# The Basis of Civil Liability in Offences Committed by Commercial Companies

**Samia KISSI ***
Abou-Bekr Belkaid University, Tlemcen, Algeria
samia.kissi@univ-tlemcen.dz

**Date of submission: 05/05/2026 - Date of acceptance: 09/06/2026 - Date of publication: 27/07/2026**

**Abstract:** In the context of the activities of commercial companies, the commission of a criminal offence (misuse of corporate assets, fraud, corruption, tax evasion, etc.) often causes economic harm to multiple victims: the company itself, its partners/shareholders, its creditors, its employees, or even third-party contracting parties. However, business criminal law is mainly geared toward punishment (criminal sanctions: imprisonment, fines). Civil liability makes it possible to compensate these victims, yet its basis is not obvious: is it ordinary tort-based civil liability, a special form of liability arising from business criminal law, or rather contractual liability? Thus, the central issue is on what legal and theoretical bases can the obligation to repair the damage caused by a criminal offence committed within a commercial company be founded, and how do these bases interact with criminal law and company law?
Accordingly, the objective of this research is to determine the conditions, the modalities, and the effectiveness of civil compensation for damages caused by business-related criminal offences.
This research is of major importance in several respects: for victims, for businesses, to combat economic delinquency, and for judicial practice. (statute of limitations, burden of proof, and scope of compensable damage). Thus, the response to this issue will be divided mainly into two parts: the first will address the classical foundations of civil liability, and the second will be devoted to the specific foundations of this liability.

**Keywords:** commercial companies; business offenses; corporate officer; legal entity; damage; civil action.

***Corresponding author: Samia KISSI.**

**Introduction:**

Commercial companies play a central role in the contemporary economic dynamic, serving as essential instruments of production, investment, and wealth creation. Through their structuring role in the circulation of capital and the organization of commercial activities[1], they directly contribute to national and international economic development. Business life is marked by a constant pursuit of profitability and growth, made possible, of course, by the various types of commercial companies.

However, this economic importance is accompanied by risks related to the commission of offenses that may harm not only the interests of the company itself but also those of shareholders, creditors, employees, or third parties.

In this environment, commercial companies, acting through their directors, agents, or bodies, may sometimes commit acts prohibited by criminal law: misuse of company assets, fraud, corruption, presentation of inaccurate accounts, distribution of fictitious dividends, tax fraud, bankruptcy, or fraudulent[2] maneuvers affecting the rights of shareholders and economic partners.

If these behaviors give rise to criminal sanctions intended to preserve economic public order, they also cause patrimonial or moral damages that call for effective civil compensation.

Civil liability thus appears as the natural extension of criminal repression, insofar as it aims not to punish the offender, but to repair the harm caused to the victims[3]. It therefore fulfills a fundamental compensatory function, while indirectly contributing to the moralization of business life and the strengthening of trust in economic relations.

However, determining the basis of this civil liability in offenses committed by commercial companies raises several legal questions. Indeed, this liability may be based either on the general rules of tort liability founded on fault, or on specific mechanisms related to company law, notably the liability of corporate officers or that of the legal entity. The plurality of actors involved as well as the complexity of corporate structures make the identification of the responsible party and the damage particularly delicate.

- Therefore, the central issue of this research is to determine: on what legal grounds civil liability can be engaged due to an offense committed within the framework of a commercial company, and how these grounds interrelate with each other and with the specific rules of criminal law and company law, as well as the effectiveness of existing compensation mechanisms.

In Algerian law, the sources of civil liability are multiple. On the one hand, there are the general grounds derived from the civil code: tort liability (article 124)[4] , contractual liability (article 124 and following), as well as liability for the acts of others (articles 136 and 137)[5]. On the other hand, special grounds are drawn from the criminal offense itself — notably the authority of res judicata in criminal matters, the constitution of a civil party, and the principle that every offense constitutes an automatic civil fault — as well as rules specific to commercial company law, the status of directors, social action, and individual action by shareholders.

[1] - G. Ripert and R. Roblot, Treatise on Commercial Law, Vol. 1, L.G.D.J., Paris, p.35.
[2] - M. Véron, Business Criminal Law, 5th ed., Colin, Paris, 1994, p.61.
[3] - Philippe le Tourneau, Law of Liability and Contracts, 11th ed., Dalloz, Paris, 2019, p.12.
[4]- Ordinance No. 75-58 of September 26, 1975, establishing the Algerian Civil Code, amended and supplemented, Official Journal No. 78 of 09/30/1975.
[5] - Ordinance No. 75-58 of September 26, 1975, establishing the Algerian Civil Code, amended and supplemented, Official Journal No. 78 of 09/30/1975.

The importance of this subject is considerable in several respects; practically, it aims to enable victims to obtain effective compensation, often more useful than the mere penalty imposed on the perpetrator.

Economic damages caused by business offenses can be massive: loss of stock value, asset misappropriation, loss of contractual opportunity, damage to brand image, etc., and therefore civil liability offers an appropriate remedy tool. On a theoretical level, the interaction between criminal law, civil law, and corporate law[6] raises delicate questions about the impact of a criminal acquittal on civil action and the civil liability of the legal entity independently of its manager, as well as the reconciliation of the derivative action (for the benefit of the company) and the individual action of the shareholders. Then, on the legislative policy level, since the Algerian legislator has strengthened liability mechanisms, notably through Article 51[7] bis of the Penal Code, which establishes the criminal liability of legal entities with obvious repercussions on their civil liability.

Thus, this study aims to demonstrate that civil liability, far from being a mere accessory to criminal repression, constitutes a true pillar of victim protection in the litigation of commercial company offenses, provided that its foundations are correctly identified and articulated.

- The method adopted for this research on civil liability in offenses committed by commercial companies is based on an approach that is both descriptive, aimed at presenting the different types of offenses that may be committed within the corporate framework and the resulting damages to the company, the partners, or third parties; and also analytical, consisting of examining the legal rules governing civil liability in offenses of commercial companies through the analysis of legislative texts, case law, and doctrine related to civil law, business criminal law, and company law in order to determine the applicable legal foundations as well as the conditions for implementing this liability. Furthermore, it is comparative, by juxtaposing certain solutions adopted in Algerian law with those established in French law, in order to identify convergences, divergences, and prospects for improvement.

Finally, to address the above-mentioned issue, it will be necessary to first examine the classical legal foundations of civil liability in corporate matters, and secondly the specific foundations related to the structure of commercial companies.

## I.Chapter 1: The Classical Legal Foundations of Civil Liability in Offenses of Commercial Companies

Civil liability in offenses of commercial companies is based on a set of texts that articulate civil law, criminal law, and commercial law. Algerian texts and jurisprudence thus establish precise mechanisms that allow victims to obtain compensation, whether the offense is committed by a director, an agent, or the company itself. The analysis of the classical foundations of this liability makes it possible to understand how its different regimes are articulated to offer effective protection to economic actors.

### Section 1: Contractual Liability

The classical principle of civil liability is stated in Article 124 of the Algerian Civil Code, which provides that "any act whatsoever of man that causes damage to another obliges the one by whose fault it occurred to repair it."

[6] - M. Cozian, A. Viandier, F. Deboissy, Company Law, Lexis Nexis, 28th ed., Paris, 2015, p.287.

[7] - Ordinance No. 66-156 of July 8, 1966, establishing the Algerian Penal Code, amended and supplemented by Law No. 04-15 of November 10, 2004.

This text, applicable in tort matters, allows any person victim of an offense (for example, a partner harmed by an abuse of corporate assets) to seek compensation for the damage suffered. Alongside this general foundation, contractual liability, provided for in Articles 119 and following of the same code, applies when a contract preexists between the victim and the author of the offense (contractual non-performance).

Victims must then demonstrate the existence of a fault, direct and certain damage, as well as a causal link between the two.

If we consider the liability action brought by the company, a legal entity, against its directors, an action known as a derivative action, we apparently find ourselves in the very general case of the agent's liability towards their principal.

Indeed, public limited companies are managed by one or more agents who are appointed for a term, revocable, salaried or unpaid.

That is to say, the public limited company has as the organ of its existence and economic functions pure and simple agents subject to the rules of civil law on mandate. Therefore, articles 577 and 579 of the Civil Code, which hold them liable for their simple fault and require them to account for their mission, will apply to these agents.

It would seem to be the same for all social management and control bodies for which the law very often uses the word "mandate" (art. 578.2°, Art 611, 641; 646; 666; 669 of the Commercial Code).

But this textual argument, even supported by its case law interpretation and doctrinal approval, does not seem to us to be decisive. In reality, this mandate of the directors presents upon analysis a particularity that fundamentally distinguishes it from the ordinary mandate. It is established by law, not only in the interest of the principal, that is to say the company and, according to case law and the majority of doctrine, also the partners, but also in the interest of third parties who are the company's creditors. It also serves a public interest purpose concerning the organization of the economy and institutions, whereas the common law mandate is an individual agreement.

Indeed, it is clear that the regular functioning of commercial companies concerns not only the partners, because their poor management, reflected by inaccuracies, insufficiencies, gaps, and frauds in the financial statements thus showing an apparent profit, abuse of corporate assets, also seriously disrupts the country's economy. Regulation and the efficiency of management or control are therefore essential to the stability of the general economic system, and without them, business activity is necessarily compromised.

This assertion remains particularly well-founded because an increasing number of regulatory and legal provisions, in the public interest, limit the free choice by companies of their management and control bodies, specify the scope of powers entrusted to these bodies, and regulate the conditions or effects of the responsibility incumbent upon them[8].

In reality, the problem is more delicate, and it ultimately depends on the question of whether the mandate is sufficient to characterize the mission of the management and control bodies.

In our view, the unusual extent of the powers of these bodies, making them custodians of corporate assets, heads of personnel, masters of social life, is incompatible with the notion of mandate under civil law, as their powers are extremely broad.

[8] - V. A. Amiaud, The Evolution of Joint-Stock Company Law, in French Private Law in the Mid-20th Century, Ripert Studies, Vol. II, LGDJ, Paris, 1950, p.287 et seq.

Under French law, the violation of provisions relating to the formation and validity of the contract undoubtedly constitutes a breach of legal requirements. But this assertion has led some authors[9] to the conclusion that the boundary between the rules governing contracts and those governing non-contractual liability is not completely impermeable, since the new article 1112-2 of the French Civil Code provides that anyone who uses or discloses confidential information obtained during negotiations without authorization incurs liability under the conditions of common law[10].

Therefore, in the case of use or disclosure of confidential information: some authors[11] have expressed the opinion that liability is, in principle, non-contractual but, by exception, contractual in the case where there has been a "conventional arrangement of the negotiation phase and its termination."

Thus, the breach of confidentiality during contractual negotiations is unequivocally a source of non-contractual civil liability, except in the case where a confidentiality agreement has been concluded without reservation regarding its precision and the determination of its scope of application.

Furthermore, the new article of the French Civil Code (2016 reform cited above) stipulates that the capacity of legal entities is limited to acts useful for the achievement of their purpose as defined by their statutes and to acts that are accessory to them, in compliance with the rules applicable to each of them. Subsequently, Law No. 2018-887 of April 20, 2018, amended this provision in paragraph 2 of Article 1145 of the French Civil Code and provides that the capacity of legal entities is limited by the rules applicable to each of them. A question then arose regarding an act carried out outside the corporate purpose but in the social interest: Case law has not provided a clear answer, but some authors believe that the new article 1145 would invite judges to hold that the act did not bind the company even if it were ancillary, while arguing that "the terms of the corporate purpose serve more to circumscribe the powers of corporate officers than to limit the capacity of the company"[12].

French case law has vigorously rejected the theory of the identity of contractual and tortious faults by affirming as early as 1962 that fault should be considered outside of any contractual viewpoint[13]. Ten years later, a decision by the social chamber brought a change by establishing the principle that the rule of non-cumulation of contractual and tortious liabilities applied only to contracting parties and to the identity of contractual and tortious faults[14]. Then, from the 1980s, the first civil chamber seemed to return to the principle of the relativity of contractual fault by requiring a tortious fault separable from the contractual obligations imposed on the contracting parties[15] before reconsidering by establishing the principle that third parties to a contract are entitled to invoke its defective performance when it has caused them damage[16] . The commercial chamber, for its part, had already affirmed in 1996 the relativity of contractual fault by establishing the principle that the breach of contractual obligations must, in order to

[9] - Loïc Bergun, Civil Liability of Companies, Master's Research Thesis, Master 2 Business Law, Paris II Panthéon – Assas, 2019, p.21.

[10] - This general and legal principle of pre-contractual confidentiality originates from international and European sources, particularly Articles 2, 1, 16 of the UNIDROIT Principles and Article 2-302 of the European Principles of Contract Law. It was introduced in the 2016 reform of the French Civil Code by Ordinance No. 2016-131 of February 10, 2016.

[11] - M. Jaquen, Negotiations and Obligation of Confidentiality, Aj contrat, 2016, p.275.

[12] - E. Schlumberger, The Modification of the Capacity of Legal Entities by the Ratification Law of April 20, 2018, Defrémois, 2018, No. 37, p.15.

[13] - Cass. 1st civ., November 7, 1962, Bull.civ, II, No. 465.

[14] - Cass. soc., March 21, 1972, No. 71-10.896.

[15] - Cass. 1st civ., April 11, 1995, 91-21-13.

[16] - Cass. 1st civ., December 15, 1998, No. 96-21-905.

constitute a tortious fault, bear the characteristics of a "violation of a general obligation of prudence and diligence"[17].

It was then that the plenary assembly ruling of October 6, 2006, in France, known as Myr'Ho or Boot shop[18], established the principle that a third party to a contract may invoke, on the basis of tort liability, a contractual breach provided that this breach caused them damage.

This solution was praised by Professor Geneviève Viney, who considered it appropriate and wrote: "as soon as a contractual breach is the direct cause of damage suffered by a third party, the elements of liability being met, the contractual breach being in itself an unlawful act"[19].

In Algerian law, the contractual civil liability of commercial companies is based on the legal personality of the company, which is obtained by the latter upon its registration and under the conditions provided by law. It can therefore enter into contracts, own assets, take legal action, and have its liability engaged. Thus, the contractual commitments made on behalf of the company bind it directly. The Algerian Civil Code enshrines the binding force of the contract in its article 106, which stipulates that the contract must be executed in accordance with its terms and in good faith. Therefore, the commercial company must loyally fulfill its contractual obligations towards its contracting parties. When the company is indebted to an unfulfilled contractual obligation, it may be ordered to compensate the injured party in accordance with article 119 of the Algerian Civil Code.

The contractual civil liability of commercial companies may also be engaged when the non-performance or poor performance of a contract results from a criminal offense committed within the scope of the social activity. In this case, the criminal act not only leads to a punitive sanction but also constitutes the source of contractual damage giving rise to compensation in favor of the contracting party or any direct victim.

It is accepted that the same act committed by a commercial company or its managers may simultaneously engage contractual civil liability and criminal liability, provided that this act constitutes both a contractual non-performance causing damage and a violation of a criminal provision. This cumulation is explained by the difference in purpose between the two liabilities: The first aims at compensating the damage suffered by the victim, while the second seeks to sanction the disturbance caused to public order.

Contractual liability arises when the company fails to fulfill an obligation arising from a contract concluded with a third party, such as a sales contract, credit contract, service contract, or transport contract. The Algerian Civil Code enshrines in this regard the principle of the binding force of the contract (Article 106) and, in case of wrongful non-performance, the company may be ordered to repair the damage caused (Article 119).

At the same time, when this non-performance results from fraudulent or unlawful behavior, criminal liability may be engaged. This is the case, for example, in cases of fraud, false accounting documents, breach of trust, corruption, or commercial deception.

By way of illustration, when a company obtains a bank loan based on false financial statements, the facts may constitute a criminal or business criminal offense[20]. while also engaging its contractual liability towards the bank victim of the financial damage suffered.

---

[17] - Loïc Burgun, Civil Liability of Companies, op.cit, p.25.
[18] - Cass. Plen., October 6, 2006, No. 05-13.255.
[19] - G. Viney, The Debtor's Liability Toward a Third Party to Whom He Caused Damage by Failing His Contractual Obligation, Recueil Dalloz, 2006, p.2825.
[20] - M-F Lucas de Leyssac, A. Mihman, Business Criminal Law, Economica, 2009, p.418.

Similarly, the voluntary delivery of falsified or non-compliant goods may lead to both criminal sanctions and the obligation to compensate the injured contracting party[21].

The victim then has two courses of action: they can take action before the civil court to obtain compensation on contractual grounds, or pursue a civil action before the criminal court in accordance with Algerian criminal procedure rules[22].

However, this cumulative approach has certain limits. It cannot lead to double compensation for the same damage. Furthermore, the contractual action always requires proof of a valid contract, a certain prejudice, and a causal link between the fault and the damage. Ultimately, Algerian law allows the combination of contractual civil liability and criminal liability in corporate matters when the conditions specific to each of these liabilities are met. This mechanism ensures both the protection of victims, the moralization of business, and the security of commercial transactions.

The obligation of corporate confidentiality in Algeria, which notably concerns manufacturing secrets, commercial strategies, lists of clients and suppliers, technical innovations, banking and tax information, etc., exists even in the absence of legal texts or even written clauses when it arises from the nature of the functions performed. Corporate contractual civil liability also covers confidentiality obligations, which thus appear as a natural extension of the duties of prudence, diligence, and loyalty in corporate management.

**Section 2: Tort Liability**

To avoid the difficulties we have addressed above, it is generally accepted that if the liability of management and supervisory bodies is contractual when it concerns damage caused to the company, it becomes tortious with regard to third parties[23]. For the same faults, these bodies may thus incur double liability: contractual towards the company they have mismanaged, tortious towards third-party victims of their actions.

The French Court of Cassation has often affirmed "that by placing the basis of directors' liability in common law, the legislator intended to refer not only to the rules relating to the company contract and mandate, but also to the general principles enshrined by articles 1382 and 1383 of the Civil Code"[24], and similarly, articles 124 and 125 of the Algerian Civil Code.

This is the case, for example, in the event of distribution of fictitious dividends, actions for liability brought by shareholders who were led to acquire shares at a price higher than their real value, relying on distributable profits[25] or other similar actions.

One may, however, wonder whether there is truly any benefit in trying to distinguish the two types of liability: contractual liability when it concerns the company, and tort liability towards shareholders and third parties, in a case such as the distribution of fictitious dividends, where the obligation to repair the damage caused by corporate bodies is prescribed by the law itself.

Moreover, some authors no longer attribute to the distinction between contractual liability and tort liability anything more than a technical scope.

[21]- M. Véron, Business Criminal Law, op.cit, p.95.
[22]- Article 4 of Law No. 25-14 of August 9, 2025, establishing the Code of Criminal Procedure, Official Journal No. 54 of August 13, 2025.
[23] - C. Voutsis, Distribution of Fictitious Dividends, Criminal and Civil Consequences, L.G.D.J, Paris, 1965, p.159.
[24] - Cass. civ., April 8, 1930, Journ.soc.1931, p.405.
[25] - Cass. Rep., January 16, 1878, Recueil Dalloz.1879.1.209; this chamber no longer exists since the law of July 22, 1947, in France.

Planiol[26] shows that among all fundamental solutions, the classical differences have been exaggerated at will. There are only technical differences, the study of which shows negligible importance in our field. Messrs. Léon and Henri Mazeaud and André Tunc also express a similar assessment when they observe an evolution of the two liability regimes towards unification. "Authors who have separated contractual liability from tort liability have thus been led to overlook the unity of civil liability. They have only perceived the existing differences between the rules governing the two orders of liability, differences of detail, not the profound similarities that bring them closer together."

They especially did not understand how desirable it would be to mitigate the differences and to achieve a legislative system in which civil liability would be subject to a single regulation, even if it means subjecting contractual liability to an exceptional regime on certain points. This is the approach that the commission for the reform of the Civil Code proposes to follow"[27].

Indeed, while it is generally taught that fault must be proven in tort liability whereas it is presumed in contractual liability, this opposition ceases when it comes to an obligation of means[28] such as that of directors or managers who are only liable in the event of failure in their management, where the distribution of fictitious dividends or the preparation of false accounts, abuse of corporate assets constitutes a characteristic fault.

Furthermore, it should be noted that contractual liability presupposes a mandate involving a legal relationship between two legal subjects, one of whom acts for the other, which is difficult to apply to the relationships existing between the company and its directors who, according to the organ theory, do not constitute a separate person from it.

Ultimately, it can be argued, it seems, that if the formal source of the duties of corporate bodies is threefold, comprising a mandate to which legal and statutory prescriptions are attached, the nature of the liability resulting from breaches of these duties can only be tortious, especially when it concerns a legal duty.

**Conditions for the existence of tort liability**

Under common law, directors and managers of companies are liable for their management faults towards the company, third parties, and shareholders, or for their tortious faults of which they may have been guilty, only under the conditions determined by both commercial and criminal law. Consequently, they are only liable for their faults if there is a causal link between the fault or any other incriminated act and the established damage, and only to the extent of the damage suffered by the claimants.

The adoption of this solution, which is also that of common law in the contractual field, leads us to set as constitutive elements of the obligation to repair damages caused by the offense three fundamental conditions : a fault must have been committed by the director or manager of the company, damage must have been suffered by the company, the shareholder, or the third party, and a causal relationship must exist between the fault and the damage.

We will successively study the fault, the damage, and the causal link between these two elements.

[26] - Planiol, Study on Civil Liability, Rev.crit., 1905, p.117 and 1906, p.80; cited in C. Voutsis, op.cit, p.159.
[27] - Henri, Jean and Léon Mazeaud, Lessons in Civil Law, Vol. II, 9th ed., Montchrestien, 1998, no. 376; C. Voutsis, op. cit., p. 160.
[28] - C. Thomas, The Distinction between Best-Efforts Obligations and Result Obligations, Rev. crit., 1937, p. 636 et seq.

**A) Fault:**

A fault must be established against the directors or managers of companies for their tortious liability, due to their actions, to be engaged. Moreover, the victim of this offense, who is taking action for liability, must prove the fault without relying on any presumption, unless there is a legal impossibility, as in the case of a common and indivisible fault.

This condition, stemming from general law, can only be referred to in the general treatises on contractual and tortious liability[29].

It should be noted, however, that the slightest imprudence or negligence can be taken into account to trigger liability, without it being possible to distinguish on this point between contractual fault and tortious fault in terms of their assessment.

Undoubtedly, fault generally appears better characterized when it consists of a violation of the law or the statutes than when it involves a failure to observe management rules. But this is rather due to the more or less precise determination of the content of the obligation incumbent on directors or managers than to a difference in the nature of the fault. Indeed, no text allows for such a distinction to be made in order to assess differently the right of action for damages of the company or the shareholders and that of third parties[30].

The determination of the facts from which the existence of fault can be inferred normally falls within the exclusive domain of the trial judges, but the French Court of Cassation exercises its control over the assessment regarding the legal existence of the fault[31].

It is also known that the offenses mentioned above constitute in themselves very serious faults in social life, and the administrators or managers, entrusted with the mission of directing the social enterprise, seriously fail in their duty through all the negligence and imprudence that are likely to diminish the social assets. Thus, the mere absence of any bad faith, while it may eliminate the criminal nature of these acts, nevertheless leaves civil liability intact for the reparation of the damage caused by it[32].

The legal nature and the very existence of the fault are intimately linked to the more or less precise nature of the obligation imposed on the administrators or managers of companies. Fault thus appears as a breach of a pre-existing obligation, a breach which justifies, according to the law, reparation if it causes damage.

But it is impossible to determine in advance, with exactness, in which cases there will be fault, especially when the obligation is as complex as preparing the inventory and balance sheet, the annual determination of profits which essentially depend on the economic situation and on indeterminate and variable factors. On this point, the notion of fault is essentially relative because the preparation of a sincere and accurate balance sheet serving as the basis for the distribution of dividends is also relative[33].

---

[29]- H. Lalou, Practical Treatise on Civil Liability, 6th edition, by P. Azard, Paris, 1962, cited in C. Voutsis, op. cit., p. 170; Bel Hadj Hamouda Ajmi, Managerial Fault in Business Law, March 3, 2009, Audinet Tunisia Legal, Business Law.

[30] - M. Cozian, A. Viandier, F. Deboissy, 20th edition, Litec, 2007, no. 604 to 610.

[31] - Cass. com., March 30, 2010, no. 08-17841, Bull. Joly, 2010, p. 60. This ruling created what has been called a presumption of fault; it decided that: "An individual fault is committed by each member of the board of directors or the management board of a public limited company who, by their action or omission, participates in the adoption of an unlawful decision of this body, unless they can demonstrate that they acted as a prudent and diligent administrator, notably by opposing this decision."

[32] - Cass. civ., January 5, 1942, D.C., 1942, p. 62.

[33] - A. Barrault, The Notion of Fictitious Dividends, thesis, Domat – 1937, Monchrestien, Paris, p. 212.

Therefore, fault must be assessed with regard to each case and taking into account the mission entrusted, the difficulties it entails, and also, to accurately assess the extent of the liability and the amount of compensation that definitively falls to each of the directors, the abilities of the one who carried it out, the time that should normally have been devoted to it, and the moral benefits or remuneration provided for their benefit.

Hence, the notion of fault is closely linked to the complex mechanism of the company. This mechanism determines countless obligations whose details and content cannot be specified in advance, but only by interpreters when a delicate case arises.

**B) The damage:**

The mere existence of the fault alone could not suffice to justify the civil liability of the management and control bodies if a damage[34] appreciable in money were not its consequence. This condition, resulting from common law, essentially distinguishes criminal liability and moral liability from civil liability.

Thus, for a conviction to be pronounced against these bodies, the acts committed by them must have caused harm either to the company, to the shareholders, or to third parties.

It follows that the judge, responsible for assessing the validity of a damages claim brought against the directors, must first determine whether, in reality, damage was caused by these directors to the claimant. In the absence of personal damage, distinct from that caused to the company, a shareholder, for example, cannot be allowed to bring a purely individual action against the directors based on article 715 bis 24 of the Commercial Code.

This would notably be the case for an action by which shareholders claim damages from the directors who caused them harm by inducing them, through false reports, a fraudulent balance sheet, and the proposal of a fictitious dividend, to subscribe to part of the share capital[35].

As for the company, it will only have a claim to the extent of the damage suffered, but it does not matter that the realization of this damage must only occur in the future[36].

The existence of this damage is all the more important as it will serve as the basis for the amount of the judgment. The compensation must indeed correspond to the damage suffered and completely eliminate it. In each case, the courts must therefore strive to determine the exact measure of the damage suffered by the claimant, and this assessment is not always easy to make.

The courts are concerned with best adapting damages to certain and not hypothetical damage[37], and they have full discretion on this point. For example, regarding the damages that the shareholder will personally obtain by exercising the individual action, they can make the following distinction:

1- If the shareholder has returned his shares, the damages may be equivalent to the difference between the purchase price of these shares and their sale price[38].

2- If he has kept his securities until the company's bankruptcy, he may obtain full reimbursement of the amounts corresponding to the purchase price of the securities[39].

[34] - G. Ripert and R. Roblot, Commercial Law Treatise, by M. Germain and L. Vogel, 17th ed., LGDJ, 1998, no. 1317.
[35] - A. Barrault, The Notion of Fictitious Dividends, Domat – Monchrestien editions, Paris, 1937, p. 13.
[36] - C. Voutsis, op. cit., p. 171.
[37] - Criminal Court of Cassation, February 2, 1950, Juriscl. Societies, Vol. VII, fasc. 148-2, p. 1, no. 141.
[38] - Paris, June 28, 1894, D.P. 1895.2.523.
[39] - Paris, December 24, 1891, Rev. Société, 1892, p.63.

Finally, it should be noted that the material existence of the damage and the determination of its amount are beyond the control of the Court of Cassation. C) The causal link:

The requirement of a causal link that must connect the damage to the fault, within the liability system, constitutes the third and final element of the obligation of the management and control bodies to repair the damage caused by the infraction. The liability of these bodies is indeed engaged only insofar as the damage suffered is the direct and immediate consequence of their fault.

French case law has very often had the opportunity to invoke the cause-and-effect relationship between the fault and the damage in cases where shareholders were led to purchase their shares based on dividends distributed or even merely announced. In all these cases, the causal relationship between the fault and the damage requires shareholders to prove that it was the actions of the directors or managers that led them to become part of the company by purchasing shares. In any case, the conviction would lack a legal basis if the trial judges failed to expressly rule on the causal link between the fault and the damage.

The French Court of Cassation had to rule on this point. In the case at hand, it involved a director of a public limited company who had prepared a false balance sheet on the basis of which he had distributed fictitious dividends. The contested ruling, having found the existence of claims compromised by a cause originating from the distribution of fictitious dividends, had ordered the administrator to pay the amount of these claims, deducting the sums that would be distributed by the trustee. The Criminal Chamber of the Court of Cassation quashed this ruling in the following terms: "Whereas only a direct and current damage can serve as a basis for an action for compensation for harm caused by the offense; … but, whereas by failing to declare that this condemnation was pronounced as damages, the contested ruling, which moreover does not specify the circumstances from which it would result that the damage thus suffered by the Société des travailleurs du bâtiment réunis was the direct consequence of the offense for which Delantel was found guilty, did not justify its decision; … that, to justify this decision, the ruling states that the 'security of the funds contributed by the Société du traitement des quinquinas to the Banque Chapuis was compromised by a cause originating from the distribution of fictitious dividends carried out on the basis of a fraudulent balance sheet'; but whereas this formula does not establish that the damage for which compensation was thus granted was the consequence of the offense for which Delantel was found guilty; therefore, the decision is not legally justified"[40].

The existence of a causal relationship between the fault and the damage is therefore an essential condition for the obligation to repair, but it is difficult to establish because, most often, a fault is not the sole cause of harm. This is particularly the case when there are multiple culprits, among whom it is not uncommon to find the victim of the damage themselves.

Indeed, if there are several culprits, and it is established that each has committed a fault, how can one determine a proportion in the causality of the damage ?

In this matter, two theories are generally encountered[41]. According to one, the chronological order of faults must be taken into account. It is the immediate fault that prevails. But one could also argue the opposite, that it is the earliest fault.

In a second system, it is said, when there is a series of faults, that they are interchangeable ; this is the theory of equivalence of conditions. If any one of the faults caused the damage, its author can be held responsible for all the damage. Therefore, each of those who committed a

[40] - Criminal Court of Cassation, February 2, 1950, Juriscl. Societies, Vol. VII, fasc. 148-2, no. 141, p.1.
[41] - C. Voutsis, op.cit., p.173.

fault must be condemned, the condemnation being shared equally, "pro parte virili," among each of the culprits.

However, case law, lacking a precise criterion it seems, hesitates to adopt one or the other theory that could definitively resolve the problem at hand. It would therefore be up to the judge, in each case, to determine to what extent each fault may have caused the damage. But, since this inquiry is difficult, judges are most often led to base their decision on the relative severity of the faults, which allows them to determine the greater or lesser responsibility for the damage.

## II.Chapter 2: Specific Grounds

The civil liability of commercial companies, when engaged in connection with offenses, is based on specific grounds that go beyond the classic framework of tort or contractual liability. Indeed, the commission of a criminal offense by a company or its directors is not limited to a punitive sanction but also opens the way to compensation for the harm caused to victims. This interaction between criminal law and civil law gives civil liability a particular character, marked by the autonomy of civil action and the influence of criminal rules on the assessment of fault. Thus, the grounds for this liability revolve around the violation of the law, the violation of the statutes, and management fault, while taking into account the specificities related to the legal personality of the commercial company.

### Section 1: Violation of the law

- Legal or regulatory provisions constitute a fault committed during the management of the company. This offense is provided for in both Algerian and French legislation. The two legal systems address this type of fault in a very similar manner. Thus, a decision of the Court of Appeal of Reims dated May 27, 2009 [42] stated that:

The obstacle placed on the audits or controls by the statutory auditors or the refusal to communicate on site all documents useful for the exercise of their mission is a fault of the manager of the controlled entity, constituting the offense of obstruction to the functions of the statutory auditor. In this case, the report pursuant to articles L 232-1 and R 232-1 of the French Commercial Code, which must be "made available to the statutory auditor at least one month before the convocation of the meeting of partners or shareholders called to rule on the company's annual accounts," was not submitted within the deadlines provided by these texts.

The violation of legal standards is proven and constitutes a fault of the manager. The manager can commit a fault by carrying out various actions aimed at evading or preventing the legal audit of the accounts.

For example, he may refuse entry to the company premises to the statutory auditor (or the minority expert)[43], he may lie or be reluctant to provide explanations, he may also provide incomplete documents[44], or attempt to deceive the statutory auditor in order to conceal losses[45].

- The directors must, during their term of office, observe the bylaws, laws, and regulations, as well as comply with the obligations to which they are subject. Any deviation from these duties of conduct will be sanctioned. French law and Algerian law express the liability of the directors of all companies, either for violations of laws and regulations, or for breaches of the bylaws, or for their management faults. For example, failure to convene the annual meeting,

[42] - Court of Appeal of Reims, May 27, 2009, Jurisdata 2009-02-2510, Corporate Law December 2010, no. 12, comment 1238, R. Salomon.
[43] - Criminal Court of Cassation, June 8, 1993. No. 92 84 092. Bull. Joly. Soc. 1993, p. 906, obs. Barbiéri; Rev. Soc. 1993, p. 860, obs. Bouloc.
[44] - Commercial Tribunal of Paris, May 30, 1990, Bull. CNCC 1990, p. 365, note Pontavice.
[45] - Criminal Court of Cassation, May 6, 2009, Dt et soc. 2009, comment 212, obs. Salomon.

irregularities in keeping the company accounts, refusal to provide company documents to a shareholder. The obligation imposed on companies by the rules and provisions of the Commercial Code will allow the assessment of the fault of directors who do not comply with the recommendations contained therein, so that their violation would constitute a fault within the meaning of Article 124 of the Civil Code.

Violation of laws and regulations implies that the director is aware of the illicit nature of their behavior, contrary to the loyalty they must demonstrate. However, negligence and oversights are also blameworthy. They will thus be held responsible for failing to include the phrase "company in liquidation" in the company's documents, which aims to inform third parties about the company's compromised financial situation[46].

The obligations incumbent upon directors are diverse and numerous. The violation of any one of them can engage their liability. But it is not only the violation of corporate law. The obligations and duties of directors also arise from private law. Thus, the late payment of a company debt that generates significant default interest for the company constitutes a fault attributable to the director[47].

In summary, the legislator has incorporated numerous provisions into company laws which, in addition to the general rules of the Civil Code and the Commercial Code, generally aim at the organization of the company and, more specifically, determine the obligations, sometimes very strict, that weigh on the corporate management bodies.

Let us note that the assessment of the fault of the corporate management and control bodies for violation of legal provisions is within the judges' authority, who, taking into account all the factual circumstances specific to each case[48], freely decide on the case of the violation submitted to them.

Ultimately, company executives are required, under penalty of liability, to comply with all the legal requirements imposed on them.

**Section 2: Violation of the bylaws**

The violation of the bylaws, like the failure to observe legal requirements, constitutes a fault which, when it causes harm, entails the liability of the directors and managers of companies. Entrusted with managing the company’s interests, is their primary duty not to respect the bylaws and observe their clauses ?

It is easily understood that if the liability of a director or manager must be engaged when there is a violation on their part of a legal provision, it cannot be otherwise when they have breached the bylaws, which are essentially the law of the company[49], the "constitution" under which the company has decided to operate. The bylaws of a company, according to the oldest rulings, have as their purpose both "the public interest and the interest of the shareholders and third parties called upon to contract with it."

This cause of liability is found in the provisions of article 715bis 23 of the Commercial Code, which states that the violation of the bylaws by directors or managers entails their liability.

---

[46] - Article 228 of ordinance no. 75-59 of September 26, 1975, establishing the Commercial Code, supplemented and amended. See also, Point Bleu Travel Company and Mr. Rivière, Verdié Travel Company, Revue des sociétés, 1997, p. 523, note Didier.

[47] - Commercial Court of Cassation, January 12, 1993, Bull. Joly. 1993, p. 336.

[48] - C. Voutsis, op. cit., p. 151.

[49] - G. Ripert and R. Roblot, Vol. 1, op. cit., no. 564 and following.

The infinite variety of clauses that the freedom of contracts and the full power of the extraordinary[50] general meeting of shareholders allow to be introduced into the bylaws of a company makes it impossible to provide a general enumeration of the cases of liability incurred by directors or managers due to violations committed against the bylaws.

Thus, the second irregularity provided for in both Algerian and French laws that can be committed by the manager during the management period of the company concerns the violation of the bylaws. Like any contract, the bylaws serve as law between the parties. However, corporate decisions taken by the corporate body in violation of the bylaws are not null and void for that reason[51]. A decision of the Court of Cassation, Commercial Chamber, dated May 10, 2010, provides a clear—and negative—answer to the question of the applicability of nullity to corporate decisions taken in violation of the bylaws or the company's internal regulations. The case involved a SAS (simplified joint-stock company), but the ruling concerns the "nullity of acts or resolutions taken by the organs of a commercial company." The bylaws must be respected by the executives, especially concerning clauses that limit their powers. Under Algerian law, clauses limiting powers are unenforceable against third parties. However, the company remains bound towards third parties acting in good faith by the actions of its executive, even if the executive acts contrary to the bylaws. If such an act is detrimental to the legal entity, the company can still seek compensation from the executive[52].

Among the cases of violation of the bylaws, a special place must be reserved for acts performed by company executives relating to the determination of annual profits and their distribution.

Generally, the bylaws partly reproduce legal provisions, but it may happen that some of these provisions are made more stringent, such as those that fix the amount of reserves, the rate of depreciation, or those establishing additional provisions.

In these cases, the directors or managers are required to comply with these statutory rules when preparing the final annual accounts and distributing the resulting profits. Thus, an act that does not itself constitute a common law fault may be considered wrongful and justify a liability action if such an act is qualified as such by the bylaws.

In any case, it remains true that the realization of profits is the fundamental goal of commercial companies, and necessarily, any decision that may be made by corporate executives outside of legal or statutory rules will ultimately have some influence on the amount of profits to be distributed and will undoubtedly determine their liability.

However, it should be noted in this regard that it is up to the trial judges to interpret the provisions of the articles of association concerning each situation. Furthermore, what we have said regarding the violation of legal provisions also applies to the assessment of fault in relation to violations of statutory requirements. The breach of statutes should thus be regarded, from the standpoint of liability, as equivalent to violations of the law.

**Section 3: Management Faults**

Without contravening the formal provisions of the articles of association, company directors may perform certain acts or refrain from others in violation of the general duty defined

[50] - V.G. Ripert, The Economic Order and Contractual Freedom, in a collection of studies on the sources of law in honor of François Gény, Vol. II, The General Sources of Modern Legal Systems, Dalloz, Paris, 1934, p. 374 et seq.

[51] - Commercial Court of Cassation, March 10, 2010, French Gastronomy Company v. SAS Larzul, JCPG no. 37, September 13, 2010, note A. Couret.

[52] - Articles 577 and 578/°1 of the Algerian Commercial Code.

by their role as administrator or manager. Here we are dealing with management faults proper, as described in Article 715 bis 23 of the Commercial Code.

This ground for liability is certainly much more delicate to define, due to the difficulty in specifying what should be understood by management fault.La troisième irrégularité prévue par les lois algériennes aussi bien françaisesconcerne la faute de gestion. Le dirigeant sera responsable face à la société et face aux tiers s'il n'agit pas en bon professionnel. Le modèle de conduite qu'il doit observer dans les deux pays (celui de l'homme de métier) lui impose le devoir d'être loyal vis-à-vis de la société et de ses associés[53].

La faute de gestion, comme nous avons eu l'occasion de l'évoquer précédemment, sera de type professionnel[54]. Les tribunaux des deux pays condamnent le dirigeant qui s'écarte du comportement de l'administrateur consciencieux, honnête et respectueux des règles normales de la gestion sociétaire[55]. Dans le cadre de la faute professionnelle il y a, comme on l'a vu, un alourdissement de la responsabilité de celui qui a causé le dommage, par rapport au droit commun : la faute légère pourra être qualifiée de lourde[56], et la faute très légère, juridiquement neutre pour les particuliers, sera au minimum considéré comme une faute légère pour l'homme de métier**.**

The fault of the director does not have to be intentional or gross because, due to its professional nature, even a slight fault is sufficient to hold them responsible. Algerian law is imprecise here in Article 715 bis 23 when it states that "the directors are jointly and unlimitedly liable for damages caused to the company, the shareholders, or third parties by their fault or fraud." In matters of professional civil liability, one does not need to speak of intentional fault because the professional is responsible even for a slight fault.

The scenarios of mismanagement are very diverse. The acts considered faulty by the courts of both countries will certainly be comparable under the two legal systems. They can involve a decision or a simple abstention. In general, the director's faults towards the company will consist of actions or omissions contrary to the company's interests. Indeed, judges consider any behavior contrary to the corporate interest as faulty. For example[57], receiving a significant remuneration that does not correspond to the actual workload performed for the company, which, moreover, is experiencing significant losses, or disadvantaging the managed company in favor of other companies in which the director has greater interests[58].

In relation to the partners, misconduct in management will be evident in disloyal conduct towards them. In both cases, the loyalty of the manager will be called into question.

Mismanagement in a solvent or in bonis company will be uncovered in the event of a possible liquidation of the company[59]. However, its assessment will differ depending on the company's economic condition: in an in bonis company, the manager will be condemned for clear mismanagement, whereas in a company undergoing judicial liquidation, the courts will be satisfied with identifying a general fault that may have contributed to creating the company's

[53] -Philippe le Tourneau, Professional Civil Liability, 2nd edition, Paris, Dalloz Référence, 2005, p.21.
[54] - Philippe le Tourneau, op. cit., p.21.
[55] - Benoit le Bars, Civil Liability of Corporate Officers, Répertoire Dalloz Corporate Law, June 2010.
[56] - J. Carbonnier, Civil Law. Property – Obligations, Paris, PUF Quadrige Manuals, 2004, Vol II, especially No. 1072.
[57] - cass.com. July 11, 2006. JCPE 2006. 2512. See also articles 800/°4 and 811/°3 of the Algerian Commercial Code.
[58] - Abd el Hafid Belkadi, The Crime of Misuse of Company Funds, Moroccan Review of Business and Corporate Law, issue 11, The Offense of Abuse of Corporate Assets in Commercial Companies, October 2006, pp. 21-22.
[59] - Estelle Scholastique, The Duty of Care of Company Directors, French and English Law, Paris, LGDJ, 1998, No. 258.

poor financial state. Furthermore, when a company is subject to collective proceedings, the court may, in the event of insufficient assets caused by mismanagement, hold the manager liable for the debts of the legal entity through the action of recourse to personally cover the deficit[60]. Thus, just as with violations of legislative, regulatory, and statutory provisions[61], this type of fault requires the manager to repair the damage resulting from their wrongful conduct.

To assess mismanagement, the courts must refer back to the date of the facts to avoid holding a decision accountable based on knowledge of the final outcome when the decision initially seemed correct."It is therefore only possible to sanction decisions that were unreasonable at the time they were made"[62]. The management of any company involves taking risks. Just because a risk materializes does not necessarily mean that the manager will be held responsible.

Indeed, judges allow for a certain margin of error inherent in any decision-making within the business world. They assess whether, overall, the management was appropriate, whether the manager acted in good faith, and in accordance with the practices of their profession[63].

The manager's behavior is evaluated in abstracto, based on that of a prudent, diligent, and active manager given the circumstances at the time of the action[64]. "Internal" conditions related to the manager's personality, such as incompetence or inexperience, cannot exempt them from responsibility.

Conversely, more concrete factors such as the size of the company or whether the mandate is gratuitous or paid can influence the judge's assessment. Indeed, running a family-sized business is not the same as managing a large publicly traded company. The same level of diligence cannot be demanded from the managers of each type of company, nor from a manager who performs their role without compensation.

These principles are also found in Algerian law. Article 578, last paragraph, of the commercial code indeed specifies the duty to act with the "diligence of a professional.It also specifies that directors must act in accordance with the corporate purpose of the company and does not exactly mention the interest of the company; from this, one can thus confuse the company's purpose on one hand, and the interest on the other.

The professional, that is to say the diligence that any merchant would show in managing their own affairs, "to manage as a good family man"[65]. This implies a greater effort and a more demanding duty of conduct from directors in corporate management. Obviously, managerial fault is any fault committed in the general administration of the company, whether by action or omission[66]. In short, it results from behavior that can be described as abnormal or irregular, most often characterized by a "lack of common sense."

French law allows shareholders, often inexperienced in management matters, in public limited companies and limited liability companies to use minority expertise. The law permits them to request by legal means the appointment of a management expert tasked with presenting

---

[60] - Article 434 of the Algerian Civil Code.

[61] - Y. Guyon, Business Law, Companies in Difficulty, Vol. 2, 7th edition, Economica, 1999, No. 1374.

[62] - Répertoire sociétés Salloz, Civil Liability of Corporate Officers, June 2010, especially No. 38.
Also, Y. Guyon, Business Law, General Commercial Law and Companies, 12th edition, Paris, Economica, 2003, Vol. I, especially No. 459.

[63] - idem.

[64] - G. Ripert, R. Roblot, Treatise on Commercial Law, 17th edition, under the direction of Michel Germain, Vol. 2, Paris, LGDJ, 2004, especially No. 1367.

[65] - Serge Hadji-Artinian, Mismanagement in Corporate Law, Jurisclasseur, Business Finance, Litec, Paris, 2001, p.4.

[66] - idem.

a report on one or more management operations[67]. Through this means, they can demonstrate such a fault necessary for the success of their liability action. This possibility does not exist under Algerian law.

It would nevertheless be useful to provide for such expertise in Algerian law, as it is often difficult for minority shareholders to prove any possible mismanagement committed by the director.

The evolution of French liability law led to the adoption of the theory of fault separable from official duties. The rulings holding a director liable are inspired by administrative law. The Tribunal of Conflicts established the principle of non-liability of a public agent acting within the scope of their service in a famous judgment on July 30, 1873, known as the Pelletier Case[68]. According to administrative case law, a public agent is only liable if they have committed a personal fault or one that can be detached from the service, as opposed to a service fault.

Similarly to administrative law, the Commercial Chamber of the Court of Cassation stated in its judgment of May 20, 2003, that "The personal liability of a director vis-à-vis third parties can only be held if they have committed a fault separable from their functions; this is the case when the director intentionally commits a fault of particular severity incompatible with the normal exercise of corporate functions"[69].

This leading ruling defines (for the first time) the position that had been that of the case law for more than thirty years[70]. Initially considering that the manager is only liable if they have committed a "fault" external to the conclusion or execution of the contract, the case law of the Commercial Chamber of the Court of Cassation later required a "personal fault." Eventually, the case law adopted the requirement of a "fault separable from the functions" of the manager, or a "detachable personal fault[71]."

It is worth highlighting the content of the definition of separable fault provided by the ruling of the Commercial Chamber of the French Court of Cassation dated May 20, 2003. This definition primarily concerns all managers : the managers of limited liability companies or general partnerships ; the chairman of the board, the general director, the deputy general director, the chairman of the management board, the sole general director of the public limited company; the manager of the limited partnership with shares ; the chairman of the simplified joint-stock company; the president of an association ; the manager of the civil real estate company. In contrast, the separable fault does not apply to members of the supervisory board nor to de facto managers.

Members of the supervisory board are liable for personal faults committed in the execution of their mandate (Article L225-257 of the French Commercial Code) but are not responsible for management acts or their outcomes. These individuals are required to disclose any offenses of which they have become aware. Failure to do so may result in their being held

---

[67] - Articles L 225-231 first paragraph, L 223-37 first paragraph of the French Commercial Code consulted on the site: codes.droit.org; https://www.legifrance.gouv.fr.

[68] - Pelletier ruling of July 30, 1873. Conflict Tribunal, July 30, 1873, GAJA 2001 No. 2: Lamy Civil Law Collection. Liability Law, Professional liabilities study 483, Liability of company officers in solvent companies, especially No. 37.

[69] - Court of Cassation, Commercial Chamber, May 20, 2003, Mme Seusse v/s Société d'Application de Techniques de l'Industrie (SATI), Quarterly Review of Commercial Law, July-September 2003, pp. 523-526.

[70] - Civil Cassation, May 31, 1978. Civil Bulletin I No. 213: Grossi Isabelle, Officer Liability, Law and Heritage Review, September 2003, No. 110, pp. 50-58.

[71] - J.F. Barbiéri, Liability of the Legal Entity or Liability of Officers? Personal Liability Adrift, Mélanges Guyon, Dalloz, 2003, p. 41.

civilly liable for those same offenses (Article L225-257 of the French Commercial Code[72]). The de facto manager, meanwhile, remains subject to general law (Article 1382 of the Civil Code). They bear the negative consequences of the status of a de jure manager but in no case are they granted the potential benefits of this status[73].

The definition of separable fault provided by the decision of May 20, 2003, includes three criteria identified by legal doctrine[74]: the fault must be incompatible with the normal exercise of managerial functions, it must be committed intentionally, and it must be of particular severity.

It can be seen that the breach of a professional-type obligation gives rise to this fault separable from the functions. Indeed, constructors are subject to the obligation to take out liability insurance, and the failure to have this insurance constitutes an offense provided for and punished by the Construction Code and the Insurance Code[75]. Despite criticisms of the theory of separable fault, which highlight the fact that it guarantees a certain immunity to executives due to the rarity of cases in which courts recognize the existence of a fault separable from the functions[76].

In the end, and in general terms, it can be said that to determine management fault, a distinction must be made between the liability that applies to directors and managers in office at the time the company's nullity was incurred due to a defect in its formation, and that related to faults committed during the company's existence[77].

Such a distinction, which seems to have the broadest meaning, necessarily leads to including in management fault, lato sensu, both management faults stricto sensu and all acts contrary to law and the bylaws.Framed in these terms, the distinction does not avoid all difficulties because, except in cases where the management body in question has failed to comply with a legal or statutory requirement, fault remains difficult to specify when it concerns obligations related to management duties proper.

Indeed, it is impossible to determine exactly in advance the cases in which there will be a breach of these duties and, consequently, civil liability, because, normally, the factors contributing to the proper functioning of companies are very variable and numerous; they are multiple both in the individuals themselves and in the actions which, as a result, take on a particular significance depending on each case, and call for different solutions given the social situation.

In this respect, one will be more or less strict in assessing the seriousness of the breaches of duty by company directors and managers and in determining the exact nature of these duties, depending on the economic or financial circumstances specific to each company. The action for liability for management faults proper thus becomes the most frequent, as it is directly related to economic vicissitudes.

---

[72] - Lamy Civil Law Collection, Lamy Liability Law, Professional liabilities – corporate officers, [May 2008] Study 483, "Liability of company officers in solvent companies," especially No. 39.

[73] - Nathalie Dedessus Le-Moustier, Liability of De Facto Officers, Companies Review, 1997, p. 499.

[74] - Claude Champaud, Didier DANET, Corporate Executives, Liability towards Third Parties for Unlawful Acts Committed on Behalf of the Company in the Exercise of Their Corporate Functions, Act Separability from Functions. Nature and Concept. Meaning and Scope. Note on Cass. com May 20, 2003 (N. Seusse), Quarterly Review of Commercial Law, 2003, no. 4, pp. 741-746.

[75] - Articles: 163-175-176-177-178-179 of Ordinance No. 95-07 of January 25, 1995, concerning the Algerian Insurance Law, Official Journal No. 13 of March 8, 1995.

[76] - Véronique Wester-Ouisse, Critique of an Imprecise Notion: The Fault of the Executive.

[77]- P. Conte and W. Jean Didier, Criminal Law of Commercial Companies, Lexis Nexis, Juriclassuer Editions, Paris, 2004, p. 2.3.

**Conclusion:**

The study of the legal foundations of civil liability in offenses committed by commercial companies, in the light of Algerian commercial and civil law, highlights a complex interplay between the rules of civil law, company law, and business criminal law.
On one hand, civil liability is classically based on general principles, notably fault, damage, and the causal link. However, in the corporate context, these elements are adapted to the specificity of commercial activity and the collective structure of the company. The reference to the diligence of the "man of the trade," notably established by Article 578 of the Commercial Code, illustrates this objectification of the faulty behavior of directors.

On the other hand, offenses committed within commercial companies reinforce the autonomy of this civil liability. The violation of legal and regulatory provisions, whether constituting a criminal offense or a mere management irregularity, constitutes a specific basis for holding directors liable, independently or in addition to public prosecution. Thus, criminal fault frequently becomes civil fault, giving rise to a right to compensation for the victims.

Furthermore, this liability has a plural nature : it can be incurred towards the company itself, the partners, or third parties. This diversity reflects the protective function of civil liability, which aims to guarantee transparency, loyalty, and security in business life.

Finally, the analysis reveals a trend towards the accumulation of civil and criminal liabilities, reflecting a strengthening of the legal framework governing corporate activities. This accumulation, far from being a contradiction, corresponds to a logic of complementarity: criminal sanctions punish offenses against the economic public order, while civil liability ensures compensation for the damages suffered.

**Results:**

This research allows for the identification of several essential findings:

- Directors are subject to specific duties to which a particular civil liability is attached. A professional civil liability.

- The management of a company is broadly defined as all acts necessary, or articles, for the realization of the corporate purpose. It consists of a legal activity limited in time, a service to the higher interest, subject to judicial oversight that monitors management faults considered as an abuse of rights.

- It is thus observed that the definition of management fault poses a problem because this fault consists of a multitude of behaviors that apparently have no real connection. Indeed, the boundary between attitudes of negligence, imprudence, and disloyalty is blurry, making the systematization unstable and uncomfortable. Nevertheless, this apparent diversity conceals a real unity of management faults, which share a common point: the corporate interest.

- The relationship between these multiple bases studied in this research sometimes remains unclear to practitioners, highlighting certain practical shortcomings, notably the difficulty of proving the causal link in complex offenses.

- Judges base their decisions on the establishment of a body of evidence. This is founded on behaviors that constitute management faults. This approach confirms the jurisprudential willingness to grant the notion of management fault an extremely broad qualification.

- Disloyalty constitutes "a fact giving rise to civil liability"; the violation of legal provisions constitutes an offense that leads to the civil liability of its author, to which criminal liability is added.

- Civil liability in the field of corporate offenses has a plural and cumulative nature: plurality of responsible persons (managers, companies), possibility of cumulation with civil liability.

- The "outlaw" leader is one who, stepping outside the legal framework, commits a management fault in their decisions. This represents the ultimate wrongful behavior of a leader who acts against the interest of the legal entity, allowing themselves to violate penal legal provisions and public order (the rules of accounting law and tax law, corporate law rules, rules of criminal corporate law). Consequently, criminal fault often facilitates proof of civil fault, which strengthens the protection of victims (shareholders, creditors, third parties).

The results show that civil liability constitutes an essential tool for regulation and protection in commercial companies. However, its effectiveness largely depends on improving the legal and practical mechanisms that govern its implementation.

**Recommendations:**

In light of these results, several recommendations can be made, here are the most important:

- Strengthen the governance of commercial companies by imposing stricter internal control mechanisms (audit, supervisory committees) in order to prevent offenses and limit management faults.

- Clarify the rules of directors' responsibility with better precision of legal obligations, notably regarding diligence and transparency, which would help reduce uncertainty in the application of Article 578 of the Commercial Code.

- Facilitate the burden of proof in civil liability matters by considering a reduction of the burden of proof, particularly in cases of economic offenses, through the introduction of legal presumptions in favor of the victims.

- Implement internal compliance programs inspired by international standards to ensure adherence to laws and regulations.

- Promote a legal and ethical culture within companies to prevent wrongful conduct and offenses.

Certain new offenses, such as those related to artificial intelligence or algorithms, may require new specific legal grounds. Jurisprudence must therefore continue to innovate so that the civil liability law of commercial companies remains effective and fair.