XI. France

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Looking back on 25 years of tort-related case law is not only a way to celebrate the accomplishments of both the European Centre of Tort and Insurance Law and the Institute for European Tort Law, but also to assess the legal developments during a pivotal period for the private law in France. In 2004, the French authorities celebrated with much fanfare the bicentennial of the *Code civil*, triggering new impetus for a reform of its law of obligations, which had remained almost unchanged for the previous 200 years. While the law of contracts and the general part of the law of obligations underwent a comprehensive reform in 2016, the provisions on civil liability (*responsabilité civile*) are still waiting for legislative review. Unfortunately, one cannot help but notice that the 2017 draft project presented by the Ministry of Justice is comfortably sitting on the shelf collecting dust.[1]

The reform project being at a dead end and despite three one-off amendments, adopted in 2024 and 2025, to the tort law provisions of the Civil Code,[2] it is all the more important to present the case law developments of the last quarter-century. The concise nature of the French legislative framework is well-known among comparative lawyers and, in France, it has always been the courts, and above all the *Cour de cassation*, which have been the creative forces of tort law.[3]

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[1] For a comprehensive survey of the reform plans, see *J Knetsch/Z Jacquemin*, France, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2016 (2017) 191, nos 13–21; *J Knetsch/Z Jacquemin*, France, in: E Karner/BC Steininger (eds), ETL 2017 (2018) 187, nos 1–8; *J Knetsch/Z Jacquemin*, France, in: E Karner/BC Steininger (eds), ETL 2019 (2020) 186, nos 1–5; *J Knetsch/Z Jacquemin*, France, in: E Karner/BC Steininger (eds), ETL 2020 (2021) 178, nos 1–5; *J Knetsch*, France, in: E Karner/BC Steininger (eds), ETL 2021 (2022) 174, no 1 f. See also the collective work of *JS Borghetti/S Whittaker* (eds), French Civil Liability in Comparative Perspective (2019), which presents in Annex a translation in English of the 2017 Draft (479–502).

[2] For a commentary on the 2024 amendment on 'troubles de voisinage', see *J Knetsch/Z Jacquemin*, France, in: E Karner/BC Steininger (eds), ETL 2024 (2025) 174, nos 1–5; as for the 2025 amendments on 'sanction civile' and parental liability, see *J Knetsch/Z Jacquemin*, France, in: E Karner/BC Steininger (eds), ETL 2025 (forthcoming).

[3] See already *R David*, The Civil Code in France To-Day (1974) 34 Louisiana Law Review 907–919, at 911.

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Below is a selection, a subjective one, of important cases which contributed to amend and even reshape the rules on civil liability in several respects: the relationship between contractual and extra-contractual liability, liability for the acts of others, causation, scope of reparable losses, interplay with labour law. It may be noted that three out of the five cases, presented here, concern personal injury claims. This is hardly surprising. One of the characteristic features of French tort law is the prevalence of the compensation for personal injury (*dommage corporel*), which has always been the chosen field for legal innovations and policy changes.[4]

1. Cour de Cassation (Cass), Labour Chamber (Soc), 28 February 2002, No 00-11793

The Curious Case of the Employer's *Faute Inexcusable*. It is merely fortuitous and due to the chronology of events that the first case selected for this book concerns an issue of tort law which, despite its practical importance, is often overlooked: the interplay between tort law and labour law and, in particular, the civil liability of employers vis-à-vis their employees for work-related damage. In 2002, the Labour Chamber of the *Cour de cassation* decided to perform a genuine revolution in theory and practice in the field of civil liability applied to occupational safety.

In 30 distinct, yet related cases, employees (or their surviving descendants) filed compensation claims against their employers on the grounds that they had been exposed to asbestos during their employment. They argued that the employers were liable on the grounds of *faute inexcusable*, that is a specific form of gross negligence, which, in accordance with the legislation on work-related accidents and diseases, determines the amount of social security benefits. Indeed, in case the employer's conduct amounts to an 'inexcusable fault', employees are entitled to an increased pension and to additional benefits for the compensation of non-pecuniary loss, paid by the health insurance fund (*caisse d'assurance maladie*), but funded by the employer. Although the French Social Security Code bars a classic compensation claim in tort against the employer,[5] it allows claims

[4] On the prevalence of personal injury and, more largely, of damage to persons ('atteintes aux personnes') in the scholarly debate on tort law in France, see *J Knetsch*, L'influence du droit des personnes sur la responsabilité civile: une révolution silencieuse? in: B Teyssié (ed), Les métamorphoses du droit des personnes (2023) 401.

[5] For a presentation in English of the French compensation regime for work-related accidents and diseases, see *F G'sell/I Veillard*, France, in: K Oliphant/G Wagner (eds), Employers' Liability and Workers' Compensation (2012) 203.

for additional benefits that are not completely separated from the rationale of civil liability and, in particular, of liability based on fault.

In its 2002 judgments,[6] the Labour Chamber redefined the scope of the employer's *obligation de sécurité*, holding that 'under the terms of the employment contract binding them to their employees, employers are bound to an *obligation de sécurité de résultat*' and that 'a breach of this obligation constitutes a *faute inexcusable* if employers were, or should have been, aware of the danger to which their employees were exposed and failed to take the necessary measures to protect them'. While employees previously had to demonstrate an 'error of exceptional seriousness', as defined in a case dating back to 1941,[7] the Court of Cassation decided in 2002 to hold employers liable for not having *guaranteed* their employees' safety, making it considerably easier to obtain a more generous compensation for occupational accidents or diseases than the fairly low lump-sum benefits provided for in the Social Security Code.

With hindsight,[8] the 2002 'asbestos cases' have resulted in two major legal developments at the intersection of tort and labour law.

First, the cases triggered a wide-ranging debate on the appropriateness of the occupational injuries compensation scheme, which dates back to an Act of 1898.[9] More and more voices are speaking up for a comprehensive reform of the scheme, arguing that victims of workplace accidents and occupational diseases are subject to discrimination as compared to other categories of victims of bodily injuries, for example in the case of traffic accidents or terror acts.[10] Despite the enactment of a specific compensation regime for asbestos-related diseases, the statutory developments over the last decades have made this unequal treatment even more visible.

Second, the recognition of the employer's *obligation de sécurité* has provoked a new field of litigation arising from employees who invoke

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[6] Commented on, in English, by *P Brun*, France, in: H Koziol/BC Steininger (eds), ETL 2002 (2003) 179, nos 97–99; see also *G'sell/Veillard* (fn 5) 241–243.

[7] Cass, Chambres réunies, 15 juillet 1941, Veuve Villa.

[8] For a detailed assessment of the aftermath of the 2002 cases, see *D Serre/M Keim-Bagot/X Aumeran*, Les accidents du travail et les maladies professionnelles sur la scène judiciaire (2022) 228–325.

[9] The debate is even more intense, as legislation and case law on the assessment of benefits in the case of *faute inexcusable* have undergone significant changes over the last five years. See eg *D Asquinazi-Bailleux*, L'indemnisation des victimes d'accidents du travail ou de maladies professionnelles: dernier épisode de la saga de la rente, Bulletin Joly Travail 2025, no 5, 56–60.

[10] On the different fund-based compensation regimes under French law, see *J Knetsch*, Tort Law in France (2nd edn 2025) nos 207–211.

'new' forms of suffering at work, such as sexual or moral harassment, not recognised in the occupational disease tables (*tableaux des maladies professionnelles*). Surprisingly, while the ousting of tort law was long considered as an achievement for the benefit of employees, fault-based civil liability is now regaining its vigour in work-related litigation for damages.[11]

2. Cass, Assemblée Plénière (Ass Plén), 6 October 2006, No 05-13255

Reassessing the Grey Zone Between Tort and Contract. Regardless of the legal system, the liability of contracting parties towards third parties is always a major source of complexity when it comes to delineating the boundary between tort and contract.[12] In the famous *Bootshop/Myr'Ho* case of 2006,[13] a commercial building had been leased to a company called Myr'Ho, which then sublet it to another company named Bootshop. Arguing that the owners were not maintaining the building as they should, Bootshop filed a compensation claim against them on the grounds of extra-contractual liability. The Court of Cassation sitting in full bench (*assemblée plénière*) decided that 'if the non-performance of a contractual obligation causes a loss to a third party, the contractual failing (*inexécution contractuelle*) may be invoked by the defendant as the legal grounds for a compensation claim in tort without further proof of fault under Article 1240 Civil Code'. In other words, a breach of contract is regarded *per se* as a source of liability for the contracting party vis-à-vis a third party.

While the interplay between contract and tort had always given rise to debate among French tort law scholars, the *Bootshop/Myr'Ho* case met with massive opposition from both practitioners and scholars.[14] The

[11] For an assessment of those 'blind spots' of the compensation regime for work-related accidents and diseases, see, for example, *M Keim-Bagot*, Faut-il élargir le champ des maladies professionnelles? Droit social 2017, 929–934.

[12] *M Martín-Casals* (ed), The Borderlines of Tort Law: Interactions with Contract Law (2019).

[13] Presented in English by *O Moréteau*, France, in: H Koziol/BC Steininger (eds), ETL 2006 (2008) 196, nos 32–41. See also *JS Borghetti*, Breach of Contract and Liability to Third Parties in French Law: How to Break the Deadlock? Zeitschrift für Europäisches Privatrecht (ZEuP) 2010, 279–303.

[14] See *P Stoffel-Munck*, Liability of Contracting Parties Towards Third Parties, in: JS Borghetti/S Whittaker (eds), French Civil Liability in Comparative Perspective (2019) 55–76. For a summary of the scholarly reactions to the *Bootshop/Myr'Ho* case, see also *H Capitant/F Terré/Y Lequette/F Chénedé*, Les grands arrêts de la jurisprudence civile, vol 2 (14th edn 2024) 322–343.

comments were critical of two different aspects of the solution. First, the case was analysed as being in clear contradiction with the doctrine of privity of contracts, known under French law as the *effet relatif des contrats*. There had been a common understanding that the doctrine of privity was mitigated by the contract's *opposabilité*, which allows third parties to 'oppose' a situation arising from the contractual performance (or non-performance) as a *fait social*.[15] However, the doctrine of *opposabilité* had always been received in the sense that only contractual conduct qualifying as an extra-contractual *faute* entitles third parties to damages in tort. With the *Bootshop/Myr'Ho* case, the Court of Cassation allows third parties to invoke the non-performance of a contractual duty without any proof of the violation of a general duty. The maintenance of the premises (in particular, the building entrance and a service lift) was, indeed, due only to the commercial tenant and not to anyone else.

A second point of criticism was a more practical one. The solution arising from the *Bootshop/Myr'Ho* case affects the legitimate expectations of contracting parties, as exemption or limitation clauses do not apply to the action in tort brought by the third party. One can imagine, for example, that the owner agrees to rent a building for a nominal rent, asking the tenant to agree to an exemption clause that bars claims for damages in the case of lack of maintenance. In that context, considering that a breach of contract could be 'as such' a source of liability for the contracting party vis-à-vis others means that third parties are disproportionately privileged. They are entitled to invoke contractual terms to establish *faute* without being bound to clauses specifically designed to shape the scope of liability.

Despite massive criticism, the Court of Cassation decided, 14 years later, in the *Bois Rouge* case to maintain this solution.[16] In this judgment, also given by the *assemblée plénière*, it was reasserted that 'if the non-performance of a contractual obligation causes a loss to a third party, it qualifies as a *fait illicite*'. Thus, in order to not 'hinder the compensation of this loss … the third party that proves causation between the contractual failing and its loss is not required to establish an extra-contractual fault distinct (*faute délictuelle ou quasi délictuelle*) from this failing'. While this case has an extended motivation according to the drafting style

[15] On the 'opposabilité' doctrine under French law, see *J Bell/S Boyron/S Whittaker*, Principles of French Law (2nd edn 2008) 335–340.

[16] Cass Ass plén, 13 January 2020, no 17-19963, presented by *Knetsch/Jacquemin*, ETL 2020 (fn 1) nos 16–22.

adopted by the Court of Cassation,[17] it raised a new blaze of criticism with commentators denouncing the 'ideological dimension'[18] of this reassertion and its 'simplistic'[19] grounds.

Clearly, the *Bootshop/Myr'Ho* and *Bois Rouge* cases have always faced resistance, even among the Court of Cassation judges, in particular within the Third Civil Chamber and the Commercial Chamber. In its latest act of defiance, the Commercial Chamber decided in 2024,[20] in reaction to the criticism, that 'in order not to defy the expectations of the debtor who has committed himself in consideration of the general scheme of the contract and not to confer on the third party who invokes the contract a more advantageous position than that which the creditor himself can claim, the third party to a contract which invokes, on the basis of tort liability, a contractual breach which caused it damage may be subject to the conditions and limits of liability which apply in the relations between the contracting parties'. For now, it is not certain whether the other chambers of the Court of Cassation will endorse this adjustment or whether the Commercial Chamber only took the initiative to launch a trial balloon, the wording of which is close to what the 2017 Draft Reform suggested on this issue.[21]

3. Cass, First Civil Chamber (Civ 1), 22 May 2008, Nos 05-20317 and 06-10967

Scientific Causation v Legal Causation in Product Liability Cases. One of the thorniest difficulties in product liability litigation is related to the assessment of the causal link between the product's defectiveness and the damage. Unsurprisingly, this has been one of the key issues during the review process of the European product liability rules. While art 4 of the 1985 Directive states that 'the injured person shall be required to prove the

[17] See *D Fairgrieve/F Lichère*, Style and Form of Judgments in France, in: M Heidemann (ed), The Transformation of Private Law – Principles of Contract and Tort as European and International Law (2024) 99–124.

[18] *M Mekki*, Dorénavant on fera comme d'habitude! La Semaine Juridique Édition générale (JCP G) 2020, 167–171.

[19] *JS Borghetti*, Responsabilité des contractants à l'égard des tiers: pas de pitié pour les débiteurs! Recueil Dalloz 2020, 416–425.

[20] Cass, Chambre commerciale (Com), 3 July 2024, no 21–14947, presented in ETL 2024 by *Knetsch/Jacquemin* (fn 2) nos 19–27. See also the more detailed case note from a comparative point of view by *J Knetsch*, Haftung der Vertragsparteien gegenüber Dritten in Frankreich: Ist der gordische Knoten endlich gelöst? ZEuP 2025, 868–880.

[21] *Stoffel-Munck* (fn 14) 71–76.

damage, the defect and the causal relationship between defect and damage', the revised 2024 Directive implements new rules on evidence.[22] Among the most important innovations, art 10 introduces a series of presumptions for the proof of defectiveness and causation. According to art 10(3), national courts are entitled to presume 'the causal link between defectiveness of the product and the damage … where it has been established that the product is defective and that the damage caused is of a kind typically consistent with the defect in question'. When looking closely at the origins of this provision, it turns out that it provides the EU product liability regime with a certain *touche française*, as it reiterates the French case law. Already in 2008, the Court of Cassation allowed presumptions for the demonstration of the causal link between defectiveness and damage.

The 2008 cases reported here[23] are part of the broader context of product liability litigation between pharmaceutical manufacturers and patients considering themselves to be affected by a drug. In the present cases, the claimants sued the French pharmaceutical company Sanofi Pasteur in order to receive compensation for damage resulting from multiple sclerosis allegedly caused by their vaccination against hepatitis B. The Court of Appeal held that 'no one can currently explain how this vaccination could cause this disease (and) that this finding precludes any presumption, no statistical link nor sufficient probability of a causal link having been demonstrated'. In its judgments of 22 May 2008, the Court of Cassation changed its position. Quashing the Court of Appeal judgments, the First Civil Chamber argued that the appeal judges had followed 'a probabilistic approach based exclusively on the lack of scientific and statistical link between the vaccination and the development of the disease', whereas they should have considered whether the facts of the case allowed for a presumption that the vaccine had caused the claimants' disease.

As the trial courts were implementing this new solution, the stance taken by the Court of Cassation, originally acclaimed by both patients' associations and personal injury lawyers, has increasingly given way to a certain disenchantment. During the following years, courts adopted different approaches to the issue of causation between allegedly defective drugs and a patient's serious health condition. In cases presenting similar

[22] On these provisions, see for example *G Howells/D Fairgrieve*, The New Product Liability Directive: Steadily Expanding Liability or Business as Usual? (2025) 33 European Review of Private Law (ERPL) 2025, 549, nos 43–50.

[23] Commented on by *O Moréteau*, France, in: H Koziol/BC Steininger (eds), ETL 2008 (2009) 264, nos 24–26. For a more detailed presentation in English, see *JS Borghetti*, Litigation on hepatitis B vaccination and demyelinating diseases in France, in: M Martín-Casals/DM Papayannis (eds), Uncertain Causation in Tort Law (2015) 11–42.

patterns, in some cases they decided to acknowledge causation, in others to reject the proof of a causal link, with the Court of Cassation refusing to review the assessment of facts by the trial judges (*pouvoir d'appréciation souveraine des juges du fond*). This 'trial lottery' being regularly denounced by tort law scholars, it has been suggested that the Court of Cassation follow in the footsteps of the *Conseil d'État*, the French Supreme Court with jurisdiction to decide State liability cases.[24] Indeed, the *Conseil d'État* specified the elements which entitle claimants to a presumption of the causal link. However, despite the criticism, the Court of Cassation has maintained its position for now, perhaps due to the fear of non-compliance with EU law.

Indeed, this concern led the First Civil Chamber of the Court of Cassation to apply to the European Court of Justice (ECJ) for a preliminary ruling on the question of whether the presumption of causation complies with the 1985 Directive. In its *Sanofi Pasteur* case of 2017,[25] the ECJ held that presumptions of both causation and defectiveness were in line with the 1985 Product Liability Directive insofar as 'certain factual evidence relied on by the applicant constitutes serious, specific and consistent evidence'. The Court made clear, however, that 'national courts must (…) ensure that their specific application of those evidentiary rules does not result in the burden of proof introduced by art 4 (of the 1985 Directive) being disregarded', thus validating only presumptions on a case-by-case approach.

The *travaux préparatoires* of the 2024 Product Liability Directive clearly indicate that the judge-made presumption of defectiveness and causation, enshrined in art 10(3), has been considered by the drafters as a mere codification of the ECJ case law.[26] Will the future of causation in the field of EU product liability be a French one and, if so, with all related uncertainties?

4. Cass, Criminal Chamber (Crim), 25 September 2012, No 10-82938

Recognition of Pure Ecological Harm. As in other fields of law, some major legal developments in tort law in France are closely related to scandals, which are increasingly considered as a significant factor for

[24] *Borghetti* (fn 23) 25–27 with further references.

[25] On this ECJ case law, see *T Verheyen*, Full Harmonization, Consumer Protection and Products Liability: A Fresh Reading of the Case Law of the ECJ (2018) 26 ERPL 119; *M Rizzi*, A Dangerous Method: Correlations and Proof of Causation in Vaccine Related Injuries (2018) 9 Journal of European Tort Law (JETL) 289.

[26] *European Economic and Social Committee*, Opinion: Revision of the Product Liability Directive, INT/1002, no 4.8.

legal reforms.[27] This is the case for the acknowledgement of the existence of 'pure ecological harm' (*préjudice écologique pur*), eligible to compensation under French law. Without the sinking of the old single-hull oil tanker Erika off the Britanny coast in December 1999, the Court of Cassation would never have taken the step towards the implementation of the environmental dimension of the law of damages.

In the present case,[28] the State, a number of local authorities, associations and individuals initiated criminal proceedings, together with claims for damages by means of an *action civile*, against Total (the French multinational oil company, which owned the cargo), the carrier and other protagonists of the catastrophe. With 15,000 tonnes of heavy fuel oil being spilt into the Atlantic Ocean, the sinking of the Erika polluted wide stretches of the coastline and oiled thousands of seabirds and provoked more damage to the environment itself than to individual losses to (human) health or property. The Paris court of first instance found the ship owner as well as Total guilty and civilly liable. A total of € 165 million was awarded to a wide range of victims, including an amount to compensate for 'damage resulting from harm to the environment' as separate from harm to property. Both the Paris Court of Appeal and the Court of Cassation confirmed this solution and, thus, sanctioned the existence of *préjudice écologique pur* under French tort law.

Recognising the importance of this case law development and taking up the proposals of several reports, Parliament decided to enact new legislation laying the foundation of a general and genuine environmental civil liability. However, the wide scope of the proposal was not to the liking of the government, which feared an excessive burden on industry. Instead, it was considered preferable to add a series of provisions governing redress for ecological harm to the Act on Biodiversity, which entered into force on 10 August 2016.[29] According to arts 1246–1252 Civil Code, an action

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[27] On the issue of scandals and their legal aftermath, see, for example, in the field of corporate law, *H Fleischer*, Unternehmensrechtliche Skandalforschung: Ein Primer, Zeitschrift für Wirtschaftsrecht (ZWiR) 2025, 1699–1709.

[28] Presented by *O Moréteau/AD On*, France, in: ETL 2012 (2013) 229, nos 48–55. See also in English *D Papadopoulou*, The Role of French Environmental Associations in Civil Liability for Environmental Harm: Courtesy of Erika (2009) 21 Journal of Environmental Law 87.

[29] For a commentary on this legislation in English, see *S Taylor*, Extending the Boundaries of Tort Law: Ecological Harm in the French Civil Code (2018) 9 JETL 81–103; *J Foulon*, Recent Developments in French Environmental Law: Recognition and Implementation of Ecological Damage in French Tort Law (2019) 21 Environmental Law Review 309–317. See also *Knetsch/Jacquemin*, ETL 2017 (fn 1) nos 4–8.

to 'repair ecological harm' is now open to the State, the French agency for the environment, local authorities and environmental protection associations, but unlike in the *Erika* case, priority was given to 'reparation in kind' (*réparation en nature*) as a remedy for ecological harm rather than to monetary compensation. Only if it is impossible to remedy the environmental harm will the judge be able to make an order for damages.

There is no doubt that these rules have provided a more secure legal framework for environmental litigation by giving public authorities and associations more leeway to enforce environmental standards. However, the 2016 Act on Biodiversity failed to implement a specific liability regime for environmental harm since the provisions in arts 1246–1252 Civil Code only apply to the consequences of liability and not to the assessment of whether there is an action in tort or not. To that extent, the general rules on civil liability, whether strict or fault-based, remain applicable.

While the legal framework on the compensation for pure ecological loss still raises several issues, such as the appropriate legal instrument to guarantee priority to the reparation in kind (monitoring of the allocation of damages, establishment of a dedicated trust [*fiducie*]…),[30] it is important to recognise that arts 1246–1252 Civil Code have been a key factor in the development of climate change litigation before French administrative courts. Against all expectations, the administrative courts have decided to apply the provisions, initially designed for proceedings before civil courts, to cases in which the liability of the State is raised by individuals exasperated by allegedly insufficient environmental policy decisions.[31]

5. Cass, Ass Plén, 28 June 2024, No 22-84760

Rewriting the Requirements of Parental Liability. For almost 200 years, French tort law has imposed on parents liability based upon a presumption of fault (*présomption de faute*).[32] According to art 1242(7)

[30] On these issues, see the collective work by *J Rochfeld/B Parance* (eds), Les grandes notions de responsabilité civile à l'aune des mutations environnementales (2024) 109–204.

[31] For a detailed assessment, see in English *M Torre-Schaub*, Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus? (2023) 14 European Journal of Risk Regulation 213–227 and *eadem*, Climate Change Litigation in France: New Perspectives and Trends, in: I Alogna/C Bakker/JP Gauci (eds), Climate Change Litigation: Global Perspectives (2021) 124–142.

[32] For a presentation in English of the development of parental liability under French law, see *P Giliker*, Vicarious Liability in Tort: Comparative Perspectives (2010) 213–217 and, *eadem*, Parental Liability for Harm Caused by Children: A Comparative

Civil Code, parents are liable towards a third-party victim unless they can 'prove that they could not have prevented the act which gave rise to that liability'. In practical terms, the defendants had to establish that the damage caused by the child was not due to a lack of supervision or education (*faute de surveillance* or *faute d'éducation*). From the 1960s to the early 2000s, parental liability progressively shifted from a fault-based regime to a super-strict liability, subject only to the defences of force majeure and contributory fault.[33] The reason for this spectacular drift, without any change in the wording of relevant provisions of the Civil Code, does not only lie in the difficulties in upholding a consistent approach to the *faute de surveillance ou d'éducation* test but also more generally to evolutions in French society. Harm caused by children is no longer considered as an ordinary risk of life by a large part of the population but as a loss which cannot remain uncompensated, especially when their parents are covered by third-party liability insurance (which nowadays is generally the case).

The shift towards a strict liability regime is also evident when it comes to the requirement of *cohabitation*. In its original version dating back to 1804, art 1242(4) Civil Code provided that parents are 'liable for the damage caused by their minor children *who live with them*'.[34] The proof of cohabitation was particularly important under a fault-based parental liability regime since the courts had to determine whether the defendant(s) had properly supervised their child, something that is only possible when there is physical proximity between them. Over the years, the cohabitation test had progressively become less and less consistent. French courts were increasingly considering that it should be sufficient that the child 'usually lived' with their parents, a standard very widely interpreted by the judges.

In light of these case law developments, the cohabitation requirement was seen by many authors as a purely 'virtual' one, an assessment which was finally endorsed, in 2024, by the Court of Cassation, sitting in *assemblée plénière*.[35] A 14-year-old boy had been found guilty of setting fire to different plots of woodland on 17 occasions. The owners of the burned land claimed compensation from both parents of the child, although the parents were divorced and the child lived permanently with his mother

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Analysis, in: R Probert/S Gilmore/J Herring (eds), Responsible Parents and Parental Responsibility (2009) 335–352.

[33] On the case law developments, see also in English *L Francoz-Terminal/F Lafay/O Moréteau/C Pellerin-Rugliano*, Children as Tortfeasors under French Law, in: M Martín-Casals (ed), Children in Tort Law, vol 1 (2006) 169–215.

[34] Emphasis added by the author.

[35] Presented by *Knetsch/Jacquemin*, ETL 2024 (fn 2) nos 12–18.

alone. The outcome of the *cohabitation* test was of the upmost importance for the mother, as the coverage limit of her insurance policy was € 1 million only, leaving her to compensate the victims for the remainder. She therefore decided to bring the case before the Court of Cassation, so as not to bear the share of the compensation not covered by her insurance alone.

The Court decided to abandon its previous interpretation of art 1242(4) Civil Code. According to the case, 'from now on, the notion of cohabitation is to be interpreted as the consequence of the joint exercise of parental authority'. This means that '(the) cohabitation (of parents) with a minor child over whom they jointly exercise parental authority only ceases when administrative or judicial decisions entrust the minor to a third party'. As a result, cohabitation is directly inferred from parental authority so that even in cases in which a child lives with one parent exclusively, *both* parents will bear civil liability, a solution well received in scholarship. For years, both practitioners and scholars had been arguing that it was inequitable that the cohabitation test may lead to the consequence that only the parent with whom the child resides was subject to parental liability while the other parent (in most cases, the father) could escape civil liability.

The 2025 Juvenile Offenders Accountability Act enshrined this new position, providing another illustration of case law-driven legislation in the field of French tort law.[36] Since 25 June 2025, art 1242(4) Civil Code now reads that 'parents, insofar as they exercise parental authority, are jointly and severally liable for the damage caused by their minor children, except where the children have been entrusted to a third party by an administrative act or a court decision'. The removal of the cohabitation test can thus be seen as a collaborative effort of the Court of Cassation and French lawmakers.[37]

[36] On this legislation, see, *JS Borghetti*, Autorité parentale et responsabilité du fait d'autrui, Droit de la famille 2025, dossier no 5.

[37] For a broader analysis of this issue, see *E Steiner* (ed), Comparing the Prospective Effect of Judicial Rulings Across Jurisdictions (2015).