

[Research Article]

Strict Liability Concept Applicable to Vehicle Owners: Comparative Analysis

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Abstract

This paper discusses vehicle owner's liability as a strict liability concept for interpreting and improving existing legal norms in emerging civil law jurisdictions. Focusing on application style, the scope of damage compensated under the strict liability rule, the determination of transport vehicle, and grounds for exemption from liability, this research provides a comparative analysis of vehicle owners' liability. The comparative study of the strict liability for transport vehicle proposes a more purpose-oriented interpretation of the relevant norms of the Civil Code of Mongolia¹ (hereinafter "CCM") and improvement at the legislative level.

Keywords: Transport vehicle, danger, hazard, strict liability, owner, possessor, *res ipsa loquitur*, negligence, absence of fault, exemption from liability, the scope of damage

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¹ Civil Code of Mongolia, 2002 <https://legalinfo.mn/en/translate>.

I. Preliminary introduction

The main goal of the general principle of fault-based liability is to prevent harm to others by the potential tortfeasor, who is more likely to foresee the risks and prevent damages². However, due to the increased use of machines, mechanisms, equipment, and vehicles, the concept of fault-based liability cannot solely fulfill tort law's function in the modern world. Technical and technological development has brought not only benefits but also tremendous risks and dangers to society. Although there have been attempts to solve this problem with the insurance system, proper legal means are necessary to diminish the risk to all members of society by transferring the consequences to those who profit from it³.

Liability for a vehicle as the strict liability concept, which does not require proof of fault, emerged in the 19th century in the European legal system and has been developing under broad discussions with controversy and uncertainty since the second half of the 20th century⁴. The concept of strict liability has emerged from the rules on compensation for damages in industrial accidents. It is used for many types, such as liability for animals and buildings, product liability, which calls for broad debates. But this study focuses only on strict liability for vehicle owners.

Although the emergence and development path of Mongolian civil law has some specifics compared to that of developed countries in Europe, Asia, and America, the concepts of the Western legal system have been firmly constituted at the structural level. Due to the relatively late economic liberalization process, the practical application of the civil law concepts was insufficient and consequently lacked academic and judicial interpretation of the norms of the CCM.

Article 499 of CCM presumably provides strict liability for transport vehicle owners without fault. This article, as a rule for vehicle owners' liability, has four sections covering grounds for liability and exemption clauses, which will be presented in more detail later in this paper.

However, the above-mentioned legislative norms still challenge the Mongolian judiciary requiring proper interpretation of the ambiguous terms, and the case study identifies that not only the identification of the owner and the transport vehicle but also the application as strict liability is

² M. Stuart Madden, *Tort Law Through Time and Culture: Themes of Economic Efficiency* in Stuart Madden (ed), *Exploring Tort Law* (Cambridge University Press, 2005) 12.

³ Kenneth S. Abraham, *Twenty-First-Century Insurance and Loss Distribution in Tort Law* in Stuart Madden (ed), *Exploring Tort Law* (Cambridge University Press, 2005) 82.

⁴ Franz. W etc., *Strict Liability in European Tort Law: and Introduction* in Franz.W&Vernon.V.P (ed), *The Boundaries of Strict Liability in European Torts Law* (Carolina Academic Press, 2004) 3.

questioned⁵. Therefore, this paper will provide a summary of comparative study of transport owners' liability in other jurisdictions having some similarities.

II. Application of the strict liability concept to vehicle owners

Explaining the grounds for imposing strict liability was always difficult for civil law jurists, and it wasn't included in both German and French civil codes representing civil law jurisdiction.⁶ A study of tort law rules on transport owner's liability in civil law countries demonstrates two prevailing approaches: imposing liability through an expansive interpretation of the civil code provisions for holders of dangerous objects or providing strict liability for a motor vehicle by passing special legislation.

1. Interpretative application of general regulations

General fault-based liability requires the causal connection between the wrongful act or omission of the person who caused the damage. It is clearly stated in articles 1382 and 1383 of the Civil Code of France, while in article 1384, any person, in addition to the damage caused by himself, is liable for the damage caused to others from objects or by the person under his control⁷. This article was considered a mere precondition of articles 1385 and 1386, which provide responsibility for the owner of things such as animals and houses.

Thus, strict liability for things was conventionally limited to "animals" and "houses". While due to the increased number of industrial accidents, it became the general principle of strict liability through judicial interpretation⁸. Particularly, the Cassation Court of France has established that application of provisions of article 1384 (1) of the French Civil Code is not limited to animals and houses. In this way, this concept is explained not as the liability based on the presumption of fault but as the strict custodial liability. Therefore, this provision applies to the liability of the owners of railways, trams, transport vehicles, and persons engaged in the production, storage, and transfer of electricity, gas, and other dangerous substances responsible⁹.

⁵ Shuuhiin shiidveryn dun shinjilgee Serial No4, (Ulaanbaatar, Open Society Forum, 2022) [Analysis over judicial decisions] 219-247 https://cdn.greensoft.mn/uploads/users/3092/files/Court%20Series%204_Web.pdf.

⁶ J. Gordley, *Foundations of Private Law* (Oxford University Press, 2006) 160, 182-183.

⁷ https://www.legifrance.gouv.fr/content/download/1950/.../Code_22.pdf Civil Code, art.1382-1386.

⁸ Franz.W etc., *Synthesis and Survey of the Cases and Results* in Franz.W&Vernon.V. P (ed), *The Boundaries of Strict Liability in European Torts Law* (Carolina Academic Press, 2004) 419-420.

⁹ K.Zweigert&H.Koetz, *Comparative law: Volume II, The Institutions of Private Law* (North-Holland Publishing Co.,1977)322.

Interpretative application of Article 1384 of the French Civil Code significantly impacts other civil law jurisdictions such as Italy, Portugal, and the Netherlands, accepting the concept with both strict and general fault-based liability elements. For instance, the Italian Civil Code contains similar general strict liability provisions, whereas vehicle owners' liability is contained in special provisions¹⁰, which imply a presumption of fault¹¹.

Article 1064 of the Civil Code of the Russian Federation defines the general provision on fault-based compensation for harm and states the possibility of strict and vicarious liability in case of specific legal stipulations¹². Section 1 of Article 1079 stipulates that the owner of the source shall be responsible for compensation for the damage caused by the "extra dangerous source", whereas the legal determination uses the words "source", which can express both an activity and a thing and this provision applies to delict from the transport vehicle¹³.

The French model of interpretation of liability for the thing as a strict liability principle is widely accepted by civil law jurisdictions, legislative and interpretative styles differ from country to country, whereas having some elements of presumption of fault if otherwise is not proven. There is a similar concept of "*res ipsa loquitur*," or strict liability is accepted in the common law¹⁴.

In American law, the defendant is liable without any evidence under this concept, which explains that the defendant is presumed to be negligent in the absence of any sound explanation of innocence.¹⁵ Although there is a difference of opinion about the principle that requires sufficient explanation and puts the burden of proof on the defendant's part, in many cases, the defendant was exempted from liability by proving the absence of his negligence in the accident.

2. Specific legal norms providing vehicle owners' liability.

German courts don't apply the general strict liability principle since conditions for imposing liability without fault are specifically established by legislative acts¹⁶. Particularly, in addition to the strict liability of owners of luxury animals¹⁷, which is stipulated in the Civil Code, several types of

¹⁰ Art.2051, art.2054, Civil Code of Italy <http://italiantortlaw.altervista.org/civilcode.html>.

¹¹ Franz.W etc., *Synthesis and Survey of the Cases and Results* in Franz.W&Vernon.V. P (ed), *The Boundaries of Strict Liability in European Torts Law* (Carolina Academic Press, 2004) 421.

¹² Grajdanskii Kodeks RF [Civil Code of Russian Federation], art. 1064, 1079 <http://www.zakonrf.info/gk/1079/>.

¹³ Grajdanskoye pravo [Civil Law] M.B.Karpichyeva, A.M. Hujina ed., (Moscow, Prospekt, 2010) 613.

¹⁴ K.Zweigert&H.Koetz, *Comparative law: Volume II, The Institutions of Private Law* (North-Holland Publishing Co., 1977) 314.

¹⁵ J. Gordley, *Foundations of Private Law* (Oxford University Press, 2006) 205.

¹⁶ J. Gordley, *Foundations of Private Law* (Oxford University Press, 2006) 209.

¹⁷ Article 833.1 establishes that the owner of the animal is liable for its harm, while the section 3 of this article exemption clause for owner of the animals for enterprise purpose as if he proves due performance of control over the animal. Article 834 of the Civil code establishes that the accident was inevitable occurrence.

strict liability have been established within the framework of special laws. For instance, the Law on Strict Liability of 1871 established strict liability for damage to human life and health caused by railway operations and later expanded its scope.

In 1978, the Law on Strict Liability was revised to include damages caused by liquids, smoke, and gases passing through pipelines, except for force majeure¹⁸. Currently, within the framework of the Air Traffic Law and the Nuclear Energy Law, strict liability has been imposed on persons engaged in aviation and nuclear energy operations. It is stipulated that liability should be imposed even if there is an influence of force majeure. In addition, the Water Management Act of 1957 and the Medicines Act of 1976 regulated the liability for damages related to water pollution, including economic loss, without limitation, and companies supplying drugs to the market are fully liable for damages related to drugs.

There is a similar system of strict liability in Austria and Switzerland. The Swiss Pipeline Act of 1963 extended its scope beyond Germany and Austria to include natural oil, gas, other liquids, volatile materials, and fuels as specified by parliament.¹⁹ In Germany, the Motor Vehicle Insurance Act and the Motor Vehicle Act, which were later issued under the pressure of lawyers, regulate that the liability for damage caused by the driver and the passengers traveling without payment was exempted. The law was amended several times, and in 1952 the Traffic Law was approved and is still in force. According to Article 7, Section 1 of the law, the registered owner or custodian of the vehicle shall be responsible for the damage caused to persons or property during the vehicle's operation²⁰.

Since the last half of the 20th century, there has been an increase in cases related to damage caused by vehicle accidents, and it is believed that there has been considerable development in the Japanese civil law theory of damage compensation. Apart from the Civil Code liability provisions for the things, several types of special delicts are established by special legislations. One of them is the Act on Securing Compensation for Automobile Accidents,²¹ adopted in 1955. The vehicle owner's liability under this law is explained as not "exact", but "close to" strict liability since the owners hold and benefit from the things dangerous to human life and body.²² Therefore, article 3 of this special law has established the special prerequisites for imposing liability on vehicle owners. The law not

¹⁸ Franz.W etc., *Strict Liability in European Tort Law: and Introduction* in T Franz.W&Vernon.V. P (ed), *The Boundaries of Strict Liability in European Torts Law* (Carolina Academic Press, 2004) 26.

¹⁹ K Zweigert&H.Koetz, *Comparative law: Volume II, The Institutions of Private Law* (North-Holland Publishing Co.,1977) 321-322.

²⁰ N. Foster&S.Sule, *German Legal System and Laws* (Oxford University Press, 2002) 437.

²¹ Act on Securing Compensation for Automobile Accidents, 1955 <https://www.japaneselawtranslation.go.jp/en/laws/view/3135/en>.

²² Wagatusma Sakae etc., *Minpou 2 Saikenhou [Civil Law 2 Law on Obligation]* (Keisoshobo, 2003) 477-478.

only strengthens the person's responsibility for a car accident but also sharpens the liability insurance system through a distribution scheme of the damage cost that can provide real compensation to the victim²³.

English law does accept the concept that imposes liability on the defendant whose negligence is not proven. The system relies on special legislation for strict liability, such as the Aircraft Owners Liability Act and the Nuclear Energy Liability Act. There are a few types of strict liability that have been created by judicial precedents²⁴.

III. Ambiguous terms

1. Vehicle as a dangerous thing

In jurisdictions with special laws, there is a tendency to include the dangerous nature of a vehicle in a certain measurement²⁵. For example, according to Article 1, Section 2 of the Traffic Act of Germany, vehicles are defined as all land vehicles driven by mechanical force except for railways, and slow-moving vehicles that cannot exceed 20 km/h are exempt from the application of the law. We can find similar logic in Japanese law²⁶.

But when the law does not specifically regulate strict liability for vehicle operation, determining the dangerous nature of sources and objects creates ambiguity. In countries such as Russia and France, which do not regulate the damage caused by vehicles by special laws, a vehicle is considered dangerous. For example, in the Russian Federation, "highly hazardous sources" are defined as the activities of using, transporting, storing, and consuming commercial purposes that cannot be fully controlled by humans and are likely to threaten surroundings²⁷.

There are two diverse ways to explain the term "source": operation-oriented and object-oriented. From the perspective of operation-oriented theory, "source" is any activity that may cause extraordinary danger to the surroundings and cannot be fully controlled by an individual, while from the perspective of object-oriented theory, it is interpreted as objects of the material world with dangerous nature to its surroundings. In other words, whether extraordinary danger arises from the

²³ Kato Masanobu, *Shin Minpou Taikei V Jimukanri, futoritoku, fuhoukoi* [Civil Law V: Management of affairs, unjust enrichment, tort] (Yuhikaku, 2002) 414.

²⁴ Franz.W etc., *Synthesis and Survey of the Cases and Results* in Franz.W&Vernon.V.P (ed), *The Boundaries of Strict Liability in European Torts Law* (Carolina Academic Press, 2004) 400.

²⁵ B.S.Markesinis, *The German Law of Obligations: Volume II: The Law of Torts: A Comparative Introduction* (3rd ed., Clarendon Press, Oxford 1997) 715.

²⁶ Art.1-2, Act on Securing Compensation for Automobile Accidents, 1955
<https://www.japaneselawtranslation.go.jp/en/laws/view/3135/en>.

²⁷ *Grajdanskoye pravo ch.III* [Civil Law part 3] A.P.Sergeev, Yu.K Tolstoye ed., (Moscow, Prospekt, 2004) 48.

activity or the object's nature is controversial among Russian scholars. However, it is believed that both explain the dangerous character of sources in connection with activities or objects, do not completely contradict each other but indicate a mutual relationship between activities and objects²⁸.

In Germany, there are a lot of cases in which the damage must have occurred during the vehicle's operation. Generally, the condition of "during the operation" is understood as a collision with some objects. Still, it can also be related to the case where the damage occurred, even if the vehicle did not come into contact with it. For example, if the motorcyclist behind the car loses balance due to sudden braking or sudden turn of the vehicle, the latter's driver is liable according to the law. In addition, the parking of a car is considered the same except for a police car or motorcycle, which is placed in the middle of the road for the purpose of giving a signal²⁹.

At the same time, in England, there was a dispute over how to define "dangerous activity," and the *Fletcher v. Rylands* case was important for explaining the responsibility for the consequences of a dangerous activity, where the court stated that a person should be responsible for the consequences of the activities he owns or conducts as well as unusual usage of things would be a reason for liability.

The United States indirectly recognizes the concept established by the case as mentioned above in an indirect way. In 1938, it issued Restatement on torts, which establishes the general rule of strict liability of the person who engages in extremely dangerous activities and defined the "ultra-dangerous activity" as a non-routine application where there is a risk of serious damage to property and the risk cannot be completely avoided with the usual level of care.³⁰

Even though the main justification for strict liability is based on the general idea that a person benefiting from extraordinarily dangerous activity or thing should bear its risk, in most jurisdictions, the term "ultra-dangerous" is still vague. Consequently, some countries do not consider keeping a car so dangerous.³¹

2. Determining the "owner"

The Road Traffic Law of Germany uses the formula "custodian" who keeps the vehicle under control, management, and use for own benefit. More clearly, the owner of a car is defined as a person who uses the car at his own expense and has the authority to dispose of it in connection with such

²⁸ Grajdanskoye pravo ch.II [Civil Law part 2] A.P.Sergeev, Yu.K Tolstoye ed., (Moscow, Prospekt, 1998) 733.

²⁹ B.S.Markesinis, *The German Law of Obligations: Volume II: The Law of Torts: A Comparative Introduction* (3rd ed., Clarendon Press, Oxford 1997) 716.

³⁰ K.Zweigert&H.Koetz, *Comparative law: Volume II, The Institutions of Private Law* (North-Holland Publishing Co,1977) 335-337.

³¹ Jan M.Smits (ed.) *Elgar Encyclopedia of Comparative Law* (2nd ed., Cheltenham: Edward Elgar Publishing.,2012) 880.

use³². Usually, the custodian of the vehicle is the owner, but in some cases, when the owner has transferred it to another person, for example, through a lease agreement or other reasons, would not be considered a custodian.

While the person using the car under a short-term rental contract is not considered the custodian. In the case of a long-term rental contract, the person using the vehicle is considered a custodian if he is responsible for all related expenses. If the vehicle is used with the owner's permission or stolen because of the owner's carelessness, the owner remains responsible according to the law.³³

Even if the owner transfers the vehicle to others, he remains as the custodian, but if his employee takes the vehicle without permission, it is considered that the maintenance and custody of the vehicle have been transferred to the employee, which shows that it is considered in the context of "factual possession". However, for damage caused by the vehicle driven by the owner's employee, according to Article 831 of the Civil Code, the vehicle's owner is liable because the employee was wrongly selected and supervised.

The person responsible for automobile damage, defined by Article 3 of the Act on Securing Compensation for Automobile Accidents of Japan defined as the person who has authority over and uses the automobile for their own benefit. Therefore, this provision is almost identical to the German regulation and is interpreted similarly³⁴.

The owner of a dangerous source can be determined either by the factual holding or the legal nature of the person who has the authority to hold the items based on certain rights in Russia, and this way of interpretation is important in the judicial application of the law. An example is given that a person who drives a certain vehicle due to an employment relationship is not considered the "owner".³⁵

In addition, if several persons jointly own a certain object or if ownership and possession belong to different persons, the criterion of real domination is applied. For example, in the case of a car belonging to the joint ownership of family members, the defendant is the one whose name appears on the car registry. Also, if the vehicle is rented alone without a driver, the person who rented it is considered the owner. However, in case the owner of the vehicle is guilty of the act causing damage, the general rule for fault-based tort applies³⁶.

³² B.S.Markesinis, *The German Law of Obligations: Volume II: The Law of Torts: A Comparative Introduction* (3rd ed., Clarendon Press, Oxford 1997) 715.

³³ B.S.Markesinis, *The German Law of Obligations: Volume II: The Law of Torts: A Comparative Introduction* (3rd ed., Clarendon Press, Oxford 1997) 716.

³⁴ Uchida Takashi, *Minpou II, SaikenKakuron, /Special provisions of "Obligation"/* (Tokyo University Press, 2011) 509-510.

³⁵ *Grajdanskoye pravo ch.II [Civil Law part 2] /ed., A.P.Sergeev, Yu.K Tolstoye/* (Moscow, Prospekt, 1998) 736.

³⁶ *Grajdanskoye pravo ch.II [Civil Law part 2] /ed., A.P.Sergeev, Yu.K Tolstoye/* (Moscow, Prospekt, 1998) 738.

3. Liability cap

Due to economic reasoning, there is a tendency to establish liability caps for strict liability, especially vehicle operations in civil law jurisdictions. In other words, the scope of liability is limited either to a certain amount of liability or to interests protected, which varies from country to country.

In the Traffic Law of Germany, the vehicle owner's liability is limited to human health and life damage. For example, if a person is deceased, the cost of medical treatment is carried out to save that life, an economic loss equivalent to the amount of income the deceased or injured person would have earned, and funeral expenses are compensated, but there is an upper limit in terms of amount³⁷. In this respect, Germany's strict liability for traffic accidents is like that in Austria, Greece, the Netherlands, Switzerland, and Scandinavian countries and is different from the French system, where all damages caused by dangerous activities and objects are held as a general fault-based delict.

This approach to defining the scope and limits of damages can be seen in the provisions of Japanese special laws. For example, damage caused to the life and health of other persons will be held within the scope of the law, and since the law is aimed at eliminating personal damage, it is believed that other types of property damage should be dealt with within the scope of the general regulation of damages of the Civil Code³⁸.

In terms of compensation for damages caused to passengers when using a vehicle for commercial purposes, the owner of the vehicle is responsible if the passenger was transported for a fee and if the negligence of the victim contributed to the increase in the amount of damage, the amount of damage is determined by applying Article 254 of the Civil Code of Germany³⁹.

There are not any special rules establishing ceilings or limiting the scope of damages in jurisdictions having general strict liability concepts, such as France and Russia since the owner is liable for any damages⁴⁰.

4. Grounds for exemption from liability

³⁷ H.B.Shafer&A.Shoenenberger, *Strict Liability versus negligence: an economic analysis* in Franz.W&Vernon.V.P (ed), *The Boundaries of Strict Liability in European Torts Law* (Carolina Academic Press, 2004) 59.

³⁸ Uchida Takashi, *Minpou II, SaikenKakuron, /Special provisions of "Obligation"/* (Tokyo University Press, 2011) 509-510.

³⁹ B.S.Markesinis, *The German Law of Obligations: Volume II: The Law of Torts: A Comparative Introduction* (3rd ed., Clarendon Press, Oxford 1997) 716.

⁴⁰ Franz.W&Vernon.V.P (ed), *The Boundaries of Strict Liability in European Torts Law* (Carolina Academic Press, 2004) 351.

Strict liability does mean liability under all circumstances because of exemption rules. Mostly accepted grounds to deny liability for a vehicle are force majeure, an unrelated third party's action, and the victim's action.⁴¹ The defendant must prove such grounds.

In Germany, the vehicle's owner is released from liability in cases of unavoidable events, such as force majeure, actions of a third party, or when the owner proves that he was careful and took all necessary measures to prevent the accident. Unavoidable events include the actions of the victim, the actions of persons not involved in driving the vehicle, and the actions of animals, in addition to the fact that both the owner and the driver of the vehicle must prove that they have taken appropriate precautions⁴². Moreover, since the cause of damage by the vehicle can be connected to external or internal reasons, defect in the vehicle is considered an internal factor, and the owner is not exempted from liability, and the behavior of a third party is understood as a third party that doesn't not have any interest in the operation of the vehicle.

A similar regulation exists in Japan. For example, as opposed to the logic of the general fault-based tort, which is described in Article 709 of the Japanese Civil Code, according to the special law, the owner of the vehicle and the driver should prove that the latter was not negligent while using the vehicle, there was an intentional or negligent act of a third party other than the victim and the driver and absence of the structural level defects and wrongs in parts of the vehicle. So, if all these three conditions have been met simultaneously and proven by the defendant, the liability is exempted⁴³.

As for the countries that do not have special laws, the general liability provision provides a rule to exempt from liability in the event of force majeure or proof of intentional or gross negligence of the victim⁴⁴. Particularly, in Russia and France, the defendant is not released from the obligation to compensate for damage caused by dangerous objects or activities unless he proves circumstances that deny his fault, such as force majeure, the victim's gross negligence, or the fault of a third party.

From the exemption mentioned above rules, it can be concluded that defense grounds, such as force major and victim negligence, are widely recognized in most modern jurisdictions. While there are still considerable differences among Western systems in the interpretation of defense rules, the gap between strict liability and negligent-based liability is getting less important⁴⁵.

⁴¹ Jan M. Smits (ed.) *Elgar Encyclopedia of Comparative Law* (2nd ed., Cheltenham: Edward Elgar Publishing, 2012) 881.

⁴² B.S. Markesinis, *The German Law of Obligations: Volume II: The Law of Torts: A Comparative Introduction* (3rd ed., Clarendon Press, Oxford 1997) 716.

⁴³ Uchida Takashi, *Minpou II, SaikenKakuron, /Special provisions of "Obligation"/* (Tokyo University Press, 2011) 509-510.

⁴⁴ *Grajdanskii Kodeks RF [Civil Code of Russian Federation]* art.1079 <http://www.zakonrf.info/gk/1079/>.

⁴⁵ Franz. W&Vernon. V. P (ed), *The Boundaries of Strict Liability in European Torts Law* (Carolina Academic Press, 2004) 353.

IV. Strict liability of vehicle owners in Mongolia

1. General background

Mongolian civil codes have contained general strict liability provisions for dangerous activities and objects. For example, article 254 of the Civil Code of 1952, article 320 of the Civil Code of 1963, and Article 379 of the Civil Code of 1994 have established the liability of the person for possession or carrying out an activity dangerous to surroundings except for the circumstances of force major, or fault of the victim⁴⁶.

These regulations are the same as those of the Soviet Civil Code of that time, which has analogous rules to France. Therefore, until the new Civil Code was adopted in 2002, vehicle owners' liability was imposed by interpreting the general strict liability rule. In other words, special delict for vehicle owners' liability has comparatively new to Mongolian jurisdiction. Article 499 of CCM contains four sections containing vehicle owners' liability rules.

Section 499.1 of CCM stipulates that the possessor of a vehicle shall compensate all damages caused by the vehicle's operation, and the rest of the sections are vested in exemption rules. Section 499.2 establishes force majeure as a ground to exempt from liability except for an aircraft. Section 499.3 establishes a rule that the owner or the possessor shall be in *solido* with the operator unless he proves no opportunity is given to the operator. Moreover, section 499.4 states that "The owner or possessor of the vehicle shall be liable for the damage if he has assigned or transferred the vehicle to the operator."

As described above, section 499.1 provides grounds for strict liability for vehicle owners with defense rules. While this regulation provides a specific norm of vehicle owner's liability, like in Germany and Japan, it has generalizations in defining custodian, scope, and forms of compensation. Moreover, the clauses establishing defense rules have complications requiring proper interpretation. These issues will be discussed in the following pieces of this paper.

2. Main definitions: "transport vehicle" and "possessor/owner"

Determining the "transport vehicle" is not a problem in Mongolia since Article 3.1.1 of the Law on Road Traffic Safety describes it as a "device for transporting people, cargo, and installed equipment on the road" and Article 3.1.2 describes "mechanized vehicles" as a vehicle equipped with an engine, except for a moped, while the law also defines "moped" as "a two- or three-wheeled vehicle with an

⁴⁶ Mongol Ulsyn Irgenii Huuliin Huuli Togtoomj (tuuhen emhtgel) [Incorporation of Mongolian Civil Codes (historical collection) 1926-2002 (Ulaanbaatar, 2012).

engine capacity of no more than 50 cm³ and a technical speed of no more than 50 km per hour." This demonstrates that the determining vehicle is indirectly described depending on its dangerous nature, such as speed, which is counted in countries like Germany and Japan. In other words, the word "vehicle" in the Civil Code of Mongolia is determined by other specific legislation, while its Japanese and German terms are contained in the legislation itself.

The liable person under this regulation is described by the term "possessor" and "owner" in an interchangeable manner. Since the regulation itself does not have a clear definition of a liable person like in other jurisdictions having special regulations on liability for a vehicle, these terms require systematic interpretation within the general framework "ownership and possession" provisions of the Civil Code. Under Mongolian ownership rule, for moveable assets, "possessor" is meant to be "owner" for a third person⁴⁷. If this is interpreted, every car driver must be considered as owner. Consequently, there would not be a difference between the operator and the possessor in a liability sense.

Therefore, the word "possessor" needs a more purpose-oriented interpretation. The article is purposed to establish strict liability for vehicle owners, not for the drivers who are meant to be negligent in a car accident. Both sections 499.3 and 499.4 of the Civil Code identify that the driver is a "user" rather than a "possessor". Therefore, it is considered that every person who temporarily takes possession of a car cannot be understood as the possessor, who is to hold strict liability.

Then the definition of "owner" of a vehicle includes both the direct one, who holds the vehicle for own purpose, and the indirect one, who has transferred or allowed the operation of the car. In the case of a long-term rental agreement, there is also a need to determine who will be the liable person.

According to Mongolian law⁴⁸, the possessors are divided into "direct" and "indirect," depending on the purpose of possession. Particularly, the person who acquired possession of the thing for a certain period for their own benefit is a direct possessor. In contrast, the person transferring the items shall be an indirect possessor. In this case, a teleological or at least systematical interpretation of the law is needed to determine whether the renter (direct possessor) is using the vehicle for his own benefit or the rent holder (indirect possessor).

⁴⁷Art. 91 of CCM "Article 91. Recognition of possessor as an owner 91.1. As for the third person, possessor is considered as an owner of the property. 91.2. Article 91.1 of this Law shall not be applied for the following cases: 91.2.1. if ownership right is based on State registration; 91.2.2. for the previous owner, if property, except for money and non-bearer's securities, was out of possession due to reasons not depending on the previous possessor's will (such as loss or theft, etc.)" <https://legalinfo.mn/en/edtl/16532510240071>.

⁴⁸ Art. 89 of CCM "89.3. Person acquired the right or obligation to possess assets for certain period of time according to one's own rights and legitimate interests, based on law or transaction, shall be direct possessor. The person delegating the authority shall be indirect possessor" <https://legalinfo.mn/en/edtl/16532510240071>.

3. Exemption from liability and scope of liability

As established in many other jurisdictions, force majeure is a basic defense of vehicle owners except for aircraft, according to section 499.2 of CCM. There is another defense implicitly expressed in section 499.3, stating, “A person who caused damage using a vehicle without the consent of its owner or possessor shall be liable for such damage. However, the owner or possessor of the vehicle shall not be released from liabilities if there was an opportunity to use the vehicle due to his/her default.” According to this rule, the owner shall be exempted from liability if he proves there was no opportunity to use the car by the driver.

The other popular exemption grounds, such as the victim’s fault or influence of a third party, are not stipulated in special vehicle owners’ liability provisions. In this regard, the problem of a causal connection between the driver's fault of the vehicle and the damage caused would be raised according to general fault-based rules of delict.

There are no limits on the scope and amount of damages, such as in Germany and Japan, which have specific vehicle owner liability rules. Even though the article establishing vehicle owners’ liability ground itself clearly states the damage to life, health, and material asset is to be compensated by the owner⁴⁹, excluding moral damage, while judicial application broadens the scope of the damage, including moral damage referring to norms establishing the ground for general fault-based tort.⁵⁰

V. Conclusive summary

The above-described analysis demonstrates that the strict liability for vehicle owners is widely accepted in most modern jurisdictions, while there are still differences in determining the scope of compensation, grounds for exemption from liability, and methods of interpretation and application of legal regulations.

There is a tendency to establish special legislations, at least special provisions in the Civil Code, for imposing liability to the vehicle owner since applying general strict liability norms into the case of vehicle owner requires broad judicial interpretation and sound explanation for liability without any fault. In this respect, special legal norms for liability facilitate legal certainty.

⁴⁹ Art. 499 of CCM “499.1. An owner of a passenger or freight forwarding transportation mean shall bear responsibility of the harm to others life, health and damage, loss or destruction of their property caused in course of using the transportation mean.” <https://legalinfo.mn/en/edt/16532510240071>.

⁵⁰ Supreme court decision No 001/HT2022/01152, dated November 23, 2022, http://shuuh.mn/single_case.

Though the liability is named “strict” due to the absence of fault on tortfeasor’s side, its “strict” character is diminished by introducing broad defenses that include force majeure, victim negligence, and third-party influence.

Mongolian vehicle owners’ liability rule is like German and Japanese, although it requires more judicial interpretation. As contained in the Civil Code, the regulation is formulated briefly and generally, while special legislative acts contain clearer, detailed regulations applicable to car accidents. Consequently, the terms used in Article 499 of CCM are interpreted in connection with traffic acts and general civil norms. On the other hand, such an active judicial interpretation would diminish the certainty of law and the purpose of strict liability.

From the analysis of the scope of compensation, liability caps, and exemption from liability, strict liability for a car accident is utilized to balance social and private interests, risk, and benefit of technological development. In this respect, Mongolia needs to develop the related legal norms at the legislative level, otherwise, judicial activism would be increased. Particularly, ceiling caps of compensation, the scope of the damage, and defense clauses, such as victim negligence, require further detailed analysis of Mongolian social and economic situations in this respect and good foreign practice.