Civil Liability Insurance Claims In Iraqi and Iranian Law

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Abstract
This research examines civil liability insurance claims In Iraqi and Iranian law by analysing their legal nature, types, parties, and procedural and substantive effects. The central problem lies in the composite legal character of such claims, which combine the rules of civil liability determining whether the insured is liable to compensate the injured party with the rules of insurance determining the insurer's obligation to bear that financial burden within the limits of the policy or the law. The research also addresses the legal position of the injured third party, the extent of that party's right to bring a direct action against the insurer, and the limits within which policy terms and exclusions may be invoked against the injured party. The study adopts descriptive, analytical, and comparative methods through an examination of the relevant Iraqi provisions, particularly Iraqi Civil Code No. 40 of 1951 and Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980, and a comparison with the relevant Iranian provisions, particularly the Insurance Act of 1316 SH, the Civil Liability Act of 1339 SH, and the Compulsory Insurance Act for Third-Party Losses Arising from Motor Vehicle Accidents of 1395 SH. The research concludes that civil liability insurance claims perform a dual function: they facilitate more effective compensation for the injured party while preserving the insurer's liability within the agreed or statutory scope of coverage. It further finds that both legal systems recognise the importance of direct actions, recourse, and subrogation, although they differ in the clarity of the statutory rules governing the injured party's legal position and in the rules relating to settlement, limitation periods, and procedural time requirements.
Keywords: insurance claims; civil liability; direct action; insurer; injured third party; Iraqi law; Iranian law.

INTRODUCTION

Civil Liability Insurance Is An Important Legal System That Seeks To Achieve A Balance Between The Injured Party's Right To Obtain Compensation And The Insured's Right To Protection Against The Consequences Of Civil Liability, By Providing Insurance Coverage Within The Limits Prescribed By Law And The Insurance Policy. Civil Liability Insurance Claims Constitute Legal Matters Involving Multiple Legal Relationships And Legal Positions Among The Injured Party, The Insurer, And The Insured, Which Requires An Examination Of Their Regulation In Iraqi And Iranian Law.

First: Research Problem

Civil liability insurance claims occupy a composite legal field that combines the contractual relationship arising from the insurance contract with the contractual or non-contractual relationship between the injured party and the person responsible for the damage. The insurer is not the direct author of the harmful act, and its liability does not arise from committing a tort. Rather, it arises from the insurance undertaking to cover the civil liability established against the insured within the limits of the policy or the law. This situation raises a fundamental question concerning the nature of the action available to the injured party: is it solely a liability action against the insured, an indemnity action against the insurer, or may both defendants be joined in a single proceeding

The problem becomes more complex where the injured party is a stranger to the insurance contract. The injured party did not participate in concluding the policy or determining its terms and exclusions, yet the practical prospect of obtaining compensation often depends on whether the policy covers the loss. This raises a significant question regarding the legal position of the injured party in civil liability insurance litigation: does the injured party have a direct right of action against the insurer, or does that right remain...

dependent upon the insured's right to claim against the insurance company? Where a direct right exists, what are its limits? May the insurer invoke all defences arising from the insurance contract against the injured party, or are some defences confined to the relationship between insurer and insured? The issue is further complicated by the differing legal foundations of civil liability insurance claims under Iraqi and Iranian law. In Iraq, the general rules of the Civil Code operate alongside special legislation, particularly Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980, which affords specific protection to victims of motor vehicle accidents. In Iran, the Insurance Act of 1316 SH, the Civil Liability Act of 1339 SH, and the Compulsory Insurance Act for Third-Party Losses Arising from Motor Vehicle Accidents of 1395 SH establish a different framework for the injured party's legal position and right to claim. A comparative analysis is therefore required to determine the extent to which the judicial protection afforded to injured parties converges or differs in the two legal systems.

A further aspect of the problem lies in the multiplicity of actions that may arise in this field. The injured party may bring a direct action against the insurer, an action against the insured, or another indirect form of claim. The insured may sue the insurer after liability has been established or after compensation has been paid, while the insurer may exercise recourse or subrogation after satisfying the claim. This multiplicity creates practical difficulties in identifying the proper parties, the competent court, the relief sought, and the applicable burden of proof. It may also produce inconsistent judgments unless the proceedings are organised in a manner that properly brings together the parties to the insurance relationship and the underlying civil liability.

The problem also concerns the effect of policy terms on claims brought by the injured party. Civil liability insurance policies commonly contain provisions relating to policy limits, the scope of the insured risk, exclusions, notice requirements, the insured's duty to cooperate, and prohibitions on settlement or admission of liability without the insurer's consent. Such provisions may be valid between insurer and insured, but their unrestricted use against the injured party may weaken that party's legal position. The question therefore arises as to the extent to which these terms may be invoked against an injured third party, especially in compulsory insurance, which is fundamentally based on victim protection and the assurance of compensation. Procedural issues are equally significant, particularly jurisdiction and limitation periods. Civil liability insurance claims may be founded on the insurance contract, contractual or tortious liability, or a combination of both, making the determination of the competent court a technically sensitive issue. Limitation, forfeiture for failure to give notice, or delay in making a claim may also result in the loss of the rights of the injured party or the insured where proceedings are not commenced within the proper period. The problem is therefore not confined to identifying who may sue, but extends to determining the correct procedural route and the appropriate time for commencing the action. Accordingly, the central research question is: how do Iraqi and Iranian law regulate civil liability insurance claims, and to what extent does that regulation achieve a balance among the injured party's right to compensation, the insurer's right to rely on the limits of coverage, and the insured's right to benefit from insurance protection? Subsidiary questions concern the types and parties of these claims, the extent of the injured party's direct right of action, the effect of policy terms against that party, and the similarities and differences between Iraqi and Iranian law regarding jurisdiction, limitation, recourse, and subrogation.

Second: Significance of the Research

The significance of this research derives from the fact that civil liability insurance claims represent the practical operation of the insurance system. A theoretical examination of the insurance contract is insufficient unless it is accompanied by an analysis of the judicial mechanisms through which the injured party, the insured, and the insurer may protect their respective rights. Litigation reveals the extent to which insurance effectively fulfils its principal purpose: securing compensation and distributing the burden of civil liability in a more stable and equitable manner.

The scholarly significance of the research lies in its treatment of a subject situated at the intersection of civil law, insurance law, and procedural law. The analysis requires consideration of the rules governing civil liability, insurance contracts, jurisdiction, limitation periods, recourse, and subrogation. This interaction is important for clarifying the legal nature of civil liability insurance claims and distinguishing them from ordinary liability actions and from actions seeking performance of insurance contracts in other branches of insurance.

Its practical significance arises because, in many cases, an injured party may be unable to obtain effective compensation where recourse is limited to the person directly responsible for the damage, particularly if that person is insolvent or otherwise unable to pay. Enabling the injured party to proceed against the insurer, joining the insurer to the proceedings, and regulating indemnity and recourse actions are therefore essential to the effectiveness of compensation. At the same time, the research clarifies the limits on the insurer's obligation so that insurance does not become an unlimited undertaking extending beyond the policy and the law.

The comparative dimension is also significant because both Iraqi and Iranian law recognise different forms of civil liability insurance, especially in relation to motor vehicle accidents, while differing in certain legislative and procedural details. The comparison assists in identifying the strengths and deficiencies of each system and in developing a clearer legal approach to enhancing judicial protection of injured parties while maintaining an appropriate balance among the parties to the insurance relationship.

Third: Research Objectives

This research aims to define the legal framework governing civil liability insurance claims under Iraqi and Iranian law by identifying the types of claims, their parties, and the legal basis of each, whether a direct action brought by the injured party against the insurer, an action against the insured, or a recourse or subrogation action exercised by the insurer after payment of compensation.

It also seeks to clarify the legal position of the injured party, determine whether that party enjoys a direct right of action against the insurer, define the limits of that right, and assess the extent to which it is affected by policy terms and exclusions. The research further examines the procedural position and obligations of the insurer and the insured during judicial proceedings or settlement.

The research additionally examines the rules of jurisdiction and limitation applicable to civil liability insurance claims because of their decisive effect on admissibility, the hearing of claims, and the preservation of rights. It also considers the effects of notice, delay in making a claim, the issuance of a judgment, and settlement on the scope of the insurer's obligation and the insured's liability.

Another objective is to compare Iraqi and Iranian law in their regulation of civil liability insurance claims and to identify the principal similarities and differences between them, particularly with respect to direct actions, actions against the insured, recourse, subrogation, and the protection of injured parties under compulsory insurance. On that basis, the research seeks to reach conclusions capable of contributing to the legal understanding of this category of claims and to the effectiveness of compensation.

Fourth: Research Methodology

The research employs descriptive and analytical methods through an examination of the legal provisions governing insurance, civil liability, and related claims under Iraqi and Iranian law. It also applies a comparative method to the respective legal positions of the insurer, the insured, and the injured party, and to the similarities and differences between the two systems concerning the types of actions, jurisdiction, limitation periods, recourse, and subrogation.

Section One: Theoretical Framework

Civil liability insurance possesses a distinctive legal nature that differentiates it from other forms of insurance, particularly with regard to the scope of coverage and the basis of the insurer's obligation. It is therefore necessary to identify its defining boundaries, distinguish it from other insurance categories, and determine the parties to the insurance contract and their respective legal positions.

This section is divided into two subsections. The first explains the distinction between civil liability insurance and other forms of insurance under Iraqi and Iranian law, while the second examines the parties to a civil liability insurance contract.

Subsection One: Distinguishing Civil Liability Insurance from Other Forms of Insurance In Iraqi and Iranian Law

This subsection identifies the methodological criteria by which liability insurance is distinguished from insurance of persons and property insurance. The analysis focuses on the location of the risk, the insurable interest, the recipient of performance when the risk materialises, and the method of calculating compensation. The distinctive feature of liability insurance is that it protects the insured's patrimony against third-party claims, and the insurer's obligation is triggered by the establishment of liability and a debt of compensation rather than by the mere occurrence of a physical event. This distinction produces practical consequences concerning exclusions, rights of recourse, and the legal position of the injured third party.

Part One: Distinguishing Civil Liability Insurance from Other Forms of Insurance In Iraqi Law

Under Iraqi law, the distinction is determined by reference to the objective nature of the insured risk, the interest protected, and the direction of performance when the risk materialises. Article 983 of Iraqi Civil Code No. 40 of 1951 defines insurance in general as a contract under which the insurer undertakes to pay financial compensation upon the occurrence of the insured event in return for premiums or other payments made by the insured. Although this provision supplies the conceptual framework, it does not by itself distinguish among the various forms of insurance because the expression "insured event" may encompass different situations. In property insurance, the event is one that damages specified property or alters its condition or value. In insurance of persons, it is an event affecting life, bodily integrity, survival, or health and giving rise to payment of an agreed sum. In liability insurance, it is an event that legally develops into a debt of compensation owed by the insured to a third party. The decisive criterion is therefore the legal location of the risk rather than the terminology used in the contract. The protected subject matter is the insured's patrimony against third-party recourse, not a particular object or the person as such.[1]

It follows that insurable interest is a central interpretive criterion when liability insurance is compared with other insurance categories. In property insurance, the interest consists in preserving the property or its economic value. In insurance of persons, it concerns protection of income, continuity of support, or financial assistance upon death, disability, or illness, depending on the policy. In liability insurance, the interest lies in protecting the insured's patrimony against compensation liabilities, claims expenses, defence costs, and the risk of insolvency or interruption of business. The risk is thus transformed from the possibility of physical loss to the possibility that a legal duty to compensate will arise. Consequently, the insured event is linked to the establishment of liability, or at least to the existence of a serious claim capable of giving rise to liability under the general rules. This also changes the direction of performance: property insurance generally pays the insured as owner or holder of the relevant interest; insurance of persons pays the insured or a designated beneficiary; liability insurance is used in practice to discharge the third party's debt, reimburse the insured for sums paid, or satisfy an amount imposed by judgment or settlement. This explains the stronger presence of the third party in liability insurance.[23]

The clearest distinction between liability insurance and property insurance concerns the insured subject matter, the assessment of compensation, and the effect of indemnification. Property insurance compensates the insured for destruction, deterioration, or diminution in value of property caused by a specified risk, such as fire, theft, explosion, or sinking. The right to payment arises from damage to the property itself. Compensation is governed by the indemnity principle and measured by the actual loss, subject to rules preventing unjust enrichment, the value of the property at the time of loss, and the policy limit. Issues such as underinsurance, overinsurance, and multiple insurance arise because the subject matter is identifiable property whose value and degree of damage can be directly assessed. Liability insurance differs because it does not attach to a specified asset but to a potential financial burden whose amount depends on the loss sustained by the third party, the court's assessment, or the limits of a settlement.[4]

The distinction becomes more precise when the conditions triggering the insurer's obligation are examined. In property insurance, it is usually sufficient to prove the occurrence of the insured risk and the amount of damage to the insured property through inspection or expert evidence. In liability insurance, two connected elements must be established: damage suffered by a third party and a legal basis attributing that damage to the insured under contractual or tortious liability. This may require proof of fault or another basis of liability, causation, and the extent of damage. The insurer's obligation therefore does not arise merely

1 Badi' Ahmed Al-Sayfi, Al-Wasi' fi al-Ta'min wa-I'adat al-Ta'min 'Ilman wa-Qanunan wa-'Amalan [The Comprehensive Treatise on Insurance and Reinsurance: Theory, Law and Practice], 1st ed. (Baghdad: Al-Diwan Printing and Publishing Company, 2006), p. 61.

2 Husam Al-Ahwani, Al-Mabadi' al-'Ammah lil-Ta'min [General Principles of Insurance] (Cairo: Dar Al-Nahda Al-Arabiyya, 2005), p. 88.

3 Hawraa Marah Adel Ghailan, "The Legal Framework of the Sports Insurance Contract," Master's thesis in Private Law, College of Law, University of Baghdad, 2025, p. 31.

4 Duraid Dawud Khudair Kargouli, Civil Liability for Errors of the Medical Team: A Comparative Study, 1st ed. (Alexandria: Dar Al-Jami'a Al-Jadida, 2020), p. 217.

because a physical accident occurred; it arises when the accident becomes a legally recognised liability producing a debt in the insured's patrimony. The measure of payment also differs. Property insurance is assessed by reference to actual property loss, depreciation, market value, and salvage. Liability insurance is measured by the compensation, expenses, and defence costs judicially awarded or otherwise established, subject to the policy limit, exclusions, and deductible. A liability policy therefore serves as financial protection against both the underlying liability and the procedural costs of a potential dispute.[5]

The distinction also affects subrogation and the scope of recourse. In property insurance, an insurer that has paid the insured is subrogated, to the extent of payment, to the insured's rights against the person responsible for the damage. This prevents double recovery, places the ultimate burden on the actual wrongdoer, and maintains the balance between premium and risk. In liability insurance, subrogation is more complex because the insurer pays a debt owed by the insured to a third party and may then seek recovery from another person who bears ultimate responsibility, such as an employee, subcontractor, producer, or joint tortfeasor. A separate right of recourse may also arise from policy exclusions, such as intentional conduct, serious breach of safety requirements, or driving without a licence in certain applications. Liability insurance is therefore closely connected with the rules governing allocation of fault, contribution to damage, and recourse among jointly liable persons.[6][7]

The difference is further confirmed by comparison with insurance of persons, which is commonly based on an agreed sum payable upon an event affecting the person, such as death, survival, injury, or disability. The beneficiary becomes entitled to the agreed sum when the insured event occurs, without necessarily proving a financial loss equal to the amount paid. The payment may possess a savings or solidarity function, depending on the product. Liability insurance, by contrast, is strictly compensatory: the insured does not receive an independent sum merely because an accident occurred, but obtains coverage for a debt owed to a third party after liability and its extent have been established. The policy limit therefore operates as a ceiling on the compensation for which the insurer is responsible. The position of the beneficiary also differs. In insurance of persons, the beneficiary may be designated and changed by the policyholder. In liability insurance, the third party is a potential creditor whose right derives from law, the occurrence of damage, and attribution of that damage to the insured. The third party's presence is functional rather than elective.[8][9]

The presence of an injured third party affects the defences available to the insurer and the extent to which contractual terms may be invoked against that party. In many forms of property or personal insurance, contractual defences operate directly because performance remains between the insurer, insured, and designated beneficiary. Liability insurance raises a distinct question: is the injured party's right merely derivative of the insured's right, or is it an independent direct right created by law? The distinction is especially important in compulsory motor insurance, where a protective approach strengthens the injured party's position and restricts defences that would defeat compensation. It also appears in policies that require the insurer to conduct the defence or pay defence costs, since litigation itself forms part of the insured risk in liability insurance to a degree not found in most forms of personal or property insurance.[10]

The distinction is particularly evident in Iraq's compulsory motor insurance legislation. Article 1 of Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980 provides for the automatic insurance of all motor vehicles within the territory of Iraq. This rule moves insurance beyond purely contractual consent into the sphere of protective public policy. Article 2 obliges the insurer to compensate for death or bodily injury caused to any person by the use of a motor vehicle in Iraq, irrespective of proof of fault. The system is therefore centred on victim protection, prompt compensation, and the reduction of evidentiary obstacles. It

5 Mohammed Taha Al-Bashir, Commentary on the Iraqi Civil Code: Rules of Obligations (Baghdad: Dar Al-Kutub Al-Qanuniyya, 2007), p. 73.

6 Kamran Mohammed Qadir, "The Legal Role of the Insurance Policy in Concluding Insurance Contracts," Journal of Education for the Humanities, vol. 4, special issue, University of Mosul, 2024, p. 15.

7 Mustafa Kamal Taha, Maritime Law: Introduction, the Ship, Persons Engaged in Navigation, Chartering and Carriage by Sea, Maritime Accidents, and Marine Insurance (Alexandria: Al-Wafaa Legal Library, 2010), p. 101.

8 Mohammed Abdul Razzaq Mohammed Al-Shawk and Malak Abdul Latif Abdul Hussein Al-Tamimi, "Substitution of the Pledgee in a Possessory Pledge: A Comparative Study," Ahl al-Bayt University Journal, no. 25 (2019), p. 220.

9 Kargouli, op. cit., p. 220.

10 Hussein Al-Zuhairi, Commentary on the Iraqi Personal Status Law (Baghdad: Dar Al-Thaqafa Al-Qanuniyya, 2005), p. 57.

creates a quasi-objective compensatory mechanism that approaches social protection in purpose while remaining connected with liability insurance through the use of motor vehicles, premiums, and risk management. The injured party's position is correspondingly strengthened, and defences based on the insured's conduct are restricted where they should not deprive the victim of compensation. In this model, the insurer's obligation derives not only from the policy but directly from statute.[11][12]

Liability insurance must also be distinguished from legally similar institutions such as suretyship, civil guarantees, and agreed compensation. Suretyship generally relates to an existing debt and adds one patrimony to another, making the surety liable with or for the principal debtor according to the agreement. It does not operate through the pooling of risks, actuarial calculation of premiums, or distribution across a broad insured group. The surety's obligation is accessory and ordinarily follows the principal debt. Insurance, by contrast, is a contingent obligation dependent on the occurrence of an insured risk and is based on risk pooling and technical pricing. A civil guarantee or undertaking to indemnify may create a direct obligation, but it remains an individual arrangement and lacks the claims-management structure, deductibles, exclusions, and policy limits characteristic of insurance. Agreed damages or a penalty clause arise as contractual consequences of breach and do not necessarily require an external event. Liability insurance, however, presupposes an event giving rise to liability towards a third party and activates mechanisms of risk management, defence, and settlement.[13][14]

Part Two: Distinguishing Civil Liability Insurance from Other Forms of Insurance In Iranian Law

Under Iranian law, the distinction rests on a composite criterion comprising the subject matter of the insured risk, the interest protected, and the direction of performance when the event occurs. Article 1 of the Insurance Act of 1316 SH establishes a general framework under which the insurer undertakes to compensate or pay an agreed sum upon the occurrence of the insured event in return for the insurance premium. The meaning of the event differs across insurance branches: it may be damage to property, an event affecting a person, or an event that develops into a debt of compensation owed to a third party. Civil liability insurance covers the financial consequences arising in the insured's patrimony from third-party claims under contractual or tortious liability. The protected interest is therefore the patrimony exposed to a possible compensation debt, rather than a tangible object or the insured's person. The risk is not fully realised by the physical event alone, but only when that event is linked to damage and a legal attribution establishing liability and its scope.

Liability insurance differs from property insurance in Iran because property insurance compensates loss sustained by the insured's own property. The right to payment arises from destruction, deterioration, diminution in value, or loss of use caused by a specified risk such as fire, theft, explosion, or water damage. Payment is measured by the actual property loss within the insured value and subject to the indemnity principle, the prohibition of unjust enrichment, valuation at the time of loss, depreciation, residual value, underinsurance, overinsurance, and multiple insurance. Liability insurance differs because no right arises merely from the event unless a third-party claim appears and a legal basis obliging the insured to compensate is established. The analysis must therefore address the third party's damage, legal attribution, the amount of compensation, claims expenses, and defence costs within the policy limit. The policy functions as financial protection against the consequences of potential litigation rather than as a mechanism for repairing a purely proprietary loss.

The distinction is also reflected in the structure and timing of the obligation and in the documents required for settlement. Property insurance generally requires proof of the insured event and the amount of damage through inspection, expert evidence, and documents establishing ownership and value. Liability insurance requires dual proof of the damaging event and the legal relationship of liability, followed by proof of the amount due to the injured party and the expenses necessary to defend the claim. Coverage may be affected by exclusions relating to intentional conduct, serious breach of safety conditions, or conduct outside the insured activity. Notice obligations, the insured's duty to cooperate, and the preservation of recourse rights therefore acquire particular importance. Article 30 of the Iranian Insurance Act of 1316 SH establishes

11 Al-Bashir, op. cit., p. 101.

12 Badri Al-Suwaidi, References on Iraqi Civil Law (Baghdad: Al-Ani Press, 1957), p. 29.

13 Ghailan, op. cit., p. 55.

14 Hamid Shakir Mahmoud Al-Ta'i, "The Effectiveness of Insurance in Legal Protection within the Legal Aid System: The French Experience as a Model," Journal of the Institute, no. 6 (Najaf, Iraq, 2021), p. 27.

subrogation in indemnity insurance to maintain equilibrium and prevent unjust enrichment. The rule is especially relevant to property and liability insurance because payment in both branches corresponds to an assessable loss and may require shifting the ultimate burden to the person legally responsible.

Liability insurance also differs from insurance of persons under Iranian law in the nature of entitlement, the contractual purpose, and the position of the beneficiary. Insurance of persons generally provides for a fixed sum or financial benefit payable to the insured or a designated beneficiary upon death, disability, illness, or survival, according to the policy. Entitlement does not necessarily depend on proving a financial loss equal to the amount, because the contract may perform savings, solidarity, or protective functions. Benefits may often be accumulated with payments from other sources without constituting double compensation. Liability insurance, by contrast, does not confer an independent benefit unrelated to loss; it covers a debt of compensation determined by the damage and the scope of liability. The injured third party is a potential creditor whose right arises from law and the occurrence of damage, not from designation in the policy. Defences in insurance of persons concern personal conditions of entitlement and medical or specific exclusions, whereas defences in liability insurance concern the establishment of liability, the scope of coverage, exclusions, intentional conduct, aggravation of risk, and breach of professional safety requirements.

Liability insurance must further be distinguished from social insurance in terms of source, function, financing, and the nature of the right. Social insurance in Iran is generally based on regulatory provisions administered by public institutions and financed by solidarity-based contributions linked to public protection policy. Entitlement ordinarily follows a personal or occupational status, such as worker, employee, or pensioner, without requiring an identifiable wrongdoer or a third-party compensation claim. Liability insurance is, in principle, a civil or commercial contract concluded by consent under Article 10 of the Iranian Civil Code of 1314 SH and governed by the Insurance Act of 1316 SH in matters such as writing, essential information, and risk management. The legislature may nevertheless make particular forms compulsory in order to protect third parties, as in motor insurance. The Compulsory Insurance Act for Third-Party Losses Arising from Motor Vehicle Accidents of 1395 SH creates a protective regulatory layer within liability insurance that prioritises victim protection and prompt compensation while preserving the essential character of the insurance as coverage of third-party liability rather than compensation for damage to the insured's own property.

Iranian law also distinguishes liability insurance from civil guarantees such as suretyship, undertakings to perform, and contractual guarantees. Suretyship generally attaches to an existing debt and adds the surety's patrimony to that of the debtor. It does not involve the pooling and distribution of risks or actuarial calculation of premiums, and the surety's obligation is ordinarily directed to a specific debt. Insurance, by contrast, pools relatively similar risks and distributes their consequences among insured persons in return for technically calculated premiums. It therefore creates pre-loss duties, including disclosure of material information, notification of changes in risk, mitigation of loss, and cooperation in claims procedures. Insurance also differs from penalty clauses and agreed damages, which arise from breach of contract and do not necessarily presuppose an external event creating liability to a third party. Liability insurance presupposes an event capable of generating liability and recourse, and it activates procedures for claims management, settlement, and defence costs.[15]

Subsection Two: Parties to a Civil Liability Insurance Contract In Iraqi and Iranian Law

The parties involved in a civil liability insurance contract under Iraqi and Iranian law form a tripartite legal structure. It begins with the original contractual relationship between the insurer and the insured and extends its effects to the injured third party, whose protection constitutes an inherent functional purpose of this branch of insurance. Unlike ordinary reciprocal contracts, the position of the third party is not incidental; in many applications, it is a principal justification for the contract, because the coverage ultimately seeks to ensure payment of compensation to the injured party and to reduce the consequences of the liable person's insolvency. The insured risk is not the destruction of property belonging to the insured, but the possibility that a compensation debt will arise in the insured's patrimony as a result of contractual or tortious liability. Examining the parties is therefore essential to understanding how the burden of a claim is transferred, how the dispute is managed, who supplies risk information, who controls the claim, who pays within the policy limit, and who retains a right of recourse when its conditions are met. The protective

15 Omran Naeimi and Shiva Moulakerami, Occupational and Professional Civil Liability Insurance (Tehran: Majd, 1395 SH), p. 121.

dimension becomes more pronounced where insurance is compulsory, as in motor insurance, because the injured party's right to compensation takes precedence over narrow contractual considerations, while the contractual relationship continues to regulate the premium, duration, policy, and procedures. This structure has practical consequences for defences, exclusions, and the interpretation of ambiguous terms, since the presence of the third party requires the contract to be read in light of its compensatory function rather than solely from the debtor's perspective. The parties therefore constitute an interrelated legal system balancing protection of the insured's patrimony, protection of the injured party, and the stability of economic and social transactions.

Part One: The Insurer In Iraqi and Iranian Law

In civil liability insurance, the insurer is the professional party that undertakes to bear the financial consequences of the insured's liability to third parties within the limits of the policy. Its legal position is defined by its function of pooling, distributing, and managing risks through an actuarial system based on premiums, statistics, and reserves. Under Iraqi law, the insurer's obligation arises from the contract and is grounded generally in Article 983 of Iraqi Civil Code No. 40 of 1951, which requires the insurer to pay financial compensation upon the occurrence of the insured event in return for premiums. In liability insurance, however, the "insured event" is connected with the establishment of a third-party claim and a legal basis obliging the insured to compensate. The insurer must perform within the policy limit, the covered risks, and the applicable exclusions. Where the policy or regulatory framework so provides, the insurer also assumes a procedural role in managing the claim, because litigation itself forms part of the insured risk. This position entails a duty to act in good faith when assessing, settling, or defending claims, while respecting the policy limits and refraining from obstructing the injured party's rights through defences unsupported by the law or the nature of the risk.[16]

The insurer's professional role is particularly evident in insurance covering the liability of industrial and professional enterprises. Its function is not confined to paying compensation after liability has been established; it also extends to examining the nature of the activity, assessing the risks posed by machinery and materials, and monitoring preventive requirements. Where liability arises from the acts of employees under Article 219 of Iraqi Civil Code No. 40 of 1951, or from machinery and objects requiring special care under Article 231, the insurer acts as a technical entity assessing the relationship between the management of the activity and the likelihood of claims. This affects the insurer's authority in settlement management, its responsibility for prompt performance within the policy, and the restrictions arising from coverage limits, exclusions, and rights of recourse. The insurer is therefore not merely an ordinary contracting party; it also performs an economic and social function by stabilising compensation in professional and industrial sectors within the limits of the law and the policy.[17]

Under Iranian law, the insurer is likewise the party that undertakes to bear the financial burden resulting from the insured's established liability to a third party within the limits of the policy. It operates as a professional risk centre that assesses, pools, and distributes the consequences of risk across a broad portfolio of insured persons. The risk in this branch is not direct material loss but a potential compensation debt that may arise in the insured's patrimony after the elements of liability have been established. The insurer's obligation is therefore based on an actuarial calculation balancing the probability of a claim, its expected amount, and the policy limit. The insurer's professionalism is demonstrated by examining the nature of the activity, the extent of exposure to third parties, claims history, and safety standards rather than merely accepting an application formally. Material information supplied by the insured is central because it forms the basis of pricing and of defining the scope of coverage. By transferring a potentially ruinous individual claim to a professionally managed risk pool, the insurer promotes stability, protects private patrimony, and strengthens confidence in professional and commercial dealings.[18]

Part Two: The Insured In Iraqi and Iranian Law

16 Bashar Adnan Malkawi, A Concise Commentary on Jordanian Civil Law: Theory of Contract (Amman: Dar Wael for Publishing and Distribution, 2004), p. 82.

17 Jalal Mohammed Ibrahim, Insurance: A Comparative Study of Egyptian, Kuwaiti, and French Law (Cairo: Dar Al-Nahda Al-Arabiyya, 1994), p. 44.

18 Rezvan Sokhangou, "Civil Liability Insurance of Mass Media," Eighth International Conference on Law and Sustainable Development of Civil Society, 1398 SH, p. 2.

The insured is the party who contracts with the insurer, pays or undertakes to pay the premium, and seeks to transfer the burden of potential third-party claims to the insurer. In liability insurance, the insured does not seek compensation for damage to property owned by that person, but protection of the patrimony against compensation debts that may arise from the use of an object, the conduct of an activity, or the practice of a profession. The insured's legal position is therefore linked to the description of the risk and the material information on which the premium and coverage limits are based. Before conclusion of the contract, the insured must accurately disclose circumstances material to the insurer's decision or to the calculation of the premium. During the period of coverage, the insured must refrain from deliberately increasing the risk and must exercise reasonable care, because insurance is not intended to encourage uncontrolled risk-taking. After the event, the insured must give notice within the applicable period, cooperate in managing the claim, provide the documents and means of defence required by the insurer, and refrain from admissions or settlements prejudicing the insurer where the policy or the law so provides. In return, the insured has the right to demand coverage when its conditions are satisfied and to benefit from the insurer's professional claims-management expertise within the policy limits.[19]

The position of the insured is especially important in employers' and contractors' liability insurance, where the insured is responsible both for financing the coverage and for managing the risk in practice. The insured must disclose the number of workers, the nature and location of the work, the standard of safety measures, and the machinery and materials used, because these matters determine the degree of risk and the policy limit. During performance, the insured must take precautions appropriate to the nature of the work, particularly where the activity falls within Article 219 of Iraqi Civil Code No. 40 of 1951 concerning an employer's liability for employees, or Article 231 concerning machinery and objects requiring special care. The insured thus combines the roles of the party financing the coverage and the centre of the risk around which the insurance operates, while the injured party remains the person with the principal practical interest once damage occurs.

Under Iranian law, the insured is the party bound to the insurer by the insurance contract and who pays the insurance premium in return for transferring the burden of potential claims from the insured's patrimony to the insurer within the policy limits. The insured's position rests on two interrelated elements. The first is exposure to risk, meaning the possibility that civil liability may arise from an activity, profession, custody of an object, or management of a service capable of causing harm to others. The second is insurable interest, which provides the lawful connection permitting liability insurance and preventing the contract from becoming a wager. Article 4 of the Iranian Insurance Act of 1316 SH reflects this principle by permitting insurance against forms of legal liability where the requisite interest exists. The insured is therefore not covered merely because of a desire for reassurance, but because that person occupies an actual legal position exposed to a foreseeable and assessable compensation debt. Liability insurance is thus insurance of the patrimony: the insured seeks protection against the disruption caused by claims rather than payment for damage to owned property. This produces an economic and social function by stabilising transactions and protecting confidence in professional and commercial activity.[20]

The insured is subject to obligations both before and after the risk materialises because the contract rests on probabilistic assessment and a precise actuarial balance between the premium and the insurer's undertaking. The insured must disclose all material information affecting risk assessment, including the nature of the activity, the extent of dealings with the public, the number of workers, the means employed, safety and prevention standards, previous claims, and circumstances indicating heightened exposure. This duty is essential because the insurer agrees to cover the risk as described by the insured; inaccurate information undermines consent, pricing, and the scope of coverage. The insured must also refrain from deliberately increasing the probability of liability, because insurance is intended to manage the ordinary risks inherent in an activity, not to create an incentive for dangerous conduct. This includes avoiding serious breaches of safety rules and avoiding the use of objects or provision of services outside the agreed scope where doing so materially increases the likelihood of harm. The insured must further take reasonable steps to prevent aggravation of damage where this can be done without disproportionate cost. Together, these

19 Iyad Khalaf Mohammed and Iman Ubaid Karim, "Legislative Protection of Public Freedoms," Journal of Politics and International Affairs, Al-Mustansiriya University, no. 23 (2013), p. 55.

20 Ahmed Mahdawi and Mohsen Rostami, "Compensation and Its Role in Civil Liability in Insurance Litigation," Eleventh National Conference on Modern Research in Education, Psychology, Jurisprudence, Law, and Social Sciences, 1402 SH, p. 12.

duties prevent the insured risk from changing from a calculated possibility into an uncontrolled exposure that destroys the balance between premium and coverage.[21]

From an analytical perspective, the particular benefit obtained by the insured is not an independent sum, as in many forms of insurance of persons, but protection of the patrimony against compensation liabilities, associated expenses, and litigation costs. This protection is realised through payment within the policy limit and professional management of claims, which can reduce procedural risk and facilitate more orderly settlements. It also promotes continuity of economic activity, since a professional, contractor, or service provider may continue operating without a single substantial claim exhausting the entire patrimony. Insurance nevertheless does not extinguish liability. The establishment of liability remains a condition of the insurer's obligation, and subrogation or recourse may ultimately restore the burden to the person who should bear final responsibility. The insured therefore remains legally and ethically responsible; insurance redistributes the financial consequences of liability but does not erase its substantive basis. Under Iranian law, the insured's position consequently combines three aspects: being the principal source of risk information through disclosure and conduct, being the beneficiary of structured financial protection, and remaining the person primarily liable to the injured party, subject to the boundary between the insurer's obligation and the amount that remains personally payable.

Part Three: The Injured Third Party In Iraqi and Iranian Law

The injured third party is a person who is not a party to the insurance contract but who becomes the principal practical beneficiary of its compensatory function because the damage is sustained directly and the right to compensation arises under the rules of civil liability. This distinguishes liability insurance from many other insurance categories: the ultimate purpose of the coverage is to secure payment to the injured party rather than to provide the insured with an independent benefit. The insurance contract thereby promotes public confidence and reduces the compensation gap that may result from the liable person's insolvency. The injured party's position is formed at the intersection of contract and liability. Before damage occurs, the person is only a potential creditor of the insured; once damage and legal attribution are established, that person becomes an actual creditor, while the insurer remains contractually obliged to the insured to provide performance that discharges the compensation debt within the policy limit. The protective position of the injured party is particularly evident in compulsory motor insurance. Article 2(1) of Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980 requires the insurer to compensate death or bodily injury sustained by any person as a result of the use of a vehicle in Iraqi territory irrespective of proof of fault, thereby strengthening protection and reducing certain evidentiary obstacles.[22]

This protection is reinforced by statutory regulation of settlement procedures. Article 6 of the same law prohibits the insured from making or accepting any offer concerning compensation of the injured person without the insurer's written approval. The rule prevents improvised settlements that may prejudice the injured party or disrupt the actuarial administration of compensation. The injured party remains protected as to the existence of the guarantee, while the system preserves equilibrium through the exclusions established by Article 7 and the insurer's right of recourse under Article 8, so that protection does not become a shield for intentional or seriously unlawful conduct.

This protective purpose is also a criterion for interpreting policy terms in a manner that secures the compensatory objective within the limits of the law and the policy.[23]

Under Iranian law, the injured third party is the person who suffers damage and acquires a right to compensation under the rules of civil liability. The injured party is not a contracting party, does not participate in negotiating policy terms, and does not pay the premium. Nevertheless, the injured party occupies a central position in liability insurance because the practical object of coverage is not to confer an independent benefit on the insured, but to ensure payment to the person harmed and to prevent entitlement from depending on the personal solvency of the liable person. Modern risks may generate losses exceeding the capacity of an individual patrimony, which creates the need for a professional entity capable of payment.

21 Akbar Rezapour Fard, "Analysis of the Relationship between Liability Insurance and the Preventive Purpose of Civil Liability," Ninth International Conference on Jurisprudence, Law, and Religious Research, 1403 SH, p. 8.

22 Ali Mohammed Abd Abbas Al-Fatlawi, "Elements of the Liability Insurance Contract in Construction Projects and the Legal and Sharia Perspective on Construction Liability Insurance," University of Kufa Journal of Legal and Political Sciences (Najaf, 2024), p. 24.

23 Hamid Jasim Alwan, Insurance from a Legal or Contractual Perspective (Baghdad: Al-Mustaqbal University College, 2019), p. 71.

The injured party may therefore be described as a beneficiary by legal effect rather than by designation: the benefit does not arise because the party was named in advance, but because damage occurred, liability was established, and the policy took effect to cover the compensation debt within its limits. The legal structure is thus tripartite in effect: a contract is formed between insurer and insured, and its consequences extend to the injured party as the potential creditor whose compensation the insurance is intended to secure.

The injured party's benefit remains subject to the scope of coverage, the policy limit, and lawful exclusions. The fact that the injured party is protected does not make the insurer liable for every claim. The obligation is confined to the form of liability insured, the covered activity or use, and the temporal and geographical limits of the policy. The injured party may not exceed the contract and demand payment for a risk the insurer did not accept. Consistent with this approach, the Supreme Insurance Council stated on 11/11/1393 SH, on the basis of Article 9 of the Executive Regulation of the compulsory insurance legislation governing the civil liability of owners of land motor vehicles toward third parties, that insurance companies must, in addition to compensating permanent disability or death arising from covered accidents, reimburse the treatment costs of bodily injuries sustained by third parties in road accidents within the policy's accepted liability limit, and may not deduct those costs from the legally prescribed blood money.[24]

The policy limit constitutes the maximum amount for which the insurer is liable in respect of the compensation debt owed to the injured party. Where the assessed compensation exceeds that limit, the excess remains payable by the person primarily liable, namely the insured.[25]

From a legal analytical perspective, the injured party's benefit is also subject to the requirement of lawfulness. Coverage does not extend to intentional acts committed for the purpose of causing harm or to conduct designed to evade the limits of the guarantee, because such an extension would distort the purpose of the contract and encourage harmful conduct. The general principle nevertheless remains that liability insurance protects third parties against ordinary insured risks. Accordingly, limitations and exclusions must be interpreted in light of the purpose of the contract, the principle of good faith, and the need not to empty the protection of its substance without a legal basis.

The system preserves its balance by allowing the insurer to raise defences connected with the scope of coverage and to exercise recourse where the law permits. These mechanisms prevent protection of the injured party from becoming immunity for the insured in cases of intentional or seriously wrongful conduct. The insurer may rely on exclusions, the absence of coverage, or the policy limit in order to maintain solvency and the equitable distribution of risks. A right of recourse enables the insurer, after payment, to recover from the person who should bear the final burden under the rules of recourse and subrogation. This restores corrective justice and the deterrent effect of liability. These mechanisms must not, however, be used to undermine the essence of the protection. The governing standard is that the injured party's right should not be obstructed without lawful basis, while the limits of both contract and law are respected. The injured third party is therefore the ultimate object of the protection: the policy secures compensation, while the insurance contract remains the primary source of the insurer's obligation toward the insured and extends its effects to the injured party in accordance with the applicable legislation.

Section Two: Civil Liability Insurance Claims In Iraqi and Iranian Law

This section examines the judicial framework through which insurance protection is realised in practice. The function of civil liability insurance is incomplete unless the parties and the injured person are enabled to pursue appropriate judicial avenues for enforcing their rights. It therefore identifies the types of actions, their parties, their legal bases, and the procedural restrictions governing them, thereby illustrating the close relationship between insurance law and the rules of litigation, jurisdiction, and limitation.

Subsection One: Types of Civil Liability Insurance Claims In Iraqi and Iranian Law

Civil liability insurance claims under Iraqi and Iranian law fall into two distinct structures according to the alignment of the parties and the protective purpose of the proceedings. This form of insurance does not concern a specific asset owned by the insured, but the insured's patrimony and the compensation debt that may arise in favour of a third party. The form of action therefore reflects the nature of the right asserted

24 Mahdawi and Rostami, op. cit., p. 6.

25 Abdullah Khodabakhshi, Insurance Law and Civil Liability: An Analysis of the 1395 Compulsory Insurance Act for Third-Party Losses Arising from Motor Vehicle Accidents, 3rd ed. (Tehran: Enteshar Joint Stock Company, 1400 SH), p. 39.

rather than merely the form of the policy. Some actions are designed to enable the injured party to obtain compensation as a social objective, while others preserve the original liability of the insured and treat insurance as a subsequent mechanism for payment or recourse. This duality explains why proceedings move among the insurer, the insured, and the injured party depending on whether the law provides direct protection or refers the parties to the general rules of contract and the policy.[26]

The first structure consists of direct or quasi-direct actions by the injured party against the insurer where the policy or a special statutory provision directs the insurer's obligation toward the person entitled to compensation. This structure is not confined to one field. It may also arise under employers', contractors', and professional liability policies where the policy terms or the nature of the insurance permit the injured party to claim directly against the insurer or to join it in the proceedings. In such cases, the injured party's action becomes a claim for performance of a defined guarantee. The dispute generally concerns proof of the damage and its connection with the insured activity, the amount of compensation, the policy limit, and the exclusions. The underlying liability nevertheless remains governed by the general rules, including Article 202 of Iraqi Civil Code No. 40 of 1951 in relation to bodily harm and Article 1 of the Iranian Civil Liability Act of 1339 SH.[27]

In practice, this structure is strengthened by the priority accorded to compensation and by treating the insurer as the principal paying entity in compulsory insurance. The injured party therefore tends to direct the action against the insurer as the party most capable of prompt payment and as the entity required by Article 2(2) of Law No. 52 of 1980 to pay compensation in a lump sum. Proceedings against the person who caused the accident may nevertheless remain necessary to establish the factual elements or determine who should ultimately bear the burden. The settlement restriction in Article 6 of the same law also influences the form of the action, because preventing the insured from making or accepting an offer without the insurer's consent makes claims management part of the compensation system and strengthens the insurer's procedural role as manager of the settlement rather than merely a subsequent payer.[28]

The second structure consists of indirect actions whose foundation is an ordinary civil liability action brought by the injured party against the insured as the original debtor of compensation under Iraqi Civil Code No. 40 of 1951. The insurance contract neither creates liability nor transfers the status of actor or custodian; it merely redistributes the financial burden of payment. The injured party's action against the insured therefore remains the normal route in voluntary insurance and in situations outside the scope of compulsory legislation. Once liability is established or the claim conditions are satisfied, the insured acquires a contractual action against the insurer seeking coverage within the policy limits.[29]

This structure also produces an action by the insured against the insurer seeking coverage as an action for contractual performance governed by the policy terms and the principle of good faith. Functionally, it rests on Article 983 of Iraqi Civil Code No. 40 of 1951, which defines insurance as an obligation on the insurer to provide financial performance upon occurrence of the insured event in return for premiums.

Such an action is therefore commonly connected with duties of notice, cooperation, and refraining from unilateral settlement where required. It also requires proof that the event matured into a compensation obligation owed by the insured to a third party and that the claim falls within the insured risk in terms of time, place, type of liability, and policy limit.[30]

Recourse and subrogation actions may additionally be brought by the insurer after payment to preserve the equilibrium of the system and prevent insurance from becoming immunity. In construction liability, the insurer may proceed against a subcontractor or supplier responsible for a defect; in professional

26 Mustafa Hasan Yahya Al-Aziz, Compulsory Insurance against Civil Liability Arising from Motor Vehicle Accidents (Egypt: Arab Center for Studies, Publishing and Distribution, 2023), p. 71.

27 Haitham Al-Masawra, Compulsory Civil Liability Insurance for Motor Vehicle Accidents: A Comparative Study (Beirut: Zain Legal Publications, 2008), p. 73.

28 Fouad Al-Mousawi, Commentary on Insurance Business Regulation Law No. 10 of 2005 (Baghdad: Dar Al-Ahliyya, 2005), p. 51.

29 Mohammed Hasan Qasim, Introduction to the Study of Law: The Legal Rule (n.p.: Al-Halabi Legal Publications, 2006), p. 79.

30 Zainab Khalil Hashim Al-Zubaidi , Alaa Abdel-Karim Al-Baldawi , "Compensation Claims in the Compulsory Motor Insurance Portfolio: An Applied Study." Maysan Research Journal 13, no. 25 (2017)), p. 473.

liability, it may proceed against another person who committed an independent fault; and in industrial liability, it may proceed against a material producer or machine operator who was the true cause of the damage. Article 30 of the Iranian Insurance Act of 1316 SH likewise establishes the insurer's subrogation to the insured's rights against the person responsible for the accident, to the extent of the amount paid. These subsequent actions redistribute the burden after protection has been provided. They are supplemented by actions seeking interpretation of the scope of coverage and actions concerning the existence or absence of an exclusion. Litigation in this field therefore balances a route designed to secure prompt compensation with another route designed to establish liability and recourse without obstructing the injured party's rights.

Part One: Direct Action by the Injured Party against the Insurer

Under Iraqi law, a direct action is based on the proposition that the injured party has an enforceable right against the insurer whenever the law makes the insurer's duty to compensate independent of proof of the insured's fault or financial solvency. The action is then no longer merely an application of a private contract between insurer and insured, but a statutory avenue protecting the injured party against insolvency, delay, and the complexity of proving fault. The centre of gravity moves from the traditional liability relationship toward a socially protective guarantee defined by statute. Its function is to reduce the gap between the occurrence of damage and the receipt of compensation while leaving open the later redistribution of the burden through recourse and subrogation.[31]

Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980 clearly establishes this route. Article 2(1) requires the insurer to compensate death or bodily injury sustained by any person as a result of the use of a vehicle in Iraqi territory, irrespective of proof of fault. The governing criterion is therefore the occurrence of damage and its connection with the use of the vehicle within the territory, not proof of the driver's negligence in every case. Article 2(2) further requires the compensation to be paid in a lump sum to the person entitled to it and prohibits payment by instalments or as a periodic income. This rule prevents the protection from being diluted through prolonged instalments or periodic payments that reduce the real value of the award and confirms that the purpose of the direct action is prompt and disciplined payment rather than negotiated arrangements prejudicial to the injured party.[32]

This framework is reinforced by statutory control of settlement procedures intended to protect the stability of the right and prevent manipulation of the relationship between the injured party and the insured. Article 6 of Law No. 52 of 1980 prohibits the insured from making or accepting any offer concerning compensation of the injured person without the insurer's written consent and provides that a settlement concluded without such consent is not binding on the insurer. Consequently, the injured party bringing a direct action is not bound by a private settlement imposed by the insured or signed under pressure, while the insured cannot create a new obligation for the insurer beyond the scope of the guarantee. The direct action thus remains connected with the insurer's professional decision in managing and evaluating the claim, while preserving the injured party's strong position against attempts to diminish the right to compensation.[33]

These rules also determine the defences that the insurer may raise against the injured party. Their scope is generally confined to matters concerning the insured risk and the limits of the guarantee established by the policy or statute. Internal disputes between insurer and insured should not, in principle, be converted into barriers to reparation. A direct or quasi-direct action therefore involves a composite but confined dispute: whether damage connected with the insured activity occurred, whether compensable civil liability exists, whether the conditions of entitlement are satisfied, and what amount is payable within the policy limit. Questions concerning internal fault among jointly liable parties or the insured's breach of cooperation duties will generally remain matters for subsequent recourse or for a defence based on the boundaries of coverage and should not take precedence over the injured party's right where the statute or policy is intended to protect that party.[34]

31 Mohammed Azmi Al-Bakri, Practical Problems in Compulsory Motor Accident Compensation Insurance Law (Cairo: Dar Mahmoud for Publishing and Distribution, 2018), p. 41.

32 Mohammed Taha Al-Bashir, op. cit., p. 167.

33 Abu Ubaid Abbasi, The Duty to Inform in Contracts: A Study in the Protection of Contracting Parties and Consumers, 1st ed. (Marrakesh, Morocco: National Printing and Stationery House, 2008), p. 81.

34 Iyad Ahmed Al-Sari, Civil Liability for Motor Vehicle Accidents under Compulsory Insurance Law and the Civil Code (Baghdad: Dar Al-Kutub Al-Qanuniyya, 2023), p. 101.

Under Iranian law, the direct action transforms the injured party from a creditor solely of the person who caused the accident into a holder of an enforceable procedural right against the guaranteeing entity whenever the event falls within compulsory insurance. The legislation does not treat insurance as a closed contractual relationship between insurer and insured, but as a protective mechanism with a social function in the field of road-traffic risks. The direct action therefore shortens enforcement, neutralises the risks of insolvency and delay, and removes the burden of first suing the driver and then pursuing execution. This approach is clearly reflected in the right of the injured person to apply directly to the insurance company or the compensation fund under the Iranian Compulsory Insurance Act of 1395 SH, demonstrating that the guarantee is directed in purpose toward the injured party and not solely toward the insured.[35]

The procedural structure of the direct action in Iran is reinforced by rules that both empower the injured party and regulate the proceedings so that protection is not emptied of substance. The 1395 SH Act provides that, where litigation is necessary, the action is to be brought jointly against the insurer and the person who caused the accident. This enables the court to determine liability and assess the damage while simultaneously ordering the guaranteeing entity to pay within the limits of coverage, without allowing disputes between insurer and insured to obstruct reparation. The legislation further protects the injured party by denying effect to settlements or consensual arrangements accepting compensation below the statutory benefits. This safeguards the direct action against erosion of minimum rights caused by need or unequal bargaining power, while the driver's criminal liability remains an independent deterrent consequence unaffected by insurance.[36][37]

The Iranian direct action therefore complements rather than displaces the indirect action, because liability insurance does not itself create civil liability; it regulates its financial consequences and redistributes the burden of reparation. In compulsory insurance, the injured party may focus on obtaining compensation directly from the insurer or the fund without detailed litigation concerning the relationship with the insured in some cases. Nevertheless, the person who caused the damage may need to be sued or joined where the claim exceeds coverage, several persons are responsible, or the elements of attribution, causation, and judicial assessment require examination. Iranian law thus establishes a balanced formula: prompt payment through direct action, while preserving liability against the wrongdoer to maintain justice, prevention, and the rule that insurance must not become immunity.[38]

Part Two: Indirect Action by the Injured Party against the Insured

The indirect action rests on the traditional basis of civil liability. The injured party proceeds against the insured as the person responsible for the damage and seeks a judgment ordering compensation. The proceedings therefore focus on proving damage, causation, and legal attribution and on assessing compensation in light of the nature and circumstances of the harm. This is an original action concerning the source of the duty to compensate rather than the source of financial capacity. Its function is to identify the true debtor and define the extent of that debtor's obligation, not merely to locate an entity able to pay. It remains relevant even where insurance exists because insurance does not create liability but regulates its discharge.

This route remains available notwithstanding insurance because the insurance contract neither creates liability nor eliminates legal attribution; it guarantees financial performance once liability is established. The insured cannot rely on the existence of a policy to defeat the injured party's action or reduce the burden of proof. The insured must defend the merits through arguments such as absence of fault, interruption of causation, absence of damage, or an external cause. The injured party may continue to proceed against the insured where the object is to obtain a final judgment establishing liability and quantifying compensation.

35 Iraj Babaei, Insurance Law (Tehran: SAMT Publications, 1402 SH), p. 59. The Arabic original also repeats "p. 93," which appears to be a bibliographic inconsistency.

36 Hussein Ravandeh and Ali Heidarinia, "The Concept and Importance of Civil Liability Insurance in Compensation under Civil Procedure," National Conference on Law, Jurisprudence, and Culture, 1399 SH, p. 9.

37 Mohammed Ali Alinia, Civil Liabilities of Basic Insurers toward Insured Persons under Iranian Law, PhD dissertation, Payame Noor University, Graduate Studies Center, 1400 SH, p. 69.

38 Seyed Mohammed Hasan Malaekehpour Shoushtari, "The Nature and Foundations of Compulsory Civil Liability Insurance under Iranian Law," Biannual Journal of Legal Knowledge and Research, vol. 3, no. 1 (1393 SH), p. 124.

Insurance then operates at the enforcement stage or through a subsequent recourse claim, depending on the nature and scope of the policy. The roles are accordingly divided between an action establishing liability and an action enforcing the guarantee.

This route is particularly important where the loss falls outside coverage, is subject to a statutory or contractual exclusion, or exceeds the policy limit. In such cases, the injured party cannot rely exclusively on the insurance guarantee and must proceed against the insured as the original debtor. The insured may in turn be unable to join the insurer where an exclusion applies or the event is outside the insured risk. The indirect action is likewise important where the damage is material, moral, or composite in a form not fully covered by compulsory insurance in a particular sector, or where the award exceeds the policy limit. The excess remains owed by the insured, making the action against that party necessary to obtain full compensation beyond the policy.

The indirect action is also essential where the facts require allocation of contributory fault, identification of ultimate responsibility among several persons, or proof of causation in a technically complex dispute. Such cases cannot be resolved merely by establishing that an accident and damage occurred; they may require investigation and expert evidence concerning responsibility among a driver, owner, custodian, maintenance contractor, supervisory entity, or several vehicles. It may also be necessary to establish that the damage was the direct consequence of the act rather than of an external cause or the injured party's own fault. Proceedings against the insured therefore provide the forum for establishing the legal structure of the facts and identifying the party who must ultimately bear the burden. Insurance then reduces the burden of enforcement but does not replace the judicial determination of liability. In this way, the indirect action accords with civil liability as a system for distributing loss according to causation, fault, and custody.[39]

This route may result in the insured being ordered to compensate the injured party and subsequently claiming from the insurer the amount paid under the policy or pursuant to applicable recourse and subrogation rules. The judgment in favour of the injured party then becomes the basis of an internal relationship between insurer and insured, whether the insurer is joined in the original proceedings where procedural law permits or is sued separately after payment. The outcome depends on whether the loss falls within coverage and whether notice, cooperation, and non-settlement requirements were complied with. The indirect action also tests the insured's compliance with insurance obligations, because breach may permit refusal or reduction of coverage, while the insured's liability to the injured party remains as that of the original debtor.[40]

Article 10 of Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980 provides that, to the extent of the amount paid, the insurer is subrogated to the injured party's rights against the third party who is civilly responsible. This confirms that the action against the insured remains central to establishing liability, whereas the action against the insurer secures payment and recovery. Subrogation means that the system first compensates the injured party and then permits redistribution of the burden to the person ultimately responsible. Where the insurer pays under compulsory protection, it succeeds to the injured party's right of recourse against the person bearing final civil liability. Conversely, where the injured party sues the insured and obtains a judgment, the insured may claim against the insurer within the policy limits. The two actions therefore coexist with different functions: one establishes the right and the other guarantees enforcement. The indirect route remains an essential component of litigation even within compulsory insurance systems.[41]

In Iran, the indirect action is likewise founded on the general rules of civil liability and remains the principal route for establishing liability against the person who caused the damage. Insurance does not alter the fact that the debtor of compensation is the person against whom the elements of attribution are established. Article 1 of the Iranian Civil Liability Act of 1339 SH provides that a person who unlawfully causes material or moral damage to another intentionally or through lack of due care must make reparation. The action therefore begins by requiring the wrongdoer to repair the harm before examining the sources of financial capacity. The injured party may sue the insured to establish intent, lack of due care, or another

39 Mahdi Qutaiba and Hussein Abdullah Al-Kilabi, "Liability of the Possessor of Mortgaged Property under an Insurance Mortgage," Journal of Legal Sciences (Baghdad, 2022), p. 93.

40 Israa Salih Dawood, Civil Liability Insurance in Construction Contracts: A Comparative Study, master's thesis, University of Mosul, 2007, p. 117.

41 Munim Al-Khafaji, Towards an Effective Iraqi Insurance Sector: Challenges and Solutions (London: Iraqi Economists Network, 2020), p. 83.

applicable basis of attribution and to determine the amount of compensation in light of the nature and circumstances of the loss. This remains an action establishing the right even where actual payment is expected from the insurer, because a judgment against the insured establishes the essential element of civil indebtedness and its limits. The indirect action is therefore not a secondary option, but an instrument for determining liability and defining the extent of the duty to compensate.[42]

The substance of the Iranian indirect action places the burden of proof on the elements of liability. The injured party must first prove damage, then causation, and then attribution under the standards of intent, lack of due care, or any other legal basis applicable to the case. Recoverable loss includes material damage such as destruction of property, loss of earnings, and expenses, as well as moral damage where its requirements are established and it can be judicially assessed, because Article 1 of the 1339 SH Act extends to both categories. This route is particularly important in technical cases requiring medical, engineering, or traffic expertise, because expert evidence determines the degree of fault, causation, and compensable damage. Proceedings against the insured allow the court to hear the defence, evaluate conduct, and determine contributory responsibility, which is difficult if the dispute is confined solely to policy limits. The indirect action is thus the primary procedural framework for constructing the judicial facts upon which compensation is based.

Insurance neither removes the insured from these proceedings nor reduces that person to a nominal defendant, because insurance is a subsequent financial guarantee rather than a source of liability. The injured party's right to sue the insured therefore remains even where a valid policy exists. This principle is also reflected in Article 4 of the Iranian Compulsory Insurance Act for Third-Party Losses Arising from Motor Vehicle Accidents of 1395 SH, which permits an action, where necessary, against both the insurer and the person who caused the accident. The wording recognises dual proceedings where required, because determination of liability may depend on the wrongdoer's participation in examining facts, defences, and attribution. The action against the insured remains the primary route for fixing the final amount of disputed damage, while the insurer acts as the paying entity within coverage. The legal structure therefore treats determination of the right as logically prior to enforcement of the guarantee, even where payment may in practice be made quickly.[43]

The need for an indirect action becomes more pronounced where the event falls outside insurance, coverage is limited, or exclusions arise. This includes professional liability, construction liability, custodial liability, or industrial liability where no effective policy exists or the policy does not cover the event. It also arises where the injured party's claim involves several persons, such as an owner, contractor, maintenance provider, supervising engineer, producer, distributor, and custodian. Recourse against the insured is then necessary to establish the source of liability and the full amount of compensation, after which the insurer performs only to the extent provided by an effective and applicable policy. The policy limit has the further practical consequence of making the indirect action necessary even where coverage exists, because insurance does not constitute an unlimited guarantee. If the court awards compensation exceeding the maximum insured amount, the difference remains payable by the insured as original debtor. The injured party cannot recover that difference from the insurer unless the policy provides a higher limit or additional coverage. Certain financial obligations, such as criminal fines and punitive financial sanctions, are generally uninsurable because they serve deterrent and personal punitive functions, leaving the insured solely responsible outside the guarantee. Recourse after payment also preserves the insured's ultimate responsibility where the insurer pays the injured party and then proceeds against the insured for serious misconduct, fraud, or material breach. In this sense, the indirect action balances effective recovery with the rule that insurance must not become immunity.[44][45]

Indirect actions are especially frequent where several causes and contractual and tortious relationships overlap, because legal attribution requires detailed analysis of the facts. The insured may be a contractual carrier and simultaneously owe tort duties to a non-contracting third party; an employer's liability may overlap with that of an employee; and custodial liability may overlap with the liability of the

42 Abdullah Khodabakhshi, op. cit., p. 39.

43 Iraj Babaei, Insurance Law (Tehran: SAMT Publications, 1402 SH), p. 133.

44 Seyed Mohammed Daryabari, "Foundations of the Liability of Webpage Designers," New Developments in the Insurance World, no. 70 (Farvardin 1383 SH), p. 8.

45 Hamidreza Kaveh, Risk Management and Insurance (Tehran: Sharif Publications, 1393 SH), p. 347.

direct wrongdoer. In such situations, the judgment must identify the person initially liable, determine that person's contribution to the fault or the applicability of the lack-of-due-care standard, and assess compensation for each category of damage. This structure requires substantial reliance on expert evidence, documents, official reports, and technical presumptions. The insured's participation is therefore indispensable notwithstanding that the insurer may ultimately pay. The Iranian indirect action also performs a regulatory function by preventing imprecise generalisation in attributing liability and preventing the guarantee from being charged with losses outside its scope.[46]

From an analytical perspective, the indirect action ultimately connects with subrogation and recourse as a later stage that redistributes the burden after the injured party has been protected. Article 30 of the Iranian Insurance Act of 1316 SH subrogates the insurer, to the extent of the amount paid, to the insured's rights against the person responsible for the accident or loss. After payment, the injured party's right therefore passes to the insurer, which may claim against the person bearing ultimate responsibility. In this context, the insured must preserve the grounds and evidence supporting recourse, because conduct that extinguishes or weakens the recourse action may create liability toward the insurer and disturb the balance of the insurance portfolio. This demonstrates the value of the indirect action from the outset: it establishes the facts, preserves the evidence, and allocates responsibility in a manner that facilitates subrogation after payment by the insurer. The litigation relationship is thus twofold: it begins by establishing the right against the insured and commonly ends with payment by the insurer followed by recourse reallocating the burden to the person who caused the damage in accordance with the law.

Subsection Two: Jurisdiction and Limitation of Civil Liability Insurance Claims In Iraqi and Iranian Law

This subsection examines the procedural rules governing subject-matter and territorial jurisdiction, the time limits applicable to insurance litigation, and the effect of limitation on the stability of legal relationships. These rules are important because they must balance the protection of the right to claim compensation against the need to stabilise obligations and prevent them from remaining indefinitely unresolved.

Part One: Judicial Jurisdiction

Under Iraqi law, jurisdiction in civil liability insurance litigation is determined by the dual source of the asserted right: the insurance contract on the one hand and the obligation to compensate damage on the other. Civil courts have subject-matter jurisdiction where the action concerns enforcement of the insurer's obligation to pay the insured sum or compensation, or disputes over premiums, policy conditions, and defences arising from the policy, in accordance with Iraqi Civil Procedure Law No. 83 of 1969. Civil courts likewise have jurisdiction where the action is brought against the insured as the person responsible for the damage and the injured party seeks a compensation judgment, while insurance is subsequently invoked as a guarantee of payment rather than as the source of liability.[47] Territorial jurisdiction is determined by such connecting factors as the defendant's domicile, the head office or branch of the insurance company, the place of performance, and the place of the accident, depending on which factor most effectively facilitates the collection of evidence and the prompt resolution of the dispute. The place of the accident assumes particular importance where the damage requires technical, medical, or traffic evidence because it brings the court closer to the sources of proof. Unity of proceedings is strengthened where insurer and insured are joined in a single action, requiring the court to organise the claims so as to prevent inconsistent judgments and promote procedural economy.[48] Special provisions governing compulsory motor insurance, particularly Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980, remain relevant to the injured party's status, settlement restrictions, and recourse, and thereby influence the identification of the proper parties and relief before the competent court.[49]

Under Iranian law, disputes arising from civil liability insurance fall, as a general rule, within the jurisdiction of the general civil courts because they concern the establishment or enforcement of a financial obligation. The action may therefore be contractual between insurer and insured, may be a liability action

46 Ahmed Mahdawi and Mohsen Rostami, op. cit., p. 13.

47 Samir Abd al-Sayyid Tanagho, Personal and Property Insurance, Alexandria, Egypt: Manshat al-Ma'arif Publishing House, 2023, p. 127.

48 Zainab Khalil Hashim Al-Zubaidi , Alaa Abd al-Karim al-Baldawi, op. cit., p.470.

49 Hossam al-Din Kamel al-Ahwani, op. cit., p. 133.

between the injured party and the insured, or may combine both forms where the insurer is joined with the person who caused the damage. This multiplicity requires jurisdictional rules capable of preventing fragmentation among several courts and ensuring prompt adjudication. The point is particularly important in compulsory insurance, where victim protection and accelerated compensation are central objectives. Jurisdiction consequently forms part of the effectiveness of protection rather than a merely formal matter and must be assessed by reference to the real connection among the contract, the harmful event, the parties' legal centres, and the place of performance.[50]

Territorial jurisdiction is initially determined by the defendant's domicile under Article 11 of the Iranian Civil Procedure Act of 1379 SH. This connecting factor is useful in actions brought by the injured party against the insured because it links the court to the legal centre of the person against whom compensation is claimed and ordinarily to the location of that person's assets. It also applies to actions by the insured against the insurance company and to recourse actions, because an insurance company, as a legal person, has a legal domicile and administrative centre that provide a stable jurisdictional connection. The domicile criterion promotes reasonable predictability for the parties and reduces preliminary disputes over the competent court. It accords with the principle that proceedings should not be transferred to a court lacking a genuine connection with the defendant, as such transfer raises litigation costs, impairs the defence, and delays an enforceable judgment.[51][52]

The relevance of the defendant's domicile is especially clear where the insurance company is the principal defendant, because the insured or injured party may hesitate between suing at the company's head office or at the branch concerned. The domicile criterion resolves that uncertainty by referring the dispute to a stable legal centre, while allowing reliance on other connecting factors where their statutory conditions are satisfied. This raises the question of how the domicile of a legal person is to be identified: by its administrative headquarters, its registered office, or the branch that issued the policy. In practice, the legal and administrative centre is commonly treated as the primary jurisdictional reference where there is no valid agreement specifying another place. The rule is also important for valid service of process, since service at the company's legal domicile ensures orderly proceedings and prevents objections based on invalid notification. Territorial jurisdiction thus operates as a guarantee of procedural regularity before functioning as a mechanism for selecting the court.[53]

In contract-based actions, territorial jurisdiction is broadened by the particular nature of insurance as a contract performed at identifiable places. Article 13 of the Iranian Civil Procedure Act of 1379 SH permits proceedings to be brought at the place where the contract was concluded or where the obligation is to be performed. An action by the insured seeking indemnity or payment of the insured sum may therefore be brought before the court of the place where the policy was issued or the place designated by the policy or the insurer's internal arrangements for payment. This broader choice is justified because the insurer's obligation is an obligation to pay and payment is connected with a specific place, policy file, competent branch, and settlement mechanism. The rule reduces litigation costs and brings the court closer to the documents and personnel holding premium records and coverage details.[54]

This wider jurisdiction remains subject to the existence of a genuine factual connection between the court and performance of the obligation, so that choice of forum does not become an evasion of jurisdictional rules. The place of contracting should not be applied formally merely because a location is printed in the policy where the actual negotiations, issuance, and performance occurred elsewhere. The place of performance is particularly significant in insurance contracts because performance is commonly administered through a particular branch that receives notices, assesses the loss, and issues the payment decision. The competent court may therefore be connected with the branch that opened the claim file and with the place where the insured or injured party received notice of acceptance or rejection. This facilitates proof concerning interpretation of policy terms, premium calculation, and coverage limits, because the court

50 Nasser Katouzian, Civil Law within the Current Legal Order, Tehran: Mizan Publications, 1387 SH (2008), p. 393.

51 Ahmed Mahdawi & Mohsen Rostami, op. cit., p. 10.

52 Irandokht Nazari, The Civil Liability of Property Owners, PhD Dissertation, Faculty of Law, University of Tehran, 1379 SH (2000), p. 109.

53 eyyed Saeed Kashfi, "Preventing Unintentional Road Traffic Crimes with Special Reference to the Compulsory Insurance Law for Third-Party Losses Arising from Motor Vehicle Accidents," Police Science Journal, No. 81, Vol. 4, 1397 SH (2018), p. 7.

54 Ayat Karimi, "Problems of Third-Party Liability Insurance," Insurance Industry Quarterly, No. 9, 1378 SH (1999), p. 11.

situated near the centre of performance can more readily summon employees and experts and examine the relevant records.

Jurisdiction acquires a distinctive dimension in civil liability insurance actions because of the multiplicity of parties and the direct or indirect relationship of the injured party to the insurance guarantee. In professional, industrial, or construction liability litigation, the insurer, insured, and injured party may be joined together with a subcontractor or the actual custodian of the instrumentality. The resulting composite proceedings address two elements simultaneously: the insurer's obligation to pay within the policy limits and the liability of the insured or another person for the damage. Jurisdiction may therefore depend on the defendant's domicile, the place of performance, or the place of the harmful act according to the characterisation of the action and the governing procedural rules. Joinder promotes procedural economy and prevents inconsistent judgments concerning the same event.[55]

In this context, the place where the damage occurred is especially important as the centre of evidence, including official records, technical expert reports, and medical, engineering, or industrial documentation. Where an accident occurs at a construction site, industrial facility, or hospital, the local court is closer to the physical evidence, witnesses, authorities that prepared the reports, and experts who inspected the cause of the damage. This accords with procedural economy because transporting experts and witnesses over long distances increases delay and may impair the accuracy of inspection. The criterion also interacts with rules on multiple defendants. Where the insurer is located in one city, the operator of the activity in another, and the injured party in a third, the place of damage may provide the most practical forum for concentrating the elements of the dispute and connecting the proceedings with the factual centre of proof.

From an analytical perspective, jurisdiction is also connected with the administrative claims process preceding litigation, which is particularly important in Iran. Article 30 of the Compulsory Insurance Act of 1395 SH grants injured third parties the right to apply directly to the insurance company or the Bodily Injury Compensation Fund upon submission of the required documents. If a dispute arises concerning the amount of compensation or the scope of coverage, the claim proceeds to court. The place of performance then becomes a practical jurisdictional criterion because the file, supporting documents, and the company's decision are generally held by a particular branch. This also complements the possibility of joining the insurer and the person who caused the accident in one action, thereby requiring a court capable of consolidating connected claims and preventing inconsistent judgments. Jurisdiction in Iranian civil liability insurance litigation should accordingly be understood as a network of connecting factors: the defendant's domicile, the place of contracting, the place of performance, the place of the accident, and the rules governing joinder. Together, these factors balance procedural stability with effective compensation.

Part Two: Limitation of Civil Liability Insurance Claims

Limitation in this field depends on identifying the nature of the right asserted. The injured party's action against the insured is governed by civil liability rules, whereas the insured's action against the insurer arises from the insurance contract or a specific statutory obligation. Contractual actions and claims concerning premiums, cooperation, and notice are governed by the general rules of Iraqi Civil Code No. 40 of 1951, subject to special periods established for particular branches of insurance. Compulsory motor insurance is distinctive because it imposes periods and procedural requirements before or during litigation that affect entitlement. Article 9 of Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980 provides that compensation for death or bodily injury caused by an unidentified vehicle is conditional upon registration of the accident with the police within seven days of its occurrence or discovery and confirmation by an official report. The same article provides that the right to claim compensation is forfeited where the injured party fails to notify the insurer within thirty days of learning of the accident, subject to an ultimate limit of one year from the date of the accident. It further makes compensation contingent upon a final judicial judgment. This structure demonstrates a legislative balance between victim protection and the need to prevent claims from remaining open without temporal control, especially where identification of the responsible person and verification of the circumstances are difficult. Limitation in Iraqi civil liability insurance litigation should therefore not be treated as one uniform period, but as a variable regime determined by the nature of the action and by whether general rules or special compulsory motor insurance

55 Abdollah Khodabakhshi Shalmazari, The Impact of Insurance on Civil Liability Law, Master's Thesis in Private Law, Faculty of Law, University of Tehran, 1381 SH (2002), p. 98.

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provisions apply.[56][57]

Article 36 of the Iranian Insurance Act of 1316 SH establishes a special two-year limitation period for insurance actions. The rule is based on the need to stabilise the insurance relationship, which rests on the aggregation and temporal distribution of risks within a single financial portfolio. The legislature seeks to prevent the insurer's obligation from remaining indefinitely open, as this would disrupt reserve calculations, undermine accurate pricing, and increase disputes over events whose evidence deteriorates with time. The provision applies to actions arising from insurance as a contract and guarantee rather than to a merely moral claim. Limitation is therefore an organisational mechanism inherent in the nature of insurance. The insured, beneficiary, or injured party, where a direct right is recognised, must consequently act within a defined temporal window in order to preserve the action. [58]

Limitation assumes particular importance in liability insurance because damage may develop over time, as with progressive disability, treatment costs extending over several months, or loss of earnings that becomes apparent gradually. This development may tempt the injured party or insured to delay proceedings until the medical or financial position is complete. Article 36, however, makes delay a procedural risk that may render the action time-barred. The right should therefore be managed in two stages: first, the claim should be formally asserted and the file opened within the prescribed period; second, assessment of the full damage may be completed through expert evidence and proof. This method reconciles the need for technical evaluation with temporal discipline and prevents lengthy negotiations or delayed reports from causing loss of the action.[59]

A difficult question concerns the commencement of the limitation period because the accident may occur on one date, liability may be established later by judgment or expert evidence, and the amount of damage may be determined only thereafter. Some practical approaches treat the accident as the event giving rise to the claim because it alerts the parties to the risk and makes performance potentially due. Other approaches focus on the date when an actual claim materialises or when the claimant becomes aware of its essential elements, because liability may develop progressively. This divergence calls for procedural caution: unless a statutory provision or settled judicial approach establishes otherwise, the date of the accident should be treated as the earliest potential commencement date. Such caution protects the claimant against an unexpected limitation defence and accords with the function of limitation as an incentive to act promptly rather than to delay.[60]

A further difficulty arises where the event is the subject of settlement negotiations or correspondence with the insurance company, because the parties may assume that negotiations alone preserve the right. In practice, negotiations unsupported by a legally effective step may expose the claim to limitation unless the period is suspended or interrupted under the general procedural rules. The prudent course is therefore to document the claim in writing, identify its date and content, and commence proceedings if settlement fails, while allowing the elements of compensation to be completed later through expert evidence. This approach preserves the action within the limitation period without preventing amendment or elaboration of the relief as medical or technical reports become available. Some liability actions require lengthy expertise, and early commencement ensures that expert examination takes place under judicial supervision within an orderly process. Limitation thereby becomes an incentive for effective file management rather than merely an obstacle.[61]

Limitation periods applicable to insurance and civil liability actions may differ according to the legal basis of the claim and the defendant pursued. The injured party's action against the insured rests on the Iranian Civil Liability Act of 1339 SH, particularly Article 1, which requires reparation of material and moral damage caused without lawful justification. By contrast, the insured's action against the insurer, and the

56 Israa Saleh, op. cit., p. 58.

57 .Anwar al-Amrousi, Social Insurance Law No. 63 of 1964 together with Its Explanatory Memorandum, Cairo: Dar al-Thaqafa Publishing House, 1966, p. 73.

58 Mohsen Izanloo, "A Critical Analysis of the Act Amending the Compulsory Insurance Law," Law Quarterly of the Faculty of Law and Political Science, No. 4, 1387 SH (2008), p. 16.

59 Assadollah Emami, "The Role of Will in Contracts," Haq Quarterly, Vol. 4, 1364 SH (1985), p. 11.

60 Iraj Aliabadi, "The Bodily Injury Compensation Fund," Central Insurance of Iran Quarterly, 2nd ed., No. 4, 1366 SH (1987), p. 19.

61 Ali Reza Shabahang, "An Examination of the Deficiencies of Professional Civil Liability Insurance for Physicians in Iran," Insurance Research Journal, No. 65, 1381 SH (2002), p. 88.

injured party's action against the insurer where a direct right exists, are founded on insurance law and are governed by Article 36 of the Insurance Act of 1316 SH. Where insurer and wrongdoer are joined in one proceeding, the court addresses two distinct legal bases: liability and insurance coverage, each with potentially different defences and evidentiary requirements. Preservation of the right against the insurer therefore does not necessarily preserve the right against the insured, or vice versa. Distinguishing the applicable periods is not a formal luxury but a condition of effective protection.[62]

Compulsory motor insurance reflects a particular balance between protection of the injured party and temporal discipline. Article 30 of the Compulsory Insurance Act for Third-Party Losses Arising from Motor Vehicle Accidents of 1395 SH strengthens the direct administrative route against the insurance company or the Bodily Injury Compensation Fund upon submission of the required documents. This administrative process reduces the burden on courts but does not eliminate the need to comply with applicable periods, because a dispute may proceed to court where compensation or coverage is contested. The Fund established under Article 21 prevents bodily-injury compensation from being lost because payment is unavailable or coverage is deficient, but it does not transform the obligation into a right without temporal limits. The injured party must therefore pursue the claim promptly and preserve it through the available mechanisms before the action becomes time-barred. The purpose is to make statutory protection practically enforceable rather than merely declaratory. [63]

From an analytical perspective, protective provisions complement limitation rules by preventing contractual reduction of statutory rights, but they do not abolish limitation as a general temporal restriction. Article 11 of the 1395 SH Act invalidates any policy term that diminishes statutory benefits and prohibits obtaining a settlement declaration from the injured party accepting less than the prescribed compensation. This prevents standard-form conditions or bargaining pressure from replacing the statutory guarantee. Nevertheless, the two-year limitation rule in Article 36 of the 1316 SH Insurance Act continues to govern insurance disputes as a temporal organising principle. Iranian law therefore combines two parallel mechanisms: substantive protection against diminution and temporal discipline preventing obligations from remaining indefinitely open. Effective civil liability insurance litigation consequently requires a dual understanding of both the protective rules and the temporal mechanisms governing the hearing of the action.

Part Three: Similarities and Differences of Civil Liability Insurance Claims Between Iraqi and Iranian Law

This part compares the two legal systems in terms of the types of actions, the procedural positions of the parties, the extent to which policy terms may be invoked, and the rules of jurisdiction and limitation. It also explains how differences in legislative policy affect protection of the injured party and the stability of the insurance market.

First: Similarities of Civil Liability Insurance Claims Between Iraqi and Iranian Law

The procedural structure of civil liability insurance claims in the two systems converges when such claims are viewed primarily as a means of securing reparation rather than merely as contractual litigation. Their common starting point is that liability insurance imposes a financial obligation on the insurer that is activated when the insured risk materialises and civil liability is established against the insured. In both systems, the insurance contract does not create the harmful event and does not replace the rules governing attribution of liability; instead, it supplies a financial guarantee for the consequences of liability within the scope of coverage. This shared structure produces a three-party relationship involving the insurer, the insured, and the injured party, even though the injured party did not participate in concluding the policy. The practical function of proceedings is therefore to establish liability, determine the quantum of compensation, and identify the extent to which the insurer must satisfy that amount.

The two systems are also similar in their classification of the actions arising in this field. Both recognise an action pursued by the injured party against the guaranteeing entity, an action against the person who caused the damage, and a recourse action arising after payment that redistributes the ultimate financial burden. This classification reflects the distinction between the source of liability and the source of insurance coverage. The injured party's action against the wrongdoer is based on civil liability, whereas the action

62 Ahmed Mahdawi and Mohsen Rostami, op. cit., p. 12.

63 Safa Taherian and Mahsa Mashhadi, "An Examination of the Legal Regime Governing Liability Insurance in Employers' Civil Liability," Twelfth National Conference on Law, Social and Human Sciences, Psychology and Counselling (1402 SH), p. 15.

against the insurer is based on the statutory or contractual guarantee. Recourse and subrogation arise only after payment and are intended to prevent double recovery and to place the ultimate burden on the person who should bear it under the law or the policy. The sequence of these actions demonstrates that both systems preserve the original liability while using insurance to facilitate effective compensation.

Direct actions under civil liability insurance in both countries are similar in purpose and in the legal position accorded to the injured party, although the scope of the special statutory provisions differs. In Iraq, protection is founded principally on the general rules of civil liability and on special provisions, especially Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980. In Iran, the injured party's position is strengthened by the Insurance Act of 1316 SH and, more specifically, by the Compulsory Insurance Act for Third-Party Losses Arising from Motor Vehicle Accidents of 1395 SH. In both systems, the purpose of the direct action is to prevent compensation from depending solely on the solvency of the person responsible for the damage. The insurer thereby becomes a financially capable defendant within the limits of coverage, while the injured party retains the right to proceed against the insured where the compensation exceeds the policy limit or where coverage is unavailable.[64]

The indirect route, under which the injured party sues the insured as the original debtor of compensation, is likewise similar in both systems. In Iraq, this action remains based on the general rules of civil liability contained in Iraqi Civil Code No. 40 of 1951, with the possibility of joining the insurer or subsequently invoking the insurance guarantee. In Iran, the same route is founded on the Civil Liability Act of 1339 SH and on the general principles of attribution and causation. In both jurisdictions, insurance does not extinguish the insured's liability or transfer the status of wrongdoer to the insurer. Rather, it covers the financial effects of that liability. The injured party must therefore prove damage, causation, and the legal basis for attribution, while the insurer may dispute coverage, policy limits, or exclusions without denying the underlying liability where it has otherwise been established .[65]

The rules of judicial jurisdiction also reveal substantial similarity because insurance disputes are generally governed by ordinary civil procedure, subject to limited particularities arising from the nature of the risk or the multiplicity of parties. In Iraq, the competent court is determined under Iraqi Civil Procedure Law No. 83 of 1969 by reference to such connecting factors as the defendant's domicile, the place of performance, and the place where the damage occurred. In Iran, Articles 11 and 13 of the Civil Procedure Act of 1379 SH similarly rely on the defendant's domicile, the place where the contract was concluded, and the place of performance. Both systems seek to connect the proceedings with a court that has a genuine relationship to the dispute and can efficiently obtain evidence. Joinder of the insurer and the insured in one proceeding is therefore useful in both systems to avoid conflicting judgments and repeated litigation arising from the same event.

A further similarity concerns limitation and the possible loss of the right of action where statutory or contractual time requirements are not observed. Under Iraqi law, civil liability insurance claims are governed by general limitation rules and by any special periods applicable to the relevant category of insurance, with early notification remaining important so that the insurer may investigate the accident and preserve evidence. Iranian law follows the same general rationale, although Article 36 of the Insurance Act of 1316 SH expressly establishes a two-year limitation period for insurance actions. In both systems, temporal rules seek to balance the claimant's right to compensation against the insurer's legitimate interest in the stability of its financial obligations and the preservation of reliable evidence. Neither legal system treats negotiations alone as a safe substitute for a legally effective step that interrupts or preserves the claim.

Finally, both systems recognise recourse and subrogation after the insurer has paid compensation. In Iraq, Article 10 of Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980 provides that, to the extent of the amount paid, the insurer is subrogated to the injured party's rights against the third party who is civilly liable. Iranian law adopts the same general principle in Article 30 of the Insurance Act of 1316 SH, which permits the insurer, after payment, to exercise the insured's or injured party's rights against the person responsible for the loss within the limits of the amount paid. In both systems, subrogation prevents double recovery, restores the financial burden to the person ultimately responsible, and protects the technical

64 Jabbar Sabir Taha, Establishing Civil Liability for Unlawful Acts on the Element of Damage: A Comparative Study (Mosul: University of Mosul Press, 1984), p. 91.

65 Samar Abdul Qadir Assaf, The Legal Regime of Compulsory Civil Liability Insurance Arising from the Use of Motor Vehicles, 1st ed. (Amman: Dar Al-Raya for Publishing and Distribution, 2007), p. 128.

balance of the insurance portfolio. Recourse may also operate where the insurer is required to compensate the injured party despite a statutory or policy breach by the insured, while retaining the right to recover from the insured in the cases specified by law.[66]

Second: Differences of Civil Liability Insurance Claims Between Iraqi and Iranian Law

The differences begin with the nature of legislative intervention in defining the injured party's procedural position and the extent of the direct right against the insurer. In some Iraqi applications involving professional or industrial liability, the injured party's position remains closer to the general rules and may depend on first establishing liability against the insured before effectively invoking the insurance guarantee. Iranian legislation, particularly the 1395 SH Compulsory Insurance Act, adopts a more explicit protective structure by granting the injured party a direct administrative and judicial route against the insurer or, where appropriate, the Bodily Injury Compensation Fund. The Iranian framework consequently gives the injured party a more autonomous procedural position in compulsory motor insurance, whereas Iraqi protection is more closely connected with the structure of Law No. 52 of 1980 and with the procedural characterisation adopted by the competent court.

A second difference concerns settlement and the limits of the insured's authority to manage the dispute. Iraqi legislation expressly restricts settlement in Article 6 of Law No. 52 of 1980 by prohibiting the insured from making or accepting any offer concerning compensation without the insurer's written consent. This rule gives the insurer a central role in controlling settlement and protects it from admissions or agreements that may enlarge its obligation. Iranian law also recognises the insurer's interest in managing claims, but the 1395 SH Act places greater emphasis on preventing settlements that diminish the injured party's statutory entitlement. Article 11 invalidates terms or arrangements that reduce statutory benefits and prohibits obtaining a discharge for less than the legally prescribed compensation. The Iraqi rule is therefore oriented more directly toward control of the insured's conduct, whereas the Iranian rule is framed more clearly around protection of the injured party against an inadequate settlement.

The systems also differ in the periods governing proceedings and in the legal consequence of non-compliance. In Iraq, the applicable periods are distributed among general rules, special legislation, and, where valid, policy requirements. Certain policies or laws may require prompt notice so that the insurer can investigate, and the consequence of delay depends on the applicable legal basis and whether actual prejudice has resulted. Iranian law provides a clearer special rule in Article 36 of the Insurance Act of 1316 SH by prescribing a two-year limitation period for insurance actions. This greater statutory specificity may promote predictability, but it may also create difficulties where bodily injury develops gradually or where the claimant is engaged in lengthy settlement negotiations. Iraqi law is comparatively less unified, while Iranian law is more explicit but potentially stricter in its temporal consequences.[67]

A further distinction appears in judicial jurisdiction and in the relationship between the compensation action and criminal proceedings where the harmful conduct constitutes an offence. In Iraq, certain civil liability claims may be connected with the criminal case, particularly where the damage arises from a traffic offence, serious occupational injury, or another criminal act. The injured party may claim civil compensation before the criminal court within the limits permitted by criminal procedure, while the insurer's contractual obligation may require separate or joined consideration before the civil court. Iranian procedure also permits interaction between criminal findings and civil compensation, but compulsory insurance legislation strengthens the possibility of obtaining payment from the insurer through an administrative route without awaiting final resolution of every criminal aspect where the statutory documents are complete. Iranian law therefore tends to separate prompt compensation more clearly from the duration of criminal proceedings.

The structure of proceedings where several defendants are involved also differs, particularly in relation to whether the insurer and the person who caused the accident must be joined. Iranian compulsory insurance legislation treats the joinder of the insurer and the wrongdoer as a procedural option connected with the needs of the litigation, enabling a unified proceeding to determine attribution, compensation, and coverage. In Iraq, the procedural structure may vary according to whether the action is characterised as a direct statutory claim, a civil liability action against the insured, or a contractual claim under the policy. This may produce greater procedural fragmentation and require separate consideration of liability and insurance

66 Zainab Khalil Hashim Al-Zubaidi , Alaa Abd al-Karim al-Baldawi, op. cit., p. 472 .

67 Mun'im Al-Khafaji, op. cit., p. 117.

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coverage. The Iranian model is thus more explicit in facilitating a comprehensive action, while the Iraqi model remains more dependent on the particular legal basis pleaded.

Another difference lies in the role of a supplementary guaranteeing institution and its effect on the form of the action. Under the Iraqi model established by Law No. 52 of 1980, the National Insurance Company, or the entity entrusted with implementation, is the principal addressee of the statutory obligation. Iranian law adds a distinct institutional role for the Bodily Injury Compensation Fund under Article 21 of the 1395 SH Act. The Fund intervenes where bodily injury is not compensated because the vehicle is unidentified, uninsured, inadequately insured, or subject to other statutory obstacles. This provides the injured party with an alternative defendant or administrative payor and reduces the risk that compensation will fail because ordinary coverage is unavailable. The Iranian system therefore establishes a clearer supplementary compensation mechanism than the Iraqi statutory model examined in this research.

The differences ultimately support a general conclusion: civil liability insurance litigation in Iraq retains a more procedurally restrictive character in certain special situations, including uncertainty concerning the proper defendant, restrictions on settlement, and possible interaction with criminal jurisdiction. Iranian civil liability insurance litigation tends to construct a more autonomous position for the injured party through direct statutory remedies, defined time rules, and the supplementary role of the Bodily Injury Compensation Fund. This does not mean that Iranian protection is absolute or that Iraqi law lacks protective mechanisms. Rather, the distinction lies in legislative technique: Iraqi law relies more heavily on the interaction of general civil rules with special provisions, whereas Iranian law employs a more detailed statutory framework for compulsory third-party motor insurance.

Findings

The study demonstrates that the legal basis of civil liability insurance claims differs in its point of departure under Iraqi and Iranian law, although both systems converge on the ultimate objective of securing compensation. Under Iraqi law, the general rules of the Civil Code operate alongside special legislation, particularly Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980. Under Iranian law, the legal framework is more explicitly distributed among the Insurance Act of 1316 SH, the Civil Liability Act of 1339 SH, and the Compulsory Insurance Act for Third-Party Losses Arising from Motor Vehicle Accidents of 1395 SH. Despite these structural differences, both systems treat insurance as a mechanism for transferring the financial consequences of civil liability without extinguishing the original liability of the person responsible for the damage.

In both legal systems, the injured party’s action against the insured remains an original civil liability action because insurance neither abolishes the liability of the person who caused the damage nor transfers that liability itself to the insurer; rather, it covers its financial consequences. Under Iraqi law, the claim is governed by the general rules of contractual or tortious liability according to the source of the obligation. The same principle applies under Iranian law, where the injured party must establish the elements of liability against the insured unless special compulsory-insurance legislation provides a more protective regime.

The injured party’s direct action against the insurer is especially prominent in compulsory insurance, particularly in motor vehicle accidents, because legislative intervention is designed to protect victims from the insolvency of the liable person or the difficulty of enforcing a judgment against that person. In Iraq, the Compulsory Motor Vehicle Accident Insurance Law establishes direct statutory protection for victims. In Iran, the Compulsory Insurance Act of 1395 SH likewise strengthens the injured third party’s position by enabling direct recourse against the insurer within the statutory limits of coverage.

Settlement and notice requirements constitute an important point of divergence between the two systems. Under Iraqi law, Article 6 of Compulsory Motor Vehicle Accident Insurance Law No. 52 of 1980 assigns the insurer a central role in approving offers and settlements relating to compensation. Iranian law also regulates notification and settlement, but the 1395 SH Act gives greater institutional emphasis to the prompt processing of third-party bodily injury claims and to the role of the Bodily Injury Compensation Fund in cases where ordinary insurance coverage is unavailable or insufficient.

The rules of recourse and subrogation perform a common function in both legal systems: preventing insurance from becoming a final exemption for the person who caused the damage or violated the law or policy conditions. Under Iraqi law, the special motor insurance legislation specifies cases in which the insurer may recover amounts paid. Iranian law similarly recognises statutory recourse in specified circumstances, in addition to the general subrogation principle established by Article 30 of the Insurance Act of 1316 SH.

The analysis therefore shows that both systems recognise subrogation and recourse, but Iraqi law regulates several recourse situations specifically within the framework of compulsory motor vehicle insurance, whereas Iranian law establishes a broader interaction between the general rule of subrogation and the detailed statutory recourse provisions of the 1395 SH Act. In both systems, these mechanisms preserve the deterrent function of civil liability and protect the financial equilibrium of insurance.

Limitation periods and procedural time requirements are decisive in the admissibility of civil liability insurance claims and the preservation of rights. In Iraq, the applicable period varies according to the nature of the action and the type of insurance, with Article 1008 of the Civil Code providing a specific framework for actions arising from insurance contracts. In Iran, limitation and procedural requirements are distributed among the general rules and the special compulsory-insurance legislation. The comparative position indicates a need for clearer and more unified legislative rules, particularly where the injured party is not a contracting party to the insurance policy.

Recommendations

Strengthen the statutory regulation of civil liability insurance in Iraq and Iran by revising existing provisions and stating their rules more precisely, thereby reducing interpretive uncertainty and promoting greater consistency in judicial application.

Reinforce the legal safeguards that ensure the injured party receives effective compensation by developing mechanisms that secure performance of the insurer’s obligations rather than relying solely on abstract statutory recognition.

Expand and more comprehensively regulate the direct action by enabling the injured party to proceed directly against the insurer in a wider range of civil liability insurance cases, thereby strengthening the injured party’s legal position and simplifying compensation procedures.

Achieve a fair legislative balance among the interests of the insurer, the insured, and the injured party in the regulation of settlements, so that no party is unduly favoured at the expense of another and both contractual and compensatory justice are preserved.

Activate and develop compensation funds, or establish them where necessary, to protect injured parties in cases where compensation cannot be recovered from either the insurer or the person liable, thereby reinforcing the social function of insurance.

Regulate subrogation and recourse through clear and detailed provisions defining their scope, conditions, and legal effects, thereby preventing conflicting interpretations and promoting sound judicial application.

Establish clear and specific limitation rules for insurance actions in order to promote legal certainty and avoid inconsistent judgments, while maintaining an appropriate balance between the injured party’s interest in pursuing compensation and the insurer’s interest in the finality of claims...

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