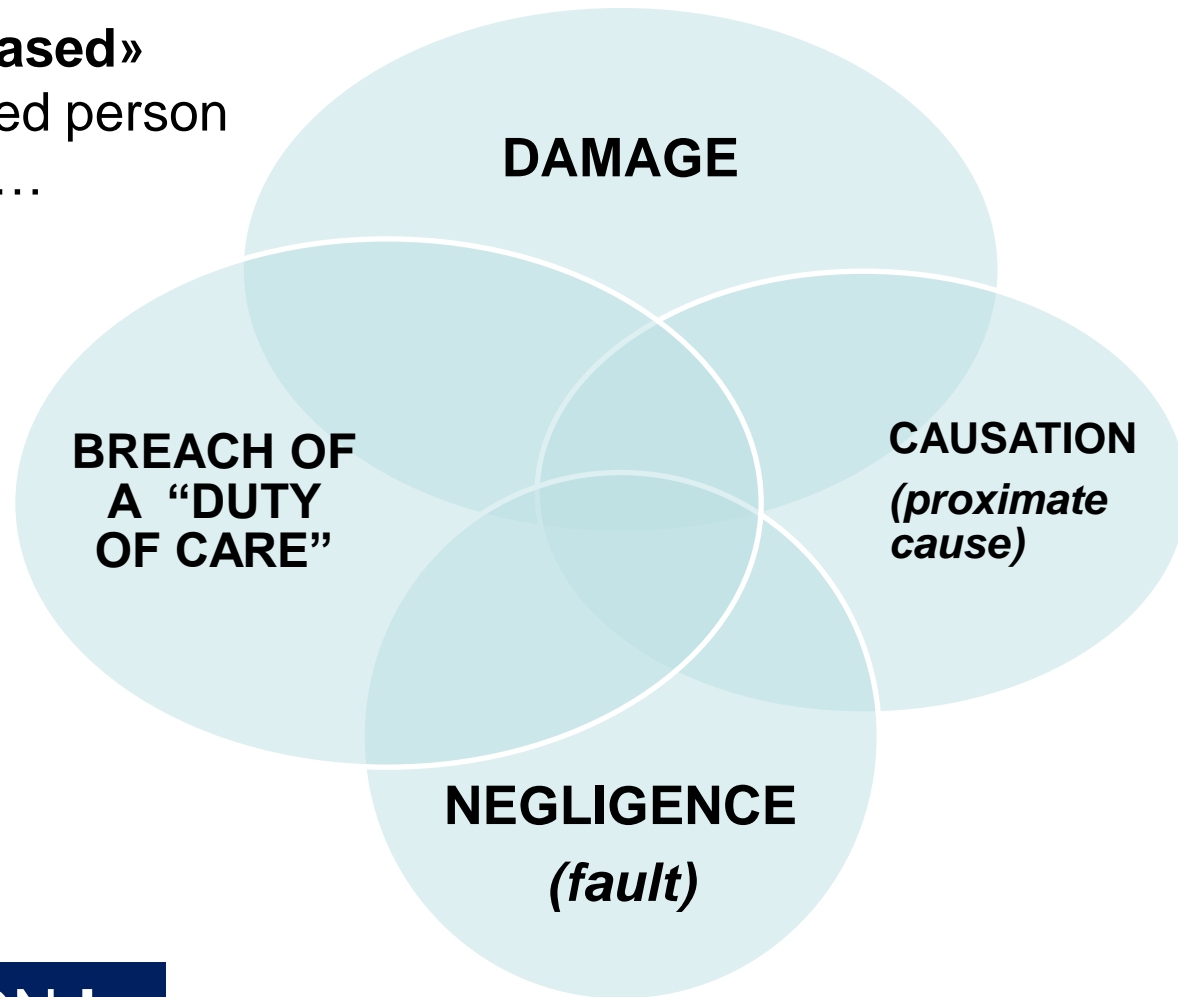
MAKING IT EASIER ON THE VICTIM TO ESTABLISH LIABILITY (HENCE TO OBTAIN COMPENSATION)

- Liability Based on a Presumption of Fault

- Special liability regime for dangerous objects/activities (art. 2050 It. c.c.)

- Custodian Liability (art. 2051 c.c.)

- Strict/Absolute liability (*i.e.* Liability based on "risk)

"SOCIAL SECURITY" MECHANISMS

- **mandatory insurance** (It allows the algorithmic risk to be shared between those directly involved, without directly mobilising public finances). It could be imposed on the manufacturers of autonomous vehicles, as well as on those in charge of the intelligent road network.

OR

- a **public compensation fund** (in case driver is unknown, insolvent or uninsured). What is to be proved? In France, only the causal link btw the vehicle and the harm caused; while in Italy a finding of fault is still required.
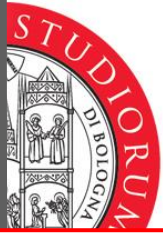
Current EU law on Liability for defective product

European Directive 85/374/EEC of 25 July 1985
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31985L0374

- applicable only in case of 'personal use'
- a product is **defective** *'if it does not offer the safety that can legitimately be expected'*.
- the plaintiff must prove the **harm**, the **defect** and the **causal link** between the defect and the harm
- Fault-less regime?
- the regime of liability for defective items does **not** apply to defect occurring **after** the item has been placed on the market
- **state-of-the-art defense** (exclusion of liability for the manufacturer where it could not have anticipated or detected the existence of a harmful defect based on *'the state of scientific and technical knowledge at the time when they put the product into circulation'*)

Proposals for new Directives on Damages caused by Artificial Intelligence

The European Commission has launched two parallel legislative initiatives:

1) a brand-new normative body containing liability rules specifically on Artificial Intelligence, called "AI Liability Directive (https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_5793)

2) revision of the existing Product Liability Directive (https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_5791)

On "ex ante" safety provisions regarding AI, generally see:
https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5807

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