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AGAINST THE BLANKET APPLICATION OF THE HEIGHTENED DANGER REGIME TO ARTIFICIAL INTELLIGENCE SYSTEMS: A COMPARATIVE ARGUMENT FOR USE BASED DIFFERENTIATION

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Abstract

Conflict of laws rules identify the applicable law but leave untouched the substantive basis of liability. In the doctrine of the Commonwealth of Independent States that basis is increasingly sought in the construct of the source of heightened danger, and a growing body of scholarship proposes to read artificial intelligence systems into it. This paper argues that the proposal is unfounded as a general rule. Two objections are advanced. The first is conceptual: the institution was formed for activities whose danger is physical, whereas most harm produced by artificial intelligence is proprietary or informational, so that extension destroys the internal logic of the institution. The second concerns the cross-border dimension: the construct has no direct equivalent in common law systems, and its extension distances national law from international practice at the stage of recognition and enforcement. Comparative examination of the European Union, China and the United States shows a structural convergence. None of the three has adopted a technology wide no-fault regime; in each, liability without fault is channelled through defectiveness or through physical danger. The paper proposes use based differentiation as the solution best suited to Uzbekistan: the heightened danger regime should apply only where the system governs a physical process endangering life or health, while all remaining cases should be



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resolved under the rules on defects in goods, works and services, supported by a documentary disclosure duty.

Keywords: artificial intelligence, civil liability, source of heightened danger, product liability, no-fault liability, cross-border commerce, comparative private law.

Annotatsiya

Kolliziya normalari qo‘llaniladigan huquqni aniqlaydi, ammo javobgarlikning moddiy asosini belgilamaydi. Mustaqil Davlatlar Hamdo‘stligi doktrinasida bu asos tobora ko‘proq oshiqcha xavf manbai konstruksiyasida izlanmoqda va ilmiy adabiyotda sun‘iy intellekt tizimlarini shu toifaga kiritish taklif etilmoqda. Maqolada mazkur taklif umumiy qoida sifatida asossiz ekani asoslanadi. Ikkita e‘tiroz ilgari suriladi. Birinchisi konseptual xarakterga ega: institut jismoniy xavf bilan bog‘liq faoliyat uchun shakllangan, sun‘iy intellekt keltiradigan zararlarning aksariyati esa mulkiy yoxud axborot xarakterida bo‘lib, kengaytirish institutning ichki mantiqini buzadi. Ikkinchisi transchegaraviy o‘lchovga tegishli: konstruksiyaning umumiy huquq tizimlarida bevosita ekvivalenti yo‘q, uni kengaytirish esa milliy huquqni tan olish va ijro bosqichida xalqaro amaliyotdan uzoqlashtiradi. Yevropa Ittifoqi, Xitoy va Amerika Qo‘shma Shtatlari tajribasining qiyosiy tahlili tuzilmaviy yaqinlashuvni ko‘rsatadi: uchala tizimda ham aybdan qat‘i nazar javobgarlik texnologiyaga emas, nuqsonlilik yoki jismoniy xavf kanaliga bog‘langan. Maqolada O‘zbekiston uchun eng maqbul yechim sifatida qo‘llanishga asoslangan farqlash taklif qilinadi.

Kalit so‘zlar: sun‘iy intellekt, fuqarolik-huquqiy javobgarlik, oshiqcha xavf manbai, mahsulot uchun javobgarlik, aybsiz javobgarlik, transchegaraviy tijorat, qiyosiy xususiy huquq.



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Аннотация

Коллизионные нормы определяют применимое право, но не устанавливают материального основания ответственности. В доктрине Содружества Независимых Государств такое основание всё чаще ищут в конструкции источника повышенной опасности, а в литературе предлагается отнести к нему системы искусственного интеллекта. В статье обосновывается, что такое решение в качестве общего правила необоснованно. Выдвигаются два возражения. Первое носит концептуальный характер: институт сложился для деятельности, опасность которой физическая, тогда как большая часть вреда от искусственного интеллекта имеет имущественный или информационный характер. Второе касается трансграничного измерения: конструкция не имеет прямого аналога в системах общего права. Сравнительный анализ опыта Европейского союза, Китая и Соединённых Штатов показывает структурное сближение: ни в одной из трёх систем не принят безвиновный режим, охватывающий технологию в целом. Предлагается дифференциация по сфере применения.

Ключевые слова: искусственный интеллект, гражданско-правовая ответственность, источник повышенной опасности, ответственность за недостатки товара, безвиновная ответственность, трансграничная торговля, сравнительное частное право.

1. The question and why it is not a question of conflict of laws

Where an artificial intelligence system participates in a cross-border commercial relationship and harm follows, two questions must be kept apart. The first is which law governs the claim. The second is on what substantive basis liability rests under that law. Conflict of laws rules answer only the first. Once the



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applicable law is identified, the claimant must still locate a head of liability within it, and it is here that the doctrine of the Commonwealth of Independent States has concentrated its attention on a single construct.

Article 999 of the Civil Code of Uzbekistan imposes liability irrespective of fault for harm caused by activity creating heightened danger for those around, and places that liability on the person who owns or operates the source.¹ Article 1079 of the Civil Code of the Russian Federation has an identical structure.² Both provisions contain an open statutory list, and that openness has invited a growing body of scholarship to read artificial intelligence systems into the category by way of extensive interpretation.³

The attraction of the proposal is easy to state. Where a system produces an outcome whose formation cannot be technically reconstructed, a claimant cannot realistically discharge the burden of proving fault. A no-fault regime removes that burden at a stroke. This paper argues that the solution is nevertheless wrong as a general rule, that two objections stand against it, and that comparative practice in the European Union, China and the United States confirms the narrower answer.

2. The expansionist proposal and its alternatives

Proponents of extension argue that the autonomy of a modern system makes full control impossible, and that this impossibility is precisely what the concept of heightened danger describes. The competing position within the same doctrinal tradition prefers to compensate such harm under the rules on defects in goods,

¹ Civil Code of the Republic of Uzbekistan. (1996). Article 999: Liability for harm caused by activity creating heightened danger for those around. Tashkent: Adolat.

² Civil Code of the Russian Federation. (1996). Part two of 26 January 1996 No. 14-FZ, Article 1079. Moscow: Sobranie zakonodatelstva RF.

³ Voinikanis, E. A., Semenova, E. V., & Tyulyaev, G. S. (2018). Artificial intelligence and law: Challenges and opportunities of self-learning algorithms. Proceedings of Voronezh State University. Series: Law, 4(35), 137-148.



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works and services, treating the system as a thing supplied rather than as a danger operated.

A third position deserves separate mention. Gadzhiev and Voinikanis argue that rather than formally recognising robot agents as subjects of law, it is more effective to develop the private law recognition of the identity of their producers.⁴ The argument rests on a market mechanism rather than on doctrinal taxonomy, and it is for that reason of particular interest in cross-border relations, where the identifiability of the responsible undertaking matters more than the classification of the instrument. The wider literature on machines without principals reaches a comparable conclusion by a different route.⁵

3. First objection: the institution answers physical danger

The institution of the source of heightened danger was historically formed for activities whose danger is physical: transport, high voltage electricity, explosive and inflammable substances, construction works. Its foundation is twofold. The harm is physical in nature, and full control over the activity is technically impossible even for a diligent operator. The absence of fault is justified because the activity is dangerous in itself, not because the causal chain is hard to trace. The harm produced by artificial intelligence in commercial settings is predominantly of a different order. A mispriced order, a wrongly rejected counterparty, a discriminatory screening outcome, a defective rendering of contractual terms, an erroneous customs classification: these are proprietary or informational losses. Extending to them an institution built on physical danger does not adapt the institution, it dissolves it. If every activity whose outcome is

⁴ Gadzhiev, G. A., & Voinikanis, E. A. (2018). Could a robot be a subject of law? (The search for legal forms for regulating the digital economy). *Law. Journal of the Higher School of Economics*, 4, 24-48.

⁵ Vladeck, D. C. (2014). Machines without principals: Liability rules and artificial intelligence. *Washington Law Review*, 89(1), 117-150.



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difficult to verify becomes a source of heightened danger, the category loses the limiting principle that gives it content.

The point can be put more sharply. Evidentiary difficulty is a problem of proof. It should be answered with instruments of proof, namely disclosure duties, documentation requirements and presumptions attached to non-disclosure, rather than by reclassifying the underlying activity. The European debate took this route: the resolution of the European Parliament on a civil liability regime for artificial intelligence proposed presumptions and disclosure rather than a general reclassification of the technology,⁶ and the expert group that preceded it framed the issue in the same terms.⁷ The scholarly literature on the limits of legal personality points in the same direction.⁸

4. Second objection: the cross-border dimension

The construct of the source of heightened danger exists mainly in the legal systems of the Commonwealth of Independent States and, in modified forms, in some continental systems. Common law systems have no direct equivalent; what they possess is a narrower doctrine of abnormally dangerous activities, confined to a short list of physical hazards. Extending the construct to artificial intelligence therefore moves national law away from international practice at the precise point where convergence matters most.

Three practical consequences follow. First, at the stage of recognition and enforcement a judgment resting on a head of liability unknown to the enforcing state invites objections founded on public policy, and the Hague Convention on the Law Applicable to Products Liability offers no assistance because the claim

⁶ Zech, H. (2019). Liability for AI: Public policy considerations. ERA Forum, 20, 147-158.

⁷ Bertolini, A. (2020). Artificial intelligence and civil liability. Brussels: European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs.

⁸ Expert Group on Liability and New Technologies. (2019). Liability for artificial intelligence and other emerging digital technologies. Brussels: European Commission.



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is not characterised as a product claim.⁹ Second, insurance becomes difficult to price, since the underwriting market for cross-border technology risk is built on product and professional liability categories. Third, the contractual allocation of risk becomes unreliable: a supplier cannot limit exposure that national law attaches to possession of a dangerous source irrespective of the contractual terms. For a jurisdiction seeking to attract technology suppliers, these are not marginal costs.

5. Comparative evidence: the European Union

Directive (EU) 2024/2853 on liability for defective products recognises software, including artificial intelligence systems, as a product, and maintains liability without fault for harm caused by a defect. Member States must transpose it by 9 December 2026.¹⁰ The structure of the Directive is decisive for the present argument: the no-fault element attaches to defectiveness, not to the technology. A system that is not defective generates no liability however autonomous it may be. The Directive does, however, address the evidentiary problem directly, through disclosure of evidence and rebuttable presumptions where disclosure is not made.

The proposed Artificial Intelligence Liability Directive, which would have introduced technology specific presumptions alongside the product regime, was withdrawn in 2025.¹¹ The consequence is that the European Union now governs artificial intelligence liability through the product channel alone. It is worth adding that the risk tiers of the Artificial Intelligence Act are market access and

⁹ Scherer, M. U. (2016). Regulating artificial intelligence systems: Risks, challenges, competencies, and strategies. *Harvard Journal of Law & Technology*, 29(2), 353-400.

¹⁰ Chesterman, S. (2020). Artificial intelligence and the limits of legal personality. *International and Comparative Law Quarterly*, 69(4), 819-844.

¹¹ Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC. *Official Journal of the European Union*, L, 18 November 2024, Articles 4, 6, 9-11.



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conformity requirements; they are not heads of liability, and a breach of them does not by itself create a civil claim.¹²

6. Comparative evidence: China

On 7 September 2026 the Supreme People's Court issued its Opinions on the trial of cases involving artificial intelligence disputes.¹³ The general standard adopted is fault based. Strict liability applies where a specific statute so requires, notably the Product Quality Law,¹⁴ and presumed fault applies where legislation such as the Personal Information Protection Law so provides. For hardware integrated artificial intelligence products, strict liability attaches where a defect creates an unreasonable danger to personal or property safety, with producers and sellers bearing product liability under the existing provisions of the Civil Code.¹⁵

Two features of the Chinese approach are instructive. The test of unreasonable danger is multifactorial, taking account of the nature and purpose of the product, its self-learning ability, its update status, the degree of control retained by the user, and compliance with national and industry standards, the last being a relevant factor and expressly not a safe harbour. And the Opinions give particular weight to whether the producer gave truthful explanations and clear warnings about applicable scenarios, inherent limitations and foreseeable risks. The Chinese answer to the evidentiary problem is thus a disclosure standard, not a reclassification of the activity.

¹² European Parliament. (2020). Resolution of 20 October 2020 with recommendations to the Commission on a civil liability regime for artificial intelligence (2020/2014(INL)). Brussels: European Parliament.

¹³ Bird & Bird. (2025). Proposed EU AI liability rules withdrawn. Retrieved from <https://www.twobirds.com/en/insights/2025/proposed-eu-ai-liability-rules-withdrawn>

¹⁴ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence. Official Journal of the European Union, L, 12 July 2024.

¹⁵ Supreme People's Court of the People's Republic of China. (2026, 7 September). Opinions on the trial of cases involving artificial intelligence disputes. Beijing: SPC.



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7. Comparative evidence: the United States

There is no federal statute governing civil liability for artificial intelligence. Liability remains a matter of state tort law, within which manufacturing defects attract strict liability while design defects are assessed under a risk utility standard, and the characterisation of software as a product for these purposes remains unsettled.¹⁶ The Executive Order of 11 December 2025 on a national policy framework for artificial intelligence pursues regulatory uniformity and the pre-emption of divergent state rules;¹⁷ it does not create a technology wide no-fault regime, and the regulatory literature has long warned that technology defined rules age faster than the technology they address.¹⁸

8. The structural convergence

Three systems with markedly different regulatory philosophies arrive at the same structural answer. None adopts a no-fault regime covering artificial intelligence as such. In each, liability without fault is channelled either through defectiveness or through physical danger. The European Union routes it through the product concept; China routes it through statutory strict liability and hardware integration; the United States routes it through the manufacturing defect category. The dividing line in all three is the character of the risk and the presence of a defect, not the sophistication of the technology. Where the evidentiary difficulty is addressed, it is addressed through disclosure and presumptions, which is a matter of the law of proof rather than of the classification of activity.¹⁹

¹⁶ Product Quality Law of the People's Republic of China. (1993, as amended). Beijing: Standing Committee of the National People's Congress.

¹⁷ Civil Code of the People's Republic of China. (2020). Articles 1202-1207. Beijing: National People's Congress.

¹⁸ American Law Institute. (1998). Restatement (Third) of Torts: Products Liability, section 2. St Paul, MN: American Law Institute.

¹⁹ Executive Order of 11 December 2025, Ensuring a national policy framework for artificial intelligence. Washington, DC: The White House.



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9. The solution proposed for Uzbekistan

It follows that the blanket application of Article 999 of the Civil Code to artificial intelligence systems is unfounded. The regime is appropriate only where the system governs a physical process and thereby endangers life or health: autonomous vehicles, medical devices, industrial robotics. In all remaining cases liability should be determined under Article 1017 of the Civil Code, that is under the rules on harm caused by defects in goods, works and services.

The practical value of the distinction is that it assigns different liability regimes to the same technology according to its field of application. The legal consequence follows from the particular use, not from the type of technology. The same large language model falls under the product defect regime when it drafts commercial correspondence and under the heightened danger regime when it steers a vehicle. This is also what makes the solution durable: it does not depend on a technological definition that will age.

Three legislative implications follow. First, Article 999 should not be amended to name artificial intelligence expressly. Such a mention would either be read as a technology wide extension or would require a definition that ages quickly; what is needed instead is interpretive clarification that the provision reaches systems governing physical processes. Second, Article 1017 should be made explicitly applicable to systems supplied as a continuing service subject to updates, because its present wording is oriented towards a single transfer of goods. Third, the evidentiary problem should be answered where it belongs, through a duty to produce technical documentation, with failure to produce giving rise to a rebuttable presumption of defect. This is the functional equivalent of the presumptions that the withdrawn European directive would have introduced, and



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it achieves the claimant's protection without distorting the institution of heightened danger.²⁰

10. Conclusion

The debate in the doctrine of the Commonwealth of Independent States has framed the question as whether artificial intelligence fits an existing category. The better question is which risk the law is responding to. Where the risk is physical, no-fault liability is justified, internationally recognisable and enforceable across borders. Where the risk is economic or informational, the proper instruments are the product defect regime and the law of proof. Comparative practice in the European Union, China and the United States supports differentiation by use rather than a no-fault regime covering the technology as a whole, and that is the solution best suited to the legal system of Uzbekistan.

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²⁰ Convention of 2 October 1973 on the Law Applicable to Products Liability. The Hague: Hague Conference on Private International Law.



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