Metodo Giuridico
Ius et Ratio • ISSN 3103-7305

ITALIAN JOURNAL OF LAW & CASE LAW • ISSN 3103-7305
CASE NOTE • CIVIL LAW & TORT & CIVIL LIABILITY • 13 NOVEMBER 2026

Strict Liability for Things in Custody and the Burden of the Unknown Cause

The Italian Supreme Court of Cassation, Civil Division, rules out any duty on the injured party to prove the intrinsic cause of a mechanical malfunction and strictly delimits the exonerating effect of contributory negligence

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Current Legal Framework as of 3 November 2026: The Italian Supreme Court of Cassation consolidates the purely strict nature of custodial liability under Article 2051 of the Italian Civil Code, reaffirming that the injured party's burden of proof is satisfied by demonstrating physical causal contact with the object, whereas the risk of an unexplained malfunction rests entirely upon the custodian.

ABSTRACT

Order no. 15662/2026 of the **Italian Supreme Court of Cassation, Civil Division** reaffirms the rigorous statutory framework of Article 2051 of the Italian Civil Code governing **strict liability for things in custody** and the allocation of the **unknown cause**. The Court clarifies that the claimant is required to prove solely the material causal nexus between the physical interaction with the object and the resulting harm, whereas intrinsic mechanical malfunctions and unexplained failures remain entirely at the custodian's risk. Furthermore, the **injured party's negligent conduct** operates as an exonerating unforeseeable event only where it exhibits objective exceptionality and unpredictability, otherwise giving rise solely to **contributory negligence** under Article 1227 of the Civil Code.

Key Takeaways

- **Pure strict liability:** Article 2051 of the Italian Civil Code operates independently of any assessment of fault or lack of supervision on the part of the custodian, resting instead on the legal duty to control the object's intrinsic dynamism.
- **Circumscribed burden of proof on the claimant:** the injured party need only prove physical causal contact with the thing in custody and the resulting bodily or patrimonial harm, with no duty to establish the underlying mechanical causes of the breakdown.
- **Allocation of the unknown cause:** any evidentiary uncertainty regarding the internal technical mechanics of a malfunction falls exclusively on the defendant custodian, who cannot rely on the claimant's inability to explain the defect.
- **Fortuitous event and careless victim conduct:** the victim's inattention reduces the object to a mere passive occasion only when wholly unforeseeable and exceptional; below that threshold, Article 1227(1) of the Civil Code applies to reduce damages proportionally.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Civil Law & Tort & Civil Liability

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order of 22 May 2026, no. 15662 — Liability for damage caused by things in cu

Legal Principle / Editorial Headnote

For the purpose of establishing liability for damage caused by things in custody under Article 2051 of the Italian Civil Code, the claimant bears the burden of pleading and proving solely the material causal link between the object in custody and the harm suffered, and is under no obligation to demonstrate the exact mechanics of the accident or the specific technical cause of the object's malfunction. Any remaining uncertainty concerning the technical origin of the failure or an unknown cause rests entirely upon the custodian, who bears the burden of positively proving an external fortuitous event.

01. DOCTRINAL FRAMEWORK OF CUSTODIAL LIABILITY AND THE UNKNOWN CAUSE

Defining the substantive prerequisites of civil liability for damage caused by **things in custody and unknown causes** has for decades represented one of the most intensely debated arenas between judicial practice and private law scholarship. Article 2051 of the Italian Civil Code establishes a model of strict imputation that operates entirely independently of any inquiry into subjective fault on the part of the custodian. Within the statutory design of the Code, **the criterion of attribution** does not rest upon a presumption of negligence or defective supervision, but rather upon the material relationship of effective governance that a person exercises over an object, deriving utility from it while bearing the corresponding risks toward third parties. Order no. 15662 of 2026 of the Italian Supreme Court of Cassation, Civil Division, reaffirms this legal regime with particular rigor, dispelling hazardous conflations with general Aquilian tort liability and clarifying the precise evidentiary burdens borne by the claimant.

1.1 — The Objective Scope of Article 2051 of the Civil Code and the Notion of Custodian

The legal status of custodian does not necessarily coincide with formal ownership over the asset; rather, it is defined by **concrete material and legal availability** conferring upon an individual or entity the power to control, govern, and neutralize the risks inherent in the object. Such physical dominion entails a continuous legal duty of management and

monitoring aimed at preventing **the intrinsic dynamism of the *res***, or its interaction with external environmental factors, from resulting in injury to third parties. Where the object causes harm in the course of an organized activity — such as technological equipment deployed within healthcare facilities or complex corporate enterprises — **the custodian's sphere of control** extends across the entire instrumental apparatus. The legal order allocates the typical risk of operational malfunctions to the party governing the asset, in keeping with the law-and-economics principle whereby loss should be assigned to the actor best positioned to prevent and eliminate the underlying hazard.

A recurring interpretive error among lower courts consists in transposing the paradigms of fault-based Aquilian liability under Article 2043 of the Civil Code into the framework of custodial liability. **The custodian's subjective conduct** remains wholly extraneous to the constitutive elements of the tort governed by Article 2051 of the Civil Code: the claimant is required neither to plead the breach of specific precautionary standards nor to allege the omission of maintenance operations. **Strict custodial liability** is triggered solely by the existence of the custodial relationship and the occurrence of harm linked to the object, establishing a clear-cut separation between personal blameworthiness and the causal attribution of the patrimonial or non-pecuniary bodily harm (*danno biologico*) sustained by the injured party.

1.2 — Which Evidentiary Burdens Rest upon the Injured Party to Establish Causation

With respect to the allocation of the burden of proof under Article 2697 of the Civil Code, **the evidentiary obligation** resting upon the prospective claimant is exhausted once a material causal nexus between the thing in custody and the injurious event is demonstrated. The claimant need only plead and substantiate that the harm arose as a direct consequence of physical contact, impact, or specific interaction with the object held in the defendant's custody. As underscored by the Italian Supreme Court of Cassation, Civil Division[1], the claimant is by no means required to prove the exact sequence of the accident, nor the specific technical or mechanical cause that triggered the asset's functional anomaly. **The causal link** demanded by the statutory provision operates on the plane of pure material causation: once it is proven that the victim's body was struck by the collapse or sudden movement of the object, the constitutive elements of the claim for damages are fully established.

Requiring an ordinary citizen or worker to demonstrate why a metal arm, a technological installation, or a structural component gave way would transform the custodial action into an impossible burden of proof (*probatio diabolica*). In disputes involving **things in custody and unknown causes**, **positive proof of physical contact** between the object and the injured person fulfills the entirety of the claimant's primary burden. Any further inquiry into the proper operational compliance of the object or the technical origin of the failure pertains strictly to rebuttal evidence, leaving it to the defendant to prove that the harmful event stemmed from **an unforeseeable external factor** wholly independent of its sphere of custody.

02. THE MECHANICS OF THE UNKNOWN CAUSE AND THE BOUNDARIES OF THE EXONERATING FORTUITOUS EVENT

2.1 — Mechanical Failure and the Irrelevance of the Intrinsic Cause of Malfunction

The central focus of the Supreme Court's ruling concerns the allocation of risk where technical anomalies remain unexplained. In the case brought before the Court of Cassation, a cleaner employed by an external contractor sustained severe injuries when the articulated arm of a surgical scialytic lamp suddenly snapped while she was sanitizing the medical equipment. **The appellate court on the merits** dismissed her claim for damages on the ground that the claimant had failed to prove whether the sudden release stemmed from an original assembly defect, component wear and tear, or an

improper maneuver. **The Italian Supreme Court of Cassation, Civil Division** decisively quashed that reasoning: in litigation concerning **things in custody and unknown causes**, evidentiary uncertainty surrounding the triggering cause of the malfunction does not prejudice the injured party, but rather operates to the detriment of the custodian.

The principle of law laid down by the Court confirms that lingering causal doubt over the internal origins of a breakdown constitutes the doctrinal category of the unknown cause. **An unknown cause** neither excludes nor severs the causal link, because it falls squarely within the sphere of risk inherent in exercising material dominion over the object. **The burden of exonerating proof** compels the defendant to identify positively and specifically an external factor capable of breaking the chain of material causation, barring the custodian from taking refuge behind the injured party's inability to provide an analytical reconstruction of the mechanical failure.

> In litigation concerning things in custody and unknown causes, lingering evidentiary doubt over the technical origin of a mechanical breakdown rests entirely upon the custodian, who bears the burden of positively proving an external fortuitous factor extraneous to the *res*.

2.2 — Inherent Manufacturing or Construction Defects and Risk Allocation in Supreme Court Precedents

The uniform interpretive line articulated in Order no. 15662 of 2026 aligns seamlessly with established precedents governing condominium custody and structural defects. Already in Order no. 21317 of 2025, the Italian Supreme Court of Cassation, Civil Division[2] clarified that **an original construction defect** or the natural deterioration of the *res* can never qualify as an exonerating fortuitous event (*caso fortuito*). **Structural flaws** remain inherent in the object held in custody and heighten, rather than diminish, the duty of supervision, maintenance, and inspection incumbent upon the custodian pursuant to Article 2051 of the Civil Code.

As examined in scholarly analyses devoted to the regime governing water infiltration from flat roofs and joint and several liability, the custodian cannot invoke latent defects or design errors committed by third-party builders in order to evade its compensatory obligation. **Custodial liability** operates irrespective of the moral blameworthiness of an omission: vis-à-vis the injured third party, liability attaches to whoever holds effective control over the asset when the harm materializes, without prejudice to any subsequent right of recourse against the contractor or manufacturer under their respective contractual relationships.

2.3 — When the Injured Party's Conduct Acquires Exclusive Causal Efficacy

Defensive pleadings by custodians consistently focus on alleging negligent conduct on the part of the victim. On this issue, the Italian Supreme Court of Cassation, Civil Division[3], confirming settled Supreme Court authority, has drawn a strict demarcation line: unlike under the general tort clause of Article 2043 of the Civil Code, **the injured party's imprudent conduct** excludes the custodian's liability solely when it displays the characteristics of total exceptionality, objective unforeseeability, and autonomous causal efficacy. Only under those stringent conditions does human behavior relegate the object to a mere passive material occasion of the injurious event within the meaning of Article 41 of the Italian Criminal Code.

Conversely, where the injured person's behavior falls within the ordinary scope of interaction with the asset or involves non-aberrant forms of carelessness, **the victim's conduct** neither severs the causal nexus nor amounts to a fortuitous event. Consistent with the interpretation developed regarding things in custody and the fortuitous event, ordinary

imprudence is relevant solely as contributory negligence under Article 1227(1) of the Civil Code, entailing a proportional reduction in the *quantum* of damages recoverable. **Supreme Court case law** thus reinforces the centrality of the duty of care, ruling out automatic exonerations in favor of custodial entities whenever hazards remain foreseeable and preventable through adequate structural safeguards.

03. ALLOCATION OF THE BURDEN OF PROOF AND DEFENSIVE IMPLICATIONS IN TORT LITIGATION

3.1 — How to Frame the Pleading on Causation Without Incurring Procedural Forfeiture

Drafting the introductory writ in a tort action properly requires a clear grasp of the evidentiary boundaries delineated by Supreme Court jurisprudence. **Counsel for the claimant** should focus factual pleadings and evidentiary requests squarely upon proving the historical fact of physical contact between the victim's person or property and the object held in custody, carefully documenting the temporal coincidence between the action of the *res* and the onset of the injury. In disputes over **things in custody and unknown causes**, attempting to advance intricate technical hypotheses regarding the intrinsic origins of the malfunction may prove counterproductive, risking handing opposing counsel arguments to divert the evidentiary inquiry toward fault-based issues not required by statute.

The Italian Supreme Court of Cassation, Civil Division[1] has unequivocally held that, once causal derivation of the harmful event from contact with the object is established, the claimant has discharged in full the burden imposed by Article 2697 of the Civil Code. **Requests for technical clarification** concerning why a safety lock failed or a structural component yielded belong within the remit of a court-appointed expert assessment aimed at describing the physical condition of the equipment, yet they do not affect the substantive merits of the cause of action. **Procedural uncertainty** regarding the mechanical genesis of the failure works in favor of the claimant and to the disadvantage of the custodian, whose liability remains anchored in the objective nature of custodial responsibility.

3.2 — Procedural Defense Strategies for Custodial Entities Between Article 1227 of the Civil Code and Exonerating Proof

On the opposite side of the dispute, counsel representing the defendant custodian — whether a healthcare institution, a public body managing infrastructure, or a condominium association — cannot merely raise generic challenges to the sufficiency of the claimant's evidence. **A sound defense strategy** must pursue two distinct tracks: as a primary defense, positively pleading and proving a fortuitous event in the strict sense by identifying a supervening natural occurrence, the act of a third party, or an unforeseeable external event beyond the entity's sphere of supervision; in the alternative, timely pleading contributory negligence on the part of the injured party pursuant to Article 1227(1) of the Civil Code.

The defense of contributory fault by the injured creditor — which the court may also examine of its own motion (*ex officio*) whenever suitable evidentiary elements emerge from the case file — frequently represents the most effective safeguard for mitigating the custodial entity's financial exposure. **Documenting the standard of diligence reasonably expected** of the injured party — such as compliance with warning signs, handling prohibitions, or operating instructions — makes it possible to prove that the victim's inattention actively contributed to causing the accident. **The burden of exonerating proof** nevertheless remains demanding and rigorous, precluding the success of defenses resting solely upon formal compliance with periodic inspections or adherence to generic operational protocols.

04. CONCLUSIONS ON THE EVOLUTION OF CUSTODIAL LIABILITY AND OPERATIONAL GUIDELINES

The ruling of the Italian Supreme Court of Cassation, Civil Division, consolidates the strict-liability architecture of Article 2051 of the Civil Code, erecting a firm barrier against any temptation to reintroduce fault-based criteria into custodial tort protection. Viewed through the lens of material causation, **allocating the risk of the unknown cause** forms the cornerstone of the entire statutory regime: whoever derives utility from custody or exercises effective governance over an object must bear the cost of its inexplicable malfunctions, without shifting onto the injured party the burden of dissecting the internal mechanics of the breakdown.

Clear operational guidelines follow for legal practitioners and professional claims handlers alike. **From the perspective of the injured party's counsel**, drafting the statement of claim must be strictly anchored in the factual dynamics of physical contact and historical proof of bodily or patrimonial damage, avoiding the dissipation of evidentiary resources on complex inquiries aimed at probing the custodian's fault. Once the material nexus between the object and the injury is established, causal uncertainty operates institutionally in the claimant's favor.

Conversely, from the standpoint of custodial defendants and insurance carriers, **effective claims management** demands an immediate pre-litigation investigation aimed at ascertaining either an autonomous fortuitous factor or contributory negligence on the part of the victim under Article 1227 of the Civil Code. Producing routine maintenance logs or formal certificates of regulatory compliance does not discharge the duty to compensate; what is required is concrete proof of an external, exceptional, and unforeseeable event capable of absorbing the entire causal sequence of the accident.

References & Authorities Cited

Statutory Provisions

- Royal Decree no. 262 of 16 March 1942 — Italian Civil Code (Articles 1227, 2043, 2051, and 2697).

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Order of 22 May 2026, no. 15662** — Liability for damage caused by things in custody is strictly objective in nature and rests solely on proof of the causal nexus between the object and the harm, rather than on any presumption of fault on the part of the custodian; uncertainty regarding the concrete technical cause of the injurious event and any unknown cause fall upon the custodian and can be overcome solely by positive proof of an external fortuitous event. Outcome: upheld; quashed and remanded. Para.: 5, 5.1.

2. **Italian Supreme Court of Cassation, Civil Division, Order of 25 July 2025, no. 21317** — The defendant custodian bears the burden of rebuttal through positive proof of a fortuitous event understood as an unforeseeable and exceptional occurrence endowed with autonomous causal impetus; should uncertainty persist as to the identification of the cause of the damage, the risk of the unknown cause remains borne by the custodian. Outcome: upheld; quashed and remanded. Para.: 4.1.

3. **Italian Supreme Court of Cassation, Civil Division, Judgment of 27 April 2023, no. 11152** — For the purpose of exoneration from liability under Article 2051 of the Civil Code, the injured party's conduct acquires exonerating force solely where it fulfills the requirements of a fortuitous event possessing autonomous and exclusive causal incidence; failing that threshold, negligent behavior by the victim is relevant exclusively as contributory causation pursuant to Article 1227(1) of the Civil Code. Outcome: upheld; quashed and remanded. Para.: 5, 6.

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