How to Cite:
Babaammi, H. A. (2025). The impact of insurance on the development of the civil liability system: A comparative study. *International Journal of Economic Perspectives*, *19*(4), 1141–1157. Retrieved from https://ijeponline.org/index.php/journal/article/view/944

The impact of insurance on the development of the civil liability system: A comparative study

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Abstract---This study aims to investigate the impact and evolution of liability for tortious acts (civil liability) in light of the emergence and proliferation of insurance. It focuses on analyzing the extent to which the development of insurance contributes to altering the internal equilibrium of the civil liability system, thereby paving the way for the principle of compensation and guarantee, rather than solely focusing on fault and penalizing the perpetrator, as traditionally advocated by civil liability. In practice, fault loses its significance once insurance is applied in the realm of individual liability, leading to a gradual decline in the concept of fault and a shift from personal liability to objective liability, which relies on guarantee or risk as a result of scientific and industrial advancements.

Keywords---Civil Liability, Fault, Compensation, Insurance.

Introduction

Compensation is defined as everything that the party responsible for the damage is obligated to provide to the injured party to restore them, as far as possible, to their pre-damage state. The concept of compensating the injured party for incurred damages is not a modern legislative innovation; rather, it is an ancient concept rooted in primitive laws, where the function of compensation evolved from retaliation and private punishment to reparation. Islamic jurisprudence adopted a reparative function for compensation, expressing the responsibility of a person to compensate another for incurred damage as an obligation of guarantee, which in Islamic law is the compensation of another for incurred damage. Modern laws have established the principle of compensation for damages to human beings on various grounds, including liability for personal acts, liability for the acts of others, and liability for the acts of things.

Damage is a fundamental element of liability, serving two critical roles: first, it is a prerequisite for compensation, as the act of causing harm, regardless of its severity, does not obligate the perpetrator to compensate unless it harms others.

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Submitted: 27 February 2025, Revised: 18 March 2025, Accepted: 07 April 2025

Second, damage is the measure of compensation, which the judge must determine to be equivalent to the actual damage incurred.

Moreover, the prevalence of accidents and disasters in contemporary life has led societies to establish protection and prevention systems to address the damages resulting from these events, to avoid the absence of compensation at the time of damage, as well as the financial weakness of the party responsible for the damage, or the lack of knowledge of the cause of damage in the event of disasters. These adverse expectations have led to the emergence and development of insurance, from commercial insurance to social and cooperative insurance, or what is known as social security.

The development of technologies since the Industrial Revolution has had a significant impact on the emergence and generalization of hazardous activities, forcing legislators to enact special laws aimed at compensating the injured party, which was considered an indication of the demise of the traditional civil liability system and the shift towards addressing the specificity of each activity at the expense of ensuring the consistency of the unified system. Therefore, various special laws record their clear departure from the existence of the "personal fault" of the party responsible for the damage. The majority emphasizes the necessity of linking liabilities to insurance capabilities, suggesting the need to consider establishing a new general law that allows for the re-establishment of consistency in the system of compensation for damages and civil penalties for unlawful acts on modern foundations.

However, there is no consensus on determining the scope in which the traditional principles of civil liability should be excluded. Ambiguity still surrounds this issue and other related matters concerning compensation systems, although the concept of risk (to the safety of persons and property) has found widespread acceptance in identifying activities that can be excluded from the system that requires proving the fault of the party responsible for the damage to obtain compensation. Consequently, the emergence of new compensation systems, represented by various types of insurance, has led to significant overlap between civil liability as a unified basis for compensation and compensation based on insurance. Furthermore, the role of insurance companies has expanded to include investment and speculation, not just compensation, making insurance companies a powerful party in contracting, and conducting their activities on technical foundations, while a weak party, fearing damages resulting from modern development, stands on the opposite side of the contract. Therefore, has insurance precipitated the decline of the traditional civil liability system? To what extent will this system be altered—complete dissolution or partial modification, such as the attenuation of the fault element? Furthermore, can insurance serve as a complete substitute for civil liability? These and related inquiries will be explored in the subsequent discussions and analyses.

Section One: Insurance as a Factor Influencing Civil Liability
Section Two: The Demise of the Concept of Fault as the Basis of Civil Liability

Section One: Insurance as a Factor Influencing Civil Liability

It is legally established that for an injured party to obtain compensation for bodily or financial damages, the rules of civil liability must identify a person responsible for such compensation based on proven or presumed fault. In seeking compensation, the injured party finds only the responsible individual as defined by civil liability rules. If no responsible party is found, the injured party must bear the damages alone. [1]This also applies if the injured party fails to prove fault or attribute it to a specific person, or if the responsible party is insolvent. Society is not involved in compensating these damages, which remain confined to the relationship between the injured and the responsible party, a concept known as individual responsibility. [2]

Therefore, if a drafter of civil law were to examine the current form of texts establishing civil liability in any civil code, they would conclude that the fundamental provisions of civil liability for personal acts have not changed. [3]In France, for example, Article 1340 remains unchanged. However, upon closer inspection, this illusion dissipates, revealing significant transformations in liability due to the growth of insurance, which has altered the economy and influenced the liability system, judicial interpretations that address legal gaps and ambiguities, and specialized legislation for specific activities. [4]

Consequently, the challenges facing civil liability date back to the onset of industrialization, when it failed to ensure effective compensation for damages from industrial accidents. This led to a debate among French jurists, including Professor Tunc, who sought to identify appropriate logic and policies, addressing concerns arising from competition due to insurance, new technologies, and alternative compensation systems. These include new techniques for collective risk distribution, which significantly impacted civil liability's monopoly on compensation, particularly in developed economies with advanced social protection and robust insurance systems that favor direct damage insurance. [5]

It is evident that when an injured party knows the responsible party is insured[6], they readily seek full compensation. Courts are then required to explicitly interpret liability conditions and assess damages, knowing that the responsible party has secured insurance, thus ensuring that any imposed penalty can be covered by this insurance for the injured party. The expansion of insurance has fostered the idea that all damages warrant compensation.[7]

Indeed, even in the late 19th century, civil liability was not the sole system; property insurance existed, albeit limited, and personal accident insurance played a significant role, competing with civil liability. Insurance facilitated the modern development of liability as a tool implicitly used by the judiciary and legislature in building and expanding the compensation system. Thus, there is a genuine competition between insurance and liability, as court-recognized liability types have steadily expanded. Victims now perceive insurance as more understanding,

tolerant, and flexible in compensation than the individual liability system, which remains confined to individualistic theoretical ideas. [8]

Subsection One: Manifestations of Insurance's Influence on Civil Liability:

The evolution of insurance has fundamentally altered the internal equilibrium of the traditional civil liability system, paving the way for a paradigm shift where prevention precedes damage remediation through compensation. This contrasts with the traditional role of liability, which struggled to provide adequate compensation due to the increasing frequency of accidents and the preference of injured parties for the proven efficacy of insurance mechanisms. [9] Currently, the invocation of civil liability without insurance and social security is increasingly untenable. Insurance, in its various forms, serves as a crucial factor in enhancing the responsiveness of civil liability to its compensatory function. This is facilitated by the technical and statistical methodologies inherent in insurance practices. The insurer assumes a pivotal role: insurance conceptually involves a collective of individuals pooling resources to mitigate shared risks, thereby contributing to the indemnification of those who incur losses. In essence, the insurer acts as an intermediary, managing funds collected from premiums based on actuarial science, to disburse agreed-upon compensation to affected parties. [10]

Insurance did not emerge as a substitute for liability; rather, it initially intervened to compensate for damages in instances where the responsible party could not be identified, thereby safeguarding the injured party. Subsequently, its scope has expanded to encompass a broader spectrum of liability. For instance, in the context of traffic accidents, the concept of "compensation at any cost" has become emblematic of liability insurance. This expansion has fostered a perception that any inflicted harm warrants compensation. Moreover, liability insurance has reinforced the principle of full compensation[11], originally formulated by civil law drafters, which was often incompletely applied due to the concentration of compensation burdens on the responsible individual's assets. [12]

Consequently, liability insurance has been instrumental in extending compensation to include non-pecuniary damages. Furthermore, it has contributed to the decline of fault as a prerequisite for civil liability. Investors and business owners engaged in hazardous activities are now mandated to secure liability insurance. In such cases, the determination of fault is supplanted by a focus on damage assessment and compensation. [13]

An interactive influence between insurance and liability is evident. The scope of judicially recognized liabilities is expanding, albeit at a slower pace compared to the more adaptable and generous evolution of insurance. Courts frequently leverage this expansion of insurance to broaden the ambit of recognized liabilities. [14]

Additionally, liability insurance has augmented the volume of compensation claims and facilitated the expedited, automated disbursement of compensation to injured parties. Individuals can insure against the consequences of their errors, thereby ensuring equitable compensation for the injured without unduly burdening the responsible party. The promulgation and rapid expansion of

occupational risk compensation legislation would have been improbable without employers' capacity to insure against financial liabilities. Similarly, the judicial expansion of liability for inanimate objects has been contingent on the availability of insurance to mitigate the custodian's financial burden. Liability insurance encourages injured parties to pursue claims and assures them of compensation from solvent insurers. Conversely, injured parties are often reluctant to litigate against uninsured responsible parties due to the difficulty of securing compensation. This ultimately results in higher compensation awards, as claimants are emboldened to seek substantial amounts, and judges are inclined to grant them. [15]

Insurance has significantly contributed to the emergence of objective liability, which emphasizes financial compensation for damages rather than the punitive and deterrent aspects of personal fault. This approach prioritizes damage redress and the alleviation of the injured party's burden, thereby diminishing the punitive role of civil liability. [16] In liability insurance, the punitive dimension of civil liability is absent, allowing for the transfer of the financial burden from the responsible party to insurers. Individuals who secure insurance act prudently to mitigate adverse financial outcomes resulting from their actions, in exchange for premium payments, even for damages caused by negligence. Only intentional acts fall outside the purview of insurance coverage. Liability insurance effectively provides a form of guarantee to the injured party, transforming fault-based civil liability into a legal framework that offers robust protection for the injured. [17]

Subsection Two: The Extent to Which Insurance Can Replace Civil Liability

To examine this hypothesis, we must explore another: the degree to which insurance can comprehensively cover civil liability. This necessitates an understanding of the scope of insurance and its capacity to encompass all risks associated with liability, given its inherent flexibility. Civil liability is exceedingly broad, addressing diverse domains and encompassing various forms of damage. As Professor Bosc articulated, "The aspiration of any society is that no one suffers or is harmed by the actions of another, or at least that any damage is promptly compensated." This is the objective that the insurance system was designed to achieve. Over time, insurance has undergone significant development, endeavoring to cover all damages regardless of their origin and to streamline the issue of liability, ultimately ensuring comprehensive compensation for victims. [18]

Consequently, insurance has witnessed substantial growth in the realm of liability, particularly concerning personal risks, thereby shifting the burden of personal torts to societal bodies, a process known as the socialization of risk. However, insurance does not invariably cover all damages, as individuals do not consistently opt for liability insurance. Even when they do, such coverage is often neither voluntary nor comprehensive. Nonetheless, liability insurance continues to expand across numerous sectors and is anticipated to eventually encompass all forms of liability, especially with the implementation of mandatory insurance and measures aimed at mitigating individual apathy. [19]

Based on the preceding observations, the notion of insurance entirely supplanting civil liability is untenable. Despite the diminished role of civil liability and its

constituent elements, its significance remains, particularly in its normative function. [20] Civil liability has benefited from advancements and has incorporated developed general principles to address prevalent contemporary risks, such as vicarious liability, liability for inanimate objects, and product liability.

Thus, a reciprocal influence exists between civil liability and various forms of insurance. Civil liability plays a vital role in addressing risks that are challenging to categorize and define, such as liability for breach of engagement, non-pecuniary damages, defamation, breach of contract, or abuse of rights. [21]Individual liability spans a wide range of domains. While insurance can practically cover well-defined aspects of liability, provided that statistically determined risk frameworks are available, it often struggles to address ambiguous and variable risks stemming from private activities that are difficult for insurers to quantify statistically.

Furthermore, the assertion that liability insurance can entirely displace civil liability is exaggerated. This does not apply to all insurance types, as articulated in Article 121/1 of the French Insurance Code, which stipulates that "an insurer who has paid insurance compensation is subrogated to the insured's rights and claims against the third party who caused the damage, up to the amount of the compensation." This provision underscores the liability of the damage caused, illustrating that civil liability and its elements cannot be entirely dispensed with. [22]

Civil liability and insurance are not inherently contradictory in their objectives and methodologies. Given the undesirability of eliminating personal civil liability, maintaining a form of civil liability necessitates defining the scope of insurance. However, this is complicated by the rapid evolution of modern risks. Humanity currently faces risks such as environmental pollution and nuclear radiation, and states are increasingly mandating liability insurance in various sectors, including construction and workplace accidents. It is noteworthy that the responsible party cannot merely invoke insurance coverage as a defense; the law allows for liability based on civil liability principles. For example, in workplace accidents, the employer's or their subordinates' intentional misconduct alone is insufficient to reinstate general civil liability law. [23]

Similarly, social security law precludes insurance coverage for damages resulting from gross negligence, holding the perpetrator personally liable. This principle also applies to medical malpractice insurance, a system adopted in the United States, France, and other countries, including Algeria. Article 176 of the Algerian Insurance Code mandates that civil health institutions and all medical, paramedical, and pharmaceutical practitioners in private practice obtain insurance to cover their civil liability towards patients and third parties. The Algerian legislature has classified this type of insurance as mandatory civil liability insurance. [24]

Legislators currently vacillate between upholding civil liability as a general theory and prioritizing the regulation of insurance through specific laws across various sectors, whether commercial or social. Consequently, compensation mechanisms continue to exhibit duality and overlap between civil liability systems and

insurance techniques, with each retaining its distinct compensation characteristics. The potential for coexistence between these systems remains unclear, as legislators seem inclined to defer the development of modern compensation techniques to jurisprudential evolution, disregarding significant advancements in contemporary insurance practices and their profound impact on the liability framework, which has been severely challenged in terms of risk coverage and societal compensation. [25]

The relationship between insurance and liability permeates all aspects of life. Regardless of whether liability is tortious or contractual, insurance serves as an implicit or explicit catalyst for expanding civil liability, thereby contributing to the continuous enhancement of victims' compensation rights, aligning with contemporary public sentiment. [26]

In light of this, one might ponder whether the prolonged practical application of insurance will profoundly alter liability principles and significantly broaden their foundations, potentially leading to the gradual obsolescence of fault in favor of risk, or even the obsolescence of risk itself, paving the way for absolute liability, which mandates compensation even in cases of force majeure or contributory negligence.

Section Two: The Diminution of Fault as a Basis for Civil Liability

The damages resulting from the developments of the eighteenth century were difficult to compensate due to the absence of identifiable responsible parties. Some jurists argued that victims should bear the damages as a matter of principle, considering it a natural occurrence justified by fate, given that victims, like other individuals, benefit from their activities and should therefore bear the associated burdens. This system was relatively easy to apply, particularly in cases of purely passive activities that did not warrant severe censure, especially during the 17th and 18th centuries, despite criticisms arising from the proliferation of risks of unknown origin. [27]

Consequently, injured parties today often find it challenging to prove fault and identify responsible parties. This situation has facilitated the victims of accidents in overcoming a sense of resignation to fate and has mobilized public opinion against alleged perpetrators, leading to the expansion of civil liability from personal liability to objective liability in the realm of damages caused by things, from fault to risk in workplace accidents, and from tort liability to contractual liability in transportation accidents.

This raises the question of whether fault can be entirely dispensed with and whether a system of civil liability devoid of fault is attainable. [28]
The fault-based liability system has proven inadequate in resolving disputes arising from diverse activities, making fault an impediment to development, particularly in professional liability. Furthermore, it conflicts with the principle of equity in compensating damages caused by individuals lacking discernment, such as the insane or mentally incapacitated. Therefore, it is unsurprising that the evolution of insurance may eventually lead to the erosion or elimination of the concept of fault.[29]

Subsection One: Scholarly Disputes Opposing the Concept of Fault

The outcomes of the Industrial Revolution and the emergence of severe accidents spurred research and analysis into civil liability. With the proliferation of various forms of insurance and their profound impact on general liability principles, numerous instances of liability without fault have arisen due to contemporary industrial and economic complexities, which impede the identification of a single culpable party among multiple participants in harmful activities. For example, if an individual suffers injury from a blood transfusion of an incompatible blood type, the error could stem from mislabeling or misanalysis by hospital staff or pharmacists.[30]

In the face of the ubiquity of fault, a hallmark of modern industrial development, it became imperative to depart from the standard of the fault and establish liability without requiring the identification of a specific responsible party. [31]
To this end, jurisprudential efforts have gradually shifted from the traditional notion that compensation for injured parties hinges on proving culpable misconduct on the part of the responsible party. This shift has been achieved by broadening the definition of fault and establishing liability without fault. [32]
The earliest challenges to the concept of fault can be traced to 1880, with the establishment of contractual liability for employers, obligating them to ensure the safety of their employees. This expansion of contractual liability aimed to alleviate the burden on workers by exempting them from proving employer negligence, achieved by incorporating a warranty clause in employment contracts.
This led to discussions that culminated in the emergence of new concepts, such as occupational risk and industrial risk, which gained significant traction due to the inadequacy of fault as the sole basis for liability law. [33]

The French professor Saleilles is considered a pioneer in critiquing traditional fault-based liability, formulating a comprehensive theory that accommodates and justifies the new directions in civil liability. He examined judicial developments in workplace accident compensation, concluding that courts had broadened the concept of fault to benefit accident victims. He posited that any activity conducted for the benefit of others could pose a risk to them and that those in control should bear the consequences of such risks. [34]

Professor Saleilles advocated for the broad application of the risk concept, extending it beyond the industrial sector and workplace accidents to encompass all individual activities. Jousserand, who joined Saleilles in developing the risk theory, argued for expanding the scope of the risk theory to include all accidents resulting from the act of a thing and abandoning the search for fault as a rational basis for compensation obligations, as this would deprive victims of unknown accidents for which no responsible party could be identified. [35]

Despite the widespread recognition of Jousserand and Saleilles' views, they did not receive universal acceptance among French legal scholars. Prominent figures such as Adhémar Esmein and Planiol, who published works in 1905 and 1906, [36] vehemently defended fault and criticized Saleilles and Jousserand. Planiol argued that "any instance of liability without fault, if indeed recognized, becomes a massive social injustice" and that "the proponents of the risk theory were correct

in their desire to facilitate compensation, but since the enactment of the 1898 Workers' Compensation Act, this issue has been resolved, obviating the need to redefine the basis of civil liability in general." Planiol also noted that the 1898 Act did not, strictly speaking, create liability without fault, as the burden of workplace accidents, ostensibly borne by employers, is ultimately transferred to the community through insurance. He further argued that jurisprudence is based on the maxim "one has no right to harm another," which he deemed fundamentally flawed, given that "social life is a continuous and pervasive struggle," where "every movement and action is, in essence, an economic and social competition." [37]

Despite the stabilization of the debate due to the arguments of fault's defenders, in early 1964, jurist André Tunc launched a scathing critique of the role retained by fault in certain applications of liability, initiating a second round of scholarly debates that reshaped civil liability concepts. Tunc argued that while courts attempted to alleviate the burden on victims by broadening the definition of fault, they rigidly adhered to the rule of non-compensation for victim fault, particularly in high-speed and high-risk traffic accidents. He contended that focusing on fault in assigning liability is often unjust and arbitrary in novel accident scenarios, [38] as reconstructing the accident and identifying fault is exceedingly difficult. In such cases, fault typically stems from negligence or inattention, which are inherent human frailties to which everyone is susceptible. [39]

Professor Tunc [40]focused on the damages caused by traffic accidents, arguing that in liability insurance, the damage caused is not held personally liable, while victims bear the consequences unless they have secured their insurance. He added, "In this paradoxical situation, those who create traffic-related risks are not liable, while victims are subjected to the principle of liability based on fault." [41]

Subsection Two: Expansion of the Concept of Fault

Most legislation, particularly the French and Egyptian laws, has not defined fault, leaving room for jurisprudence and judicial interpretation to expand and provide a broad and flexible understanding of fault. This expansion is done by interpreting liability provisions in a way that meets the demands of modern times. The judiciary has the authority to determine which actions constitute fault, thereby establishing new duties over time to protect those harmed, especially from physical injuries, and to ensure compensation by all means. [42] Legal scholarship has developed objective definitions of fault, some of which exclude the notion of fault altogether, equating it with the infringement of another's right. In this view, a fault is merged into the harmful physical act, becoming indistinguishable from it. For example, fault is defined as an unlawful, harmful act that violates another's right, where the responsible party cannot invoke a right stronger than that of the injured party. [43]

French courts, for instance, have consistently held employers liable for workplace accidents merely for failing to take ordinary or extraordinary precautions. [44] Similarly, French courts have also recognized that breaches of ethical duties, such as lying, forgery, or providing false information in bad faith, can in themselves establish liability. An act may not be inherently faulty but is considered so if committed with the intent to harm another, a principle adopted

by Egyptian jurisprudence as well. Not stopping at this point, which proved insufficient for awarding compensation, the judiciary further expanded the concept of fault by holding individuals liable for harm caused by the exercise of their rights. This was achieved by imposing restrictions on the use of rights, based on the doctrine of abuse of rights. French and Egyptian courts have applied various criteria to determine such abuse, including intent to harm, lack of legitimate interest, and deviation from the social purpose of the right. [45]

The rapid and significant developments in the world have led to numerous disasters and injuries, prompting legal experts to develop theories that allow injured parties to obtain fair compensation. Following the expansion of the concept of fault through the doctrine of abuse of rights, legal scholars further expanded the concept by establishing a duty of safety in certain contracts to protect human life and bodily integrity, particularly in passenger transport contracts. [46] This duty has been extended to hotel operators and amusement park operators. [47]

Despite the expansion of the concept of fault in Egyptian and French jurisprudence, rapid and dangerous technological advancements have left many injured parties without compensation, particularly in accidents involving industrial machinery, vehicles, and modern technologies. This led to the emergence of the theory of presumed fault. Even with the expansion of fault and establishing the duty of safety, these solutions were insufficient to protect injured parties. Initially, French jurisprudence expanded the scope of Article 1386, concerning damages arising from buildings, to include a general rule of liability for things, not limited to buildings but encompassing all inanimate objects such as trees, machinery installed in buildings, and marine locomotives. [48] Thus, industrial and technological developments have led to new forms of damages that fit within traditional civil liability, such as liability for things, liability for the acts of employees, liability of legal persons, unusual neighborhood nuisances, and liability for the acts of those lacking discernment. A new form of liability, product liability for defective products, has also emerged. [49] These developments have fueled the debate between proponents of fault-based liability and risk-based liability, which was initially applied to workplace accidents during the early stages of industrial development. [50] Attempts to reconcile these opposing views have included:

- ✓ Relying on insurance as a new justification for compensation within civil liability.
- ✓ Expanding the scope of fault as the sole basis for liability, which, as discussed earlier, proved insufficient as damages still went uncompensated.
- ✓ Combining the theories of risk and fault as a basis for civil liability, as advocated by Esmein [51]and Savatier. [52]

In practice, strict liability supplements fault-based liability, applying only when the latter fails, i.e., when traditional liability rules conflict with considerations of justice. Despite the differences like the harmful activity (lawful in strict liability, unlawful in fault-based liability), both systems share the general requirements of damage, namely, that it must be certain, infringe a legally protected interest, and be quantifiable in monetary terms. [53]

The most recent theories in civil liability are those of guarantee and risk, which align with the Islamic legal concepts of *daman* (guarantee) and *tadmeen* (compensation). Islamic jurisprudence prioritizes repairing harm over punishing the harm-doer. [54]This is facilitated by the clear distinction between criminal and civil liability in Islamic law, where punishment is the aim of the former, and compensation is the aim of the latter. *Jawaber* (compensations) are prescribed to restore lost benefits, while zawajer (penalties) are prescribed to prevent harm. Compensations do not require fault, unlike penalties, which do. This is why compensation is specified for unintentional acts and acts of the insane and those lacking discernment. [55]

Conclusion

Through analysis and study, we have arrived at the following conclusions:
First: We concluded from the study that the rules of civil liability and their elements of fault, damage, and causation originated from criminal liability. In French jurisprudence, criminal liability gave rise to tortious civil liability, making civil law appear to punish those responsible for damage. However, the more accurate view is that repairing damage is a civil and ethical duty, distinct from punitive and criminal aspects. This is exemplified in Islamic jurisprudence through the theory of guarantee and compensation. This approach shortened a jurisprudential and legal debate that lasted nearly a century in France.

Second: Through our study of the relationship between insurance and liability, we concluded that the development of insurance has overturned the internal balance of the traditional civil liability system. It has paved the way for the principle of addressing damages through compensation, whereas the traditional role of liability was to identify the wrongdoer and then provide compensation, which it failed to do due to the inability of its elements to adapt to modern developments. Civil liability itself has become a subject of insurance. All of the above have significantly contributed to eliminating the element of fault in civil liability, thereby accelerating the emergence of strict liability, which aims to provide financial compensation for damage without focusing on punishing the perpetrator of personal fault. The primary goal is to redress the damage and alleviate its burden on the injured party.

Third: In practice, fault loses its significance as soon as insurance is applied in the field of individual liability, as relying on fault as the primary basis for liability hinders development. Consequently, the spread of insurance over time has led to the erasure or elimination of the concept of fault, or at least paved the way for the transition from personal liability to strict liability under the influence of insurance. The introduction of new techniques, such as collectivizing civil liability, has made it one of the most important individual and collective solutions affecting the civil liability system.

Fourth: It is clear from the above that civil liability does not conflict with insurance in terms of its objectives and techniques. Given that the complete disappearance of personal civil liability is generally undesirable at present, maintaining a form of civil liability requires defining the scope of insurance. However, this is difficult due to the rapid development of modern risks. Currently,

humanity faces risks such as environmental pollution and nuclear radiation, and states are seeking to impose mandatory liability insurance in various fields, including construction and workplace accidents. It should be noted that the responsible party cannot merely invoke the existence of insurance to evade liability; rather, the legislator has left room for holding them accountable based on civil liability.

Fifth: From the foregoing, we conclude that the idea of replacing civil liability with insurance is impossible. Despite the decline in the role of civil liability and its elements, its role remains important, particularly its normative role. Civil liability has benefited from modern developments, and advanced general principles have emerged to cover a range of significant and prevalent risks, such as vicarious liability, liability for things, and product liability.

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4. Ameiri Farida, *Liability Without Fault: A New Direction Towards Establishing Liability of Public Medical Facilities*, Academic Journal of Legal Research, Volume 01, Issue 1, University of Bejaia, Algeria, 2018.

[1] Civil liability was not clearly defined in ancient laws, where collective or individual revenge and the principle of retaliation (*la vindicta privata*) prevailed. Subsequently, Roman law recognized the principle of 'an eye for an eye, a tooth for a tooth.' However, civil liability in Roman law arose only from acts considered criminal offenses. This legal system lacked a general principle of civil liability. Instead, the Twelve Tables provided the injured party in a criminal offense the right to file a claim seeking compensation for damages. This tradition transitioned to ancient French law, where jurist Douma, in the seventeenth century, distinguished between civil and criminal liability and established what approximated a general principle of civil liability. This legacy then passed into the Napoleonic Code, which became the primary source of Arab legal codes. For detailed information

on the evolution of civil liability, see Ali Ali Suleiman, *Studies in Civil Liability in Algerian Civil Law*, Diwan Publications, Algeria, 1994, p. 2 et seq.

[2] Mohamed Ibrahim El-Desouki, *Assessment of Compensation Between Fault and Damage*, Mansha'at Al-Ma'arif, Alexandria, 1980, p. 167; and see Amir Farag Youssef, *Civil Liability and Compensation Thereof*, University Publications House, Egypt, 2006, p. 7.

[3] except for Jordanian law, which relies on the theory of *Insurance* derived from Islamic law. See Mustafa Al-Zarqa, *Harmful Act and Guarantee Therein*, 1st ed., Dar Al-Qalam, Damascus, 1988, for a discussion of the harmful act.

[4] Genevieve Viney, *Comprehensive Treatise on French Civil Law*, translated by Ibrahim Shams El-Din, 1st ed., University Publishing Institution, Lebanon, 2011, p. 36.

[5] Saeed Mokaddam, *Insurance and Civil Liability*, 1st ed., Darclic for Publishing, Algeria, 2008, p. 8. For more details on the evolution of civil liability and compensation for bodily injuries due to the industrial and technological revolution, see Yvonne Lembert-Faivre, *le droit du dommage corporel.systemes d'indemnisation*, édition Dalloz, 1990, p. 8 et seq.; and F. Terré, P. Simler, Y. Lequette, *Droit civil les obligations*, édition Dalloz, p. 669.

[6] Various Arab civil laws provide specific definitions for insurance, including Article 920 of the Jordanian Civil Code, which states: 'Insurance is a contract whereby the insurer undertakes to pay the insured or the beneficiary, for whose benefit the insurance [1] is stipulated, a sum of money, a regular income, or any other financial compensation in the event of the insured event or the realization of the risk specified in the contract, in consideration of a specific sum or periodic premiums paid by the insured to the insurer.' Jordanian Civil Code No. 5 of 1975. The explanatory memorandum notes a disagreement among contemporary jurists regarding the permissibility of insurance. However, Article 1 of the legislative principles on which the provisions of transactions in the Maliki codification project are based states: 'The origin of transactional contracts and their types is what is customary and agreed upon by people...' And Article 2 of the same codification states: 'The origin of contracts and conditions is permissibility unless there is legal evidence of prohibition.' Given that such contracts involve a form of cooperation among the insured to face risks that may befall one of them to compensate them from the premiums they pay, and that the prevailing custom in this regard does not contradict the Quran or the Prophetic Sunnah, there is no legal impediment. For more details, see the explanatory memoranda of the Jordanian Civil Code, vol. 2, pp. 661-664

[7] Belhadj Arabi, *General Theory of Obligation in Algerian Civil Law*, vol. 2, 4th ed., Diwan Publications, Algeria, 2007, p. 53; Genevieve Viney, *op. cit.*., p. 40.

[8] Saeed Mokaddam, *op. cit.*, p. 166.

[9] The prevailing conviction among most modern legal scholars is that the civil liability system is not superior to other compensation systems. Therefore, various jurisprudential efforts have focused on integrating different techniques to avoid double compensation. Traditional jurisprudence, however, remains confined to the narrow view that optimal compensation for damages lies solely within the framework of civil liability, rejecting the possibility of other compensation techniques outside this framework. See Saeed Mokaddam, *Insurance and Civil Liability*, p. 169.

[10] Mahmoud Gamal El-Din Zaki, *Problems of Civil Liability*, vol. 2, Cairo, 1978, p. 6.

[11] Full compensation is a key feature of the deterrent function of civil liability. When the liable party commits a severe act, the considerations for fair compensation are waived, and there is no justification for mitigating the liable party's compensation burden. Compensation then rises to the level of full compensation. The underlying principle is that if the liable party had freedom of choice and chose to harm others, they must bear all consequences. The maximum compensation the injured party can receive in cases of gross negligence is full, covering material and moral damages, lost profits, incurred losses, and foreseeable and unforeseeable damages directly resulting from the fault.

[12] Liability insurance is a contract whereby the insurer protects the insured from damages resulting from third-party liability claims. Liability insurance is a type of insurance that does not differ in nature from other insurance contracts. It covers damages, not the injury itself, but the insured's

financial loss due to third-party liability claims. See Abd El-Razzaq Al-Sanhouri, *Explanation of Civil Law, Aleatory Contracts*, Al-Halabi Publications, Lebanon, (no publication year), pp. 1641-1642; and Mahmoud Zaki, *op. cit.*., p. 229

[13] Constant Eliashberg, *Risques et assurances de responsabilite civile*, 4th ed., L'Argus de l'assurance, 2002, p. 131.

[14] Mokaddam, *Insurance and Liability*, *op. cit.*, p. 140.

[15] Mahmoud Zaki, *op. cit.*, p. 250.

[16] The failure of the liable party or their insurer to provide automatic and full compensation often leads to disputes over liability, resulting in high legal costs that are detrimental to insureds and individual victims who cannot bear the length and expense of such disputes. This is due to factors such as 'the overlap between liability insurance and the right of recourse enjoyed by the other party's insurer.' The dispute is between insurers at the expense of victims, who often receive compensation years after the damage, hindering the proper functioning of insurance in serving victims. Moreover, liability may be separate from insurance, making the effectiveness of insurance dependent on the liability claim, which assumes the liable party's obligation. For more details, see Saeed Mokaddam, *Insurance and Liability*, pp. 184-185.

[17] Mohamed Labib Shanab, *Liability for Things*, 2nd ed., Al-Wafa Library for Publishing, Cairo, 2009, p. 70.

[18] C. Eliashberg, *Risques et assurances de responsabilite civile*, *op. cit.*, p. 180.

[19] Saeed Mokaddam, *Insurance and Liability*, *op. cit.*, p. 145.

[20] The normative role of liability refers to the general standard of compensation in various areas of law.

[21] C. Eliashberg, *Risques et assurances de responsabilite civile*, *op. cit.*, p. 48.

[22] The legal structure of liability systems now considers the close relationship between liability and insurance. For example, under the Paris Convention, the operator held liable for nuclear accidents is obliged to cover the risks of civil liability, making the insurer the actual debtor of compensation. Similarly, the French law of December 20, 1988, on persons conducting medical research, holds the project owner liable for damages and requires them to purchase liability insurance. For more details, see Saeed Mokaddam, *Insurance and Liability*, p. 257.

[23] In the construction sector, French law of January 4, 1978, on liability and insurance, no longer allows the insurer to invoke liability insurance 'against the victim' in cases of deliberate or unauthorized breaches of professional standards. This law was enacted to protect victims of defective construction. For more details, see Claude J. Berr, *Assurances de la construction: la loi du 4 janvier 1978*, cited in Saeed Mokaddam, *Insurance and Liability*, *op. cit.*, p. 151; and Amir Farag Youssef, *op. cit.*, p. 474.

[24] See Articles 175 to 183 of the Algerian Insurance Law 06/04, dated January 25, 1995.

[25] For more details, see Genevieve Viney, *Comprehensive Treatise*, pp. 152-160; and Saeed Mokaddam, pp. 153-160; and C. Eliashberg, *Risques et assurances de responsabilite civile*, *op. cit.*, p. 3.

[26] Alain Decocq, Alfred Dinsing, translated by Karam Shafiq, *Studies in Compensation for Contractual and Tort Liability*, Dar Al-Jalil for Publishing, Lebanon, 1991, pp. 188-189.

[27] Mohamed Ibrahim El-Desouki, *op. cit.*, p. 250. Industrial development led to the problem of liability for things, and French jurisprudence shifted from liability for living things to liability for inanimate objects. The debate on the basis of this liability led to the expansion of the concept of fault and the emergence of its abandonment through French judicial applications. For details, see Ali Ali Suleiman, *Studies in Civil Liability in Algerian Civil Law*, Diwan Publications, Algeria, 1994, p. 86 et seq.; and Amir Farag Youssef, *op. cit.*, p. 493.

.Liability without fault emerged judicially, created by the French Council of State, as an extension of the evolving concept of fault, which gradually weakened. New administrative activities emerged, posing risks to individuals despite their legitimacy. Legal jurisprudence based administrative

liability without fault on three factors: the inadequacy of fault-based liability, the judicial nature of administrative law, and the independence of administrative liability rules. For more on this, see Ameiri Farida, *Liability Without Fault: A New Direction Towards Establishing Liability of Public Medical Facilities*, Academic Journal of Legal Research, vol. 17, issue 01, 2018, p. 91.

[28] In French jurisprudence, fault is closely tied to ethical rules, assuming a breach of ethical order in the form of a breach of individual duty in society. An individual is liable only for reprehensible conduct. The traditional view is that civil liability is based on fault. This link between civil and moral liability affects the fault element itself as a basis for liability. The harm-doer is liable only if their conduct deviates reprehensibly, breaching ethical rules. For details, see Ibrahim El-Desouki, *Assessment of Compensation Between Fault and Damage*, p. 236

[29] F. Terré, P. Simler, Y. Lequette, *op. cit.*, p. 690.

[30] The French legislature has established various applications of no-fault liability for public medical facilities, enacting health legislation that establishes no-fault liability for health risks to ensure the safety of participants in medical activities. See Omeiri Farida, *op. cit.*, p. 93.

[31] Ibrahim El-Desouki, *op. cit.*, p. 169; and see Ali Ali Suleiman, *op. cit.*, p. 88.

[32] Genevieve Viney, *Comprehensive Treatise*, p. 131

[33] This theory emerged during parliamentary debates on compensation for workplace accidents, which lasted 18 years in France. Professor Saleilles conceived the renowned risk theory, which gained widespread acceptance. This theory did not arise abruptly; throughout the nineteenth century, German, Austrian, and Italian writers paved the way, demonstrating the inadequacy of fault as a basis for civil liability. Moreover, in France, jurist Labbé wrote in 1890: 'Upon thorough reflection, a conscientious study of law reveals a greater interdependence between the good and bad fortunes of a deliberate act, and between the benefits and risks of a project, than we previously perceived. This alters our perception and attributes our adherence to this principle to a sense of justice, namely, that the one who reaps the benefits of this apparatus should bear its risks.' However, these observations do not diminish Saleilles's credit, as he articulated this idea into a coherent theory capable of explaining and justifying a new direction for civil liability in numerous writings published between 1894 and 1898. For more details, see F. Terré, P. Simler, Y. Lequette, *op. cit.*, pp. 672-673; and G. Marty, P. Raynaud, *op. cit.*, pp. 438-439.

[34]Saeed Mokaddam, *Insurance and Liability*, *op. cit.*, p. 212; and see Amir Farag Youssef, *op. cit.*, p. 129, on employer liability in Egypt.

[35] F. Terré, P. Simler, Y. Lequette, *op. cit.*, p. 703.

[36] See also Ali Ali Suleiman, *op. cit.*, p. 91 et seq.; and Genevieve Viney, *op. cit.*, p. 63; and for details on the approaches of Planiol, Ripert, and Savatier, see Mohamed Nasr Al-Rifai, *Damage as a Basis for Civil Liability*, Dar Al-Nahda for Publishing, Egypt, 1978, pp. 368-380. In a study published by jurist Planiol in 1905, titled 'Study on Civil Liability,' he explained his legal approaches: M. Planiol, *Études sur la responsabilité civile*, Rev. crit. dip., 1905.

[37] Mohamed Nasr Al-Rifai, *op. cit.*, p. 434.

Jurist André Tunc authored several studies on traffic accidents, including: 'Road Safety' (1982) and 'Traffic Accidents: Faults or Risks?' For details, see Ali Ali Suleiman, *op. cit.*, p. 100.

[38]Jurist André Tunc authored several studies on traffic accidents, including: 'Road Safety' (1982) and 'Traffic Accidents: Faults or Risks?' For details, see Ali Ali Suleiman, *op. cit.*, p. 100.

[39] Saeed Mokaddam, *op. cit.*, p. 206.

[40] Jurist M. J. Lasser, a proponent of Tunc's views on the injustice to traffic accident victims, in his work 'Evolution of Ideas on Civil Liability in the 19th Century,' university thesis, Paris, 1961. See Genevieve Viney, *op. cit.*, p. 138.

[41] *Ibid.*, p. 143..

[42] Ibrahim El-Desouki, *op. cit.*, p. 240

[43] Fathi Abdel Rahim, *Studies in Tort Liability*, Mansha'at Al-Ma'arif, Egypt, 2002, p. 65.

[44] Mustafa Al-Awji, *Civil Law, Vol. 2, Civil Liability*, 3rd ed., Al-Halabi Publications, Syria, 2008, p. 282.

[45]Abd El-Razzaq Al-Sanhouri, *Sources of Obligation*, *op. cit.*, paragraph 556; Ibrahim El-Desouki, *op. cit.*, p. 244 .

[46] For example, the liability of a passenger transport operator is established, obligating them to compensate for damages suffered by a passenger during transport, even without a breach of legal or contractual obligations, as the safe arrival of the passenger is considered an obligation of result, not an obligation of means, as established by the French Court of Cassation and adopted by Egyptian Courts of Cassation

[47] Abd El-Razzaq Al-Sanhouri, *Sources of Obligation*, *op. cit.*, paragraph 557.

[48] Fathi Abdel Rahim, *op. cit.*, p. 58. For details on the evolution of liability for things and liability of supervisors, see Ali Ali Suleiman, *op. cit.*, p. 60 et seq.

[49] This refers to the liability of the manufacturer for defective products. French Civil Code regulated this modern liability in 1998 in 18 articles (Articles 1386-1 to 1386-18). The term 'manufacturer' under French law includes the final producer, raw material producer, and component producer, provided they act professionally. This professional status leads to an imbalance between the injured party and the manufacturer, necessitating special protection for the injured party. Traditional personal liability rules, custodian liability, fire damage liability, construction damage liability, and general rules on latent defects are insufficient. Article 1386-1 states: 'The producer is liable for damages caused by a defect in their product, even without a contractual relationship with the injured party.' See Boudali Mohamed, *Product Liability for Defective Products*, Dar Al-Fajr for Publishing, Algeria, 2005, p. 20; Qandil Marwa Mahmoud, *Liability of Sales Representatives in Product Marketing*, Al-Wafa Library, Alexandria, 2011, p. 35; and Ali Filali, *Compensable Acts*, 2nd ed., Dar Mofem for Publishing, Algeria, 2010, p. 258.

[50] See Ali Ali Suleiman, *op. cit.*, p. 152.

[51] Jurist Issman presented a study in 1949 titled 'The Place of Fault in Civil Liability.' See Genevieve Viney, *op. cit.*, p. 122.

[52] Mohamed Nasr Al-Rifai, *op. cit.*, p. 467.

[53] Ameiri Farida, *op. cit.*, p. 97.

[54] Dr. Wahba Al-Zuhaili posits that *daman* in Islamic jurisprudence encompasses both civil and criminal liability, defining it as 'the obligation to compensate another for damage to property, loss of benefits, or total or partial harm to human life.' For a discussion of the views of various schools of Islamic jurisprudence, see Wahba Al-Zuhaili, *Theory of Daman or Provisions of Civil and Criminal Liability in Islamic Jurisprudence*, Dar Al-Fikr, Damascus, 2008, p. 15 et seq.

[55] Adnan Ibrahim Al-Sarhan, "Unlawful Act (Damage) as a Basis for Tort Liability (Obligation of Daman) in Islamic Jurisprudence and Jordanian Civil Law," Research Paper published in Al-Manara Journal, Issue 2, Volume 2, 1997, Yarmouk University Library Database Publications, p. 111.