

The Legal Appraisal Of The Nature Of Liability Of Land Transport Operators In Cases Of Accidents In Cameroon

Kutife Umaro Kombo

Doctor of Philosophy in Law (PhD), Faculty of law and Political science University of Douala, Cameroon,
kutiefeumarok@gmail.com

Abstract—Land transport operators in Cameroon can be criminally and civilly liable as a result of an accident resulting from their actions. This is provided for in section 289(1) of the penal code¹. The criminal liability can be either in tort law, like in negligence, vicarious liability and strict liability, as well as under contract law. The criminal liability can be for an imprisonment term, the payment of a fine, or loss of life or destruction of property. However, the nature of liability in cases of accidents is faced with problems in Cameroon, as the cases suffer from continuous delay before the courts, weak sanctions provided in the penal code and more. This paper sets out to examine the efficiency of the nature of liability of transport operators in cases of accidents in Cameroon. A doctrinal research method has been adopted where the researcher has analyzed both primary and secondary sources of information. The primary sources are the laws and cases decided by courts, while the secondary sources are other write up which the researcher consulted to complete the research paper. Our findings reveal that the laxity of the courts and weak sanctions provided by the

Penal code affects the effectiveness of the liability regime for transport operators in cases of accidents. We recommend that the penal code be revised and a more stringent criminal sanction be put in place. Also, a separate court system should be set up for disputes related to accidents to solve the problem of continuous delay before the courts

Keywords—NATURE OF LIABILITY, LAND TRANSPORT OPERATORS, ACCIDENTS

1.0. Introduction

The provision of section 289 of the Cameroon Penal Code on Unintentional killing and Harm is interested only in the criminal part of liability in cases of accident in Cameroon. This law is silent as far as civil liability is concerned, even though the provision of section 289 recognises the fact that an accident might be caused by negligence, which is a ground for civil action in Tort law. However, reference can be made to

section 59 of the Criminal Procedure Code.² This section permits the institution of a civil action alongside a criminal action. The civil action aims to compensate the victim for injuries suffered as a result of the offence committed, like in the case of an accident in Cameroon. An accident which leads to death or bodily injuries, as provided for in section 289 of the Penal Code, also permits the victim of the accident to bring a civil action for damages in line with section 59 of the CPC as a result of injuries suffered resulting from the accident in question. The nature of liability in cases of accidents, therefore, refers to the type of liability which can fall on the person responsible for the accident in question.³ The cause of the accident in Cameroon and who is responsible for the accident will determine the nature of liability that will fall on the person responsible for the accident. Such liability can be civil and criminal. Civil liability can be under the Tort of negligence, vicarious liability or strict liability, as well as under contract law. But because contract law and Tort are both alternatives, a plaintiff or a victim of an accident can't bring an action both under Tort law and under contract law at the same time. The victim rather brings the action generally under Tort law or contract law. Determining the nature of liability permits victims of accidents to know the type of claim to bring against the person responsible for the accident. This is because we did some interviews with victims of accidents by road, and some of them were ignorant about the type of action they can take, especially when it comes to claims resulting from the accidents. Our discussion in this paper is centred on the criminal liability, civil liability, and the available defences which could be raised by the person responsible for the accident emanating from land transport.

1.1. Criminal Liability of Land Transport Operators in Cases Of Accidents In Cameroon

² Section 59: (1), The commission of any offence may lead to the institution of criminal proceedings and as the case may be, to a civil action.

(2) The institution of criminal proceedings aims at procuring a sentence or a preventive measure against an offender as provided by law.

(3) Civil action is intended to provide compensation for damages resulting from an offence.

³ John Cohen (2009), Questioning the nature of liability in cases of accidents, Australian Journal of Science, Volume, 5, P, 24.

¹ Law no 2016/007 of 12 July 2016 on the Cameroonian penal code

Criminal liability refers to legal responsibility for a criminal act, such as negligence or recklessness, that causes harm to another person or property. In cases of accidents by land, criminal liability may be assigned to individuals or Corporations that are deemed to have acted recklessly or with disregard for safety, leading to an accident. For example, a driver who is convicted of drunk driving and causes an accident may face criminal liability for their actions. Also, a corporate or transport company in Cameroon may be criminally responsible under the doctrine of corporate criminal responsibility found under section 74-1 of the penal code.⁴ Criminal liability can lead to criminal charges, such as unintentional killing, harm or reckless endangerment, and may result in fines or imprisonment, as provided by the Cameroonian penal code. To better examine criminal liability in cases of accidents by land in Cameroon, we have divided it into: liability for unintentional killing, liability for unintentional harm, liability for destruction of property and the category of land transport operators who can be criminally responsible.

1.1.1. Liability for Unintentional Killing

This is provided for in article 289(1) of the Cameroonian penal code. This section has not given any meaning to the word unintentional killing but rather provides that whoever, *whosoever, as a result of lack of skills, rashness, recklessness and disregard for regulations, causes the death of another person.*⁵ By definition, in legal terms, unintentional killing, also known as "manslaughter," refers to the act of unintentionally causing the death of another person.⁶ This occurs when a person unintentionally causes the death of another person due to negligence, recklessness, or criminal behaviour, such as drunk driving⁷. The fact that the accident in question was involuntary is not an excuse under Cameroonian law. If the accident in question leads to the death of another person, then the person responsible will be held liable. Liability for unintentional killing has been established in the following Cameroonian cases: In **AFFAIRE MINISTERE PUBLIC ET Ayant droit de NKEMFACK MICHEL, représenté par NGOU C/ ESSOME VICTOR**⁸, the accused person was charged before the court of first instance of Dschang for

Unintentional Killing of Nkemfack Michel as a result of careless driving contrary to and punishable under section 289 of the Cameroonian penal code. From the facts of this case, on March 16, 2012, at around 2 p.m., at Santchou, a Toyota Hilux vehicle belonging to the company "ZENN NETWORK", driven by its driver **ESSOME Victor**, was travelling in the direction of Melong-Dschang fatally hit a man named Nkemfack Michel, who was crossing the road, and who immediately died at the accident scene. The accused pleaded guilty to the offences of Unintentional Killing and the presiding Magistrate, Justice **Valentine Mbiang Eba**, sentenced the accused person to pay a fine of 200.000 FRS. The problem we have with this judgment is the 200,000 FRS fine given by the judge for reckless driving, which caused the death of another person. But again, the justification given by this judge for such a lenient punishment is that the accused person is a first-time offender who also pleaded guilty to the offences, which permits him to benefit from diminishing responsibility and mitigating circumstances as provided by sections 90 and 91 of the penal code and section 359 of the CPC. These circumstances make even some of the victims of accidents see that no real justice has been done for them to see a family member killed, and the person responsible is asked to pay 200,000frs as a fine. It is because of such situations that we recommend that, as a result of necessity and the rate of accidents in Cameroon, these circumstances, which diminish the responsibility and sanctions of land transport operators in cases of accidents, should not be taken into consideration, seeing that the accident rate in Cameroon is very high.

Similarly, in the case of the **People of Cameroon Vs Hamadou Koda, CFIT/51C/FD/2023**⁹, the accused was charged with Unintentional Killing and Harm of one Mr Edingue Mbang Phillippe on 29/01/2023 contrary and punishable under section 289(1) of the Cameroonian Penal code, destruction of property and dangerous activities contrary and punishable under section 316(1) and 228(2) (d) of the penal code. From the facts of this case, on 29/01/2023, the accused person Rashly drove the vehicle with registration number LTTR-091-AQ/LTSR-692-AI belonging to **Source du pays** on the highway in a manner liable to cause harm to another and as a result caused the death of EDINGUE MBANG Philippe, driver of the vehicle with registration number SW-885-BD owned by MUNJONGUE Epse EDINGUE Lydie, an offence contrary to and punishable under Section 289(1) of the Penal Code. This accident destroyed the vehicle owned by MUNJONGUE Epse EDINGUE Lydie, which is contrary to and punishable under section 316(1) of the penal code. The accused person pleaded guilty and the presiding judge, Justice **Anjorine Enanga Lilian**, sentenced him to pay a fine of 250.000 FRS and 48,000 FRS as a cost of the proceedings. We can also see from the final decision

⁴ SECTION 74-1: Criminal responsibility of corporate bodies. a) Corporate bodies shall be criminally responsible for offences committed on their behalf by their organs or representatives. b) The provisions of the subsection (a) above shall not apply to the State and its agencies. c) The criminal responsibility of natural persons who are authors of reprehensible acts may be compounded with that of corporate bodies.

⁵ Section 290(1) of the penal code.

⁶ Frankline Uche,(2020), Traffic Offenses and Sanctions under Nigerian criminal law, Journal of science and Law, Lagos Nigeria, Pp, 67.

⁷ **Charlotte Seville** (2010), Crimes and Defenses, 2nd edition, Washington University Press, P. 12

⁸ JUGEMENT N° 651/COR DU 21 Novembre 2017

⁹ Court of First of Instance Tiko Judgement N° 51C Fako Division of 16/02/ 2016.

of the trial judge that the offender was only sentenced to pay a fine of 250.000 FRS for recklessly causing the death of one person and destroying personal property. The rationale for the lenient judgment is again because the accused person was a first-time offender and pleaded guilty to the charge.

From the sanctions in the two cases above, the fines given by the trial judges do not mean they acted out of the law because section 289(1) of the penal code provides for either an imprisonment term or the payment of a fine, which might range from 10,000 FRS to 500.000 FRS. It is therefore left for the judge to appreciate the circumstances of the case before him by taking into consideration all the circumstances of the case. Thus, in the case of the **People of Cameroon vs Menchuke Hamlet Ndang, CFIT/39C/FD/2023**,¹⁰ the accused was charged with the Unintentional killing of Meh Franklin as a result of a lack of skills contrary to and punishable under section 289(1) of the Cameroonian penal code. The accused pleaded not guilty, but the prosecuting state counsel, Magistrate **Mbangeh Vanessa Penlaga Epe Yang**, presented before the trial Judge, which shows that the death of the victim was caused as a result of the lack of skills of the driver, who, even at the time of the accident, did not possess a driving license. The trial judge, **Akpoh Essambe**, found the accused person guilty and sentenced him to 3 months imprisonment and to pay an additional fine of 200,000 FRS or serve an additional period. It can be seen from this judgement that they caused the death of one person, and the Judge sentenced them to 3 months' imprisonment and to pay a fine of 200,000 FRS. The decision of this judge should be applauded in this case because, when compared with the above two cases, the offenders killed one person but received a fine as a conviction despite the alarming rate of accidents daily in Cameroon.

Furthermore, in **AFFAIRE MINISTERE PUBLIC & NAMEKONG Jean Pierre, TADAHO Berlin C/-NINGAHI TIOZANG Hervé et CHEUTA LACDO Cédric Nelson, JUGEMENT N° 516/COR DU 1 AOUT 2023**¹¹, the accused persons were both found guilty for unintentional killing and harm contrary and punishable under section 289(1) of the penal code. Both accused persons were sentenced to 15 months' imprisonment and to pay a fine of 150,000 FRS each. From the facts of this case, the accident took place on 03 September 2022 at about 11:30 pm around Penka-Michel in the Menoua division, West Region of Cameroon. The car in question was owned by NINGAHI TIOZANG Hervé, who decided to give the car to his friend CHEUTA LACDO Cédric Nelson to drive without a license. The friend was reckless and lacked skill, knocking down **Jean Pierre, TADAHO Berlin** and the friends who were returning from a

birthday party. One of the victims of the accident later died after being in a coma for almost 1 month. **TADAHO Berlin, on the other hand, sustains injuries lasting more than 120 days.** The accused persons then reported themselves to the Gendarmerie of Penka-Michel. The presiding magistrate, **Melंगा Melinga Fabien**, found both parties guilty of unintentional killing and harm and sentenced them both to 15 months imprisonment and to pay a fine of 150,000frs each. One question which might come to mind is why the owner of the car is charged alongside the person who was driving rather than only the driver alone. The prosecuting State Counsel in this case charged the owner of this car as an accessory punishable under section 97 of the penal code.¹² The prosecuting state counsel argued that it was the owner of the car who aided the commission of the offence in question by giving his car to his friend, who did not know how to drive, resulting in the death and injuries suffered by the victims. The decision of the trial judge to find both parties guilty should also be applauded because, at times, owners of motor vehicles and motorcycles permit persons who are not qualified to drive, leading to some of the causes of accidents daily in Cameroon. This is to send a strong signal that an individual will also be held liable as a result of an accident facilitated by providing the means.

But in another case before the court of first instance of Dschang: in **AFFAIRE MINISTERE PUBLIC & AYANTS-DROIT DE LEPAFO Brigitte, DOUMTSOP BIAKEU Zygfyrd, C/ TAMO NEGOU Blaise et MBONJOH Francis, JUGEMENT N°663/COR DU 15 SEPTEMBRE 2023**¹³, the accused person was charged for the unintentional killing of **EPAFO Brigitte and her son DOUMTSOP BIAKEU Zygfyrd** at Foto precisely at the entrance of Alliance Franco-Cameroonias de Dschang. From the facts of this case, on April 29, 2022, in the Foto precisely at the entrance of the Alliance Franco-Camerounaise in Dschang, MBONDJOH Francis, driver of the Toyota Hiace vehicle, registered OU 085 P. from Bafoussam to Dschang belonging to General Express, stopped to allow some of his passengers. While NGANTSI TINTOCK Francis (the motor boy) was on the roof of this vehicle to unload the luggage of LEPAFO Brigitte, who was already on the ground with her son DOUMTSOP BIAKEU Zygfyrd Rodrigue; Another car belonging to the UCB company, travelling in the same direction and driven by TAMO NEGOU Blaise, fatally hit the above-mentioned passengers before hitting the

12 SECTION 97: Accessories

- (1) An accessory shall mean a person who abets the commission of a felony or misdemeanor, that is:
- a) who orders or in any manner causes the commission of an act or omission so defined; or
 - b) who aids or facilitates the preparation or the commission of such an offence.

(2) Attempted abetment shall be treated as abetment.

¹³ Court of First Instance of Dschang, Judgment No, 663 of 15 September 2023

¹⁰ Court of First Instance Tiko, Fako Division, Judgement No 39C/21/06/2023.

¹¹ Court of First Instance of Dschang, Judgment No 516, 01/08/2023.

mentioned MBONDJOH Francis's driver. This resulted in the death of the passenger and her son, with whom she travelled. Both the driver of the UCB and the driver of Hiance were charged with unintentional killing, punishable under section 289(1) of the penal code. But only **TAMO NEGOU Blaise**, the driver of the UCB truck, was found guilty of unintentional killing, and the presiding Judge, Magistrate **Mbara A Betsem Guy David**, sentenced the accused to pay a fine of 350,000frs. This particular accident, like most accidents by road in Cameroon, was heartbreaking to so many people who witnessed the accident where a mother and her son died at the same spot, closer to the house. But the trial judge only sentenced the person responsible to pay a fine of 350,000 FRS for killing two people as a result of recklessness.

Accidents emanating from rail, concerning unintentional killing, are conditions the same under section 289(1) of the Cameroonian penal code. Any rail accident which leads to death or bodily injuries is punishable under section 289(1) of the Cameroonian penal code. This is because section 159 of the 2023 law governing the rail sector in Cameroon conditions the punishment of accident-related cases as per the Cameroonian penal code. In *Affaire ministere Public C/ Camrail, Didier Vandebon et 13 autres*,¹⁴ the accused person was charged with unintentional killing contrary to and punishable under section 289(1) of the Cameroonian penal code. This Eseka accident will always remain memorable in the minds of Cameroonians as one of the deadliest train accidents in the world.

The liability for unintentional killing aggravates under section 290 of the Cameroon Penal Code when, after the accident, it was discovered that the driver was drunk, under the influence of a drug, and did not possess the required license for driving the car or escape from the scene to avoid liability. The term unintentional killing means that the offences were not intentional and thus the provision of section 74(2) of the Cameroonian penal code cannot be invoked.¹⁵ Since this offence is unintentional, the law requires that the act of the offender should lead to the death or injuries suffered by the victims. This means the

¹⁴ Court of first instance of Eseka, Judgement no 287, 27/09/2018

¹⁵ SECTION 74: Punishment and Responsibility (1) No penalty may be imposed except upon a person criminally responsible. (2) Criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it. (3) Save as otherwise provided by law, no criminal responsibility shall arise from the result, though intended, of an omission. (4) Save as otherwise provided by law, there shall be no criminal responsibility unless subsection (2) of this Section has been satisfied. Provided that responsibility for a simple offence shall not require any intention to act or to omit or to cause the result.

material element of the offence is only on the fact that the acts of the offender resulted in the death of the victim, and thus the offender will be held responsible. But if the death of the victim is not a result of the act of the offender, even though there was an accident, then the accused cannot be found guilty. In the **Cameroon** case of the *People of Cameroon vs Kamga Andre*, the accused person, who was a truck driver, was charged before the court of first instance of Limbe on 27 counts for causing the death of 8 school children and causing bodily injuries to 18 other children on the 31st of March 2023 in Molowi Limbe, punishable under section 289(1) of the penal code. But because there was no evidence which showed he was the cause of the accident, the accused person was discharged and acquitted on all the counts. Similarly, in the case of the *People of Cameroon Vs Azie Roland Atangwa, CFIBA/0212^{crime}/LD/2022*¹⁶, the accused person was charged before the court of first instance of Bamenda on four counts; Unintentional killing, Dangerous driving, unintentional harms and destruction of property contrary and punishable under section 289(9) of the penal code, 228(2) (d) and section 316 of the penal code. From the facts of this case, the accident occurred on the 14th of March 2021 at Up-station Bamenda when **Azie Roland Atangwa** drove his Corolla car with Chassis No 023226 rashly on the highway and collided with another vehicle of Mark Toyota with registration No NW852-BF, which caused the death of one Tiaya Martin and injured Ngoufo Armel, Ndongla Christina and Foutsop Tchinda Paul Michel Benerd and also caused damage to the Corolla car. However, the accused pleaded not guilty to all four counts and was found guilty only on one count, which was rash driving, which resulted in the accident. That of unintentional killing and harm, and destruction of property, the accused person was discharged and acquitted. The reasons advanced by the trial judge, Justice **Ajibi Julius Kanyimi**, were that there was a lack of evidence as the prosecuting state counsel failed to provide any medical report connecting the victims to the alleged injuries to the acts of the offender and also all the witnesses were absent from the trial. Thus, according to section 395(2) of the CPC, the accused person is discharged and acquitted on these counts for doubts which in a criminal trial should be resolved in favour of the accused person. The accused person was only found guilty of the offences of careless driving and sentenced to pay a fine of 50,000frs and 188,850 as cost of proceedings, failure of which the accused will serve 12 months imprisonment as provided in section 56491 of the CPC. Apart from liability for unintentional killing, land transport operators can also be criminally liable for unintentional harm.

1.1.2. Liability for Unintentional Harm

¹⁶ Court of First Instance of Bamenda, Judgment No 0212/LD/2022.

Land transport operators can also be held criminally liable for Unintentional harm as provided under section 289(1) of the Cameroonian penal code, read alongside sections 277, 280 and 281 of the penal code. Section 277 of the penal code punishes the offence of Grievous Harm¹⁷, while section 280 of the penal code punishes the offence of Simple Harm¹⁸, and section 281 of the penal code punishes the offence of Simple Harm.¹⁹ The penal code has not defined unintentional harm per se, but from the reading of section 289(1) of the penal code, the accident as a result of rash driving, lack of skill, carelessness and disregard of regulation, causes death or leads to any of the offences provided for in section 277, 280 and 281 of the penal code. The accident might not lead to death but rather to bodily injuries suffered by the victim. Once it has been established that the land transport operator is the cause of the injuries suffered by the victim as a result of their rash driving, he/she will be criminally responsible. Thus, in **AFFAIRES MINISTERE PUBLIC ET KAMTA NGOUFO CHRISTIAN ET AUTRES C/MBOGNOU WAMBA STANIS RODRIGUE, JUGEMENT N° 640/COR DU 12 September 2023**²⁰, the accused person was charged with involuntary harm contrary to section 289(1) and section 280 of the Cameroonian penal code as a result of rash driving, which resulted in bodily injuries suffered by the victims; Kamta Ngoufo Christian, Lekeufack, Soanfo Nzofou Pierre Marc Mirabeau, Lambou Armand, Nkegne Totuom Prosper Marc and Ngaffo Nadege lasting more than 45 days. The prosecuting state counsel, Mme Halimatou Harouna, presented evidence before the court which showed that the accused person on the 02 of November 2019 was driving a Coaster of Mark Toyota with registration no CE 732 GA, lost control at the Dschang Cliff because of brake failure, leading to a collision which caused the bodily injuries to the victims. The vehicle in

question was insured by Pro Assurance Ltd. The accused was found guilty of being the cause of the accident, and Justice Melinga Melinga Fabien sentenced him to prison for three months and to pay a fine of 300,000 FRS as well as 733.057 as a cost of proceedings or serve an additional 2-year imprisonment term. The insurance company was civilly liable to compensate all the victims with the sum of 11,649,847 FRS as a result of the injuries suffered.

Equally, in **AFFAIRE MINISTERE PUBLIC & WABO NGOUSSO JOEL C/ YOUSOUFA BOGNON**²¹, the accused was also charged with involuntary harm contrary to and punishable under section 289(1) and section 280 of the penal code. From the facts of this case, on 04/29/2019 at the entrance to the Baleveng Bilingual High School, a Mercedes vehicle, belonging to the Teric Travel Agency and driven by YOUSOUFA BOGNON, coming from Dschang and heading towards Bafoussam, as a result of the negligence of the driver, caused injuries to WABO NGOUSSO Joël, who was one of the passengers of this vehicle, leading to an incapacity to work for 60 days. The prosecuting state counsel, Magistrate Chuchoua Samo Tchankem, tabled evidence which showed that the driver failed to slow down at a speed break at Baleveng, which resulted in the victim hitting his head and also being thrown on the seats within the car. This resulted in injuries suffered to both his head and chest. The accused person was found guilty and sentenced to pay a fine of 100,000 FRS and 56,165 FRS as the cost of proceedings; in default of payment, they will serve 9 months ' imprisonment. The travelling agency was also vicariously liable to pay the sum of 780,340 FRS as damages to the victim as a result of the negligence of their driver. Also in *Affair Ministere Public et -FEUTSA Boris, DONJIO Kelly, TEJLOTSOP Hilaire, NGNINTEDEM Georgette Et Autres C/ HANFOU SONHANFOUA Adrien*²², the accused person was charged for unintentional harm caused to **FEUTSA Boris, DONJIO Kelly, TEJLOTSOP Hilaire, NGNINTEDEM Georgette, with an incapacity to work for 120 days, 45 days and 90 days respectively**. From the facts of the case, this accident took place on the 1st of January 2019 at Effock-foreke when the driver, as a result of his lack of skills, carelessness and disregard of regulations contrary to and punishable under section 289(1) of the penal code. The driver lost control and knocked down a motorcyclist named FEUTSA Boris had three other persons on board: DONJIO Kelly, TEJLOTSOP Hilaire, and NGNINTEDEM Georgette. The driver of this vehicle ran away from the accident scene, not to the police but to escape liability, which aggravates the sanction and punishment under section 290 of the penal code. He was later caught by the Central police station of Dschang and charged with involuntary harm and running away from the accident scene to escape liability contrary to and punishable under sections

¹⁷ SECTION 277: Grievous Harm Whoever permanently deprives another of the use of the whole or of any part of any member, organ or sense shall be punished with imprisonment for from 10 (ten) to 20 (twenty) years.

¹⁸ SECTION 280: Simple Harm Whoever by force or interference causes intentionally or unintentionally to another any sickness or inability to work lasting more than 30 (thirty) days shall be punished with imprisonment for from 6 (six) months to 5 (five) years or with fine of from CFAF 5 000 (five thousand) to 200 000 (two hundred thousand), or with both such imprisonment and fine.

¹⁹ SECTION 281: Slight Harm Whoever by force or interference causes intentionally or unintentionally to another any sickness or inability to work lasting for more than 8 (eight) days and up to 30 (thirty) days shall be punished with imprisonment for from 6 (six) days to 2 (two) years or with fine of from CFAF 5 000 (five thousand) to CFAF 50 000 (fifty thousand), or with both such imprisonment and fine.

²⁰ Court of First instance of Dschang, Judgment No 640, September 12, 2023.

²¹ JUGEMENT N°782/COR DU 17 NOVEMBRE 2023

²² JUGEMENT N°650/COR DU 12 SEPTEMBRE 2023

289(1), 280 and section 290(1) of the penal code. He was found guilty and sentenced to pay a fine of 300,000 FRS and a cost of proceeding of 124,655 FRS, or serve 12 months' imprisonment. But the leniency of this judge in this case as to the sanction poses a problem for us. Just the fact that the driver ran away to escape liability is not a good sign. If he were running to the police station to declare himself, it would have been different, but for the fact that he escaped from the scene to avoid liability, the judge should have given a heavier sentence. This is because section 290(2) provides a heavier sanction when the Unintentional Harm leads to simple or slight harm with an imprisonment term of 6 months to 4 years and a fine of up to 100,000 FRS.²³ The 300,000 FRS fine given by this judge is not enough.

1.1.3. Liability for Destruction of Property and Dangerous Activities

An accident by road or rail might lead to the destruction of property belonging to another, which is punishable under section 316(1) of the Cameroonian penal code or rash driving, which might lead to an accident, might be qualified as dangerous activity and punishable under section 228(2) (d) and 228(3) of the Cameroonian penal code. Section 316(1) of the Cameroonian penal code provides that;

Whoever destroys the whole or any part of any property belonging wholly or in part to another or charged in favour of another shall be punished with imprisonment for from 15 (fifteen) days to 3 (three) years or with a fine of CFAF 5 000 (five thousand) to CFAF 100 000 (one hundred thousand), or with both such imprisonment and fine.²⁴ (2) The penalty shall be imprisonment for from 2 (two) to 10 (ten) years or a fine of from CFAF 10 000 (ten thousand) to CFAF 500 000 (five hundred thousand), or with both such imprisonment and fine, where the property in question is a building, construction ship, plant or installation.²⁵

This section does not indicate what could be the cause of the destruction or how the destruction could be done. However, an accident that leads to the destruction of property belonging to another person can be sanctioned under section 316(1) of the Cameroonian penal code. A good example was seen in the case of the **People of Cameroon vs Hamadou Koda, CFIT/51C/FD/2023**,²⁶ where the accused was charged with Unintentional Killing and Harm, destruction of property and dangerous activities

contrary and punishable under section 289(1), 316(1) and 228(2) (d) of the penal code, respectively. This accident destroyed the vehicle owned by MUNJONGUE Epse EDINGUE Lydie, which is contrary to and punishable under section 316(1) of the penal code. The accused person was found guilty and sentenced to pay a fine of 250,000 FRS and an order granted by the trial judge to repair the car of the victim.

For dangerous activities, the Cameroonian penal code in section 228 has not defined dangerous activities²⁷. But the connection of this section to accidents and eventually criminal liability is found in section 228(2) (d). This section provides that;

Whoever rashly and in a manner liable to cause harm to any person: leads, drives, rides, stops or leaves any animal or vehicle on the public highway shall be punished with imprisonment for from 3 (three) months to 3 (three) years, or with a fine of from CFAF 5 000 (five thousand) to CFAF 500 000 (five hundred thousand), or with both such imprisonment and fine.²⁸

Again, driving while drunk or under the influence of alcohol is punishable and also considered a dangerous action under section 228(3) of the penal code.²⁹ Upon conviction under subsection (2) (d) in respect of a vehicle, or under subsection (3), the Court may add disqualification from holding a driving license for up to 2 (two) years.³⁰ In the **People of Cameroon vs Ngemeta Eric Blaise, CFIBA.0119C/FD/2021**³¹, the accused person was charged with dangerous driving contrary to and punishable under section 228(2) (d) of the penal code and unintentional harm punishable under section 289(1) of the penal code. From the facts of the case, the Learned State Counsel, Magistrate **Ndifor Wilkins Tantoh**, said the accused person is standing trial for having violated the provisions of Sections 74 (2), 228 (2) d and 289(1) of the Penal Code. To prove his case, his lone witness was called and he was very precise and concise that on 5/5/2021 around Hotspot, he was hit by a vehicle driven by the accused person which was stationed by the road and was about to leave without due observation, rashly entered the road and hit the car driven by the victim at the passenger's side causing damages on the car and to him the victim as he was rushed to the hospital. The accused admitted that after offloading cement and as he was about to leave the area where he parked, the accident

²³ Section 290(2) of the penal code provides that; "Where such harm as is described in section 281 is caused unintentionally in the circumstances of the last foregoing subsection, the driver shall be punished with imprisonment for from 6 (six) months to 4 (four) years and with fine of from CFAF 10 000 (ten thousand) to CFAF 100 000 (one hundred thousand)".

²⁴ Section 316(1) of the Cameroonian penal.

²⁵ Section 316(2) of the penal code.

²⁶ Court of First of Instance Tiko Judgement N° 51C Fako Division of 16/02/ 2016.

²⁷ Section 228(1) provides that; (1) whoever fails properly to provide against risk of bodily harm to any person from his dangerous activities shall be punished with imprisonment for from 6 (six) days to 6 (six) months.

²⁸ Section 228(1) (d) of the penal code.

²⁹ Section 228(3) provides that; whoever drives any vehicle when drunk or under the influence of drugs shall be punished in like manner.

³⁰ Section 228(4) of the penal code.

³¹ Court of First instance of Bamenda, Judgement N° 0119./FD of 30th June 2021.

occurred, although he blamed the victim, who wanted to escape from a pothole. But the prosecution tendered evidence from a police investigation which showed that the victim was in his lane, and it was the accused person who drove in a dangerous manner, which resulted in the accident in question. Magistrate **AJIBI JULIUS KANYIMI** found the accused person guilty and sentenced him to pay a fine of 100,000 FRS, and 52000 FRS as cost of proceedings and in default of payment, will serve 9 months imprisonment. The civil party was awarded 50,000 FRS in damages as a result of the accident in question. Also, in the case of the *People Vs Njifon Hassan(Supra), Suit no CFIL/335C /20/03/2023*,³² the accused was charged before the Court of First Instance of Limbe with six counts for unintentionally causing the death of 3 persons(Moh Ruben Mircale Chia, Achou Christian and Achou Kingsly) and injuring 2 others(Ngwang Tanyu Collins and Shu Akongnwi) as a result of a collision at Cite Sic Junction Limbe in the Fako Judicial division, punishable under section 289(1) of the penal code. The fourth, fifth and sixth counts were qualified as dangerous driving contrary to and punishable under section 228(2)(d) of the penal code. The charge sheet³³ presented to the court was as follows; **COUNT IV:** That you NJIFON Hassan at the same time and place, rashly drove a truck matriculated LT-739-LL on the public highway and in a manner liable to cause harm to other road users and as a result collided with a motorcycle SENKE with Chassis n LGVSKP10XGZE04387 ridden by MOH Ruben Miracle CHIA and thereby committed an offence contrary to and punishable under section 228 (2)(d) of the Penal Code; **COUNT V:** That you NJIFON Hassan at the same time and place, rashly drove a truck matriculated LT-739-LL on the public highway and in a manner liable to cause harm to other road users and as a result collided with vehicle n° LT-928-LL driven by NGWANG TANYU Collins and thereby committed an offence contrary to and punishable under section 228 (2)(d) of the Penal Code; **COUNT VI:** That you NJIFON Hassan at the same time and place, rashly drove a truck matriculated LT-739-LL on the public highway and in a manner liable to cause harm to other road users and as a result collided with vehicle n° CH 003526 driven by SHU AKONGNWI and thereby committing an

³² The *People Vs Njifon Hassan, Suit no 337C CFIL/20/03/2023*,

³³ A charge sheet, also known as an indictment or information, is a formal document that lays out the charges against an individual in a criminal case. It includes the specific charges that the individual is accused of committing, as well as the legal justification for those charges. The charge sheet serves as the basis for the prosecution's case against the accused individual and is typically filed with the court by the prosecuting attorney. The information in the charge sheet is typically based on the evidence gathered during the investigation of the crime and may include witness statements, physical evidence, or other relevant information.

offense contrary and punishable under section 228(2) (d) of the penal code. The accused is guilty of all six counts and sentenced to 3 months imprisonment and a fine of 200,000frs, cost of proceedings 159,900frs in default of payment, the accused shall serve 12 additional months in prison. Since the car in question was owned by MIRA Co SA and Insured under Guarantee Mutuelle Assurance, they were civilly liable to pay the sum of 4,416,550 as damages to the victims and loss of property.

1.1.4. The categories of land transport operators who can be criminally responsible for accidents

The idea under this heading here is to determine who should be criminally responsible for the accident in question. The first thing that comes to the mind of every Cameroonian is the fact that the state, one of the actors in land transport, cannot be criminally responsible for an accident as seen in section 74-1(b).³⁴ The state can only be civilly liable under the tort of contributory negligence, maybe as a result of the failure to maintain the road infrastructure, which contributed to the accident in question. The 2001 law governing the profession of road transport in Cameroon, in section 2, considers transport operators to be either a natural or moral person. This is the same idea under section 7 of the 2023 law governing the rail sector in Cameroon.³⁵ Criminal liability of land transport operators, therefore, can fall on either a physical person or a moral person. Under the Cameroonian penal code, the provision of section 289(1) begins with "*whosoever*". This means it can either be a physical person or a moral person. This is the same thing under sections 228(2) (d) and 316(1) of the penal code. The physical person can either be the owner of the car, train, or motorcycle or may be working under another person or for a company. When there is an accident, the physical person can be criminally responsible and can be physically incarcerated in prison, which is contrary to the moral person, who cannot be subjected to physical imprisonment. This does not mean that a moral person cannot be criminally responsible under Cameroonian law. Section 74-1(a) of the Cameroonian penal code punishes corporate entities for crimes committed by their agents.³⁶ But a travel

³⁴ SECTION 74-1: Criminal responsibility of corporate bodies. a) Corporate bodies shall be criminally responsible for offences committed on their behalf by their organs or representatives. b) The provisions of the subsection (a) above shall not apply to the State and its agencies.

³⁵ According to section 7 of the 2023 law on Rail sector in Cameroon, a Railway operator shall be any legal or natural person holding a concession or license to construct, develop or operate technical and commercial rail freight and/or passenger transport services

³⁶ SECTION 74-1: Criminal responsibility of corporate bodies. a) Corporate bodies shall be criminally

agency like Avenir Voyage in Cameroon can be criminally responsible for an accident caused by its driver. Two Cameroonian cases can better demonstrate the position of Cameroonian law on the categories of persons who can be criminally responsible in cases of accidents by land in Cameroon.

In **AFFAIRE MINISTERE PUBLIC ET METEU LEJEU SYDONG, C/ NKEM - NGUEKEM Romuald Aime; JUGEMENT N° 415COR DU 23 Juin 2023**³⁷, the accused person was charged with unintentional killing contrary to and punishable under section 289(1) of the Cameroonian penal code. From the facts of this case, this accident occurred on 03/02/2022 at a place called Likon-Dschang when NKEM - NGUEKEM Romuald Aime, transporting 17 people on board his Toyota vehicle, pick-up type, registered CE 158 DS, heading towards Fontsa-Toula, lost control of the said vehicle before ending up on a cliff more than 10m from the road, which led to the loss of life of Mrs METEU LEJEU Sydong. The accused was then charged with unintentional killing, punishable under section 289(1) of the Cameroonian penal code. The accused in these cases was the owner of the car and was the one driving the car in question. Justice Djaouwe Martin found the accused guilty and sentenced them to pay a fine of 200,000 FRS and 88,865 FRS as cost proceedings, failure of which they will serve 12 months imprisonment. Now, since he was the owner of the car, he was personally liable for the accident in question. But if he were working for another person or corporate entity, we would have seen two persons as accused persons. This was seen in **AFFAIRE MINISTERE PUBLIC & Ayants-droit de LEVI MESSI Représenté par AZEMTE Hervé Benoît C/ NJOYA MAMOUDA et Avenir Voyage, JUGEMENT N°425/COR DU 23 JUIN 2023**.³⁸ The interesting thing about this second case in connection to the first case is that both judgments were delivered on the same day before the same court, but by two different Judges concerning accidents, although the accidents occurred on two different dates and places. From the facts of this case, the Public Prosecutor, Magistrate AfalMan Suzanne Mirielle Jolie, stated that the defendant, on December 22, 2021, the accused person was driving the Mercedes vehicle registered LT 961-FA owned by the transport company "Avenir Voyages" and covered by valid insurance policy No. 00003/4200001447 issued by SAAR Assurances, hit the person named AZEMTE Soclong who was crossing the road at Fombap-Santchou due to non-compliance with the regulations and through carelessness, subsequently causing his death. Since he was a driver working under Avenir Transport Company, the prosecutor argued that the company should also be criminally liable for the acts of its

responsible for offences committed on their behalf by their organs or representatives.

³⁷ Court of First Instance of Dschang, judgment no 415 of 23 June 2023.

³⁸ JUGEMENT N°425/COR DU 23 JUIN 2023

driver. Justice **Melinga Melinga Fabien**, in delivering judgment, invokes the provision of section 74-1(a) of the penal code on corporate criminal responsibility and section 36(2) of the 2022 law, which provides that the court may decide that payment of the imposed fines be borne wholly or partially by the vehicle owner or the driver. He sentenced the accused to pay a fine of 200.000 FRS and 53,915 as a cost of proceedings, but to be paid by Avenir voyage, or the driver will serve 6 months imprisonment. The company paid the fine and the cost of the proceedings immediately, which prevented the driver from serving 6 months' imprisonment. The family of the victim, however, did not claim any civil damages. The point to be taken from the two cases is the fact that corporate entities cannot be confined to a physical imprisonment term like a natural person. However, sections 18 and 19 of the Cameroonian penal code provide the type of penalties that might fall on corporate bodies if they are found guilty of committing crimes. Section 18(b)³⁹ talks of principal penalties for corporate bodies. Such penalties can be temporary or final closure, or a fine. Section 19(b), on the other hand, provides for accessory penalties which could be given by the courts alongside the principal penalties. Accessory penalties for corporate bodies include; ban, for a specified period, on the direct or indirect exercise of any or all of its activities; - placement under judicial supervision for a specified period; closure, for a specified period, of establishments or branches having served in the commission of offences: publication or media broadcast of the judgment and finally, any other accessory penalties provided for by special instruments.⁴⁰ In most accident cases involving an entity, fines or temporary suspensions are generally the most common sanctions given by the courts or the administrative authorities after investigation, suspending the company for a certain period. But fines are the most used in the majority of cases as a criminal sanction since the acts of the driver are usually attributed to the company, or if the accident was caused by the failure of the company to maintain the car in question. Take the Ezeka accident in question. Investigation after the accident showed that the train in question had defects which were brought to the attention of the authorities, who ignored them. This explains why Camrail herself, alongside the director of the company, was held responsible for the rail accident in question.

In **AFFAIRE MINISTERE PUBLIC ET AZAPMO Jean Francis, C/ DJEUONG TCHASSE Séverin et Real Voyage**⁴¹, the trial judge convicted both the driver and the company for this particular accident in question. From the facts of this case, the Public Prosecutor stated that on June 18, 2022, in Nkong-ni, the defendant **DJEULONG TCHASSE Séverin**, driving a Toyota Bus, registered under number CE

³⁹ Section 18(b) of the Cameroonian Penal Code.

⁴⁰ Section 19(b) of the Cameroonian Penal code

⁴¹ JUGEMENT N° 416 COR DU 23 Juin 2023 DU 23 Juin 2023

007 LO belonging to the solicited DM Global Services Sarl, assigned to intercity transport for the benefit of REAL Voyages, hit a SANILI motorcycle, unregistered and driven by the named AZAPMO Jean Francis, who was overtaking at high speed, and later died. The accident in question was blamed on both the driver and the company. The said car in question had a brake problem, which the driver had earlier indicated to the company before departure, and the driver, knowing very well that the brakes of the car were not efficient, was travelling at high speed and refused to slow down to make way for the bike rider, which eventually resulted in his death. The trial judge found the driver liable for unintentional killing contrary to section 289(1) of the penal code and sentenced him to 2 months' imprisonment. The Transport agency in question was fined 350,000 FRS for failing to maintain the car, which resulted in the accident in question. One thing which needs to be updated within the penal code on unintentional killing in Cameroon is the sanctions imposed on those found guilty of these offences. Again, we recommend that a provision of the penal code should be put in place only on corporate criminal responsibility in cases of accidents. Section 74-1(a), section 18(b) and section 19(b) are general provisions for corporate criminal responsibility. A specific section on corporate criminal responsibility in cases of accidents will deter some of these transport agencies from some of their bad practices that lead to accidents. Some of them, since they want to make more profit, permit their drivers to run at high speeds and even hire inexperienced drivers to pay them less. Some of them do not sanction their drivers for excessive speed, overloading or reckless driving. Some of these elements contribute to the high rates of accidents on roads today in Cameroon.

Apart from criminal liability in cases of accidents in Cameroon, land transport operators can also be civilly liable for accidents for which they are responsible.

1.2. Civil liability of land transport operators in cases of accidents

Civil liability refers to the legal responsibility of an individual or organisation to compensate another party for harm or damage caused by their actions or negligence.⁴² In the context of land transport operators in Cameroon, civil liability may arise in cases where an operator's actions or negligence contribute to an accident or injury. Civil liability can result in financial compensation for damages, such as medical expenses, property damage, or lost wages. It may be pursued through a civil lawsuit filed by the injured party or their representative. For land transport operators, civil liability may arise from factors such as negligence, unsafe driving practices, poor maintenance of vehicles, or inadequate training of drivers. The nature of civil liability under this heading

⁴² Keyatta Swanson,(2013), Holding Transport Companies liable for accidents they caused in Kenya, Journal of legal science Kenya, Volume 3, P, 38.

has been divided into three: liability in tort law, liability under contract law and state liability.

1.2.1. Tortious liability of land transport operators in cases of accidents in Cameroon

Tortious liability refers to legal liability based on the wrongful act or omission of a person or entity that causes harm or damage to another party.⁴³ In the context of land transport operators, tortious liability can arise when an operator's actions or omissions cause an accident and thus result in injury or property damage.⁴⁴ It arises from the breach of a duty primarily fixed by the law. This generally applies to the person, and its breach is redressible by an action for unliquidated damages.⁴⁵ Tortious liability is therefore the duty of the causer of damage to compensate the injured party for damage for which he or she is responsible.⁴⁶ Tortious liability is separate from criminal liability, which is based on violations of criminal law and can result in criminal charges and penalties. Compared to other tort claims, the filing, litigation, and resolution of auto accident claims are distinctive. For starters, as compared to most accident victims, those injured in auto accidents are far more likely to seek compensation in Cameroon, even though there is evidence that some Cameroonians who are victims of accidents refuse to demand any form of compensation from the person responsible and leave anything in the hands of God. Some families refuse insurance compensation and call it "blood money", which cannot bring back their lost relative. That notwithstanding, tortious liability can be in negligence and vicarious liability.

1.2.1.1. Liability in Negligence in cases of accidents in Cameroon

Negligence is all about who should bear the burden of the loss that results from an injury-producing incident. Negligence tries to make the best out of a bad situation by allowing the burden of the loss to be shifted from one party to another where appropriate.⁴⁷ Negligence is one of the bases of liability of land transport operators in cases of accidents under Cameroonian law, as seen in section 289(1) of the penal code. It should be noted that negligence in cases of accidents by land in Cameroon has already been qualified as the grounds for criminal

⁴³ Nora Freeman Engstrom, (2018), WHEN CARS CRASH: THE AUTOMOBILE'S TORT LAW LEGACY, WAKE FOREST LAW REVIEW, USA, volume 54, P, 299.

⁴⁴ STEPHEN J. CARROLL ET AL., (1991), "NO-FAULT APPROACHES TO COMPENSATING PEOPLE INJURED IN AUTOMOBILE ACCIDENTS", *N.Y.L. SCH. L. REV.* Pp., 243.

⁴⁵ Amadou Monkaree,(2024), Lectured Notes on Torts law, University of Dschang, P, 11.

⁴⁶ Gregor DUGAR,(2016), "Tortious Liability of a Driver in Road Traffic", Kabul Tarihi Journal Slovene, Pp,26.

⁴⁷ Eric E. Johnson (2015), Torts: Cases and Context, Volume One, eLangdell Press, USA, P, 67.

liability when there is loss of life or harm, dangerous activities or even destruction of property, as seen in section 289(1), 228(2) d and 316(1) of the penal code, respectively. But since the Cameroonian criminal permits victims of criminal offences to institute a civil action and claim damages as a result of the offence, both the criminal offence and the civil action are tried jointly, as seen under the provisions of section 59 of the CPC and section 61 of the CPC. Section 61, for example, is to the effect that *a civil claim may be made alongside a criminal action before the same court so long as they arise from the same offence*.⁴⁸ Since accidents might lead to loss of property or personal injuries, both criminal and civil actions are tried jointly before the same court. Therefore, negligence in cases of accidents caused by land transport operators is governed by the section of the Cameroonian penal code, since it is the basis for liability in cases of accidents in Cameroon.

Therefore, Negligence as an independent Tort is the infliction of damage as a result of the breach of a duty of care owed by the defendant to the plaintiff.⁴⁹ Concerning land transport, Negligence refers to a failure to exercise reasonable care or caution in operating a vehicle, train, or motorcycle, resulting in harm or damage to another party. These definitions show that there are three ingredients necessary to establish an action in Negligence. Firstly, there must be a duty of care owed by the defendant to the plaintiff, there must be a breach of the duty of care as a result of the conduct of the defendant, and lastly, there must be damage suffered by the plaintiff resulting from the breach.⁵⁰ Since Cameroonian law recognises the fact that negligence can be one of the causes of accidents, it is necessary to elaborate on the conditions necessary to institute an action in negligence in cases of land transport accidents in Cameroon.

A. The Duty of care imposed on land transport operators under Cameroonian law

The first element that must be established by a plaintiff in proving a negligence case is that the defendant owed the plaintiff a duty of care. If the defendant did not owe the plaintiff a duty of care, then even if the defendant was careless and caused injury to the plaintiff, there would be no recovery in negligence.⁵¹ Let's demonstrate this with two examples; suppose someone asks you for one of your kidneys, explaining that otherwise they will die. In terms of the negligence doctrine, you do not owe this

person a duty to hand over a kidney. And even if the person dies as a result of not getting one of your kidneys, there is no prima facie case against you for negligence. You can probably intuit that there is no good cause of action here, but it is instructive to consider the explicit reason. Check off the elements: There is an injury, and there is causation. Those are not lacking. What is lacking is the duty of care. Now, suppose you are carelessly driving a car, motorcycle or train and, thanks to your lack of care, you lose control, hitting and injuring a pedestrian who was walking on a sidewalk. You owed the pedestrian a duty of care, and you breached that duty. And that breach caused an injury. Thus, the pedestrian will be able to establish a prima facie case for negligence. All the elements are in place. The essential concept in defining the duty of care in negligence is foreseeability. A defendant is said to owe a duty of care to all foreseeable plaintiffs for all foreseeable harm.⁵²

Under Cameroonian law, for example, when the penal code punishes in section 289(1) whoever, by negligence, lack of skills and disregard of regulations, causes the death or harm to another person, it implies that every driver is under the duty not to cause harm or death to another person in the course of driving. Again, section 228(2) (d) punishes whoever, by rashness or carelessness, drives his car in a manner likely to cause harm to another person. Similarly, section 7 of the 2023 law, in defining rail safety, considers it to be the obligation imposed on all rail transport companies to take all means (technical, human, legal, etc.) used to control and curb risks of railway accidents or incidents, as well as mitigate their impact. Also, section 4 of the 2022 law Protecting National Road Assets imposes an obligation on all national road users to put in place safety devices to ensure the safety of persons and goods. Not forgetting section 7 of the Cameroonian Highway code, which also requires all drivers to drive with caution to avoid injuring any other road users. This duty is therefore imposed on all land transport operators towards other drivers, pedestrians and any other person who can be affected as a result of the negligent act of the defendant. In the *People of Cameroon vs Fotsing Nde Erve, CFIBA/0107/Crime/LD/2021*⁵³, the accused person was charged with negligent driving, which resulted in injuries suffered by Dzounesse Tidonzong Christian. From the facts of the case, on 09/10/2019, the accused person was the driver of a vehicle marked Dong Feng, registered under No. LTTR-170-AQ drove without caution at Up-station Bamenda, lost control of the said car and hit the victim, who sustained bodily

⁴⁸ Section 61: A civil claim may be made alongside a criminal action before the same court so long as they arise from the same offence. It may also be brought separately from a criminal action. In such a case, the court seized of the civil matter shall stay proceedings until a final decision on the criminal action has been pronounced.

⁴⁹ Amadou Monkaree,(2024), Op, Cit, P, 18.

⁵⁰ Ibid, P, 19.

⁵¹ Eric E. Johnson (2015), P, 73.

⁵² Antonio Davola,(2018), "A MODEL FOR TORT LIABILITY IN A WORLD OF DRIVERLESS CARS: ESTABLISHING A FRAMEWORK FOR THE UPCOMING TECHNOLOGY", *IDAHO LAW REVIEW*, VOL. 54,Pp, 592

⁵³ Court of First Instance Bamenda, Judgment No 0107 of 26th May 2021

injuries lasting more than 40 days and, thereby, committed an offence contrary to and punishable under section 290(1) of the penal and sections 7 as read with 90 of the Highway Code. Magistrate **Avadiba Magnificence** for prosecution tendered evidence during the trial, which showed that the accused person was negligent and drove while respecting the precautionary obligation imposed on all road users to drive with care, taking into consideration all other road users. He was found guilty and fined 50,000 FRS. In delivering judgment, Justice **Lilian Wenyi Munji**, the presiding judge, believed that;

“The accused person in this case failed to drive with care as imposed by the Cameroonian Highway code, which eventually led to the injuries suffered by the victim, contrary to and punishable by the provisions of section 289(1) of the Cameroonian penal code, section 7 and 90 of the Cameroonian Highway code. I therefore find the accused person guilty of the offence he is charged with, and he is sentenced to pay a fine of 50,000 FRS.”

From this particular case, it can be seen that the prosecution was able to show that the Cameroonian law imposed an obligation on all road users to drive with caution or care in order not to cause harm to another road user. It is well accepted that the general duty of care requires would-be defendants to refrain from actions that unreasonably subject foreseeable plaintiffs to a risk of harm, but land transport users in Cameroon continue to violate this obligation daily. Careless driving continues to claim the lives of Cameroonians every day. If the plaintiff proves there was a duty of care, the plaintiff must also prove the accused person breached the duty of care, which led to the injuries suffered.

B. Breach of duty of care and causation by land transport operators leading to the accident.

Having established that the defendant owes the plaintiff a duty of care, it will next be necessary to determine whether the defendant has breached that duty, and so if there is any damage or injuries suffered by the victim or the plaintiff. The defendant will have fulfilled his duty if he has behaved under the standard of the reasonable man.⁵⁴ With accidents by land in Cameroon, the prosecutor must show that the driver in question acted contrary to the provisions of the laws put in place. If a driver drives as required by the law, it means he has not breached the duty of care. But from the moment he drove rashly or carelessly, it implies that he has acted contrary to the duty of care. Take, for example, section 228(2) (d), which punishes whoever drives carelessly in a manner likely to cause harm to another person. Causation means, therefore, that the plaintiff not only has to prove that the defendant owes him a duty of care and has breached his duty, but also that the defendant caused the plaintiff's loss or injuries. The defendant's breach of

duty must be a cause of the damage. going back to the provision of section 289(1), this point relates to the material element of the offence of unintentional killing or harm or section 316(1) for the destruction of personal property or section 228(2) d for dangerous activities, these provisions simply require that it should be the act or conduct of the offender which led to injuries or death of the victim or destruction of his property. It therefore means that if the driver in question was not negligent, he cannot be held liable for the accident in question and at times, it is difficult to prove negligence. In the **People of Cameroon Vs Kuegue Michel Kemta, CFIBA/0071C/LD/2023**⁵⁵, the accused person was charged with dangerous activities contrary to and punishable under section 74(2) and 228(2) d of the penal code. From the facts of this case, on September 9th 2021 along the Batibo-Widikum highway within the jurisdiction of the Court of First Bamenda and being a driver of vehicle N° NW 971 BG drove the same rashly on the public highway in a manner liable to cause harm to other road users and hit vehicle N° NW 949 BG belonging to one FRU Solomon FRU and offence punishable by section 228(2) d of the penal code. But the state prosecutor, Magistrate Ndifor Wilkins Tantoh, failed to prove that this accident was a result of the negligence of the accused person. The accused was discharged and acquitted of the charges by the presiding judge, Justice Ajibi Julius Kanyimi. This was the same position in the case of the **Cameroon case of the People of Cameroon Vs Kamga Andre**⁵⁶, who was discharged of all the 27 charges against him for unintentional killing and Harm because the accident was not his fault but that of the driver of the other car. Therefore, the law of torts has, in general, denied recovery to an injured person who fails to prove negligence on the part of the defendant. This philosophy of "no liability without fault" has attracted particular criticism in the sphere of road accidents. How appropriate is it that, in an area where the risk of injury is so high and the consequences so serious for the individuals concerned, recovery of compensation should continue to depend on proof of fault? The difficulties of adducing satisfactory evidence of negligence in the ordinary type of collision case are well-known, as just demonstrated in the two cases above, where it was impossible to prove negligence by the state prosecutor. Another example can be seen in the foreign case of **Venning v. Chin**⁵⁷. This case involved a highway accident, in which a pedestrian was knocked down and seriously injured by a motor car while she was crossing a road in Adelaide. The woman claimed damages for her injuries. The woman alleged that the driver of the car had been guilty of negligence; the driver denied this and alleged that the plaintiff had been guilty of contributory negligence. The trial judge, Hogarth J., was unable, on the facts,

⁵⁴ Owen Richard,(2000), Essential tort law, 3rd edition, British Library Cataloguing in Publication, P, 31.

⁵⁵ Court of First Instance of Bamenda, judgment No 0071C of 29 March 2023.

⁵⁶ CFIL/78FD/2023

⁵⁷ (1975) 49 A.L.J.R. 378.

"to find positively that the defendant was guilty of any negligence which caused or contributed to the occurrence of the accident". However, he was equally "unable to find positively that he was not guilty of such negligence. As a result, if the plaintiff's action was framed in negligence, she would fail. However, Hogarth J. suggested that the plaintiff might bring an action for trespass to the person; in such an action, once the injury was proved to have been caused directly by the act of the defendant, the onus was on him to prove that the act was neither intentional nor negligent, and this was true even though the accident occurred on the highway. Having held that on the pleadings as they stood, the plaintiff was entitled to a claim for a trespass, Hogarth J held that the defendant had failed to discharge the onus of disproving negligence and that the plaintiff was therefore entitled to recover. He further held that although the plaintiff had succeeded in an action for trespass, the plaintiff's damages were to be reduced on account of her contributory negligence. He held the plaintiff 60% to blame for the accident and reduced the damages accordingly.

But if the defendant is the cause of the accident as a result of his negligence, then he shall be held responsible for the accident under the tort of negligence. In **AFFAIRE MP & Ayant droit de KENFACK Thomas, représenté par KENFACK DONFACK Nadège C/ TANKEU TIWA Jean Peauclaire**⁵⁸, the accused person was charged before the court of first instance of Dschang for the unintentional killing of KENFACK Thomas on the 31st of July 2017. From the facts of this case, the named TANKEU TIWA Jean Peauclaire, a Driver, residing in Mbouda-Nylon, of Cameroonian nationality, was brought before the Court of First Instance of Dschang, ruling in criminal matters, to answer to the facts of having, in Santchou, on July 31, 2017, while driving the Mercedes brand vehicle, registered under number LT-127-CI, through negligence, and disregard of regulations, caused the death of **KENFACK Thomas**, 58 years of age. He pleaded guilty to the offence, and since he was a first-time offender, he was sentenced to pay a fine of 150,000 FRS and 27,967 FRS as the cost of proceedings or serve 9 months imprisonment in default of payment. He was also civilly liable under the tort of negligence to pay the family of the victim 2,367,500 FRS because of the accident. Also in **The People of Cameroon Vs, Ngonbbouwo Bohmama, CFIL/351FB/2024**⁵⁹. In this case, the accused person was charged with reckless driving of a Camion owned by Dangote Cement Company and insured under Prudential Beneficiary Insurance Company Ltd. The heavy-duty truck collided with a motorcycle rider at Mile 2 Limbe, resulting in body injuries which lasted for about 55 days and was punishable under section 280 and 289(1) of the Cameroonian penal code. The presiding Judge, **Justice Nzene Ette Florence**, found

⁵⁸ JUGEMENT 567/COR DU 13 OCTOBRE 2017

⁵⁹ Court of First Instance of Limbe, Judgment No 351FB, 13/03/2024

the accused guilty and fined the accused person with a fine of 300,000, and a cost of 117000 FRS. Dangote Cement Company, which was the employer of the accused person, was vicariously liable towards the victim alongside the insurance company. The victim received the sum of 512000 FRS as compensation from the company as a result of the accident, where the driver was at fault. The award of such damages to the victim showed that the defendant in this case was negligent, which eventually led to the accident and the injuries suffered by the victim as a result of the accident.

Also in **Affaire Ministere Public Et Abessolo Matin Paul C/ Kentchouet Tagho Bernard**⁶⁰, the accused person was charged with unintentional killing contrary to and punishable under section 289(1) of the Cameroonian penal code. From the facts of this case, on November 8, 2020, the defendant was driving the TOYOTA vehicle registered LT807IN, belonging to ABESOLO Martin Paul, himself being inside. The accused person was overtaking another car carelessly and collided with the vehicle of the victim, resulting in his death as a result of the injuries sustained. He was found guilty and sentenced to pay a fine of 150,000 FRS and 1.328,544 as the cost of the proceeding, or serve 5 years imprisonment in default of payment. The offender's car was insured by GAC Assurance.⁶¹ The victim's beneficiaries brought a civil action under the Tort of negligence claiming the sum of 19,753,458 francs in damages, namely: -Funeral expenses.870,480 FRS; Economic damage (spouse and minor children. 16,486,148 FRS; Moral damage (spouse, children and ascendants.2,393,820 FRS.⁶² The calculations were done under the provisions of articles 264, 265 and 266 of the CIMA code. The trial judge approves the civil damages as claimed by the victim's beneficiaries, plus an additional 5,926,037 as interest for any payment delays. Therefore, since the accused person caused the accident as a result of his carelessness, the civil party's action under the tort of negligence succeeded.

The state can also be held liable under the tort of negligence for failing to maintain the roads or install red signals, which contributed to accidents. Some of the causes of accidents in Cameroon are attributed to the state. It is an obligation imposed on the state to ensure that the state of the road, rail or land transport infrastructure should not be a contributing factor to accidents in Cameroon. If the state fails to respect this obligation and the land transport infrastructure contributed to an accident, the victim can bring an action against the state. A good example was seen in **Affaire Kountcho Levi-Bord C/ Etate du Cameroun, judgment no. 18 /CS-CA/ 85-86 OF 26 June 1986**. In this case, the plaintiff was returning from Yaounde,

⁶⁰ JUGEMENT N° 17/COR DU 13 JANVIER 2023

⁶¹ Police d'assurance n°10042011900310 en cours de validité et délivrée par AGC Assurances

⁶² The calculations were made in accordance with the CIMA code in its articles 264, 265 and 266.

and while at Makenene, there was a sharp bend which he did not know, and there was no road signal to indicate to him. As a result, he fell into the river and sustained injuries and vehicle damage. He brought an action against the administration before the administrative bench of the Supreme Court for failure to indicate a road signal. He was awarded damages of 673,000frs as a result of the failure of the administration to indicate the sharp bend.

Apart from liability under negligence in tort law, land transport operators can also be vicariously liable.

1.2.1.2. Vicarious liability of land transport operators in cases of accidents under Cameroonian law

Vicarious liability refers to a legal doctrine that holds an employer or principal liable for the actions of its employees or agents. This means that if an employee or agent causes harm to another party while acting in the course of their employment or agency, the employer or principal may be held responsible for the damages or injuries caused.⁶³ Vicarious liability is often applied in cases involving accidents caused by employees⁶⁴ or agents of land transport operators, such as bus or truck drivers, who may cause harm or damage while performing their duties. The 2022 Cameroonian law protecting National Road Assets in section 36(1) is to the effect that *Motor vehicle owners shall be liable for the fines, damages, and costs charged to their employees for an offence committed in performing the duties for which they are employed.*⁶⁵ However, without prejudice to the criminal liability incurred by the driver, the court may decide that payment of the imposed fines be borne wholly or partially by the vehicle owner or the driver.⁶⁶ The rationale behind vicarious liability is that the employer or principal can control or supervise the actions of their employees or agents, and therefore should bear some responsibility for any harm or damage caused by those individuals. Also, if the employer benefits from the acts of the employees, it should bear the consequences of some of the actions of the employee when they cause any harm to a third party. By holding employers and principals liable for accidents caused by their employees or agents, vicarious liability serves as a means to hold employers accountable for the acts of their

employees.⁶⁷ In The *People of Cameroon Vs. Ngonbouwo Bohmama*⁶⁸, the accused person, was employed by the Dangote Cement Company. Justice **Nzene Ete Florence** found Dangote Cement Company, which was the employer of the accused person, vicariously liable towards the victim alongside **Prudential Beneficiary Insurance Company Ltd.** The victim received the sum of 512000 FRS as compensation from the company as a result of the accident, where the driver was at fault.

Also in *Affaire Ministère Public Et Nongni Cécile C/ Funwi Oditious Ambeche*,⁶⁹ the accused person was charged with unintentional harm contrary to and punishable under 289(1) and 280 of the Cameroonian Penal code. From the facts of the case, the state Prosecutor, Magistrate Engoulou Mbida Serge, produced as evidence the preliminary investigation report No. 008 of January 27, 2019, of the Dschang Gendarmerie Research Brigade. It emerges from the exploitation of this means of proof that the defendant was driving a HIACE type, TOYOTA, registered NW. 637 AX, belonging to Emmanuel AZIESHEH, driving towards Douala with 16 passengers on board, lost control of his car at the Dschang Cliff while dodging another vehicle and crashing on an embankment, injuring two people, namely NONGNI Cécile, who was temporarily unable to work for one month, and another unidentified person: The said vehicle was insured under AREA Assurance.⁷⁰ The accused person was found guilty and sentenced to 1month imprisonment. His employer, Emmanuel AZIESHEH, was vicariously liable to pay a fine of 200,000 FRS. The trial judge emphasised the need for employers to know that they can be held liable for accidents caused by their employees during the exercise of their duties. The insurance company was also civilly liable to compensate the victim with the sum of 480,000 FRS as a result of the injuries, which covers both medical expenses and loss of earnings for the one month in which the victim was injured.

Furthermore, in *AFFAIRE Ministère Public et TSASSE Lamene Duplex Aurelien C/ AMADU*⁷¹, the accused person was charged with unintentional harm contrary to and punishable under section 289(1) of the penal code before the court of first instance of Dschang. According to the facts of this case, this accident occurred at a place called Koagoh in Bamendou, around 9 a.m., when the Toyota vehicle, registered CE 878, was involved. DF, belonging to YAGOUBA Aliou, assigned to the Avenir voyage company and driven by the defendant AMADU as a result of his negligence and non-respect of regulations while driving, hit another Toyota vehicle registered

⁶³ Owen, Richard,(2000), Op, Cit, P, 65.

⁶⁴ by article 1(2) of the Cameroonian labour code, "worker" shall mean any person, irrespective of sex or nationality, who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the "employer".

⁶⁵ Section 36(1) of the 2022 law Protecting National Road Assets in Cameroon.

⁶⁶ Ibid, section 36(2).

⁶⁷ Employers and principals are incentivized to ensure that their employees or agents are trained and supervised properly to avoid accidents.

⁶⁸ CFIL/351FB/2024

⁶⁹ JUGEMENT N° 15/COR DU 13 JANVIER 2023

⁷⁰ Assurance No 36603180000033

⁷¹ JUGEMENT N°548/COR DU 10 OCTOBRE 2017

SW-9241-C, belonging to KOUNDA Serge Florent. As a result of the collision, the victim who was inside the other car sustained bodily injuries lasting more than 60 days. The accused person was found guilty, and the court sentenced him to pay a fine of 200,000 FRS and the cost of proceedings 73,415 FRS. Avenir Voyage was vicariously liable to pay the fine as a result of the offence committed by her employee, or the employee would serve 12 months' imprisonment. A similar decision was arrived at in **AFFAIRE MINISTERE PUBLIC & Ayants-droit de LEVI MESSI Représenté par AZEMTE Hervé Benoît C/ NJOYA MAMOUDA et Avenir Voyage, JUGEMENT N°425/COR DU 23 JUIN 2023**,⁷² where Justice Melinga Melinga Fabien invoked the provision of section 36(1) of the 2022 law protecting national road Assets, sentenced the accused to pay a fine of 200.000 FRS and 53,915 as cost of proceedings but to be paid by Avenir voyage, who was his employer, or the driver will serve 6-month imprisonment.

Again, in **AFFAIRE MINISTERE PUBLIC & AD AKEFACK Philippe C/ TESSA Paul, KANKEU FONKOUO Cyril LANDO Valentin; JUGEMENT N°478/COR DU 14 Juillet 2023**,⁷³ the accused persons were charged for Unintentional Killing contrary to and punishable under section 289(1) of the penal code. According to the facts of the case presented by the state prosecutor, Magistrate Enougou Mbida Serge, on September 6, 2021, at Blessing, a Mercedes semi-trailer truck, registered LTTR 035 AC,⁷⁴ travelling from Bafoussam-Dschang, slowed down to pick up luggage that had fallen. The said vehicle was followed by a TOYOTA Avanza LT 716 JL⁷⁵, which also slowed down. Then another vehicle of Mark Toyota with registration NW 866 AK driven by TESSA Paul with passengers on board did not slow down like others and started to overtake in third position, and was surprised by the truck coming in the opposite direction. He then tried to return to his traffic lane but was violently hit from behind by Lando Valentin, driving the semi-trailer vehicle CETR 538. The violence of the impact caused him to be thrown on the side of Kankeu Fonkouo Cyril, driving the vehicle LTTR 830 AU, which hit the vehicle, causing the amputation of AKEFAC Philippe, aged 50, who subsequently died. The three accused persons were found guilty and sentenced to pay a fine of 300.000 FRS each. All three employers of the offenders were vicariously liable alongside their insurers to pay the sum of 45,276,516 as damages to the family of the victim as a result of the accident.

Additionally, **AFFAIRE Ministere Public & TAKOUDE Eric Bigal represented by NGAMENI**

⁷² JUGEMENT N°425/COR DU 23 JUIN 2023

⁷³ JUGEMENT N°478/COR DU 14 JUILLET 2023

⁷⁴ This vehicle was owned by SOCONORD SARL, driven by FAYCAL MOUSSA,

⁷⁵ Belonging to GEOCHIM SARL and driven by PENKA KAMGANG Alain Roméo

Simplice C/ MALACHIO Elie⁷⁶, the Amour MEZAM Travelling Company was vicariously liable as a result of an accident caused by one of their drivers as a result of negligence. From the facts of this case, on December 11, 2012, around Fombap at Chefferi Nganzom, a Mercedes vehicle registered under the number NW-992-AI belonging to the company Amour MEZAM and driven by its driver MALACHIO Elie, coming from Douala and going to Bamenda, violently hit the young TAKOUDE Eric Bigal, aged 7 years. These injuries were so severe that this child did not go to school for the remaining academic year. Justice found the accused person guilty and sentenced him to pay a fine of 300,000frs, and 93,735 as the cost of proceedings, which was to be paid by the company Amour MEZAM or the driver will serve a month's imprisonment. Unfortunately, the family of this child did not claim any damages before the court but agreed to resolve the civil part of the claim out of court. **In Affaire Ministere Public C/ Camrail, Didier Vandebon et 13 autres**, Camrail was also held liable alongside the general director of this company as a result of the devastating Eseka accident.

Also, **AFFAIRE MINISTERE PUBLIC et Ayants droit de MBADOUET Rosaline, représentés par Azemgue Danchi Boris C/ SOUNNA Ulriche Valdo**⁷⁷, the accused person was charged before the court of first instance for unintentional killing and harm contrary and punishable under section 289(1) of the Cameroonian penal code. According to the facts of this case, on March 10, 2021, the defendant was driving the Toyota Hiace vehicle registered LT 619HP belonging to QUINS HOTEL and covered by the valid Insurance Policy No. 2002024110017 issued by the company SUNU, coming from Bafoussam to Dschang and travelling at high speed. At PPMS Baleveng, he was hit from behind by a motorcycle driven by DANCHI Boris and carrying MBOADOUET Rosaline, thus causing the death of the latter and injuries to the former. He was arrested and charged before the court with the first instance of Dschang for unintentional killing and harm contrary to and punishable under section 298(1) of the penal code. Since the driver in question was an employee of QUINS HOTEL, the company was vicariously liable for the acts of the driver and sentenced to pay a fine of 250,000frs and 46,265 as the cost of proceedings, or the driver will serve 9 months imprisonment. However, the parties in this case did not bring a civil action before the court and preferred to settle the civil part of the case out of court.

Even the state can be vicariously liable for acts committed by civil servants in the exercise of their functions, which caused an accident to another person. This was seen in the case of the **People of Cameroon vs Chedou Kpondon Berlin, CFIT/15C/FD/2023**.⁷⁸ According to the facts of this

⁷⁶ JUGEMENT No 504/COR DU 26 SEPTEMBRE 2017

⁷⁷ JUGEMENT N° 311/COR DU 12 MAI 2023.

⁷⁸ Court of First of Tiko, Judgment N° 15C of 12/06/2023.

case, the accused person was a worker under the delegation of the Livestock Fisheries and Animal Husbandry Tiko South West Region of Cameroon. CHEDOU KPONDON BERLIN at high speed, rashly drove a motorcycle with mark JIALING NO MTCA2914D belonging to the Delegation of Livestock Fisheries and Animal Husbandry Tiko on the highway, lost control of the motorcycle, and as a result caused the death of AMBE GODWIN MOFA, an offence contrary to and punishable under Section 289(1) of the Penal Code. The Ministry of Livestock, Fishery and Animal Husbandry, which was represented by Enow Egbe Lucy, was vicariously liable since the offender was her employee and was fined 250,000 FRS, the default of which the convict will serve 12 months imprisonment.

The cases above show that the courts in Cameroon are always ready to hold the employers of land transport operators in cases of accidents. This is because, as employers, they have the right to discipline and even caution their drivers on the dangers of recklessness or negligence in the course of driving, which might lead to accidents. But some of these employers, because they want to make a lot of profit, put some of the drivers under very difficult working conditions and sometimes use the time frame within which a driver is supposed to get to a destination and back. This pushes some of the drivers to run at high speeds to meet the time prescribed by their employers. Some of these employers even minimise maintenance defects notified to them by drivers. Defects in cars contribute to some of the causes of accidents on land in Cameroon. We recommend that the state impose an obligation on all road transport operators to have motion detectors which can show the speed at which their workers are driving on the highway, and immediate sanctions be taken against these perpetrators.

1.3.2. Liability of Land Transport Operators In Cases Of Accidents In Contract Law

A contract is an agreement giving rise to obligations which are enforced or recognised by law.⁷⁹ It establishes the rights and obligations of the parties involved and is typically enforceable in court. The factor which distinguishes contractual obligations from other legal obligations, like those under tort law, is that they are based on the agreement of the contracting parties. Tortious and contractual obligations are the two main types of obligations recognised in English law and English Cameroon.⁸⁰ A contractual obligation

⁷⁹ Ewan McKendrick,(2010), *CONTRACT LAW; Text, Cases, and Material*, Oxford University Press, UK, P, 4.

⁸⁰ This is recognized in English Cameroon by virtue of section 11 of the southern Cameroon High court law of 1955. this section provides that; the rules of common law, the doctrines of equity and the statute of general application which were enforceable in England up to the 1st of January 1900 shall be applicable in Anglophone Cameroon insofar as our legislators have not legislated on for the time being.

arises when one person makes a promise to another, provided generally that that promise is supported by consideration or is made under seal, and is not invalidated on grounds such as mistake, misrepresentation or frustration. The promisor is under an obligation to perform his promise, and should he fail to do so, the promisee has a cause of action against him for breach of contract. A tortious obligation, on the other hand, is an obligation not to wrong another by conduct that the different torts specify to be wrongful. Should a person break such an obligation, the person wronged has a cause of action against him for the tort.⁸¹ In the formation of a contract for the transportation of persons or goods, there is an implied obligation that the driver or the transport company will drive with caution to get the passengers or victims to their destination safely. A good example demonstration can be seen under contracts for the carriage of goods by road as regulated by the OHADA Uniform Act on Contracts of Carriage of Goods⁸² by Road (UACCGR) of 2003⁸³ which permits the owner of the goods to bring an action against the carrier in case though his acts or omission causes any damage to the goods⁸⁴ in the course of transit as per article 16 of the UACCGR. Such damage to the goods might be caused by an accident due to the acts or omissions of the carrier or the agent of the carrier. It should be noted that an accident must not necessarily be between two cars or a vehicle hitting someone, but can still occur when a driver alone may get involved in an accident as a result of their negligence or carelessness.

On the same facts and concerning the same loss, the plaintiff may be able to show not only that the defendant has broken his contract but also that he has committed the tort of negligence. For example, where a carrier contracts to carry goods for the owner, it will usually be a term of the contract that the carrier takes reasonable care of the goods in transit. If he then

⁸¹ Burrows A. S.,(1987), *Remedies For and Breach of Contracts*, 1st edition, Butterworth's Co Publishers Ltd, P, 4.

⁸² According to article 2(a) of this Uniform Act defines "contract for the carriage of goods as": any contract under which a natural person or legal person called the carrier, undertakes, principally and in return for remuneration to convey by road from one place to another, by means of a vehicle, goods entrusted to him by another person, known as the sender.

⁸³ According to article 1(1) of this uniform acts, This Uniform Act shall apply to every contract for the carriage of goods by road, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are either situated in the territory of an OHADA State Party or on the territory of two different States, of which at least one is an OHADA Member. The Uniform Act shall apply irrespective of the place of residence and nationality of the parties to the contract of carriage.

⁸⁴ According to Article 2(e) of this Uniform Act "goods have been defined as " any movable property"

negligently damages the goods, he is not only in breach of contract but is also liable to the owner for the tort of negligence. The number of potential overlaps between breach of contract and the tort of negligence has increased in recent years, particularly since the tort of negligence has been expanded to allow the recovery of pure economic loss (that is, economic loss not consequent on physical damage) at least where there is proximity between the parties.⁸⁵ Clearly, what the plaintiff cannot do in this sort of situation is to recover damages both for the breach of contract and for the tort of negligence, for this would be to recover double damages for the same loss. But as a matter of principle, there should be no objection to the plaintiff choosing to obtain judgment either for breach of contract or for the tort of negligence, depending on which is more favourable to him. In cases of accidents which might lead to loss of life, injuries or damage to property in Cameroon, the most suitable should be under the Torts law rather than a contract because the obligations of the safety of both passengers, their property and other road users are imposed by the law, which makes it more appropriate for the plaintiff to easily succeed in his action under the tort of negligence. Again, when most Cameroonians go to a train station or an agency and buy a ticket to travel, the ticket given to them represents just proof of payment for that voyage and nothing more. They are not aware that the ticket in question might contain implicit terms of the contract of voyage where the driver or the agency in question is under the obligation to carry them to their destination safely. Imagine another situation where no ticket is even paid, like when we take a taxi or a motorcycle to get to a particular destination. Therefore, the liability of land transport operators in Cameroon in cases of accidents under contract law is an alternative to that of tort law. The victim cannot bring an action in tort law and contract law at the same time. One thing that is also of interest under contract law relates to the exception to the doctrine of Privity of contracts⁸⁶, which permits third parties who are victims of accidents by roads to bring an action against insurance companies as a result of an accident caused by the insured. This is recognised under section 200 of the CIMA Code on third-party insurance. This obligation of insurance companies to be liable towards third parties is recognised by the law and not an agreement between the insured and insurer. Since the law has already imposed obligations on land transport operators to exercise

⁸⁵ Burrows A. S., (1987), Op Cit, p, 5.

⁸⁶ Privity of contract refers to the legal relationship between the parties to a contract. Essentially, it means that only the parties to a contract have the right to enforce the contract or to be bound by its terms. For example, if two individuals enter into a contract for the sale of a car, only those two individuals are bound by the terms of the contract. A third party, such as a friend or family member of one of the parties, cannot enforce the contract or be bound by its terms.

their duties with care in order not to cause harm to another person, the tortious obligations should be enforced strictly, which might reduce the rate of accidents in Cameroon. But again, a victim of an accident is still free to bring an action under contract law as a result of an accident if it is the most appropriate mode in the case in question.

However, there are defences which could be raised by the land transport operators as a result of accidents. Some of the accidents might be caused by factors which are independent of the will of the offender or the person accused of committing the offence.

1.4. Defences to the nature of liability of land transport operators in cases of accidents in Cameroon

So far, we have been primarily concerned with what a plaintiff or the prosecutor has to prove to establish the basis of liability or what he has to prove to show the defendant or accused person was the cause of the accident in question. This would be a convenient point to consider certain defences which may be raised by the defendant, who, while admitting the behaviour complained of (which would otherwise constitute a tort or a crime), then seeks to adduce in evidence additional facts which will excuse what he has done. So, the burden of proving the facts to establish the defence rests on the defendant. These defences are: inevitable risk, contributory negligence and age.

1.4.1. Contributory Negligence As A Defence For Liability Of Land Transport Operator In Cases Of Accidents In Cameroon

Contributory negligence refers to a legal defence that reduces or eliminates a plaintiff's ability to recover damages if the plaintiff's negligence contributed to their injuries.⁸⁷ For example, if a pedestrian is injured by a negligent driver but was jaywalking at the time of the accident, the defendant may argue that the pedestrian contributed to their injuries and is therefore partly responsible for the accident. Contributory negligence is a common defence in cases involving negligence and personal injury, and can significantly impact the outcome of a lawsuit. A land transport operator standing trial as a result of an accident can claim the defences of contributory negligence, which might reduce the ability of the plaintiff to recover damages. In the Cameroonian case of the **People of Cameroon Vs Kenne Njapto Uguette & one other, CFIL/122C/2022**⁸⁸, the accused person was charged with unintentional Killing by rash driving in Limbe at Half Mile. The accused during the trial raised the defences of contributing negligence on the part of the victim. There was a pothole which the offender tried to avoid, and entered the side of the victim who was

⁸⁷ Owen, Richard, (2000), Op, Cit, P, 155.

⁸⁸ Court of first instance of Limbe, Judgment No 122C/21/03/2022

coming at high speed, resulting in the death of the victim after the collision. The police report also supported the arguments of the offender. Justice **Nzene Ete Florance** accepted the fact that even though the offender had crossed on the side of the victim as a result of the nature of the road, the victim had driven at the normal speed, the fatality of the accident would have been different. This judge still found the accused person guilty but took into consideration the circumstances of this accident and only fined the accused person 50,000 FRS and 93000frs as the cost of proceedings or served 6 months imprisonment.

The rationale behind contributory negligence is based on the principle of fairness. The defence argues that it would be unfair to hold the defendant fully liable for an accident if the plaintiff contributed to their injuries. By assigning partial responsibility to the plaintiff, contributory negligence aims to discourage individuals from engaging in dangerous or negligent behaviour, as they may be held partially responsible for any resulting injuries. Some critics argue that contributory negligence can be harsh and unfair, particularly in cases where the plaintiff's negligence was minor compared to the defendant's. However, defence remains an important aspect of personal injury law in many jurisdictions. Such defences can be raised against other land transport operators or the state in question. Take, for example, the nature of the road, which contributed to the cause of the accident, can be a ground for contributory negligence. Some of the highway roads in Cameroon have a lot of potholes, and some lack basic road signals. A land transport operator can claim the defence of contributory negligence if these factors contributed to the accident in question. But if the land transport operator cannot justify that there was contributory negligence on the part of the victim, which contributed to the accident, then he/she will be fully responsible. A good example can be seen in the case of the **People of Cameroon vs Ekouda Mpend Patrick, CFIL/306C/FD/2023**. In this case, the accused person was charged with Dangerous activities while driving, which is contrary to and punishable under section 228(2) (d) of the penal code. The defendant argued that on that faithful day, Mr Nebahh Roland Ngwa was in front of him, and each time he attempted to overtake him, Mr Nebah would accelerate. This happened three times, which provoked him to hit the victim from behind. His arguments that the actions of the victim contributed to the accident were rejected by Justice Kengo Federick. The trial magistrate believed that the decision of the accused person to hit the victim from behind because he could not overtake him was a deliberate act and sentenced the accused person to 6 months imprisonment and to pay a fine of 100,000 FRS.

At common law, it was a complete defence if the defendant proved that the plaintiff had been guilty of contributory negligence. In **Butterfield v Forrester**

(1809),⁸⁹ the defendant negligently left a pole lying across the road. The plaintiff was injured when he collided with the pole while riding along the road. Although the defendant had been negligent, he escaped liability since the plaintiff would have avoided the accident if he had not been riding so fast and also at night without light. It is not necessary to show that the plaintiff owes the defendant a duty of care, but merely that the plaintiff has contributed to the injury and not necessarily the cause of the accident. So, in **O'Connell v Jackson (1972)**,⁹⁰ there was a 15% reduction in the damages awarded to a motorcyclist because he failed to wear a crash helmet. The case involved a plaintiff who was injured when he was struck by a car driven by the defendant. The plaintiff sued the defendant for negligence, but the defendant argued that the plaintiff was contributorily negligent for failing to take proper precautions when crossing the road. The court held that while the plaintiff's negligence contributed to the accident, the defendant was also negligent for failing to take proper precautions when approaching the pedestrian crossing. The court reduced the plaintiff's damages by 50% to account for his contributory negligence. Similarly, in **Froom v Butcher (1975)**,⁹¹ there was a 25% reduction in a driver's failure to wear a seatbelt, as the injury could have been completely avoided by wearing the seat belt, but if wearing a seat belt had reduced the severity of the injuries, then damages would have been reduced by 15%. In this case, the plaintiff, Mr Froom, was driving at night when he struck a police car parked on the highway. The police car was responding to an earlier accident and had its hazard lights flashing. Mr Froom sued the police officer, Mr Butcher, for negligence, arguing that the car was not properly lit and visible. In most cases when contributory negligence is raised against the state, the judges rarely consider that, as was the case in the **People of Cameroon v. Kenne Njapto Uguette & one (supra)**. The trial judge rather said the state cannot be held liable for that, and the nature of the road should caution the drivers on their ability to drive safely in relation to the road in question.

1.4.2. Inevitable accident

"Inevitable accident" is a legal defence that argues that an accident was unavoidable, even with the exercise of reasonable care by the defendant.⁹² This defence is often raised in cases where the defendant is accused of negligence but argues that the accident was caused by factors beyond their control, such as a sudden and unexpected event. This is found under the Cameroonian penal code in section 77 on Accident and Physical Compulsion. This section provides that *no criminal responsibility shall arise from*

⁸⁹ (1809) 11 East 60 (KB),

⁹⁰ All England Law Reports: (1973) 1 A.E.R. 126

⁹¹ Online sources: British and Irish Legal Information Institute (BAILII): [1975] 1 WLR 763; Westlaw UK: [1975] 1 WLR 763; LexisNexis UK: [1975] 1 WLR 763

⁹² Owen, Richard, (2000), Op, Cit, P, 163.

*an accident or an irresistible physical compulsion.*⁹³ This section has not defined what an irresistible physical compulsion is. But from the implication, it means those factors which are independent of the will of the defendant, like natural causes of accidents. But this provision insists only on the criminal liability and says nothing about the civil liability. In cases of accidents by road for example, the natural causes of the accident is a defence for criminal liability but the insurance company will be civilly liable to compensate the victims of the accidents found in the car in question under section This is per the provision of section 226 of the CIMA Code. This section provides that *the driver or custodian of a vehicle may not oppose an act of God or a third-party act to the victims, including the drivers.*⁹⁴ This means that the owner of the vehicle cannot make use of a defence of the fact that the accident is a result of natural factors and not his fault.

However, it's important to note that the defence of inevitable accident is rarely successful, as courts generally require defendants to exercise reasonable care to prevent accidents. Unless the defendant can show that the accident was truly unavoidable, the court is likely to find them liable for negligence.

1.4.3. Age of the perpetrator

This defence can be raised only by physical persons. One of the conditions to obtain a driving license in Cameroon is the condition of age specified in Article 4 of the Cameroonian Highway Code. For categories A1 and A, the person must be 16 years, for B, F and G, the person must be 18 years, for C, the person must be 20 years and finally, for D and E, the person must be at least 21 years of age. It is very common today in Cameroon to see children who are not of age driving cars or riding bikes without a license. If this child commits, for example, unintentional killing, punishable under section 289(1) of the penal code, this child cannot be criminally responsible because of the defence in section 80 of the penal code.⁹⁵

4.5. Conclusion and recommendations

The cause of the accident in Cameroon and who is responsible for the accident will determine the nature of liability that will fall on the person responsible for

the accident. Such liability can be civil and criminal. The nature of liability determines the type of action which can be brought against the offender in cases of accidents in Cameroon. This chapter permits us to know if the offender can be criminally or civilly liable as a result of an accident he or she is responsible for. The person responsible for an accident can be held criminally responsible, as seen under section 289(1) of the Cameroonian penal code. Criminal responsibility can be imposed either by the payment of a fine or an imprisonment term as the judge thinks fit. It is left for the judge to appreciate the evidence presented and determine the sanction which will be given to the offender at any moment in time. The person responsible for an accident by land can also be civilly liable both under Tort law and contract law. In summary, Negligence, vicarious liability, liability in contract and criminal liability are all possible forms of liability that may apply to land transport operators in cases of accidents. The operator may be held liable for their negligence or the negligence of their employees or agents, and the degree of liability will depend on factors such as the type of harm caused, the foreseeability of the accident, and any contributory negligence by the plaintiff. Land transport operators may raise various defences in cases of accidents, including contributory negligence, inevitable accidents, and others. However, the success of these defences will depend on the specific facts and circumstances of the case. Land transport operators need to exercise reasonable care and take appropriate precautions to prevent accidents and harm to others. While accidents may occur despite these efforts, operators must be prepared to address liability issues that may arise. The nature of liability in cases of accidents remains a problem in Cameroon because even when the appropriate action has been determined, the case before the courts continues to suffer from adjournment. Some of the cases take more than 4 years before a final verdict can be given by the courts. This is disadvantageous for the victim seeking justice. Some victims just abandoned the case before the courts because of too many adjournments and time wastage. We recommend that the judge in court must respect the principle of prescription of prosecution and sentences when it comes to cases of accidents by land in Cameroon.

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⁹³ Section 77 of the Cameroonian penal code.

⁹⁴ Article 226: Acts of God and third party act non-invocable . The driver or custodian of a vehicle may not oppose an act of God or third party act to the victims, including the drivers.

⁹⁵ SECTION 80: Infancy (1) No criminal responsibility shall arise from the act or omission of a person aged less than 10 (ten) years. (2) An offence committed by a person aged not less than 10 (ten) years and not less than 14 (fourteen) years may attract only such special measures as may by law be provided. (3) For an offence committed by a person aged over 14 (fourteen) and under 18 (eighteen) years, responsibility shall be diminished.

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