

The theme of liability involves different areas of law, in both national and international sphere.

Starting from the study of the Ulpian notion of *culpa lata* (D. 50.16.213.2, Ulp.1 reg.: "*lata culpa est nimia negligentia, id est non intellegere quod omnes intellegunt*"), the research aims to analyse the possible derivation from the ancient Roman Law of the concept of "gross negligence" which is found in various articles of our Codes and is often commented on in the judgments of the Courts and the Supreme Court.

The investigation is likely to produce results of particular importance not only in our legal system but also in the comparative context.



€ 16,00



M. L. Biccari (edited by)

Essays on gross negligence ("*culpa lata*"): criterion of liability

Maria Luisa Biccari  
*edited by*

ESSAYS ON GROSS NEGLIGENCE  
("CULPA LATA"):  
CRITERION OF LIABILITY

CACUCCI  EDITORE  
BARI

Maria Luisa Biccari  
*edited by*

ESSAYS ON GROSS NEGLIGENCE  
("CULPA LATA"):  
CRITERION OF LIABILITY

CACUCCI  EDITORE  
BARI

Il presente volume è realizzato con il contributo del Dipartimento di Giurisprudenza (DiGiur) dell'Università degli Studi di Urbino Carlo Bo.

---

PROPRIETÀ LETTERARIA RISERVATA

---

© 2021 Cacucci Editore – Bari  
Via Nicolai, 39 – 70122 Bari – Tel. 080/5214220  
<http://www.cacuccieditore.it> e-mail: [info@cacucci.it](mailto:info@cacucci.it)

Ai sensi della legge sui diritti d'Autore e del codice civile è vietata la riproduzione di questo libro o di parte di esso con qualsiasi mezzo, elettronico, meccanico, per mezzo di fotocopie, microfilms, registrazioni o altro, senza il consenso dell'autore e dell'editore.

## Table of Contents

Preface	1
ANNA MARIA GIOMARO, <b>Almost a chronicle of previous installments</b>	3
CECILIA ASCANI, <b>From the Balduzzi Law to the Judgment of the Italian Supreme Court of 2018. Determining the limits of criminalization between minor and gross negligence</b>	37
1. The apparent regulatory innovation of the Balduzzi Law	37
2. Gelli-Bianco and the disappearance of minor negligence from the regulatory landscape	41
3. The interpretative contrast on the Gelli-Bianco subject's and the concept of so-called intermedia negligence conceive by the United Sections no. 8770 of 22 <sup>nd</sup> February 2018	46
MARIA LUISA BICCARI, <b><i>Culpa lata, luxuria</i>, and the case of the <i>incendiarius</i></b>	49
1. Gross negligence in the texts of the Digest	49
2. Gross negligence in the criminal law of Ancient Rome	51
3. The case of the <i>incendiarius</i>	53
MARCO CASSIANI, <b>Abuse of trial and “new” procedural negligence</b>	57
1. Gross negligence in the civil procedure	57
2. Article 96, paragraph 3 of the Code of Civil Procedure	59
3. Some final remarks	67
MARIA GRAZIA COPPETTA, <b><i>Culpa lata</i> in proceedings to obtain relief for wrongful imprisonment</b>	71
1. Definition of the negative condition of <i>culpa lata</i>	71
2. Scope of application of domestic laws on redress for wrongful imprisonment	71
3. <i>Continued</i> : in extraditions	74
4. <i>Continued</i> : in the European arrest warrant	76
5. The role of the condition preventing <i>culpa lata</i>	77
6. <i>Continued</i> : in the extradition	83
7. <i>Continued</i> : in the European arrest warrant	84
8. Reform proposals	85

MARINA FRUNZIO, <i>Culpa lata</i> . Minimal ideas between roman law and mixed legal systems	87
1. Foreword	87
2. <i>Culpa lata</i> . A reference to essential data	89
3. <i>Culpa lata</i> in mixed legal systems	92
ANNA MARIA GIOMARO, Diachronies and synchronies of “gross negligence”	97
1. The presence of gross negligence ( <i>culpa lata</i> ) in current legislation	97
2. <i>Culpa lata</i> in the Roman jurists	100
FEDERICO LOSURDO, The concept of “gross negligence” and the judge-state liability	105
1. Introduction. Balancing judicial independence and liability	105
2. Gross negligence and the safeguard clause in the Italian law (of 1988)	106
3. Primacy of EU law and gross negligence	108
4. The contradictory alignment of the Italian law (of 2015) to the EU legal system	111
5. Conclusions. Interpretation and creation of law	112
VALERIA PIERFELICI, Brief remarks on <i>culpa lata</i> in San Marino law	115
1. Foreword: the originality of San Marino law	115
2. Liability founded on <i>culpa/diligentia</i> in current San Marino law	118
3. <i>Culpa lata</i> in San Marino case law	121
4. Conclusions	127

## Preface

This volume continues and completes an interdisciplinary and interdepartmental research work that began in 2019 (see Resolution by the Board of the Urbino Department of Law [DiGiur] no. 4/2019) as enhancement research and has attracted the scientific attention of distinguished scholars, experts of Roman Law and otherwise, around the issue of *gross negligence*.

The research should have been structured as a series of seminars and round tables scheduled to be held periodically at the Urbino Department of Law (DiGiur).

The health-related events of 2019-2020 prevented its practical implementation. However, at the end of 2020, the thoughts of each participant on this subject were collected in a volume titled *Dalla “culpa lata” ulpiana al concetto di “colpa grave” della legislazione codicistica attuale*, edited by Maria Luisa Biccari, in *Studi Urbinati di Scienze Giuridiche, Politiche ed Economiche* 71.3-4, 2020. This volume, in English and reserved for the members of the Urbino Department only, intends to resume and conclude the discussion on the subject.

The reader is informed that quotations taken from Italian authors have been translated into English in order to facilitate the reading text. References to the original texts are given in the footnotes.