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Theoretical Elaboration of the Structural Interaction between Contractual Liability, Tort Liability, and Property Law in Iranian Law

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ABSTRACT

The present study aims to elucidate the structural interaction among three principal institutions of private law—namely contractual liability, tort liability, and property law—and to propose an integrated model for reducing conflicts and enhancing the efficiency of the Iranian legal system. This research adopts a descriptive–analytical method with a comparative approach. The data were collected through library-based examination of statutes, legal doctrines, and judicial decisions in the legal systems of Iran, France, and Common Law jurisdictions and were analyzed using qualitative content analysis. The findings indicate that conflicts among these domains primarily stem from divergences in their theoretical foundations, particularly the confrontation between the theory of obligation and the theory of conveyance. This divergence has resulted in differences regarding enforcement mechanisms, the scope of compensable damages, and the allocation of the burden of proof. Within this framework, property law plays a dual and pivotal role: on the one hand, it constitutes the primary instrument for enforcing civil liability judgments; on the other hand, it is itself constrained by the rules of civil liability and the doctrine of la darar (the principle of no harm). The comparative analysis reveals that advanced legal systems have managed these conflicts by adopting flexible approaches, including granting the injured party the right of election in cases of concurrent liabilities. Accordingly, this study proposes an integrated model whose core elements include recognition of the injured party's right of choice, harmonization of compensation rules, enactment of a comprehensive civil liability statute, clarification of the conceptual boundary between conveyance and obligation in the Civil Code, and reform of the system of registration of documents and immovable property. While preserving the relative autonomy of these institutions, this model facilitates institutional interaction and the realization of restorative justice within the Iranian legal system.

Keywords: *Theory of Obligation; Theory of Conveyance; Property Law; Non-Contractual Liability; Structural Interaction; Integrated Model*

Introduction

Private law, as the regulator of interpersonal relations within society, is founded upon several fundamental branches, among which contract law, civil liability (tort), and property law occupy a central position (1-3). Although these three fields are usually examined separately in legal scholarship, in practical contexts—particularly in judicial proceedings—their conceptual and functional boundaries are so deeply intertwined that an isolated analysis of each becomes seriously problematic (4, 5). This complexity is especially pronounced in the Iranian legal system, which represents a hybrid structure combining the foundations of Imami jurisprudence, with its inclination toward the theory of ownership, and modern legal doctrines centered on the theory of obligation (6-8).

The core problem of this research lies in identifying and analyzing the theoretical and practical gap in the precise articulation of the reciprocal relationships among contractual liability, non-contractual liability, and property law. This gap has generated numerous challenges in Iranian judicial practice (4, 9). For instance, in cases where a single act simultaneously constitutes both breach of contract and a tortious wrong—such as medical malpractice occurring during the performance of a treatment contract—the fundamental question arises whether the injured party may rely on both legal bases concurrently or must elect one of them (10, 11). Moreover, the tension between the principle of party autonomy in contractual relations and the real rights of third parties (such as easements and mortgages), as well as the conflict between absolute ownership and the obligation to compensate for harm resulting from the exercise of that right, constitute additional problematic dimensions of this field (1, 12). These conflicts have not only prolonged litigation and produced inconsistent judgments, but in some instances have also undermined the rights of injured parties.

With respect to the subject of this study, valuable scholarly contributions have been made—most notably the extensive analyses of Nasser Katouzian in his seminal works on non-contractual obligations and general principles of contract law concerning the nature and foundations of contractual and tort liability (1, 9), the examination by Seyed Hassan Vahdati Shobeiri of the theoretical confrontation between these two institutions (13), and the investigation by Jalil Ghanavati into the roots of this divergence within Imami jurisprudence and Iranian law (6). Nevertheless, a comprehensive and systematic study that simultaneously analyzes the mutual interaction of these three legal branches from a comparative perspective while offering an operational model for resolving existing conflicts has not yet been undertaken in a detailed manner. Most existing studies either focus solely on the bilateral relationship between two of these institutions or lack practical mechanisms for overcoming the current impasse.

This research has been conducted using a descriptive–analytical method with a comparative approach. Data were collected through library-based research, including the examination of books, scholarly articles, statutory materials, judicial decisions, and authoritative electronic sources. The research population consists of all written and digital sources related to the three domains under study within Iranian, French, and Common Law legal systems. The research instruments included systematic note-taking and qualitative content analysis, and the method of data analysis relied upon logical reasoning and legal analysis while taking into account the multiple dimensions of the issue.

Theoretical Framework: The Confrontation between the Foundations of Contractual and Non-Contractual Liability

The basis of the confrontation between contractual and non-contractual liability must be sought in the fundamental divergence of their theoretical foundations. Understanding this theoretical opposition is the key to resolving many of the practical conflicts that arise in disputes where a single act simultaneously constitutes breach of contract and a tortious wrong (9, 14, 15).

The Theory of Obligation: Autonomy of Will and Contractual Liability

The theory of obligation (*Théorie de l'obligation*), which represents the classical and dominant foundation of contractual liability and finds its origins in Roman–Germanic legal systems—particularly in French law—conceives contractual liability as the natural extension and enforcement mechanism of the obligation that arises from the mutual will of the contracting parties (14, 16, 17). According to this view, a contract is an agreement that inherently generates an obligation, and the breach of that obligation gives rise to liability that is inherently contractual in nature (1). More precisely, the source of the obligation is the parties' will, and the origin of liability for non-performance is likewise traced back to that initial will.

In Iranian law, this theory is clearly reflected in Articles 219, 220, 221, 226, and 227 of the Civil Code. Under Article 221, upon breach of obligation, the obligor is liable for damages unless non-performance is attributable to an external cause beyond the obligor's control. Accordingly, contractual liability in Iranian law is based on the breach of a valid contractual obligation rather than the mere occurrence of damage, and it rests firmly upon the principle of party autonomy embodied in Article 10 of the Iranian Civil Code (18, 19). Within this framework, breach of obligation constitutes the central axis of liability rather than the mere infliction of harm.

Under the theory of obligation, contractual liability arises from the violation of a legal duty created by contract, and its enforcement consists in compelling the obligor either to perform the obligation in kind or to compensate for the resulting loss (20). This theory is grounded in the binding force of contracts and the principle that agreements must be honored, holding the obligor accountable for commitments voluntarily assumed (2).

Within this theoretical structure, contractual liability exhibits distinctive characteristics: first, the burden of proof is comparatively lighter, as the injured party need only establish the existence of the contract and the occurrence of breach (4); second, the scope of recoverable damages is generally confined to losses that were direct and foreseeable at the time of contract formation (6); third, by virtue of contractual freedom, the parties may expand or restrict the boundaries of this liability through specific contractual clauses (16). From this perspective, contractual liability constitutes an autonomous institution rooted in party autonomy and deriving its normative force from it.

The theory of obligation thus forms the backbone of contractual liability in Iranian law, whose essential elements consist of the existence of a valid obligation, breach of that obligation, occurrence of damage, causal connection, and the presumption of fault on the part of the obligor (1, 4). The evolution of this theory from fault-based liability toward liability grounded in breach of obligation reflects the tendency of legal systems to strengthen contractual security and protect the legitimate expectations of the parties (14).

However, where contractual liability is based on fault—such as in the obligation of a physician to treat a patient or of an attorney to provide effective legal representation (obligations of means, *obligation de moyens*)—the obligor is not required to achieve a specific result but is merely bound to employ reasonable, customary, and appropriate means to attain the desired outcome (16, 17). In this conception, the criterion of liability is the conduct of the obligor rather than the final result.

Accordingly, the mere failure to achieve the intended result does not in itself give rise to contractual liability unless it is proven that the obligor acted negligently in employing the necessary means. Under the fault-based theory of obligation (obligation of means), contractual liability materializes only when the injured party establishes the obligor's negligence in the use of customary means. This theory emphasizes the evaluation of the obligor's conduct, contractual fairness, and the inherent limitations of human control over outcomes, and it continues to play a fundamental role in limiting contractual liability in many professional relationships (2, 17).

The Theory of Conveyance: Primacy of the Legal Rule and Non-Contractual Guarantee

By contrast, the theory of conveyance, which originates from the framework of Imami jurisprudence, adopts an object-oriented perspective and analyzes liability arising from breach of contract within the broader domain of non-contractual guarantee (*ḍamān qahri*) (6-8). According to this view, in certain contracts the principal and immediate effect of the agreement is the transfer of a right or property rather than the mere creation of an obligation to transfer. From this standpoint, a contract of sale, upon its conclusion, instantaneously effects the transfer of the subject-matter to the buyer and the price to the seller, while the obligations arising from the contract are regarded as secondary and derivative consequences of that transfer (18, 21).

Under this approach, the analysis of liability in such contracts must begin with an examination of the status of ownership and the transfer of rights, since many forms of guarantee—such as warranty of title, liability for destruction of the sold object, and the legal consequences of delivery—derive their foundation from property law rather than from mere breach of obligation (1, 12). The predominance of a purely obligation-based analysis in this category of contracts therefore leads to a conflation of the rules of contractual liability with the doctrines of ownership.

The theory of conveyance provides a more precise and structurally coherent interpretation of Iranian Civil Code provisions in contracts that inherently transfer ownership, and it would be erroneous to subsume all contractual effects exclusively within the framework of breach of obligation (22). Nevertheless, the applicability of the theory of conveyance is confined to contracts whose essential nature involves the transfer of a right or property, such as sale, proprietary settlement, and gift. Extending this theory to all forms of contracts—particularly service and professional contracts—results in a distorted analysis of liability. Even in conveyancing contracts, the role of obligation cannot be disregarded, since the realization of the effects of transfer (such as delivery, protection against third-party interference, and the guarantee of beneficial enjoyment) is inconceivable without recourse to the institution of obligation. The theory of conveyance alone is therefore incapable of explaining all dimensions of contractual liability and must be employed in conjunction with the theory of obligation in a complementary and integrated manner (6).

The doctrinal foundation of this theory rests upon well-known jurisprudential principles such as destruction (*itlāf*), causation (*tasbīb*), deception (*ghurūr*), and possession (*yad*), which are reflected in Articles 328 to 336 of the Iranian Civil Code (9, 23). According to this conception, even within contractual relationships, the compensation of damage must be sought through the general rules of non-contractual guarantee. This perspective endorses the principle of the primacy of non-contractual liability, meaning that contractual liability is subsidiary to non-contractual guarantee and, in cases of conflict, the rules of non-contractual liability prevail (24). This view entails significant practical consequences. In other words, although the existence of a causal link between breach and damage is required even within the theory of obligation, the manner and intensity of establishing causation differ from those in tort liability.

Within the theory of obligation, breach of contract gives rise to contractual liability, but the recovery of damages requires proof of damage and causal connection; therefore, while performance in kind or termination does not depend upon proof of damage, a causal relationship is indispensable for the award of damages (6). What is removed under the obligation-based approach is not the requirement of causation but rather the necessity of proving fault, and without establishing such a causal link, damages cannot be claimed even in the presence of a clear contractual breach (1).

Comparative Analysis of Theoretical Foundations in Legal Systems (Iran, France, and Common Law)

Comparative examination reveals divergent approaches of legal systems toward this theoretical confrontation.

In Iranian law, the legal system exhibits a form of theoretical dualism. On the one hand, under the influence of French law, Articles 221 and 218 of the Iranian Civil Code reinforce an obligation-based approach in which breach of obligation in itself entails liability, particularly in contracts emphasizing the performance of acts or obligations—such as lease, deposit, and service contracts—without the immediate transfer of ownership (18, 19). This orientation clearly reflects acceptance of the theory of obligation. On the other hand, under the profound influence of Imami jurisprudence, the provisions governing non-contractual guarantee in the Civil Code (such as Articles 328 and 331), together with judicial practice in certain cases, reveal a tendency toward the theory of conveyance and the primacy of non-contractual liability (6, 24). For example, in judicial decisions of the Supreme Court concerning contracts of sale and transfer of ownership—particularly in matters relating to delivery of the subject-matter and warranty of title—the effect of contract has at times been treated as conveyancing in nature, while the obligation to perform has been analyzed as derivative. This approach is closely connected to Articles 338 and 362 of the Iranian Civil Code, which reflect the conceptual tension between ownership and delivery. Similarly, in disputes involving the consequences of breach of obligation and third-party interference with transferred property, courts have often been compelled to integrate the two theories by recognizing both ownership arising from the contract (conveyance) and liability resulting from failure to perform or exercise due care (obligation). In disputes concerning service and professional contracts—such as consultancy and construction—courts have predominantly adopted an obligation-based analysis, emphasizing breach, damage, and the duty of compensation even where no transfer of ownership has occurred (4, 10). This dualism constitutes the principal source of inconsistency in Iranian judicial decisions.

In French law, both in traditional doctrine and in the 2016 reforms, contractual liability is fundamentally grounded in an obligation-based analysis. Contrary to some traditional interpretations, the theory of obligation and the theory of conveyance are not treated as absolutely contradictory, but rather as two distinct analytical levels of contractual effects (14). French doctrine maintains that a contract may simultaneously create obligations and, in specific cases, produce direct proprietary effects, while enforcement mechanisms are always analyzed within the domain of obligations rather than real rights (14). Accordingly, obligation governs personal duties and conveyance governs the real effects of contract; the two theories are not antagonistic but complementary, and the analysis of contractual liability is consistently conducted on the basis of the theory of obligation.

The Common Law system of England and the United States adopts a pragmatic and flexible approach. Although the distinction between breach of contract and tort is clearly recognized, courts in numerous cases—particularly in professional liability—have expanded the doctrine of duty of care so as to permit the injured party to elect between contractual and tortious causes of action (16). This right of election, crystallized in the landmark English case of *Henderson v Merrett*, serves as a mechanism for avoiding rigid limitations that may otherwise prevent full compensation of loss, with the ultimate aim of securing the most effective and equitable remedy for the injured party.

The theoretical framework of the present research demonstrates that the confrontation between contractual and non-contractual liability in Iranian law is deeply shaped by the tension between the theories of obligation and conveyance. While Common Law systems mitigate this conflict through the injured party's right of election and French law offers relative clarity through systematic differentiation, the Iranian legal system—owing to its underlying dualism—requires a coherent and integrated strategy to overcome the current impasse.

Practical Confrontation: Remedies and the Scope of Recoverable Damages

Alongside the confrontation of theoretical foundations, judicial practice and legal doctrine face a practical confrontation in the domain of remedies and the scope of recoverable damages. This practical tension directly affects both the amount of compensation ultimately received by the injured party and the dynamics of litigation (4, 9).

Divergent Approaches to Recoverable Damages (Loss of Profit and Non-Pecuniary Harm)

One of the most salient manifestations of this practical confrontation is found in the scope of recoverable damages, particularly regarding "loss of profit" and non-pecuniary (moral) damages.

In contractual liability, Iranian judicial practice—relying on established doctrine and practice—has tended to accept compensation for benefits that were reasonably expected to accrue but were lost due to breach of contract (19). The rationale is that, at the time of contract formation, the parties typically contemplate future gains, and breach frustrates that legitimate expectation. For example, if an employer prevents a contractor from performing the work, the contractor may claim the probable profit that would have arisen from that contract.

By contrast, in tort liability, the traditional approach—drawing on the views of some jurists—has often been grounded in the non-compensability of loss of profit, on the argument that such loss is merely probabilistic and not realized (22). Although a unifying judicial position has, in principle, recognized compensation for loss of profit resulting from a wrongful act where it is established as certain and definite, proving that "certainty" in practice is frequently difficult, and judicial practice has not been uniform in this regard (3, 23).

With respect to non-pecuniary harm, although Iranian civil liability doctrine recognizes its compensability, its recoverability within contractual liability has long been the subject of debate. Some jurists argue that contracts are predominantly oriented toward economic interests and that compensation for non-pecuniary harm—such as pain and suffering or reputational injury—is more coherently justified through tort-based rules (9). Nonetheless, recent judicial practice, especially in contracts with prominent personal and emotional dimensions (such as medical treatment contracts, pilgrimage tours, or wedding photography agreements), has shown a growing willingness to recognize and award non-pecuniary damages within a contractual liability framework. This trend reflects an effort to introduce greater flexibility and to acknowledge the human dimensions of contractual relations (10).

Confrontation in the Causation Standard and the Allocation of the Burden of Proof

The causation standard and the allocation of the burden of proof constitute another major arena of practical confrontation.

From the standpoint of a significant current within Iranian legal doctrine, the foundation of civil liability is the occurrence of damage rather than its foreseeability. Foreseeability is not treated as a condition for the existence of liability itself; instead, it may operate as a moderating factor in delimiting the compensable scope of damages, particularly in contractual liability. Accordingly, the principle is compensation for loss even if the harmful outcome was not foreseen, provided that the damage is definite and that an customary causal relationship exists (23). In

Iranian law, the damage must possess characteristics such as certainty and a customary causal nexus in order to be recoverable; however, independent foreseeability prior to occurrence is not, in itself, framed as a distinct condition for recovery, and it functions more as a rule affecting the extent of compensation than as an element establishing liability (19).

In contractual liability, however, a dominant principle in comparative contract law—and one that is implicitly accepted in Iranian analysis—is the criterion of foreseeability. Under this approach, only those damages are recoverable that were reasonably foreseeable at the time of contract formation by the breaching party (16, 17, 20). The underlying rationale is the rational allocation of risks and the prevention of imposing an excessive and unexpected burden upon the obligor. By contrast, in tort liability, the primary standard is direct and immediate causation: any damage that is directly and without intermediate cause attributable to the wrongful act is, in principle, compensable even if its occurrence was difficult or impossible for the tortfeasor to foresee (4, 9).

In French law, foreseeability traditionally plays a role only in contractual liability, while in tort liability it does not function as a governing criterion; rather, the central focus is direct damage and causation. Some commentators describe foreseeability in French law as an instrument for limiting responsibility rather than a condition for establishing damage (14).

This divergence of standards can produce contradictory outcomes in practice. Suppose a company breaches a contract by delaying delivery of a critical component to a factory, and the delay causes production to halt and several profitable downstream contracts to be lost. If the factory sues on a contractual basis, it may be unable to recover all losses arising from the lost contracts if those losses are deemed unforeseeable at the time of contracting. Yet, if the factory can frame the claim in tort (for example, on a causation-based theory) and establish direct causation, it may have a stronger prospect of recovering the full range of direct losses (24).

A similarly clear contrast arises in relation to the burden of proof. Under the Iranian Civil Code framework governing contractual liability, fault is generally presumed against the obligor, and the obligor bears the burden of proving that non-performance resulted from an external cause, thereby creating a presumption of liability in favor of the obligee (1, 12). This presumption, however, is not absolute. In obligations of means, the default position is non-liability unless the injured party proves the obligor's fault (16). In tort liability, by contrast, the burden of proving all elements of the claim—including fault, damage, and causation—rests on the injured party (the claimant), and the default presumption favors the defendant's non-liability (4, 25).

Practical Confrontation: Remedies and the Scope of Damages

Alongside the confrontation of theoretical foundations, judicial practice and legal doctrine encounter a practical confrontation in the domain of remedies and the scope of recoverable damages. This practical tension directly affects both the amount of compensation awarded to the injured party and the overall litigation process (4, 9).

Divergent Approaches to Recoverable Damages (Loss of Profit and Moral Damages)

One of the most prominent manifestations of this practical confrontation appears in the scope of recoverable damages, particularly regarding *loss of profit* and *moral damages*.

In contractual liability, Iranian judicial practice—relying on established doctrine and long-standing procedure—has accepted compensation for benefits that were reasonably expected to accrue but were lost due to breach of contract (19). The rationale is that, at the time of concluding the contract, the parties foresee future gains, and breach of contract frustrates that legitimate expectation. For example, if an employer prevents a contractor from performing the agreed work, the contractor may claim the probable profit arising from the contract.

By contrast, in tort liability, the traditional approach—drawing upon the views of certain jurists—has been grounded in the non-compensability of loss of profit, on the ground that such loss is merely probabilistic and unrealized (22). Although later judicial positions have in principle accepted compensation for loss of profit when it is established as definite and certain, in practice proving such certainty remains difficult, and judicial practice has not been uniform (3).

With respect to moral damages, although civil liability doctrine in Iran recognizes their compensability, their recoverability within contractual liability has long been disputed. Some jurists maintain that contracts are primarily concerned with economic interests and that compensation for non-pecuniary harm—such as emotional distress or injury to reputation—is more coherently justified within the framework of tort liability (9). Nevertheless, recent judicial practice, particularly in contracts with pronounced personal and emotional dimensions—such as medical treatment contracts and similar personal services—has increasingly recognized moral damages within contractual liability, reflecting a movement toward greater flexibility and acknowledgment of the human dimension of contractual relations (10).

Confrontation in the Causation Standard and Allocation of the Burden of Proof

The standard of causation and the distribution of the burden of proof constitute another important field of practical confrontation.

From the perspective of a major current within Iranian legal doctrine, the foundation of civil liability is the occurrence of damage rather than its foreseeability. Foreseeability is not treated as a condition for the existence of liability itself, but rather as a factor that may moderate the extent of compensable damages, particularly in contractual liability (23). Accordingly, damage must be definite and causally connected in a customary sense to the harmful act; independent foreseeability prior to the occurrence of harm does not operate as an autonomous requirement for establishing liability, but rather affects the scope of compensation (19).

In contractual liability, however, a dominant principle in comparative contract law—and one implicitly accepted in Iranian analysis—is the criterion of foreseeability: only those damages are recoverable that were reasonably foreseeable at the time of contract formation by the breaching party (16, 17, 20). The rationale is the rational allocation of risks and prevention of imposing excessive and unforeseen burdens on the obligor. In tort liability, by contrast, the governing standard is direct and immediate causation: any damage directly attributable to the wrongful act is in principle compensable, even if its occurrence was difficult or impossible to foresee (4, 9).

This divergence of standards can generate contradictory outcomes in practice. Where losses flowing from breach of contract are deemed unforeseeable, recovery may be limited under contractual liability, whereas the same losses might be recoverable under tort liability upon proof of direct causation (24).

A similarly sharp contrast exists with respect to the burden of proof. Under Iranian contract law, fault is generally presumed against the obligor, who must demonstrate that non-performance resulted from an external cause, thereby creating a presumption of liability in favor of the obligee (1, 12). This presumption, however, is not absolute. In obligations of means, the default position is non-liability unless the injured party proves the obligor's fault (16). In tort liability, by contrast, the injured party bears the burden of proving all elements of the claim—including fault, damage, and causation—and the default presumption favors the defendant's non-liability (4, 25).

Mechanisms of Exemption from Liability

The mechanisms for exemption from liability also differ significantly between these two domains.

In Iranian contractual liability, the principle of freedom of contract allows the parties to reduce the scope of their liability through limitation or exclusion clauses, provided that such clauses do not conflict with mandatory law or public order (21). The most significant ground for exemption is *force majeure*, which, when established, extinguishes the obligor's liability.

In tort liability, the grounds of exemption are narrower and are primarily determined by law, including legitimate defense, legal authorization, and, in certain circumstances, the consent or contributory fault of the injured party. Iranian courts may also reduce or eliminate liability when the injured party has assumed the risk or contributed to the harm (5, 24).

The Central Role of Property Law in the Tripartite Interaction

Property law occupies a pivotal and dual role within private law: it both supports the enforcement of civil and contractual liability and constrains those liabilities by moderating rights and restoring equilibrium. This dual function makes property law the essential connective link among these three branches (1, 3).

Positive Function: Property Law as the Enforcement Backbone of Liability

Property law, through its powerful proprietary institutions, provides the tangible enforcement infrastructure for civil and contractual liability. A judicial order awarding damages would remain ineffective without enforceable assets. In contractual relations, only property and interests recognized as legitimate and legally protected may constitute the subject of obligations; likewise, in civil liability, harm is compensable only when it affects legally protected property or interests (9, 12).

The principle of the general security of assets establishes that all assets of the debtor—except those legally immune from execution—constitute collateral for the performance of obligations, including the payment of damages (21). Additional proprietary mechanisms, such as provisional seizure and mortgage, function as bridges between personal obligations and proprietary enforcement, thereby transforming abstract rights into effective remedies (1).

Negative Function: Limitation of Ownership by Civil Liability

Property law itself is subject to supervision and moderation by civil liability rules. While property law defines what interests are worthy of protection, civil liability determines how such interests are protected. The principle of *no harm*—reflected in Iranian civil law—limits absolute ownership and subjects it to the rights of others. Civil liability serves as the practical enforcement mechanism of this limitation (9, 24).

This interaction also appears in the doctrine of abuse of rights: where the exercise of ownership lacks legitimate purpose or is primarily intended to harm others, courts may prohibit such conduct or impose liability for resulting damage (24).

Case-Based Analysis: Neighborhood Rights and Environmental Liability

This confrontation is clearly observable in neighborhood law and environmental liability.

In neighborhood disputes, when a property owner alters the use of property in a manner causing abnormal disturbance, civil liability arises based on customary standards and statutory limits, requiring compensation for harm caused (1, 4).

Environmental liability represents an even stronger form of limitation of ownership in the public interest. Industrial activities that cause pollution and harm are increasingly subjected to liability without fault, reflecting a shift toward strict liability and emphasizing risk allocation and protection of injured parties (5).

This development embodies the modern function of civil liability as a regulatory mechanism for industrial risk, integrating legal, social, and economic considerations into a coherent system of accountability.

The Proposed Integrated Model

In light of the theoretical and practical challenges arising from the tripartite confrontation among contractual liability, non-contractual liability, and property law, it becomes necessary to propose a model capable of transforming this confrontation into constructive interaction. The proposed integrated model is grounded in flexibility, restorative justice, and systemic efficiency.

The Injured Party's Right of Election and Relative Harmonization of Rules

The most fundamental pillar of this model is the recognition of the injured party's **right of election** in situations where a single act simultaneously fulfills the conditions of both contractual and non-contractual liability. This right of election—successfully applied in Common Law systems—allows the injured party, with awareness of the substantive and procedural differences between the two legal avenues, to select the most appropriate route for vindicating their rights. This approach simultaneously enhances judicial efficiency and ensures the highest level of protection for the injured party's right of access to justice (16).

The second pillar is the **relative harmonization of compensation rules**. Even while preserving the relative autonomy of the two liability regimes, the rules governing compensation should, as far as possible, be unified. In particular, the compensation of definite loss of profit and non-pecuniary damage should be explicitly recognized—subject to appropriate conditions—under both contractual and non-contractual liability.

Relative harmonization also enables proportional allocation of loss between the injured party and the injuring party and adjustment of compensation according to the degree of fault of each party. This approach departs from the traditional doctrine of absolute contributory fault, under which any fault by the injured party leads to total deprivation of compensation. Its core components consist of identifying the fault of the parties, determining their respective shares of responsibility, applying corrective factors, and enforcing the resulting judicial or contractual ruling. This method reflects a rational adaptation of civil liability to the multifactorial nature of modern harm and has become widespread in contemporary legal systems.

Legislative Unification and Clarification of the Boundary between Conveyance and Obligation

At the legislative level, the enactment of a comprehensive civil liability statute regulating both contractual and non-contractual liability in an integrated manner is essential. Such legislation should expressly address situations of overlap and conflict and formally recognize the injured party's right of election. Moreover, by harmonizing compensation rules where feasible, the statute would reduce incentives for strategic forum-selection based solely on the scope of recoverable damages.

Simultaneously, reform of the Iranian Civil Code is necessary to clarify the conceptual boundary between contract and conveyance. Article 183 of the Civil Code defines contract as the creation of an obligation, a definition that inadequately accommodates contracts whose immediate effect is the transfer of ownership, such as sale, gift, and proprietary settlement. A revised formulation could state that: *"A contract is a legal act concluded by the mutual consent of the parties and may give rise to an obligation, the transfer or creation of a real right, or both."* This modification would remove the conceptual conflation of obligation with the essence of contract.

Furthermore, conveyance should be defined as a legal effect arising from a contract or unilateral act, by which a proprietary right is transferred or created. Such clarification would allow more precise analysis of delivery, registration, and possession and significantly reduce ambiguity in the treatment of real and consensual contracts.

Specific reform is also required with respect to Article 362 of the Civil Code on the effects of sale, which currently conflates obligation and conveyance. An interpretive clause could clarify that: *"Transfer of ownership in sale is the direct effect of the contract unless the law or the parties' agreement makes it conditional upon delivery, possession, or registration."* This preserves both doctrinal coherence and practical certainty, particularly in disputes involving unregistered property.

Development of Modern Doctrines and Unification of Judicial Practice

At the judicial level, the development of modern doctrines by courts can significantly enhance flexibility and systemic effectiveness. Doctrines such as abuse of rights (for restraining harmful exercises of ownership) and strict liability in high-risk domains—such as environmental harm and defective products—constitute powerful tools for achieving justice in contemporary society (5, 24).

Moreover, the issuance of authoritative unifying decisions by the Supreme Court in cases of doctrinal conflict would eliminate existing inconsistencies in judicial practice. In particular, formal recognition of the injured party's right of election where contractual and non-contractual liability coexist, and clarification of the criteria distinguishing an independent wrongful act from mere contractual breach, would provide critical guidance for lower courts.

Modernization of the Registration System

At the executive level, modernization of the property and document registration system plays a decisive role in reducing conflicts between contracts and property rights. Mandatory electronic registration of all real-property contracts and establishment of a unified national database enabling immediate and reliable access to registration information would substantially enhance transactional security and prevent legal conflicts. The system should allow instant verification of all encumbrances on property, including real rights of third parties such as mortgages and easements.

Conclusion

This study, through an in-depth examination of the interrelationships among the three fundamental domains of private law—contractual liability, non-contractual liability, and property law—has reached a number of findings that may be summarized at three levels.

At the theoretical level, the historical confrontation between contractual and non-contractual liability is rooted in the foundational divergence between the theory of obligation and the theory of conveyance. The theory of obligation, centered on party autonomy and the principle of freedom of will, regards contractual liability as an independent institution and the natural continuation of the initial obligation. In contrast, the theory of conveyance, by emphasizing the primacy of legal rules and mandatory norms, analyzes liability arising from breach of contract within the broader framework of non-contractual guarantee. This theoretical dualism in Iranian law—formed by the interaction of modern legal influences and the foundations of Imami jurisprudence—has become the principal source of conflict in this field.

At the practical level, this theoretical confrontation has extended into judicial practice and has generated multiple tangible challenges. The most significant of these include conflicts concerning the scope of recoverable damages (particularly loss of profit and moral damages), divergence in causation standards (foreseeability versus direct causation), and differing allocations of the burden of proof. In practice, these divergences may produce entirely different outcomes for injured parties and lead to prolonged litigation and inconsistent judicial decisions.

At the level of the role of property law, this research demonstrates that property law occupies a pivotal position within this framework. On the one hand, in its positive function, it provides concrete enforcement mechanisms for civil liability through institutions such as the general security of assets, provisional seizure, and mortgage. On the other hand, in its negative function, property law itself becomes subject to supervision and moderation by the rules of civil liability. Principles such as the prohibition of harm and the doctrine of abuse of rights serve as powerful tools through which absolute ownership is restricted in the face of abnormal harm to others and to the public interest. This dual role is particularly evident in fields such as neighborhood law and environmental liability.

Building upon these findings, this research proposes the Theory of Structural Interaction as a novel framework for organizing the relationship among these three legal branches. The core of this theory lies in abandoning a purely confrontational perspective and moving toward an integrated and flexible model that both respects the relative autonomy of the institutions and, through effective management of conflicts, promotes restorative justice and the overall efficiency of the legal system.

The principal pillars of this theory are as follows.

First, the principle of moderated party autonomy. While recognizing party autonomy as the cornerstone of contract law, this theory moderates it in light of the social foundations of civil liability and property law. Accordingly, contractual freedom is limited by mandatory rules whenever it threatens the established rights of others or public order.

Second, an integrated system of compensation. This theory calls for the relative harmonization of compensation rules in contractual and non-contractual liability. The objective is to guarantee full and fair compensation for the injured party regardless of the legal classification of the claim. Within this system, compensation for definite loss of profit and moral damages is recognized in both domains under clear definitions and specified criteria.

Third, the strategic right of election for the injured party. The most critical element of this theory is the formal recognition of the injured party's right of election in cases of concurrent liabilities. This right—accompanied by the court's duty to provide appropriate guidance—enables the injured party, in light of the specific circumstances of the case (including differences in burden of proof, scope of damages, and limitation periods), to select the path that offers the most effective and efficient means of vindicating their rights.

Fourth, the active mediating role of property law. Under this theory, property law is not viewed as a completely autonomous domain, but rather as an active mediating and balancing mechanism between the two liability regimes. On the one hand, by securing enforcement of judgments, it gives tangible effect to obligations; on the other hand, by incorporating the limitations derived from the prohibition of harm, it prevents the right of ownership from becoming an instrument of injury to others.

Fifth, transparency as a precondition for interaction. This theory regards informational transparency—achieved through modernization of the property and document registration system and the establishment of a unified national database—as an essential precondition for reducing conflicts between contracts and third-party property rights. Such transparency strengthens transactional security and prevents the formation of inherently defective contractual relationships.

In conclusion, the Theory of Structural Interaction offers a coherent and practical strategy for overcoming the present impasse. It demonstrates how the internal capacities of each of these three domains may be mobilized to construct a legal system in which contracts function as engines of wealth creation and circulation, civil liability guarantees fair compensation and moderates absolute rights, and property law simultaneously serves as an instrument for the realization of justice and an object of legal supervision and equilibrium. The realization of this theory requires a sustained commitment at the legislative, judicial, and executive levels.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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