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Introductory Remarks

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- 1. The new liability's society**
 - 2. Challenges of liability insurance**
 - 3. Intrinsic limits of liability**

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The new liability's society

▶ Liability explosion

- *An old case*
 - *For negligence liability*
 - *As well as for non negligence liability (workers compensation)*
- *But with new dimensions*
 - *No more contained to special cases (special laws or contracts)*
 - *Less and less contained to negligence liability*

▶ Main sources

- *Multiplication of new difficult to control risks*
 - *Casualties cannot be liable*
 - *Product, environment liability*
- *Equity principle*
 - *Same compensation for the same pain (cf. role of jury)*
 - *Philosophical reunification of compensation principles*

▶ Main consequences

- *Socio-economic consequences*
 - *Explosion of precautionary costs*
 - *Eclipse of social security concerns*
- *Political consequences*
 - *Retro-activity of new standards*
 - *The rise of courts' power*

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Challenges of liability insurable

▶ Drift of liability

- *Quantitatively and qualitatively*
 - *Expanding number of cases for expanding grounds*
 - *Raising compensation sometimes contesting covers limitations*
- *Trends difficult but not impossible to anticipate & price*
 - *Case by case progression*
 - *Accelerated by class actions*

▶ Growing difficulties to insure risky activities

- *Raising insurance premiums*
 - *Raising costs to be covered because of wages & compensations*
 - *Raising risk premium because of trend's uncertainties*
- *Concentration on most risky activities*
 - *Activities with high social costs (construction) => accurate*
 - *Sensitive activities (drugs' defects, medical malpractice) => social problem*

▶ A moral hazard problem

- *Insurance as incentive scheme*
 - *For economic agents to pursue risky activities paid by others => selectivity*
 - *For courts to grant compensation generously => precautionary behaviors*
- *Insurance as a perverted scheme*
 - *Deep pocket principle => covers' limitations*
 - *Pernicious effects of compulsory liability covers => market sanction*

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Intrinsic limits of liability

▶ Intrinsic limits to causality

- *Causality as a powerful instrument for expanding liability*
 - *Traditional legal & principle based causality*
 - *New raising statistical causality*
- *Causality as a source of irrationality*
 - *Where to stop the chain of causality ?*
 - *Statistical causality as a source of injustice*

▶ Necessity to ponder liability

- *Handle insurance inefficiencies*
 - *Accept covers' limitations*
 - *Become more predictable*
- *Support innovative activities*
 - *Pharmaceutical industries*
 - *Technological progress (cf. nanotechnology, GMO)*

▶ Coming limitations of courts power

- *A risk of falling legitimacy*
 - *Retro-activity, instability, unpredictability and irrationality of courts' jurisprudence*
 - *Omnipotence that threatens to end up in escapable judicial errors*
- *The coming backlash of legislators ?*
 - *Necessity of an equilibrium between the three powers*
 - *Need for more law based principles*

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