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Legal Issues and Countermeasures in Autonomous Driving

Dong Yu Han, Su Yu Hua, Lu Jun Cheng, Shun Yu Hang

Faculty of Law, Beijing Wuzi University, Beijing, China

ABSTRACT

The article presents an in-depth analysis of some important problems regarding civil tort liability for autonomous vehicles in terms of China's regulatory system, where particular emphasis is placed on the rapid advancement from Level 3 to Level 5 in automotive driving technology, which clearly shows that the traditional theory focused on human factors cannot keep up with the new changes brought by intelligent technology. China, as the main market of L2 automations, has the largest number of vehicles equipped with ADAS (Advanced Driver Assistance Systems) on its roadways, and needs to have policies applicable to such types of automotive driving functions soon. From analyses of famous cases overseas such as Uber fatality in 2018, the German Mercedes-Benz 2023 level 3 vehicle issue, etc., it is found that most of these incidents happen due to insufficient understanding about issues like the identity of the actor in accidental situations, principle(s) of accountabilities, how the existing product liability rules need to be updated or strengthened in some key aspects and how insurance should function in regards to the changing landscape of automotive accidents. Therefore, understanding the concepts above-mentioned is the prerequisite to establishing a corresponding duty-based determination and apportionment mechanism. And what's more, our study brings references based on different foreign theories and doctrines, combining all elements above-mentioned and our own situation in China, targeting at finally offering feasible and plausible constructive suggestions of building an inclusive solution with domestic legislation revision and other relevant institutional adaptations plus safety standards improvement on industrial level, so as to incorporate advanced technology into legislative measures as fast as possible but never become overpowered or overthrown as such right vindications lag.

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INTRODUCTION

The ongoing migration of L3 and above autonomy to public roads will impact on existing traffic accident liability systems that have taken years to evolve. These liability systems are underpinned by the presumption of human operation control, direct driver error and simple cause effect relationship, and after vehicle driving authority—and for that matter, vehicle driving cognition – is transferred to autonomous systems, there are essentially three significant yet interdependent complications: significant increase in potential liable parties ranging from end users, manufacturers, software developers, sensor makers, data providers and infrastructure operators, the insufficiency of traditional fault-based evaluative criteria (the previously established behaviors and 'reasonable care' ideas fail to interpret decisions made by algorithms, machine learning results, or sensor interpretation); and a significantly higher degree of causal chain determination complexity because of the black box nature of systems, because of the componend interdependence, and the remote causation involved.

Major, high-profile accidents and deployments such as the Mercedes-Benz L3 event thoroughly investigated on the German Autobahn in 2023 and the tragic Uber pedestrian fatality in the U. S. in 2018 indicate urgent demands on China's part to build transparent, clear, strict, and solid legal systems that can advance justly alongside development and progress. The incidents illustrate

the vulnerability and increasing obsolescence of traditional liability rules in their inability to provide an expedient, substantial response to the rights of those victimized by emerging technology and innovation, while also fueling greater uncertainty for the proper and safe regulation of future artificial intelligence innovation endeavors within China. Different nations, being products of their respective legal traditions, took different measures, like Germany was able to address this by having its legislations be active and targeted at creating precise protocols of stringent technical state supervision and a key aspect of this was the advanced technical standards provided by state requirement which actually materialize specific law scenarios, so they effectively prohibited and penalized the violation of technical standards with time-limited deadlines to fix identified issues; on the other hand, the United States has relied mainly on progressively refining procedural-based product liability litigation during trial with significant reliance on market forces and newly-built judicial case precedents; In stark contrast, whereas the Chinese regulatory, research, and scholarly work is beginning to grow, it remains fragmented, nascent, and divided along strict silos and competing factions, lacking a cohesive, coherent, and systematically and unifying logic trajectory over any determined period of time.

This study focuses on an in-depth case analysis and utilizes a comparative law method and policy evaluation focusing on China's specific legal, technical, and industrial setting to explore three important, mutually dependent dimensions: First, the construction of appropriate technology-neutral adaptive liability rules for ever-more autonomous systems and dynamic human roles; Second, improvement of evidence collection, data access, forensic analysis and fair burden-shifting of proof; Third, establishment of an equitable and sustainable multi-stakeholder risk sharing system with possible wider insurance pools and no fault damage fund. The primary aim is to develop an advanced, robust, principled legal system to accommodate the need to innovate while ensuring public safety, consumer protection, and accountability, and set up China as a leader in responsible autonomous driving technology within the global environment.

1. Comprehensive Analysis of the Impact of Autonomous Driving Technology on Traditional Liability Systems

(1)The Established Framework of the Traditional Liability System:China's existing road traffic liability system – serving as a starting point to accommodate the AVs initially entering the marketplace – is based on the two pillars embodied in the Road Traffic Safety Law and relevant portions of the Civil Code: the former being a highly detailed legislative work used to specify traffic rules, license requirements, vehicle specifications, and accident emergency measures; and the latter giving the scope and foundations of legal civil compensation based on tortious laws aimed at allowing recourse for personal injury, property damage, and limited privacy breaches. These apply to pre-existing norms of presumed driver behaviors, anticipated control mechanisms for automobiles, and situations that are thought likely to give rise to accidents based on past experience.

The principle of fault liability constitutes the undeniable cornerstone of this system. It is a principle centered on moral blameworthiness and personal responsibility. Subsequent to an accident, legal responsibility is determined by judicial or administrative authorities according to a binary assessment: whether an actor operated intentionally knowingly causing or consciously disregarding the substantial probability of an accident or negligently failing to exercise the standard of care expected of a reasonable and prudent person under similar circumstances, encompassing both acts of omission and commission. Evidence to establish this fault is derived from a combination of comprehensive on-site investigation by traffic police, credible witness testimony, traffic camera recordings, vehicle damage patterns, and increasingly, data from basic vehicle Event Data Recorders (EDRs). This evidence is utilized not merely to identify the responsible party but to measure their precise degree of fault, which in turn influences the apportionment of damages.

Within this established system, the human driver is unequivocally the central, and most often the sole, liable agent. The driver is legally obliged to maintain continuous, conscious, and effective control over the vehicle's trajectory and speed while adhering to all applicable traffic regulations and adapting to road conditions. This is a high standard of care. Should an accident arise from unambiguous infractions such as red-light violations, excessive speeding, illegal maneuvers, or driving under the influence, the driver bears primary civil liability for resulting losses; furthermore, concurrent criminal liability may also apply under the Criminal Law when specific offenses such as causing serious injury or death through traffic violations are constituted, introducing the potential for severe

penalties including imprisonment. (2). The Multifaceted Challenges Introduced by Technological Advancement Profound Ambiguity in Identifying Liable Entities:The advent of conditional and highly automated driving scenarios essentially breaks up the existing human driver dominated traditional paradigm where the responsibility and liability is weighed upon the human operator who is driven from active driver to passive user or even an ordinary passenger; whereas when incidents do happen, transferring the entire burden to an operator by attributing legal responsibility solely is destined to run into a tremendous amount of tortious hassle involved in these delicate financial dealings. Furthermore, assigning fault or liability would become increasingly complex as one factor may act upon another by multiple parties. As shown above, the participants in potential fault include, but are not limited to: Vehicle manufacturers (liable due to hardware defects, production flaws, or the shortcomings of overall system integration), software developers (those liable for bugs in the algorithm, logic failures, insufficient machine learning training, and failures in object recognition), suppliers of sensors (toxic for malfunctions of lidar, radar or cameras), data providers (liable for inaccuracy or outdatedness of the map, errors in traffic maps that were not updated or tampered real-time data), telecom companies (liable for network latency or failure affecting V2X communication), and users themselves (if improperly maintained, ignored takeover requests, or made unauthorized changes).More difficult still, this multiplication of agents working in concert and step means that few points of reach or access are available for pinpoint responsibility determination or evaluation, contributing to convoluted and cumbersome negotiations during accident attribution.

2. Technical and Conceptual Difficulty in Establishing Fault

Autonomous driving systems depend on immensely sophisticated algorithms, extensive and diverse sensor arrays, and continuous, high-speed data processing. Their real-time decision-making processes involve technical complexities, probabilistic calculations, and non-transparent deep learning models that render conventional fault assessment—based on observable human behavior and established driving norms—entirely obsolete. The very concept of "fault" becomes blurred when applied to a system that has no "intention" and operates on programmed rules and statistical inferences. Furthermore, the current absence of universally accepted technical evaluation standards, certification protocols, independent auditing mechanisms, and forensic investigation methodologies leads to frequent, and often irreconcilable, expert disagreement regarding whether a system acted negligently, defectively, or simply encountered a statistically inevitable edge case. This lack of consensus compounds uncertainty in judicial rulings, insurance claims, and liability outcomes, creating a legal quagmire Profound Exponentially Increased Complexity of Causation Analysis

In contrast to traditional incidents where the cause-effect chain is usually simple—such as being clearly and closely linked to some particular driver mistake, vehicle mechanical failure or external hazard; with autonomous vehicles, multiple interfacing elements make up a robust network—i. e., hardware reliability, algorithmic correctness, software robustness, data transmission accuracy, and cyber-physical security—meaning that an even tiny glitch or worse yet, a poor algorithmic decision may lead to a crash when anything goes wrong within any of these factors (like an off-model object that the algorithm recognized, combined with the lack of an accurate fuse with the sensor signal caused by a small delay of processing in the system or a point with a detailed map dated too far back). The cascaded failures or unpredictable interactions within this complex system cause the inability of the exacting forensic determination of the causal contributions and responsibility proportions. It is extremely difficult to prove that an improper conduct constituting the near cause of damage rather than the non-negligent intervening act or purely fortuitous happening or natural course requires extraordinary expertise.

3. In-Depth Analysis of Core Issues in Civil Tort Liability for Autonomous Driving

(1)Multifaceted Challenges in Identifying Liable Entities:(SAE)the Society of Automotive Engineers (SAE) International's J3016 standard offers a valuable and widely referenced classification scheme (Levels 0-5) that defines the extent to which the driver or the system is engaged in automated driving, thereby forming the basis for a structured discussion around liability. At levels 3 and above, the parties who may be held liable differ substantially from previously identified parties. This requires parties involved in creating this type of automation to deeply reassess each other's roles, responsibilities, and reasonableness, all viewed through the lens of the SAE levels. Under L3 conditional automation, the human driver is legally designated the "fallback user" or "dynamic driving

task后备使用者" – a role that is paradoxically both passive and critically active. The user is not continuously driving but must maintain sufficient situational awareness to resume control within a stipulated period (typically 10–15 seconds) following a system request. This creates a legally nebulous zone. Failure to respond in a timely and appropriate manner, or engagement in improper intervention that subsequently causes an accident, may incur significant liability. However, determining whether the user was reasonably attentive and whether the takeover request was itself issued adequately and timely are complex questions. In L4–L5 high to full automation scenarios, the human occupant's role transforms more completely into that of a "passenger." In principle, this passenger is not liable for system failures or operational errors. However, exceptions would exist for clearly demonstrable instances of intentional interference (e.g., hacking), fraudulent manipulation, or unauthorized physical modifications that directly contribute to the accident. The burden of proof for such misuse would likely fall on the producer or insurer.

From conventional automobile makers (OEMs) who had at one time dominated auto production to today's larger pool of tech contributors, automobile accident liability claims' chain has grown very long and intricate. At present, it includes not only algorithm developers like AI technology firms but also sensor providers such as LiDAR, radar, cameras; high-precision map service providers who must provide ongoing updates with a tremendous degree of accuracy, telecommunications module providers for connectivity, and cybersecurity businesses to name but a few, all of which run the risk of shouldering partial or full liability from defect causes related to the said parts or service. It raises the huge question on how the liable party should split up in this long chain of stakeholders—should it be fully borne by the lone OEM as a system integrator? Or should the liability be decided based on its contribution and proportionally distributed? While this second option seems fairer theoretically, it will require an exact technical evaluation of the degree of fault on the part of each participant, and determine where to assign the corresponding parts of the product liability among the many players—which entails huge practical, evidentiary, and commercial challenges due to the current forensics state of affairs and the highly proprietary nature of products.

(2) Critical Evaluation and Adaptation of Liability Principles: The application of traditional fault-based liability principles faces significant and perhaps insurmountable limitations in autonomous driving contexts. First, as noted, there is no legally or technically applicable standard for determining "fault" in a system's behavior. Algorithmic "error" is fundamentally distinct from human negligence; it may stem from a training data gap, an unforeseen scenario (a "corner case"), a sensor misinterpretation, or a software bug, none of which map neatly onto concepts of "carelessness" or "recklessness." Second, the inherent "black box" nature of complex neural networks and deep learning algorithms obstructs transparent causal demonstration. Even developers cannot always precisely explain why a system made a particular decision in a specific micro-second, making it nearly impossible for a court to adjudicate "fault." Third, the evidentiary asymmetry is staggering. Individual victims face prohibitive difficulties in procuring the essential technical evidence, expertise, and financial resources required to prove a system defect against a multinational corporation, substantially undermining their rights protection and access to justice.

Consequently, a structured no-fault liability framework, or a strict liability regime for producers, offers a more suitable, efficient, and socially equitable alternative. This approach is rooted in established risk-control theory and enterprise liability principles: those who create, benefit from, and are best positioned to manage and insure against a novel risk should bear the financial responsibility for the realization of that risk. This justifies holding producers (broadly defined to include key system integrators and component makers) liable for accidents caused by system defects, without the victim needing to prove fault. A reversed burden of proof is a logical corollary: the producer should be obligated to demonstrate that the product was free from defects, complied with prevailing state-of-the-art safety standards, and that the accident was solely due to an unforeseeable external factor or gross user misuse. This creates powerful incentives for safety-by-design and rigorous testing. Users, in turn, would incur liability only under the conventional "he who asserts must prove" rule when clear and provable misuse or intentional harm is evident. This structure collectively forms a balanced and adaptive "dual attribution system" that is responsive to the new technological realities, protecting victims while clarifying the primary responsibilities of developers.

4. Comprehensive Comparison and Synthesis of International Regulatory Experience

(1) The German Model: Legislative Precision and Technical Oversight: Germany has strategically positioned itself as a regulatory pioneer in the governance of automated vehicles, reflecting its automotive industrial leadership and its tradition of precise, comprehensive legislation. Its approach is characterized by proactive, detailed legal frameworks designed to provide certainty. The 2017 Eighth Amendment to the Road Traffic Act (Straßenverkehrsgesetz-StVG) was a landmark move, formally creating a legal personality for highly automated driving systems under specific conditions, allowing the vehicle itself(and its insurer)to be the primary liable entity when the system is active, effectively decoupling liability from the human driver's conduct during automated operation. This was followed by the even more ambitious 2021 Autonomous Driving Act (Gesetz zum Autonomen Fahren), which provided a framework for the deployment of L4 autonomous vehicles in specified operational design domains(e.g., shuttle services, people movers), introducing concepts like technical supervision.

(L3)in 2023, an illustration of the situation happened with Mercedes-Benz's DRIVE PILOT (L3) crash on a German Autobahn putting this system to test. It took German law extra efforts to investigate about the system itself, whether it had engaged in the places designated beforehand in general, as well as the weather states matched with specified restrictions and even the way that drivers responded to the system's need for human intervention. Meanwhile, it worked out an essential prototype for those intending to implement on-demand autonomous mobility. This defined model sets up so-called technical supervision which means having a person that is in charge of overseeing the company fleet for proper functioning, monitoring fleet movement and securing safety that can control from the cloud, placing strong demands on high-limit compulsory insurance for ensuring access of any claimants of victimizes to compensation and concurrently transferring any supervision-related liabilities from these masters to insurers. Such working model underwrites technical mandate as well as financial assurance, whereby turning obscurity into clarity.

(2) The American Model: Litigation-Driven Adaptation and Insurance Innovation: The United States, in contrast, exemplifies a decentralized, litigation-driven, and common law approach, reflecting its federalist structure and strong tort law tradition. In the absence of comprehensive federal legislation specifically for AV liability (though safety standards are set by NHTSA), regulatory and liability standards vary significantly by state. This was starkly highlighted in the consequential 2018 Uber fatality in Arizona. The accident's legal aftermath involved complex questions of criminal and civil liability for the safety driver, Uber as the operator, and the vehicle technology providers, with outcomes heavily influenced by Arizona's specific laws and regulatory posture at the time.

This resulted in legal frameworks bringing more changes and challenges to others' solutions. Major insurance companies have thus had to roll out new kinds of products and formulas matching automation level, usage pattern, and data-driven risk assessments. They weave system performance metrics from manufacturers, cybersecurity assessments, and real-time telematics data into their dynamism premium calculation formulas. However, large interstate discrepancies are still present which add complexity to determining the amount of compensation and create a confusing hodgepodge of different standards for automakers nationwide. Product liability litigation is still used as a major mechanism to measure both safety and accountability standards; courts frequently need to be asked if automakers and/or software developers acted reasonably – a matter repeatedly explored via lawsuits involving shortcomings with Tesla's Autopilot/FSD systems concerning insufficient driver monitoring or unfavorable operational warnings. Technology is technically introduced piece-meal and this is furthered by tech companies claiming unreasonable benchmarks so there's also cause to go to court on these matters. Current methods of providing such standards may define what constitutes "reasonable care", but this has yet to happen in full and due form; it takes long periods and repeated lawsuit to get full insight into case-specific do's and don'ts. (3) Derived Lessons and Policy Implications for China: First, proactive and precise legislation is important for stable industry development and consumer confidence. To wait for the occurence of accidents and then set standards by judicial determination is to prolong their uncertainties. With coherent laws, regulations will be more straightforward, objectives can be set ahead of time and liability distribution will be foreseeable which is vital to acquire capital inflows and to design sound business models. Secondly, the availability of a more inclusive, innovative insurance regime needs to be aligned with the emerging technological landscape from the beginning. The insurance industry cannot simply be

a one-off tail end fix after any systems have been developed, it needs to be part of the process which adequately compensates all affected stakeholders across the chain and provide no-fault timely responses for victims through forms of operation which do not need costly court litigation. Possible forms might be new product liability insurance regimes, mandate fleets of operators, broader compensation funds etc. Thirdly, China needs to work towards developing harmonized technical standards and certification procedures. This would help overcome regional legislative disparity risks, minimize fragmentation of markets for foreign global manufactures, enhance compatibility and most important of all lift the public's confidence regarding the objectivity of automated transport systems'safety and reliability. Given the weight of China's huge home market size and technological enthusiasm, China can actively participate in and shape international standards as well.

5. Development Recommendations and Strategic Outlook for China

(1) Phased Legislative and Regulatory Recommendations: A phased approach allows for learning, adaptation, and building institutional capacity. Short-term(1-2 years):Utilize existing legal instruments to provide immediate clarity. The Supreme People's Court could issue authoritative judicial interpretations to establish clear liability presumptions for L3+accidents(e.g., presuming manufacturer responsibility for system failures during automated operation, and user accountability for provable improper 接管 or misuse). Simultaneously, administrative agencies like the MIIT and MOT should strengthen and issue detailed regulations concerning data privacy, cybersecurity, event data recorder (EDR) standards for AVs, and data accessibility for investigators.

For the medium term (3-5 years), take targeted amendments to foundational laws into account, such as the aforementioned Road Traffic Safety Law needing to have a designated chapter dedicated to autonomous driving: stating the prerequisites required for every level (from L3 to L5), periodic safety assessment requirements for eligible vehicles, requirements to report data, and specifying a clear level of liability assigned based on the degree of automation and driving mode. In terms of the Product Quality Law, clarify that the manufacturers as well as key system integrators should bear liabilities for system-level issues and that all conditions around continuous monitoring, over-the-air update protocols, and safety recalls throughout the entire lifespan of sold products need to be in order. After 5-10 years (long term), pass specialized and omnibus legislation—referred to herein as the "Autonomous Vehicle Act"—as a comprehensive, overarching regulatory framework that includes vehicle type certification/approval, market entry requirements for operators, operational protocols/guidance, liability distribution rules, data management and ownership, ethical standards for algorithmic design, and the role of national/local regulators. (2) Institutional and Systemic Development: To establish effective institutions supports making laws work well. LTL determination on cause: The system should focus on the forensic analysis. Producers and suppliers should be strictly liable for technical failures and design defects which can be validated with data, while for accidents mainly caused by factors such as extreme weather conditions, infrastructure failure, or other parties' violation of traffic rules, the traditional principle should apply on a case-by-case basis. Operators such as ride-hailing fleets who use AVs shall bear the responsibility for inadequate maintenance, negligent operational planning and failure to properly respond to events. Apportioning Responsibility by Operational Mode: The law must clearly distinguish between modes. During mandatory safety operator-controlled phases (e.g., during testing or in certain L4 deployments), the operator bears primary liability for operational errors, with potential enterprise liability for deficient training, fatigue, or management pressure. During dedicated full automation phases (true driverless operation), producers or operators must shoulder primary liability for system-related accidents, with very limited exceptions for gross, demonstrable user misconduct (e.g., sabotage).cing the Insurance System: A Transformed NeedThe compulsory traffic insurance premium structure should change to reflect the immense risk shifting from humans to manufacturers/operators. The industry needs incentives to drive the creation of tailored commercial insurance products for different levels of automation, operational context (such as geofenced vs. full navigation), and mileage exposure. Above all, it's crucial to establish a secure information-sharing mechanism among insurers, manufacturers, and regulators so that the insurers can price risk based on the performance data, allowing manufacturers to improve safety performance and ensuring a fair level of compensation to provide efficient risk-distribution across the whole new mobility eco-system.

Conclusion

The advent of autonomous driving forces civil tort responsibility from a driver-centered one to a fault

model for each entity in a distributed system. It marks a completely new development direction. As China's national interests include its tech lead but also society at large, this shift offers opportunities to set civil tort rules for autonomous driving. In other words, in order to set optimal and effective rules of civil tort liability for autonomous driving, the Chinese authorities need a deep rooted consideration into traditional person-centered responsibility and entity-based fault evaluation. The article states that there should be a carefully designed "tiered liability+entity adaptational regulatory architecture" for ensuring civil tort liability, elaborately setting up different attributions based on SAE automation levels, and on level 3 providing clear user supervision obligation stipulations; whereas on levels 4 & 5 providing substantial producer responsibility, giving due considerations of producer's no-fault liability while there is a reversed burden of proof due to the system failure, thus leaving huge room of financial incentive because the harm is irreversible; whilst on user side, any proven intended interference of traditional fault-based attribution could remain unchanged.

In tandem, there must be a regime which responds effectively, morally, and equipped with knowledge of technological innovation. The technology regulations will need to balance rapidly evolving innovations with required standards of safety, ethics, and oversight, all the while taking into account concerns of protection of consumer welfare. Future efforts should encourage continuous, structured dialogues amongst legislators, technologists, engineers, insurers, ethicists, and regulators. Efforts directed towards communication, collaboration, and co-creation across disciplines would lead to increased support for the industry transitioning from smaller-scale and experimental ventures to safely large-scale commercial applications of this new transportation. This structured support is crucial to progressing transportation infrastructure towards intelligent and equitable transportation systems.

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