

The Development of the Principles of Tort Liability: (A Comparative Study of French, Egyptian, and Algerian Civil Law)

La evolución de los principios de la responsabilidad extracontractual: (Un estudio comparativo del derecho civil francés, egipcio y argelino)

Dr. Touri Ikhlef

University of Blida 2 Ali LOUNICI, Algeria
i.touri@univ-blida2.dz

Universidad de Blida 2 Ali Lounici, Argelia
Correo electrónico: i.touri@univ-blida2.dz

Received: 15.04.2026 Accepted: 25.09.2026 Publishing: 12.10.2026
Recibido: 15/04/2026 · Aceptado: 25/09/2026 · Publicado: 12/10/2026

Abstract

The significance of this subject lies in the notion that civil liability, in both its theoretical and practical dimensions, constitutes a fundamental and effective legal apparatus for redressing the harm sustained by the aggrieved party. Indeed, the various evolutions in its principles and foundations have been oriented towards strengthening protection for the injured party and ensuring they receive compensation. It is therefore regarded as the most significant effect of civil liability, as it is the legal means by which harm is redressed and the desired protection is achieved. The principles of tortious liability have undergone a marked evolution, owing to contributions from legal doctrine and judicial precedent, which was subsequently reflected in comparative legislation. This shift in legal thinking has moved away from basing liability on the theory of fault towards the adoption of forms of strict liability based solely on the occurrence of damage, without the need to prove fault. This has led to modern trends that assess liability for damage caused by artificial intelligence, machinery, and products on the basis of strict liability. However, there remains debate as to how effective these principles are in ensuring compensation for personal injury, particularly in cases where it is not possible to identify the person responsible for the injury or to establish their liability. Given that the Egyptian Civil Code derives a significant proportion of its provisions from the French Civil Code, and that the Algerian Civil Code was in turn influenced by the Egyptian Civil Code, significant similarities can be observed in the provisions governing civil liability under the French, Egyptian and Algerian civil codes. The present study therefore seeks to identify, highlight, and analyse these similarities through a comparative examination of the relevant legal provisions in these three legal systems.

Keywords: Civil liability; tort liability; strict liability; compensation for damage; Civil law.

Resumen

La relevancia de este tema radica en que la responsabilidad civil, tanto en su dimensión teórica como práctica, constituye un mecanismo jurídico fundamental y eficaz para reparar los daños sufridos por la persona perjudicada. Las diversas transformaciones de sus principios y fundamentos se han orientado a reforzar la protección de la víctima y garantizar su indemnización. Por ello, la reparación del daño se considera el efecto más importante de la responsabilidad civil, al constituir el medio jurídico mediante el cual se subsana el perjuicio y se materializa la protección perseguida. Los principios de la responsabilidad extracontractual han experimentado una notable evolución gracias a las aportaciones de la doctrina y la jurisprudencia, que posteriormente se han reflejado en las distintas legislaciones objeto de comparación. Esta transformación del pensamiento jurídico ha supuesto un desplazamiento desde la responsabilidad basada en la culpa hacia la adopción de modalidades de responsabilidad objetiva, fundamentadas en la producción del daño sin necesidad de probar la culpa. En este contexto, las tendencias actuales examinan la responsabilidad por los daños causados por la inteligencia artificial, las máquinas y los productos desde la perspectiva de la responsabilidad objetiva.

Sin embargo, persiste el debate sobre la eficacia de estos principios para garantizar la indemnización de los daños personales, especialmente cuando no es posible identificar al responsable o establecer su responsabilidad.

Dado que el Código Civil egipcio toma una parte considerable de sus disposiciones del Código Civil francés y que, a su vez, el Código Civil argelino recibió la influencia del egipcio, se observan importantes similitudes entre las disposiciones que regulan la responsabilidad civil en estos tres ordenamientos. En consecuencia, el presente estudio pretende identificar, destacar y analizar dichas similitudes mediante un examen comparativo de las disposiciones jurídicas pertinentes de los sistemas francés, egipcio y argelino.

Palabras clave: responsabilidad civil; responsabilidad extracontractual; responsabilidad objetiva; indemnización de daños; derecho civil.

1. INTRODUCTION

The concept of civil liability, as recognised and understood in contemporary legal thought, was not known to ancient societies. Within primitive communities, the prevailing sentiment was one of seeking retribution and revenge against those who had inflicted harm. The pursuit of compensation was not a consideration that was ever entertained by those who had suffered harm, nor, it should be noted, by their communities. The sole concern of the individual and the collective was to exact retribution on the perpetrator and to hold the entire community responsible for the harm caused. Consequently, collective retaliation was initiated, carried out by the victim's tribe or family against the perpetrator's tribe or family, as the state, in the modern sense of the term, had not yet been established.

It can be argued that the rapid developments taking place in modern societies – which have given rise to new opportunities for harm – are among the key factors that have led to the emergence of civil liability as a field of legal interpretation. Indeed, it is now widely acknowledged that the principles of civil liability are of particular importance in the practical sphere, and this has helped to codify those principles and establish their development. Indeed, it has been said that they are now regarded as the foundation of civil law due to their comprehensiveness, covering many aspects, including persons, property, and money.

The evolution of the theory of civil liability, akin to other legal theories, has been subject to various developments. Despite its progression, this legal system continues to be a subject of research and study, thereby underscoring its significance to society. Among the significant factors that have had a major impact on the development of the liability system, the ideological aspect must be mentioned. On the one hand, a distinction was drawn between the victim's interests and their right to compensation, and the interests of the party causing the harm. On the other hand, the advent of the Industrial Revolution, modern technology, and economic development led legal scholars to develop new theoretical foundations for civil liability – particularly liability in tort – with a view to making its rules more conducive to the compensation of damages.

The significance of this subject is predicated on the notion that civil liability holds considerable importance, especially when considered from both a theoretical and a practical standpoint. The scope of tortious liability is recognised as being broader in comparison to that of contractual liability. The evolution of the principles and foundations of this liability is entirely aimed at ensuring the protection of the injured party, with the fundamental essence of civil liability lying in the sanction of ensuring that the injured party receives compensation.

Accordingly, the central question guiding this study is as follows: What are the fundamental principles that underpin both traditional and modern forms of tortious liability?

In order to address the research problem, a descriptive and analytical approach has been adopted in order to highlight the most significant developments in civil liability and to identify the key jurisprudential theories advocated by jurists in the field of tortious liability. A comparative approach was also employed to examine the stance of French, Egyptian, and Algerian legislation on these theories, and the legal foundations established by the law to create a system of civil liability capable of compensating the injured party. This constitutes the principal objective of the present study.

The subject has been addressed in two sections. In the first section, the historical roots of civil liability were examined. In the second section, recent trends in tort liability were analysed. Finally, the key findings were summarised, and recommendations were put forward.

2. Historical Origins of Civil Liability

Roman law occupies a pre-eminent position among ancient legal systems, ensuring its enduring relevance. It is characterised by the precision of its legal framework and its clear articulation of how it addresses the shortcomings encountered by all who practise law. Its continued significance is further demonstrated by the fact that some of its legal classifications remain in force in modern legislation. Consequently, numerous provisions of contemporary legislation, particularly civil codes, are intrinsically connected to the tenets of Roman law through Western legal systems in general and French law in particular (Belayour, 1986).

2.1. Civil liability in ancient legal systems

The following section provides a comprehensive examination of civil liability in various legal traditions, including Roman law, Old French law, Islamic jurisprudence, and Old Egyptian civil law.

2.1.1. Civil liability under Roman law

Since ancient times, the Romans have distinguished between damage resulting from public offences—such as those threatening the security of the state and society—and damage resulting from private offences, which were regarded as giving rise to a duty of care. The existence of the latter was provided for in the Law of the Twelve Tables. In 287 BC, the Roman legislature enacted the Lex Aquilia, which refined the Law of the Twelve Tables and set out certain offences relating to slaves, livestock, and cases of property damage. The Lex Aquilia prescribed a specific fine to be paid to the injured party (Ben Zita, 2013).

The theory of tort liability under Roman law is characterized by three main features:

- There was no general rule stipulating that every fault giving rise to damage would give rise to compensation; rather, it was only certain acts, as defined by statutory provisions, that gave rise to liability. In ancient times, liability in tort was left to the practice of blood feuds, then shifted to voluntary blood money, then to compulsory blood money, and finally to punishment once state intervention became established to ensure security and order (El-Sanhouri).
- The sanction for these specific acts giving rise to liability was not civil compensation; rather, the concept of criminal punishment continued to permeate the concept of civil compensation as a legacy of the past, from the era of blood feuds and the payment of blood money.
- The concept of fault as the basis for liability emerged gradually; initially, fault was not a prerequisite, with damage instead serving as the primary condition. Consequently, the notion of fault began to emerge gradually. Concerning the concept of fraudulent acts, that is, deception, the notion of fault emerged with such clarity that it ultimately prevailed over the concept of damage (Ibid).
- Despite the considerable progress made by the Roman state in the development of legal thought, including the formulation of general principles and legal systems, Roman law did not establish a general rule governing civil liability. Instead, it recognised two categories of legal action: actions for

damages aimed at compensating the victim, and punitive actions aimed at punishing the perpetrator. However, these categories did not address the differences or conflicts between the two types of action. This prevented any distinction from being made between civil, criminal, and contractual or tortious liability (Filali, 2012).

2.1.2. Civil liability under old French law

In the 17th century, the French jurist Domat distinguished between criminal and civil liability, thereby establishing the former as distinct from the latter. However, it was during this period that civil liability first took shape and became separate from criminal liability, although it remains to this day influenced by the period when the two were intertwined. Domat established a general principle governing civil liability, and the notion of fault emerged clearly in his writings, which were influenced by canon law. In his work *The Civil Laws*, he wrote that all losses and injuries caused by persons, whether resulting from want of foresight, recklessness, ignorance of what they ought to have known, or from any similar fault, however slight, give rise to an obligation to compensate on the part of anyone whose negligence or fault caused them (Sliman, 2003).

The distinction between tort and contractual liability was first made by Domat, although this was during the era of the Belgian jurist Saintelle. In his treatise on liability and guarantee, Saintelle refused to apply the term 'liability' to contractual liability. Instead, he used the term 'guarantee' and reserved the term 'liability' for tort liability, in order to emphasise the distinction between the two systems (Ibid).

2.1.3. Civil liability in Islamic jurisprudence

Islamic jurisprudence was not, in its origins, the product of theories; rather, its rulings were organised according to factual circumstances into groups linked by a common subject matter. Consequently, the concept of 'contractual liability' or 'tort liability' is not recognised in Islamic jurisprudence. However, there are indications that a distinction between the two is recognised by jurists and reflected in Islamic jurisprudence texts (Fayd Allah, 1962).

Islamic jurisprudence has evolved a general principle that life and property are inviolable; that is, they cannot be unlawfully violated or appropriated. However, the existence of lawful grounds or justifications does not necessarily destroy such inviolability; that is, they do not prevent liability or extinguish the right of the injured party to compensation. The Prophetic hadith, "There shall be neither harm nor reciprocating harm," is considered one of the foundational principles of liability in Islamic jurisprudence. From this principle, jurists and scholars have derived a number of jurisprudential maxims relating to liability and compensation for the injured party (Yasin, 2022).

2.1.4. Civil liability under old Egyptian law

Ancient Egyptian law adopted the rules of tort liability from French law at a time when the French judiciary had begun to adopt the doctrine of imputed fault. Thus, the general rule of tort liability was established and based on fault, the existence of which must be proven. Thus, Articles 151 and 212 provide that any act which results in harm to another individual gives rise to the obligation of the perpetrator to provide compensation for that harm. The text then proceeded to present cases of strict liability, modelled on French law, and supplemented the text of Articles 151 and 212 to establish the liability of those entrusted with the supervision of persons under their care, and based such liability on a presumed fault (El-Sanhouri).

2.2. Concept of civil liability in tort

There has been considerable divergence amongst legal scholars in their definition of civil liability, with the consequences of this divergence being evident in judicial rulings and even in statutory legislation. Indeed, the term 'civil liability' is not a traditional term in legal language, and it was perhaps the 18th-century English philosophers who first established the principles of this terminology (Faiq, 2017).

2.2.1. Concept of tort liability

Tort liability presupposes that harm has been caused to a third party and that this harm does not arise from a breach of a contractual obligation; for example, a driver who injures a pedestrian incurs tort liability, as the harm is not linked to the existence of a contract between the driver and the pedestrian; rather, it is independent of any contractual obligation between the liable party and the injured party (Al-Ahwani, 2021).

Tort liability arises from a mere breach of legal duties, whether these are set out in legislation or stem from the rules of social coexistence. Such duties include the need to respect neighbours' rights and not to endanger the safety of individuals, and the general principle of not causing harm to others. The party that causes such harm is obliged to pay compensation to the injured party (Al-Araari, 2011).

2.2.2. The elements of tort liability

Tort liability, like contractual liability, is based on three fundamental elements which will be briefly outlined below:

- **Fault:** There are several competing views on the definition of the concept of fault, the most significant of which is the definition provided by the jurist Planiol, who defines fault as: 'a breach of a prior obligation'. The question of how to define fault has remained open, despite all the concepts that have been put forward in an attempt to define it. According to Hijazi, fault is defined as a deviation in a person's conduct, accompanied by awareness of such deviation. This definition may be considered closer to the objective standard generally applied in determining fault, whereby a person's conduct is assessed against the standard of the ordinary person to determine whether it constitutes a deviation from normal or expected conduct (Said, 1992).

It should be noted that an individual may demonstrate that the blame does not lie with them; rather, it is attributable to an external cause, such as force majeure, a sudden accident, the act of a third party, or the fault of the injured party themselves.

- **Damage:** Damage constitutes an essential element of tort liability, without which liability cannot arise. In the absence of damage, there is no liability, even if there is fault or an act giving rise to liability in general. This fundamental distinction between civil and criminal liability is predicated on the notion that criminal liability is based on the mere commission of an act that is explicitly criminalised by law, irrespective of whether it results in harm to others. Islamic law, for instance, posits that harm constitutes the very basis of liability, a principle that contemporary French jurisprudence espouses and which has been adopted by certain Arab legislations. Consequently, the party deemed culpable for causing harm is obligated to provide compensation, without the necessity of establishing fault (Al-Ahwani, 2021).
Damage constitutes the second element of civil liability, whether that liability is of a contractual or tortious nature, and whether it arises from one's own act, the act of a third party, or the act of a thing. It should be noted that civil liability was established with a view to redressing and compensating for harm

caused to others. This underscores the significance of this element, as there can be no civil liability without damage. In general terms, the absence of damage precludes the acceptance of a liability claim, in accordance with the principle that there can be no claim without a legal interest. Damage is not merely an element of civil liability, but also serves as the measure of the amount of compensation to which the victim is entitled (Filali, 2012).

- **Causation:** For liability to arise, it is a prerequisite that the fault be the cause of the damage; this is the causal link between the fault and the damage, and it constitutes the third element of tortious liability. It is not sufficient for the fault to be the cause of the damage; rather, it must be both the direct cause and the proximate cause. Consequently, the causal link is broken, and liability does not arise if the damage is attributable to an external cause, or even if it is attributable to a fault which was not, however, the direct or proximate cause of that damage (Tannagho, 2009).

Article 182 of the Algerian Civil Code establishes the standard for determining the liability of the perpetrator of a wrongful act in the event of a chain of damages. While this article pertains to contractual liability, it is asserted by scholars of law that its provisions also apply to tortious liability, as it is founded on the concept of causation, which is an integral element of liability, whether it be contractual or tortious. Consequently, direct damage is defined as that which is the natural consequence of the fault (Al-Saadi, 2021).

2.2.3. Tort liability in comparative legislation

In this section, an examination of tort liability under French, Egyptian and Algerian civil law will be conducted.

- Tort liability under the French Civil Code

Under a chapter entitled "Liability in Tort", the French legislature provides, in Articles 1240 to 1244 of the Civil Code, for personal liability; liability for persons under one's supervision; parents' liability for their minor children; vicarious liability for the acts of persons under one's authority; liability for things in one's custody; liability for damage caused by fire and the collapse of buildings; and liability of the keeper of an animal. It further establishes an obligation to make reparation for the damage arising from these forms of liability¹.

The system of tortious and quasi-tortious liability is based on two provisions governing fault-based civil liability. First, Article 1240, concerning civil wrongs, that is, unlawful and harmful acts committed with the intention of causing harm, provides that any act of a person that causes damage to another obliges the person through whose fault the damage occurred to repair it. Article 1241, concerning quasi-delicts, addresses unlawful acts causing harm that are committed without the intention to cause such harm. It provides that everyone is liable for the damage he causes, not only by his acts, but also by his negligence or imprudence (Terré, Simler, & Lequette, 2013).

- Tort liability under Egyptian Civil Code

In Chapter Three of the Egyptian Civil Code, entitled "Unlawful Act," the Egyptian legislature provides for liability arising from personal acts in Articles 163 to 172. These provisions also address liability for the acts of others, including the liability of a person entrusted with supervision under Article 173 and the vicarious liability of a principal for the acts of his subordinate under Article 174. They further provide for liability arising from things, including the liability of the keeper of an animal under Article 176 and liability for the

¹ Article 1246 of the French Civil Code, 1804.

collapse of buildings under Article 177. Article 178 provides that anyone who has custody of things requiring special care or of mechanical equipment shall be liable for any damage caused by such things. The Code further affirms the obligation to make reparation for the damage arising from these forms of liability².

- Tort liability under the Algerian Civil Code

The Algerian legislature has established a comprehensive framework of tort liability encompassing liability for one's own acts, liability for the acts of others, and liability arising from things. It has adopted fault as the basis of tort liability. Accordingly, proof of fault is required in cases of liability for personal acts under Article 124 et seq. of the Civil Code, whereas fault is presumed in cases of liability for the acts of others under Articles 134 to 137 of the same Code, including the liability of a person entrusted with supervision and the vicarious liability of a principal for the acts of his subordinate. The Code also provides for liability arising from things, including the liability of the custodian of a thing or animal, liability for fire and the collapse of buildings, and product liability under Articles 138 to 140 bis of the Civil Code.

It can be concluded that the provisions on tort liability and the articles set out in the French, Egyptian and Algerian Civil Codes are virtually identical; this is because the French legislature was the first to codify these provisions, and they were subsequently adopted by the Egyptian legislature. It is evident to legal scholars that the Algerian legislature has been influenced by both Egyptian and French legislation, as Algeria is a relatively recent nation in terms of law-making, having gained independence in 1962; whereas in France, the Civil Code was drafted by Napoleon in 1804, whilst the Egyptian Civil Code was enacted in 1948.

3. Modern Trends in Tort Liability

A retrospective analysis of the development of tortious liability shows a continuous expansion of the scope of tortious liability. Initially, its use was restricted to certain situations and a limited set of circumstances. But gradually it broadened until it became a general principle. Such was the stage of its development in the ancient French law before it was codified in the Napoleonic Code of 1804. Under current French law, the general rule on liability has evolved. It was first based on the concept of fault, which had to be proven; then, in certain cases fault came to be presumed, and more recently the concept of liability has emerged alongside that of fault (Al-Saadi, 2021).

3.1. Modern foundations of tort liability

It was therefore natural to seek to move beyond the traditional, personal nature of civil liability, particularly after the emergence of theories that departed from fault as the basis of civil liability and replaced it with damage on the basis of risk allocation. However, the courts did not accept the principle of strict liability. Although they arrived at many of its practical consequences, they did not recognize any basis for liability other than fault. Instead, they confined themselves to broadening the scope of cases involving presumed fault, while also relying on contractual liability in certain cases by implying an obligation to ensure safety (Azoua, 2013).

3.1.1. Risk-based liability (Strict liability)

² Egyptian Civil Code No. 131 of 1948

The concept of strict liability began to emerge as a development of the principles of fault-based liability. It was subsequently recognized in certain judicial decisions and examined by legal scholars in the field of civil liability. Comparative legal systems have sought to provide the highest possible level of safety and security for users of modern technologies. This has prompted the development of a new system of liability based on objective grounds, with the aim of compensating the greatest possible number of injured parties and restoring them, as far as possible, to the position they were in before the damage occurred (Yasin, 2022).

- Strict liability in legal scholarship and judicial practice

The English judiciary is regarded as having laid the foundation for, and played a pioneering role in, the development of the system of strict liability. This approach emerged in English courts through the adoption of the principle that an employer is liable for damages resulting from risks arising from their business, without it being necessary to establish fault on their part; indeed, even if the employer had taken every possible measure to prevent such harm from occurring.

Legal doctrine did not adopt this theory in its broad sense, considering the theory of presumed fault sufficient to render it unnecessary. The shift away from this theory resulted from the position adopted by the judiciary and the legislature towards it. French courts, for their part, did not recognize strict liability; rather, they required proof of fault, although they went a long way towards establishing liability based on presumed fault (Al-Saadi, 2021).

- Strict liability under French legislation

The French legislature has adopted this approach and abandoned the concept of fault as the basis for liability, by enacting some laws, including: the Act of 9 April 1898, as amended, concerning compensation for victims of workplace accidents; the Act of 5 July 1985, which relates to victims of road traffic accidents and those responsible for motor vehicle accidents; and the Act of 31 December 1991, concerning compensation for victims of acquired immunodeficiency syndrome (AIDS) resulting from blood transfusions (Dhahir, n.d.).

From these provisions, which have been cited by way of example rather than an exhaustive list, it can be observed that the French legislature has not made the existence of fault, or proof of fault, a prerequisite. This legislative openness and legal flexibility have encouraged judges to move away from the theory of fault. They often disregard the requirement to prove the existence of fault, and are content merely to presume fault on the part of the liable party to facilitate compensation for the injured party and safeguard their rights (Ibid.).

In this context, it should be noted that the French legislature stipulated that compensation must be paid for environmental damage under the amendment to the Civil Code of 1 October 2016, stating that anyone who causes environmental damage is obliged to remedy it³.

- Strict liability under Algerian legislation

The Algerian legislature was influenced by its French counterpart in adopting the theory of risk, although not expressly; rather, it did so implicitly by incorporating it into certain legal applications. Meanwhile, the Algerian Civil Code has undergone several amendments through which the legislature has sought to

³ Article 1246 of the French Civil Code (1804)

accommodate developments within the state and society and to respond to persistent calls for the amendment of certain provisions of the Code, particularly those repeatedly advocated by Suleiman. It appears that the legislature has responded to some of these calls, particularly in the field of tort liability (Ben Zita, 2013).

3.1.2. Product liability

The French legislature enacted Law No. 389 on 19 May 1998, concerning liability for defective products. No separate legislation was enacted to regulate liability; rather, the provisions of the aforementioned law were incorporated into the Civil Code in Articles 1245–1245/17. Consequently, under this legislation, the liability of the manufacturer and the professional seller has become strict liability (Saqr, 2023).

By virtue of Law No. 05-10 amending and supplementing the Civil Code, the Algerian legislature introduced a new form of liability, namely a newly established liability relating to products, referred to as product liability. It is clear that, in enacting Article 140 bis, the Algerian legislature was influenced by French law. The latter, however, regulated product liability through 18 articles, whereas the Algerian legislature devoted only a single provision to it, consisting of two paragraphs. This may have been intended to leave room for judicial interpretation to develop and regulate this newly established form of liability in light of the Algerian legal framework and the realities of Algerian society (Bounasser&Boujerada, 2023).

It should be highlighted that Article 140 bis, paragraph 1, of the Algerian Civil Code is virtually identical to Article 1245 of the French Civil Code, whilst Article 140 bis, paragraph 2, is also largely modelled on Article 1245/2 of the French Civil Code. This confirms the influence of French legislation on Algerian legislation. Article 140 bis of the Algerian Civil Code provides that the producer shall be liable for damage resulting from a defect in their product, even if they have no contractual relationship with the injured party. From the wording of this article, we may infer that the Algerian legislature has adopted the theory of liability for defects in products that cause harm to third parties.

Our view is consistent with that of Filali, who maintains that, in the absence of specific rules governing the means of exonerating the producer from liability, the only course available is to have recourse to the general rules. In this regard, he considers product liability to be strict liability rather than personal liability, since the producer is held liable for damage resulting from a defect in the product, rather than based on the producer's conduct (Filali, 2012).

It should be noted that it would have been preferable for the Algerian legislature to have incorporated product liability into the Consumer Protection Law rather than into the Civil Code. This is also the view expressed by Boubaker (2009). This is because there are numerous provisions regarding product safety and security requirements, which are set forth in the Consumer Protection and Fraud Prevention Act; and provisions regarding penalties, such as imprisonment and fines, are also set forth in the same law⁴.

The Egyptian legislature has also enacted the Consumer Protection Law No. 67 of 2006, as amended by Law No. 181 of 2018, which holds the manufacturer and anyone dealing with the manufacturer liable for damages caused by defective goods. The law also focuses on ensuring the safety of persons and preventing risks posed by goods and products, and includes certain specific rules. This is not limited to the Consumer Protection Law alone; it also includes the Commercial Code No. 117 of 1999, which stipulates

⁴Law No. 09/03, dated February 25, 2009, on Consumer Protection and the Suppression of Fraud, Official Gazette of the Republic of Algeria No. 15, dated March 8, 2009.

the manufacturer's liability for damages caused by its products(Saqr, 2023). It shouldbe noted that the Egyptian legislature has not provided for product liability in the Civil Code.

Among the legal issues arising within the framework of tort liability for products is the question of the legal characterization of liability for damage resulting from the use of AI-powered machines. Legal doctrine has differed as to the nature of tort liability arising from artificial intelligence. Some scholars have argued that it should be governed by the concept of liability for animals, while others have drawn an analogy with liability for the custody of things and dangerous machinery. Still others have classified it within the legal framework governing defective products (Mohamed, 2023).

Moreover, it should be highlighted that pursuant to Article 178 of the aforementioned Civil Code, which falls within the second section of Chapter Three, the Egyptian legislature has classified mechanical devices as dangerous things subject to custody and control.

We believe that it would be more appropriate to adopt the theory of risk, whereby liability arises simply upon the occurrence of damage caused by such machines, without having recourse to these analogies, since the primary objective of imposing liability is to ensure that the injured party receives compensation. The risk theory is therefore the most appropriate approach in this case.

3.1.3. The precautionary principle

The precautionary principle is the legal principle that calls for taking precautionary and preventive measures against potential risks that may harm the environment or human health arising from an activity, in the absence of scientific certainty as to whether such risks actually exist, or to provide compensation for damages resulting from such risks based on newly established rules of civil liability (Al-Tahhan, 2023).

In this regard, it should be mentioned that the Algerian legislature has incorporated the provisions relating to this principle into the aforementioned Consumer Protection and Fraud Prevention Law, specifically Articles 53 to 67, under the heading "Precautionary Measures and the Precautionary Principle." These measures are intended to prevent harm to consumers. Any violation that causes harm to consumers as a result of non-compliance with these measures renders the offender liable to the penalties provided for under the Consumer Protection and Fraud Prevention Law, particularly Article 68 et seq.

3.2. Establishing new mechanisms for ensuring compensation

Technological progress has had a profound impact on changing the conventional or familiar concept of compensation by altering the definition of the party responsible for compensation—whether through the requirement of mandatory civil liability insurance, state intervention in compensation, or social security funds.

3.2.1. Civil liability insurance

The insurance system, which underwent rapid development at the beginning of the twentieth century due to its economic importance, had significant repercussions on the system of civil liability. Insurance encouraged many victims to assert their rights and seek compensation for the harm they had suffered, even when such harm was minor. The courts also demonstrated a degree of flexibility regarding the conditions for establishing the insured's liability, and began to assess compensation in light of the actual damage suffered

by the victim, regardless of the victim's conduct. It should be noted that the insurance company pays the compensation on behalf of the insured (Filali, 2012).

The development of liability insurance has served as an encouraging incentive for injured parties to insist on obtaining compensation. They find themselves facing a financially sound entity—the insurance company—that will pay them the compensation they are entitled to, while the insured party is sometimes less cautious, leading to an increase in accidents and the resulting damages and lawsuits (Al-Ahwani, 2021).

3.2.2. Compensation by the State

Despite the theoretical developments in the concept of civil liability, it has remained incapable of providing compensation for damage that cannot be attributed to human action, such as damage resulting from force majeure, unforeseen accidents, and other similar circumstances. In such cases, the injured party is unable to identify a person liable for compensation under the traditional rules of civil liability. Hence, socialist thought called for the State or the public treasury to guarantee compensation for those who could not identify a liable party against whom they could seek compensation, because ultimate responsibility for compensation rests with society as a whole (Azoua, 2013).

Through Article 140 bis 1, the Algerian legislature has established a general principle requiring the State to compensate for bodily injury in cases where there is no party liable for the harm. We believe that the inclusion of this principle in the Civil Code enshrines the new compensation system that has gradually emerged through various special statutes. It is worth noting in this regard that this new system, known as lump-sum compensation, compensation for bodily injury, or automatic compensation for bodily injury, is entirely distinct and independent from the civil liability system in several respects, including the person liable for compensation, the damage eligible for compensation, and the amount and methods of compensation. This calls for a study of this system, whose scope is expanding day by day and which has increasingly come to rival the civil liability system (Filali, 2012).

With regard to compensation by the State for bodily injury under the French and Egyptian Civil Codes, an examination of the provisions of both Codes revealed that no provision has been made for such compensation. It should be mentioned that the Algerian legislature provided for compensation by the State for bodily injury in the aforementioned article, at the end of Chapter Three, which addresses liability for personal acts, vicarious liability, and liability arising from things.

This raises the following questions: Does compensation for bodily injury, subject to the conditions outlined in Article 140 bis 1, cover damage arising from these three forms of liability? Or is such compensation limited to damage resulting from a defect in a product, given that the legislature provided for product liability in Article 140 bis, which is immediately followed by Article 140 bis 1? Or does compensation by the State under this article refer to compensation provided for under special legislation, such as compensation for damage resulting from road traffic accidents and occupational accidents, as previously mentioned by Filali (Ibid.)?

We believe that it would be advisable for the Algerian legislature to clarify this issue. At the very least, a decree should be issued specifying the manner in which the provisions of Article 140 bis 1 are to be implemented. Even where compensation is assumed by the State, it cannot, in reality, and as dictated by both logic and law, cover all forms of damage.

3.2.3. Compensation for non-pecuniary damage

Damage is of two types: pecuniary damage and non-pecuniary damage. While there has been no dispute as to the obligation to compensate for pecuniary damage, compensation for non-pecuniary damage has been the subject of controversy. The Algerian legislature had not previously provided for compensation for non-pecuniary damage in the Civil Code, whether in the context of contractual liability or tort liability. However, this matter was addressed by Law No. 05-10 of 20 June 2005, which provides that compensation for non-pecuniary damage shall include any infringement of freedom, honour, or reputation. It may be inferred from this provision that compensation covers damage arising from both contractual and tort liability⁵.

It should be noted that, pursuant to the aforementioned Law No. 05-10 amending the Civil Code, the Algerian legislature replaced the term “person” with the term “individual.” Article 124 provides that any act, whatever its nature, committed by a person through his or her fault and causing damage to another person shall render the person who caused the damage liable for compensation. It may be concluded that, just as a legal person may be held liable for acts causing damage to others, it may also claim compensation for damage suffered by it, even where such damage is non-pecuniary, such as damage to its reputation resulting, for example, from defamation. It should be highlighted that, prior to 2005, the Algerian ordinary, administrative, and criminal courts had already issued several judgments awarding compensation for moral (non-pecuniary) damage (Al-Saadi, 2021).

4. CONCLUSION

In conclusion, civil liability is a fundamental mechanism of civil law that ensures compensation for damage caused to others. The determination of liability is based on several elements, including fault, damage, and the causal relationship. In addition, legal doctrine and comparative legislation have recognized other bases of liability arising from sources of harm, such as things, animals, and persons under the supervision or control of others. As for the functions of civil liability in general, and tort liability in particular, they consist of two main aspects: imposing a sanction on the person liable and ensuring the protection of the injured party. The punitive function is most clearly manifested in liability for personal acts, which is based on fault.

Based on the foregoing, the main findings of the study are as follows:

- Tort liability has evolved significantly since the enactment of the French Civil Code in 1804, when the general principle of this liability—namely, liability based on fault—was established. Other specific forms of liability have since been added, such as the principal’s liability for the acts of a subordinate, liability for animals, and liability for the collapse of a building.
- The traditional theory of liability subsequently became inadequate due to the Industrial Revolution. Liability evolved to make it easier for the injured party to obtain compensation.
- Civil liability has evolved in modern times through the work of legal scholars, who called for establishing it on a basis other than fault and adopted the theory of risk, whereby liability is founded on the risks arising from an activity. Under the principle that gain entails burden, a person who benefits from an activity that creates risks for others is required to compensate them. This constitutes the objective theory of liability.

⁵Article 182 bis of the Algerian Civil Code, enacted by Ordinance No. 75-58 of 1975.

- Tort liability based on fault is the general rule. Liability based on damage is an exception, and the element of personal fault cannot be disregarded, because a person is held accountable for his or her own harmful acts and for the acts of those under his or her responsibility or supervision.
- The difficulty of proving a causal link between the fault and the damage in tort liability, which deprives the injured party of the opportunity to obtain compensation.
- Strict liability arises upon the occurrence of damage, and the injured party is relieved of the burden of proving fault.
- Application of the strict liability standard in tort liability to ensure the right to compensation.
- Liability for damages caused by artificial intelligence and other machines is based on the concept of accountability.
- The Algerian legislature has adopted the theory of risk in cases involving defects in products that cause damage to others.

Finally, it should be noted that, between the injured party's right to compensation and the absence of liability in the absence of fault, disagreement remains as to the effectiveness of the optimal legal bases for ensuring compensation for bodily injury, particularly where there is no person liable for the damage.

Accordingly, the following recommendations are proposed:

- Expanding the application of the theory of risk to ensure compensation for injured parties who suffer damage caused by dangerous machinery and things, since the general principle underlying civil liability is the prohibition against causing harm to others. Islamic law establishes that harm constitutes the basis of liability, a position also advocated by contemporary French legal scholarship.
- Product liability under Algerian law should be incorporated into the Consumer Protection Law, or a decree should be issued clarifying how the provisions of Article 140 bis 1 are to be applied. For even if the state were to provide compensation, in reality—and as dictated by logic and the law—it cannot cover all damages.
- Establishment of special funds by the State to compensate those affected, in accordance with Article 140 bis 1 of the Algerian Civil Code.
- Clarifying the mechanisms and conditions for obtaining compensation from the State.
- Reconsidering the insurance mechanisms applicable to economic enterprises and establishing a stringent system for compensation for damage.
- Developing new preventive concepts in civil liability that focus on preventing damage from occurring.
- Establishing clear legal provisions governing compensation for environmental damage, particularly under Algerian legislation.

References

1. Azoua, A. (2013, May 23). Guarantees of compensation in light of the development of the concept of civil liability [Study presented at a study day on modern trends in the theory of civil liability]. University of Adrar, Algeria.
2. Al-Ahwani, H. K. (2021). Sources of obligations: Voluntary and involuntary sources. Dar Al-Nahda Al-Arabia.
3. Al-Sanhuri, A. A. (n.d.). Al-Wasit in the explanation of the Civil Code: The general theory of obligations, sources of obligations, contract, tort, unjust enrichment, and law (Vol. 1). Dar Ihya Al-Turath Al-Arabi.
4. Al-Saadi, M. S. (2021). Al-Wadih in the explanation of the Civil Code: The general theory of obligations, sources of obligations, tort liability, and the compensable act: A comparative study of Arab laws. Dar Al-Huda.
5. Al-Arari, A. (2011). Sources of obligations (Book 2, Civil liability). Dar Al-Aman.
6. Belaïour, A. K. (1986). The theory of termination of contracts in comparative Algerian civil law. National Book Company.
7. Ben Zita, A. H. (2013, May 23). The historical and legislative development of civil liability [Study presented at a study day on modern trends in the theory of civil liability]. University of Adrar, Algeria.
8. Bounasser, I., & Boujerada, N. (2023). The newly developed legal foundations of civil liability. *Journal of Law and Society*, 11(1), 328–351.
9. Daher, O. Z. (n.d.). Applications of the precautionary principle in civil liability. Cihan University, College of Law and International Relations.
10. Fayz Allah, M. F. (1962). Tort liability between Islamic law and positive law [Doctoral dissertation, Al-Azhar University, Faculty of Sharia].
11. Filali, A. (2012). Obligations: The compensable act (3rd ed.). Moufem Publishing.
12. French Civil Code. (1804, March 21; amended through January 1, 2017).
13. Law No. 05-10 of June 20, 2005, amending and supplementing the Algerian Civil Code.
14. Law No. 09-03 of February 25, 2009, relating to consumer protection and fraud prevention. Official Gazette of the Algerian Republic, No. 15, March 8, 2009.
15. Mahmoud, M. M. A. (2023, October). The extent to which the provisions of the Civil Code accommodate artificial intelligence facts: A comparative jurisprudential study. *Journal of Sharia and Law*, 42, 1305–1363.
16. Mansour Saqr, M. (2023). Legal protection of consumers from bodily harm arising from defective products. *Damietta Law Journal for Legal and Economic Studies*, 8, 166–256.
17. Mostafa, M. (1992). The theory of compensation for non-pecuniary damage in civil liability. National Book Company.
18. Egyptian Civil Code No. 131 of July 16, 1948, as amended and supplemented.
19. Algerian Civil Code, enacted by Ordinance No. 75-58 of September 26, 1975, as amended and supplemented through 2007. Official Gazette of the Algerian Republic, No. 78, September 30, 1975.
20. Tanhago, S. (2009). Sources of obligations. Al-Wafaa Legal Library.

21. Al-Tahhan, M. A. A. (2023). Towards adopting the precautionary principle as a new basis for the civil liability of producers of COVID-19 vaccines: A comparative study. *International Journal of Jurisprudence, Judiciary and Legislation*, 4(1), 184–227.
22. Yassin, M. I. A. F. (2022). Objective liability for emerging risks: A comparative study. *Benha Journal of Humanities*, 2(1), 49–90.
23. Lylan, R. F. (2017). Civil liability in law [PDF].
<https://www.krjc.org/uploads/Lylan%20rashed%20faeq.pdf>

Declaraciones

Conflictos de interés: La autora declara no tener conflictos de interés relacionados con este estudio.

Financiación: La autora declara que este estudio no recibió financiación específica.

Responsabilidad autoral: La autora asume la responsabilidad del contenido del artículo.

Licencia

Este artículo se publica bajo la licencia Creative Commons Atribución 4.0 Internacional (CC BY 4.0), que permite su uso, distribución, reproducción y adaptación en cualquier medio, siempre que se cite adecuadamente a la autora y la fuente, se incluya un enlace a la licencia y se indiquen los cambios realizados.

<https://creativecommons.org/licenses/by/4.0/>

