

The Role of Judicial Jurisprudence in Establishing New Professional Obligations

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Abstract:

Modern jurisprudence building upon established judicial precedents has introduced a novel perspective on professional responsibility that transcends traditional classifications of civil liability. This perspective simultaneously affirms the subjective and specific nature of professional responsibility while highlighting the inadequacy of previous legal frameworks in fully encompassing all legal obligations. This evolution raises a critical question: To what extent has the judiciary played a role in establishing new professional obligations that extend beyond those traditionally prescribed for legal professionals under general legal principles? This issue becomes particularly relevant given the emerging perception of clients as a vulnerable party requiring protection in their capacity as consumers of legal services. Accordingly, this study aims to identify and analyze the various professional obligations newly established through comparative judicial rulings. This analysis is crucial for understanding one of the fundamental conditions for holding professionals accountable, particularly since legislative frameworks have been influenced by these judicial developments. As a result, distinct obligations have been introduced specifically for legal professionals, characterized by a heightened degree of rigor and

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strictness compared to the general legal obligations traditionally in place.

Keywords: judicial developments, emerging perception, influenced, fully encompassing professional responsibility.

1. INTRODUCTION

The theory of professional liability is a legal construct developed by French jurisprudence and the judiciary¹. This theory has moved beyond the traditional classification of civil liability, which legal scholars argue is no longer sufficient to encompass the specific provisions governing the liability of professionals. Instead, a more suitable foundation has been established in the rules and ethics of the profession, grounded in several key justifications.

One of the most significant aspects of this shift is the standard used to assess professional fault. The conduct of a professional is measured against peers within the same field of specialization, rather than the general public. This approach acknowledges that professional error is influenced by pragmatic considerations, particularly those linked to specialization and the technical or artistic nature of fulfilling professional obligations. The judiciary's influence on this evolution is evident, as

Genevieve Viney, *Treatise on Civil Law: Liability – Conditions*, 1st .¹ edition, L.G.D.J, Paris, 1982, op. cit., pp. 243 and 245. See also : PATRICK SERLOOTEN, *Towards Professional Liability*, in *Essays in Honor of P. Hebraud*, University of Social Sciences, Toulouse, 1981, p. 805 et seq.

courts have historically relied on the professional's status to impose stricter standards upon them².

An analysis of professional regulations and customary practices reveals the shared characteristics that unify legal professions, despite variations in execution. These common features directly impact the obligations imposed on professionals and, consequently, the responsibilities they bear. One of the defining aspects of professional liability is the highly personal nature of the professional-client relationship. Clients often seek out professionals based on subjective and moral considerations, related to the professional's persona, which drive them to seek their services. Such factors include trust, intellectual, artistic, and technical qualifications, as well as the professional's reputation, public recognition, career history, and past experiences.

The liability of legal professionals is fundamentally legal, grounded in the concept of professional fault, which is directly linked to professional obligations. These obligations arise from multiple sources, including legal and regulatory texts governing independent legal professions, internal professional regulations, and long-established professional customs recognized within the field. Judicial precedents—particularly in comparative law—have played a pivotal role in shaping many of these obligations, especially after consumer protection principles became more prominent in legal professions.

Genevieve Viney, *Treatise on Civil Law: Liability – Conditions*, op. cit., p. 255.

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This evolution raises a fundamental question: to what extent has judicial jurisprudence contributed to expanding the scope of professional obligations? Following the legal framework governing independent legal professions, legislators have established a set of common obligations characterized by a distinct professional nature and a judicial origin³. These obligations are notably stricter compared to the general obligations imposed on the public. This study will examine these obligations by focusing on four key aspects: the duty to inform and advise (First Section), the duty of care and diligence (Second Section), the duty of loyalty (Third Section), and, finally, the duty of professional confidentiality (Fourth Section).

Section One: The Duty to Inform and Advise

This duty is among the most significant legal obligations imposed on professionals in independent legal professions. Although it is a common obligation across all professional fields, its scope and content vary depending on the nature and specialization of each profession. However, it reaches its highest level of importance and impact in the fields of notarial practice and legal advocacy. Therefore, our analysis will focus on the scope of this duty in these two professions, following an examination of its definition and legal nature.

Lieselottte Arens, Christian Boutteman, et al., under the coordination .³
of Sophie Boufflette, *op. cit.*, pp. 264 et seq., 315 et seq., 344 et seq.

Subsection One: Definition of the Duty to Inform and Advise⁴

With the increasing reliance on the services provided by independent legal professionals, this duty has become a fundamental pillar of professional practice and a key element in fostering public trust. It functions as a crucial safeguard for clients' interests, which led the Algerian legislature to integrate it into the legal framework governing these professions⁵. However, the legislator has not provided a precise definition of this obligation, opting instead to outline its general scope.

Since defining legal concepts is the domain of jurisprudence⁶, some scholars argue that the boundaries of this obligation remain unclear. They contend that merely providing information is insufficient; rather,

⁴. Some scholars also refer to this obligation as the duty of disclosure, the duty of foresight, the duty to provide information, the duty to furnish data, the duty to inform, the duty to warn, or the duty to provide advice.

⁵. In this regard, Article 12 of the Notarial Law states: "The notary must (...) provide advice to the parties (...). The notary shall also inform the parties of the extent of their obligations and rights, clarify the implications and obligations to which they are subject, and explain the precautions and legal mechanisms required or granted by law to guarantee the legal effect of their intentions. It is noteworthy that the wording of Article 12 of the Notarial Law is identical to that of Article 37 of the Moroccan Notarial Law (Law 09/32).

. According to Mohamed Boudali in his book *Consumer Protection in Comparative Law: A Comparative Study in French Law*, Dar Al-Kitab Al-Hadith, Cairo, Egypt, 2000, pp. 73-74, the notary was the first professional upon whom the judiciary imposed the duty to provide advice. Subsequently, this duty was extended to litigation agents, bailiffs, attorneys, real estate agents, and accounting experts.

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professionals must offer solutions aligned with the client's best interests. This interpretation imposes a heightened duty of care on professionals, requiring them to conduct relevant research and analysis. Consequently, professionals bear the burden of proving that they have fulfilled this duty⁷.

Some legal scholars consider that judicial officers (bailiffs) are obligated, under this duty, to inform their clients about the nature and consequences of the actions they undertake, either upon request or as part of their official duties. Meanwhile, the French judiciary has ruled that notaries⁸ must provide advice even beyond the immediate scope of contract drafting, reasoning that such an obligation serves the principles of fairness and practicality. Similarly, attorneys are required to furnish their clients with comprehensive legal counsel, ensuring that they receive clear and adequate legal advice⁹. As a

⁷. This evolution is consistent with the famous Hédreul ruling by the French Court of Cassation, which addressed medical liability. The ruling was formulated in broad terms, suggesting its applicability to all professionals, stating: *"Anyone who is legally or contractually bound by a specific duty to inform must provide evidence that they have fulfilled this obligation."* This ruling is cited by Mohamed Boudali in the aforementioned reference, p. 74.

⁸. *"...The duty to provide advice indeed exists beyond any specific act, as long as it can be established that the notary is involved in the negotiations and the drafting of the contract. This solution is both fair and realistic..."* Jean-Luc Aubert, *Civil Liability of Notaries*, Thesis, Nice, 1973, p. 17. See also: Jeanne De Paulpiquet, *op. cit.*, p. 88.

⁹. *"The lawyer must inform the client of all possible procedures available to handle their case and guide them toward the most appropriate, most effective, and least costly procedure..."* SAID NAOUI, *op. cit.*, p. 68.

result, what was once regarded as an ethical duty has evolved into a legally binding obligation.

Subsection Two: The Nature and Legal Basis of the Duty to Inform and Advise

Legal scholars have long distinguished between different types of obligations, classifying them into obligations of result and obligations of means. The duty to inform and advise, being one of the most fundamental legal and ethical obligations imposed on independent legal professionals, presents a challenge in determining its precise nature and foundation. This complexity arises from the nature of independent legal professions, where each profession entails a variety of tasks. Consequently, defining the scope of this obligation for each professional depends primarily on the specific task assigned to them.

This ambiguity has led both jurisprudence and comparative judicial rulings to adopt differing perspectives¹⁰. Some scholars argue that this duty constitutes an obligation of means when it pertains to legal consultation. In such cases, the professional's role is limited to providing legal information and reasoning related to the matter at hand. The professional merely clarifies the potential effects and consequences without imposing a decision upon the client, who remains free to make their own choice.

¹⁰. Rene Savatier, *Professional Advisory Contracts in Private Law*, Dalloz, 1972, p. 139. See also: Genevieve Viney and Philippe Jordain, *op. cit.*, p. 475. Cecile Biguenet-Maurel, *The Duty to Advise for Notaries*, Dalloz, 2006, p. 201.

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Conversely, another view¹¹ holds that the duty to inform and advise should always be considered an obligation of result, given that its primary objective is to ensure the accuracy and effectiveness of the professional's task. A third¹², more flexible approach suggests that a professional's liability may be classified as either an obligation of result or an obligation of means, depending on the circumstances. The reasoning is that the obligation of means applies when the client retains discretion over whether to follow the professional's advice, whereas an obligation of result arises when incorrect information or improper advice leads to harm¹³.

¹¹. Jeanne De Poulpiquet, *op. cit.*, p. 90. See also: Cecile Biguenet-Maurel, *op. cit.*, p. 201. Cecile Biguenet-Maurel stated that the duty to advise is not always, and absolutely, an obligation to achieve a specific result; rather, it is an obligation of means or an obligation of diligence, albeit with a heightened degree of strictness. However, it does not reach the level of an obligation to achieve a result, especially when it concerns a breach of one of the complementary obligations associated with the duty to advise, specifically the obligation to ensure effectiveness.

¹². "...*The obligation to inform and advise is both an obligation of means and an obligation of result. Firstly, because the client remains free to follow the information provided by the lawyer, and the burden of proof falls on the client—not only to establish the existence of this obligation but also to prove a fault characterized by false information in cases where the client was not properly advised by their lawyer...*" Said Naoui, *op. cit.*, p. 79. See also: Lieselotte Arens, Christian Boutteman, et al., under the coordination of Sophie Boufflette, *op. cit.*, pp. 344 et seq.

¹³. In our view, this important obligation imposed on independent legal professionals cannot be classified under a single legal category, given the diverse and complex nature of professional legal work. This leads us to align with the latter opinion, which holds that the nature of this

Regarding the legal basis of this obligation, it is explicitly referenced in Articles 12 and 13 of the Notarial Law and Article 40, Paragraph 8 of the Internal Regulations of the Legal Profession. Furthermore, since clients of independent legal professionals are considered consumers of their services, an additional legal foundation for this duty can be found in Law No. 09/03¹⁴ on Consumer Protection and Fraud Prevention, which applies to both paid and free legal services, including legal consultations¹⁵.

Subsection Three: Justifications and Rationale for the Duty to Inform and Advise

This obligation emerged after extensive efforts by both jurisprudence and the judiciary, which worked to establish its foundations in pursuit of legal fairness between the parties involved in contractual relationships. The adoption of the duty to inform and advise by legal professionals, particularly notaries and attorneys, is the

obligation should be determined on a case-by-case basis. However, it is generally considered an obligation of diligence, as legal professionals are presumed to exercise the necessary care and competence when providing advice.

¹⁴. Law No. 09/03, dated 25/02/2009, on Consumer Protection and Fraud Prevention, Official Gazette No. 15, dated 08/03/2009.

¹⁵. Mohamed Imad Eddine Ayad, *The Scope of Application of the Consumer Protection and Fraud Prevention Law*, article published in *Dafater Assiyassa Walqanoun* (Journal of Politics and Law), an international periodical specializing in law and political sciences, published by *Kasdi Merbah University*, Ouargla, Issue No. 9, June 2013, pp. 67 and 70. For further reference, see: Mohamed Kabouri, *The Legal Basis of the Notary's Duty to Inform in the Authentication of Real Estate Sale Contracts*, article published in *Journal of Property Law Systems and Disputes*, issued by the Center for Human and Social Studies and Research, Oujda, Kingdom of Morocco, Issue No. 07, 2003, p. 251.

result of several key considerations and justifications. From a legal perspective¹⁶, this duty primarily aims to ensure contractual balance, given that many clients of legal professionals lack the ability to fully comprehend the circumstances and implications of contractual agreements, especially regarding legal information related to the contract. This obligation ensures equal access to knowledge for contracting parties. Additionally, practical and pragmatic justifications reinforce this duty, as it is closely linked to trust in the legal professional, the need for legal security, and the inability of general legal principles to provide the necessary level of protection.

Subsection Four: Scope and Content of the Duty to Inform and Advise

The application of the duty to inform and advise varies across different legal professions. While its specific content differs between notaries, judicial officers (bailiffs), and attorneys, it remains a common obligation across all these professions. In essence, this duty encompasses both its subject matter and the individuals to whom it applies.

From a subject matter perspective, the duty to inform and advise is intrinsically tied to the professional's area of expertise. A judicial officer, for instance, cannot provide legal advice on matters related to drafting real

¹⁶. *"The legal profession must respond to the new legal needs of individuals and businesses that arise from social evolution in order to properly serve justice...."* Said Naoui, *op. cit.*, p. 85.

estate transfer contracts, just as a notary or an attorney cannot perform tasks outside their legal jurisdiction.

From a personal application standpoint, legal and regulatory texts impose this duty directly on the legal professional rather than their assistants or associates. This is due to the inherently personal nature of the profession and the trust placed in the professional's competence, specialization, and academic qualifications¹⁷. Moreover, the duty to inform and advise is intended for the benefit of clients rather than third parties. Disclosing contractual information to unauthorized individuals would constitute a violation of professional confidentiality. Unlike the clear provisions governing notaries, the legislator has been less explicit in defining the nature and scope of this obligation in both the Legal Profession Framework Law and its internal regulations¹⁸.

Comparative judicial¹⁹ precedents have ruled that an attorney's duty to inform and advise extends beyond the

¹⁷. All legal provisions that permit independent professionals to employ assistants do not impose specific qualifications or require a competitive selection process. Instead, they grant professionals discretionary authority in hiring decisions. A segment of French legal scholarship and judicial rulings has adopted this position, basing it on the legal framework that applies to assistants—which differs from that of the professional, who is considered a public officer.

¹⁸. Article 84 of the Internal Regulations states: *"An attorney must always act with integrity, honesty, and trustworthiness... and must provide their client with assistance based on the knowledge and qualifications at their disposal."*

¹⁹. *"A duty of information, advice, and diligence is also imposed on the lawyer, who must, in particular, inform their client about the chances of success, the progress and evolution of the case, and the estimated amount of their fees..."* Philippe Barbier, *The Lawyer and Evidence*,

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details of the case, its prospects for success, and its procedural implications. It also includes informing clients about potential future consequences, such as avenues for appeal and any financial burdens arising from the case. Some legal interpretations go even further²⁰, asserting that this duty persists even after the attorney's mandate has ended. Accordingly, attorneys must disclose all actions taken during their representation, as well as any expenses incurred or received in the course of their duties.

In this context, French courts have affirmed that²¹, under the power of attorney granted to attorneys, they are required to take all necessary measures to safeguard their clients' rights. Attorneys must proactively inform their clients of all available legal mechanisms to ensure they make the most appropriate and cost-effective decisions. This duty to provide guidance and necessary information applies even if the client does not explicitly request it²².

Revue LAMY Droit Civil, Evidence at the Core of Legal Practice, supplement to Issue No. 71, May 2010, p. 40. See also: Said Naoui, *op. cit.*, p. 68.

²⁰. "The agent must account to the principal for their management, present a detailed statement of their expenses and recoveries, with all supporting documentation required by custom or the nature of the case, and fully disclose everything received as a result of or in connection with the mandate." Said Naoui, *op. cit.*, p. 69.

²¹. Court of Appeal of Paris, 1st Chamber A, 04.07.1977, J.C.P., No. 45 of 08.09.1978.

²². "The obligations of information and advice both involve conveying data to clients. However, they can be distinguished by the fact that information must be communicated to the client even if they have not explicitly requested it...." Said Naoui, *op. cit.*, p. 78.

Section Two: The Duty of Care and Diligence

A breach of this obligation occurs when a professional fails to perform the tasks entrusted to them following the rules of the profession or disregards the instructions and expectations of their clients. This applies regardless of whether the obligation involves exercising diligence or achieving a specific result²³. The influence of comparative legal systems on this obligation is evident, as judicial rulings have consistently required professionals to ensure the accuracy of their actions and their compliance with applicable laws²⁴.

Subsection One: The Scope of the Duty of Care and Diligence

Guidance on this matter can be drawn from Algerian legislation and comparative judicial precedent, particularly in France. For example, an attorney may not withdraw from a mandate without informing their client promptly, ensuring the client has adequate time to prepare their defense²⁵. Additionally, the attorney may notify the presiding judge overseeing the case.

²³. Article 9 of the Legal Profession Law, Article 84 of its Internal Regulations, and Article 10 of the Notarial Law.

²⁴. *"The legislator relies on the notary to ensure, on the one hand, that the parties' legal instruments are properly drafted and preserved by an impartial custodian..."* Jean Perruchot-Triboulet, *op. cit.*, p. 44. See also: Said Naoui, *op. cit.*, p. 86. *"The lawyer undertakes to provide legal services on behalf of their clients with the aim of achieving the desired result..."*

²⁵. Article 96 of the Algerian Legal Profession Law, as well as Article 85/3 of its Internal Regulations. This position has also been affirmed by French case law, as established in one of its rulings: *"The lawyer must see the case they have been entrusted with through to completion, except if the client relieves them of their duties or if the lawyer*

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Similarly, a notary is required to complete all procedures related to the formal and official elements of contracts executed in their office within the legally prescribed deadlines, exercising the highest level of care and diligence. Likewise, judicial officers (bailiffs) are obligated to carry out notification and enforcement procedures in strict accordance with professional rules and the Code of Civil and Administrative Procedure.

Subsection Two: The Legal Nature of the Duty of Care and Diligence

Legal scholars²⁶ have debated the classification of this obligation, with some considering it an obligation of means as a general rule, and an obligation of result as an exception. Others have questioned²⁷ whether certain circumstances require a heightened degree of diligence, potentially amounting to an obligation to achieve a specific result.

themselves decides to withdraw from the case. In the latter case, however, the client must be informed in a timely manner."

²⁶. *"This obligation is, in principle, an obligation of means and, exceptionally, an obligation of result."* Said Naoui, *op. cit.*, p. 93. See also: Lucie Lauziere, *The Civil Liability of Bailiffs*, *Revue du Notariat*, Volume 101, No. 02, September 1999, p. 218: *"While professional obligations are, in most cases, classified as obligations of means, courts have, in exceptional circumstances, imposed an obligation of result on professionals."*

²⁷. *"In cases where the required diligence is extremely strict, does it not approach the limits of an obligation of result?"* Genevieve Viney, *op. cit.*, p. 527.

Some scholars²⁸ further argue that judicial bodies' preference for obligations of result over obligations of means constitutes a deviation from general legal principles, even though no clear-cut distinction between these two obligations exists in certain cases.

In our view, the nature of this obligation depends on how it is defined and classified within the specific professional context. The obligations of legal professionals differ in their nature and scope, not only from one another but also across different professions. For instance, notaries are responsible for ensuring the completion of registration procedures, judicial officers for the notification of judicial rulings, and attorneys for filing pleadings with the court registry. In these cases, care and diligence cannot be regarded merely as an obligation of means; rather, they amount to an obligation of result. This is because such tasks are governed by strict legal provisions that leave no discretion to professionals in their execution.

Legal professionals are required to adhere not only to general legal principles but also to the ethical standards and regulations governing their profession. Their actions must always comply with these rules to ensure their validity and to protect the interests of their clients²⁹.

Subsection Three: Elements of the Duty of Care and Diligence

²⁸. Nicholas Kasirer, *Le Parfait Notaire, Revue du Notariat*, Volume 101, No. 03, December 1999, p. 405.

²⁹. Jean-Claude Royer, *The Role of the Lawyer in the Modern Investigation, Les Cahiers de Droit*, Volume 18, No. 02 and 03, 1977, p. 540.

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Based on previous jurisprudential opinions and relevant judicial rulings, the duty of care and diligence encompasses several key elements, including effectiveness, reliability, impartiality, legal security, and transparency. This section will focus on the first element—**effectiveness**—due to its fundamental importance and its direct connection to the professional’s duty to inform and advise.

▪ **Effectiveness in the Work of Legal Professionals**

Effectiveness is an essential aspect of legal practice, as professional duties extend beyond merely providing legal advice and information. Professionals must also meet the expectations placed upon them by both their clients and the legal framework governing their profession. This obligation is closely linked to the trust clients place in legal professionals and the regulatory oversight imposed by legislators.

Effectiveness can be understood as both a requirement and an objective derived from the duty to advise. Establishing clear connections between these legal concepts facilitates their broader application in judicial practice. Some scholars consider professional effectiveness as an integral component of the duty to inform and advise, while comparative judicial rulings often associate it with credibility. Others argue that the

duty to advise is itself a component of professional effectiveness, which can be categorized as follows³⁰:

1. Legal Effectiveness

The validity of actions undertaken by practitioners of independent legal professions requires their complete and unequivocal knowledge of the legitimacy³¹ of all professional rules and the legally mandated procedures to be followed. Additionally, they must stay informed about all legislative and regulatory amendments related to the profession, as well as its specific applications, regardless of whether they originate from legal or judicial sources. Furthermore, they are obligated to seek clarification when necessary regarding the applicable provisions before making any decision or taking any action to ensure its correctness, soundness, and usefulness³².

When considering whether legal professionals can effectively fulfill their responsibilities in the absence of

³⁰. Jean-Luc Aubert, *op. cit.*, pp. 81-94. See also: Court of Cassation, 3rd Civil Chamber, 21.02.2001:

"The notary who participates in the drafting of sales contracts is bound by a duty to advise, intended to ensure the validity and effectiveness of the legal instruments to which they contribute."

³¹. The Algerian legislator has adopted this principle through Article 18 of the Notarial Law, Article 20 of the Judicial Officers Law, and Article 9 of the Legal Profession Law, all of which require legal professionals to enhance their legal knowledge and expertise, in line with comparative jurisprudence: *"Competence and efficiency are the hallmarks of a professional lawyer (...); they must have a thorough knowledge of all the fundamental rules of their profession and its specific practices."* Said Naoui, *op. cit.*, p. 97. See also: Jean-Claude Royer, *op. cit.*, p. 540.

³², *"Given Articles 1382 and 1383 of the Civil Code; Whereas the person who has agreed to provide information has, in turn, the obligation to seek information in order to inform with full knowledge of the facts;..."* Court of Cassation, 2nd Civil Chamber, 19.10.1984.

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clear legal provisions, French courts have ruled that the principle of legal certainty does not exempt professionals from their duty to advise, inform, and exercise due diligence. On the contrary, they are required to increase their level of diligence and effort, particularly when legal uncertainty exists. In such cases, professionals must proactively inform their clients of potential risks, benefits, disadvantages, and alternative legal solutions. This duty becomes even more crucial in light of legal ambiguities and doctrinal debates that lead to divergent legal interpretations³³.

Furthermore, the principle that "ignorance of the law is no excuse"—which is universally applied in legal systems—takes on a different meaning in the relationship between legal professionals and their clients. Clients are presumed not to possess legal knowledge, which negates the notion of equal access to legal information. As a result, legal professionals bear an even greater duty to inform and advise their clients, while clients themselves are placed in a more passive role.

2. Practical Effectiveness

For the work of legal professionals to be deemed valid and complete, it must yield tangible results that fulfill the client's expectations. Clients are not primarily concerned with the legal success of the professional's work; rather,

³³. "The existence of a legal controversy no longer necessarily exempts a legal professional from liability." Court of Cassation, Civil Chamber, 16.04.1935, *Recueil Hebdomadaire de la Jurisprudence Générale*, Dalloz, 1935, Vol. 1, p. 281.

they seek outcomes that effectively address their needs. This view has been widely supported by comparative judicial rulings³⁴.

In our opinion, this aspect of the obligation is particularly relevant to notarial practice and judicial officers, as their responsibilities are closely tied to legal formalities that serve as a prerequisite for the validity of legal acts. Given that notaries and judicial officers are entrusted with drafting legal instruments and enforcing judicial decisions, they must ensure the legal soundness and enforceability of their actions.

This position is reflected in Algerian law³⁵, specifically in Article 15 of the Notarial Law, which grants notaries the right to refuse to draft contracts that violate legal provisions. Similar obligations are outlined in Article 12, Paragraph 1, and Article 18 of the Judicial Officers' Law, reinforcing the principle that legal professionals must act in strict compliance with statutory and regulatory frameworks.

Section Three: The Duty of Loyalty³⁶ to Clients

³⁴. Court of Cassation, 1st Civil Chamber, 12.11.1987. See also: Court of Cassation, 1st Civil Chamber, 26.01.1988.

³⁵. "Notaries are specifically required to examine the legality of the documents they are asked to draft and must not confer authenticity upon an agreement they know to be irregular." Court of Cassation, 1st Civil Chamber, 22.04.1992. See also: "The notary, as the drafter of the deed, is required to take all necessary measures to ensure its effectiveness and incurs liability when they confer authenticity upon an agreement they know to be irregular." Court of Cassation, 1st Civil Chamber, 10.01.1995.

³⁶. Gerard Cornu, *op. cit.*, p. 528, defines loyalty as follows: "*Integrity refers more specifically either to contractual sincerity (in the formation of a contract) or, in judicial proceedings, to proper conduct, which requires each party to enable the other to organize their defense*

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The French judiciary does not always distinguish between the duty of loyalty to clients and the duty to provide advice; rather, it often links the two concepts³⁷. Based on the principle of good faith established in Article 1134 of the French Civil Code³⁸, the duty of loyalty requires professionals to perform their tasks with integrity and transparency to achieve practical effectiveness. In respecting the will of their clients, legal professionals must exert their utmost efforts to fulfill their obligations correctly and follow professional rules.

For legal professionals, the duty of loyalty means safeguarding their clients' interests and demonstrating professional competence, which is particularly subject to legal regulation³⁹. Consequently, professionals must uphold honesty, integrity, loyalty, and diligence in fulfilling their responsibilities in line with their clients'

by providing them, in a timely manner, with the necessary means of defense and evidence."

³⁷. "Rightfully, the Court ruled that the notary, bound by a duty of loyalty and advice towards their clients, has the obligation to provide them with all the relevant information in their possession that may clarify the nature and scope of their commitments." Court of Cassation, 1st Civil Chamber, 20.07.1994. See also: Lucie Lauziere, *op. cit.*, p. 29: *"The bailiff is required to act with honesty and loyalty in the best interest of their principal... they have a legal obligation to act with prudence and diligence."*

³⁸. Article 1134, Paragraph 3 of the French Civil Code: *"Legally formed agreements must be performed in good faith."*

³⁹. Philippe Le Tourneau, *Professional Obligations*, in *Essays in Honor of Louis Boyer*, Presses Universitaires des Services Sociaux de Toulouse, 1996, p. 385: *"The execution of obligations may require adherence to certain qualities or virtues such as politeness, punctuality, patience, and discretion."*

intentions. They must also exhibit objectivity, impartiality, and good faith to ensure the validity and reliability of their work.

Regarding the stance of the Algerian legislature, the legal and regulatory frameworks governing independent legal professions have incorporated numerous provisions related to impartiality and objectivity, aiming both to protect the interests of clients and to improve the quality of legal services. This is reflected in Articles 19 to 22 of the Law on Notaries, Articles 21 to 30 of the Law on Judicial Officers, Articles 10, 13, and 15 to 19 of the Law on the Legal Profession, as well as Articles 84, 86, and 87 of the profession's internal regulations⁴⁰.

Section Four: The Duty of Professional Confidentiality

Confidentiality is closely tied to both personal and financial privacy, particularly for legal professionals. Due to the nature of their work and the trust placed in them, the law and society have entrusted them with sensitive client information, documents, and financial matters. This has necessitated legal safeguards to protect individuals' rights, assets, and private affairs.

Since there is no explicit legislative definition of professional confidentiality, jurisprudence has sought to define it. Some legal scholars consider notarial confidentiality to be one of the most fundamental rights afforded to clients, imposing a strict duty on notaries to

⁴⁰. In reality, this category of obligations requires legal professionals to make significant efforts to achieve the necessary level of care and diligence. However, this does not grant them a blank check to claim unrealistic financial compensation in recognition of their efforts.

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maintain the confidentiality of contracting parties and their transactions. This duty is viewed as an integral part of the profession, its traditions, and ethical standards.

Other scholars have linked professional secrecy to the potential harm caused by disclosure, defining it as any information whose revelation could damage the reputation or dignity of the individual concerned.

A third perspective relies on trust as the fundamental criterion for determining whether confidentiality has been breached, viewing its violation as an independent professional offense, regardless of the motive or resulting harm. Under this view, the trust placed in legal professionals necessitates disciplinary action if breached. Conversely, some scholars argue that professional confidentiality is a matter of public order, given its critical importance and legal consequences. They consider it the most significant obligation imposed on legal professionals, particularly attorneys.

Subsection One: The Theoretical and Legal Basis of Professional Confidentiality

Confidentiality is closely linked to private life, encompassing both the personal and financial aspects of individuals in general and professionals in particular. Due to the nature of their work and the trust placed in them, professionals are entrusted by law and society with many secrets, documents, and financial matters. This necessitates careful legal attention and regulation to

protect individuals' rights, assets, and private information.

In the absence of a legislative definition of professional secrecy, we turn to various jurisprudential definitions, which consistently relate it to the nature of the profession. Some scholars ⁴¹consider documentary confidentiality to be one of the most fundamental rights granted to those dealing with notaries, where the notary is obligated to maintain the confidentiality of contracting parties and their transactions. This obligation is inherently tied to the profession, its traditions, and ethical standards. Others ⁴²link professional secrecy to the potential harm caused to third parties, defining it as any disclosure that could damage the reputation or dignity of the information's owner.

Another perspective⁴³ views trust as the key criterion for determining professional secrecy violations, considering any breach a professional misconduct, independent of the motive behind it or the damage it causes. According to this view, the trust placed in certain professionals necessitates penalties if violated. In

⁴¹. Belhou Nassim, *previously cited reference*, p. 72. While this confidentiality is relative, as the notary interacts with various administrative bodies and institutions while performing their duties and completing the necessary formalities related to transactions.

⁴². Mohamed Sobhi Najm, *Explanation of the Algerian Penal Code – Special Section*, University Publications Office, Algeria, 5th edition, 2005, p. 111. See also: Anan Dawood, *The Doctor's Obligation to Maintain Medical Confidentiality*, Master's Thesis in Private Law, Faculty of Law, Ben Aknoun, Algeria, 2000/2001, pp. 28-29.

⁴³. Ahmed Kamel Salama, *Criminal Protection of Professional Secrets*, Cairo University Press and University Book, Cairo, Egypt, 1988, pp. 12-13.

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contrast, some legal scholars⁴⁴ classify this obligation as a matter of public order due to its significance and consequences. They regard it as the most crucial duty imposed on legal professionals in general and on lawyers in particular.

Subsection Two: The Nature of the Duty of Professional Confidentiality

Jurisprudence and judicial rulings have generally established an absolute duty of confidentiality as the general rule, allowing for only limited exceptions. In this regard, the legislator alone has the authority to determine specific exceptions or exemptions due to the significant consequences of breaching professional secrecy.

Subsection Three: The Scope of the Duty of Professional Confidentiality

A review of comparative legal systems reveals a general consensus on the obligation of legal professionals to maintain confidentiality⁴⁵. This duty extends to all

⁴⁴. Said Naoui, *op. cit.*, pp. 105-106, who adds: "*The professional secrecy of the lawyer remains one of the essential components of the right of defense, whose ultimate goal is to serve and safeguard the physical and psychological freedom of the individual.*" See also: GERARD CORNU, *op. cit.*, p. 798: "*Professional secrecy can be defined as the obligation for individuals who become aware of confidential facts in the course of their duties or on occasion of their functions not to disclose them, except in cases where the law imposes or authorizes the disclosure of the secret.*"

⁴⁵. In addition to Tunisian and Moroccan legislation, the Iraqi legislator affirmed this obligation in Article 46, Paragraph 1 of the Legal Profession Law, as well as in Article 89 of the Evidence Law. Similarly, the Egyptian legislator addressed it in Article 79 of the Legal Profession Law and Article 66 of the Egyptian Evidence Law.

information, facts, documents, and official or unofficial records obtained by a professional in the course of their duties. It also covers correspondence⁴⁶ exchanged between the professional and their client, whether in written or verbal form⁴⁷.

Additionally, this duty is not limited solely to legal professionals themselves; it also applies to their associates, employees, and legal representatives. However, certain legal systems provide exceptions, not only permitting but at times compelling disclosure of confidential information in cases involving criminal offenses or other serious legal violations. For example, Algeria's Law on the Prevention and Combating of

See: Salem Abdul Zahra Al-Fatlawi and Hussein Jader Faleh, *The Concept of the Lawyer's Obligation Not to Disclose Professional Secrecy: A Comparative Study*, article published in *Al-Muhaqqiq Al-Hilli Journal for Legal and Political Sciences*, a peer-reviewed quarterly journal issued by the Faculty of Law, University of Babylon, Iraq, Issue 1, Year 9, 2017, p. 165.

⁴⁶. Article 1 of Law No. 91-646 of July 10, 1991, regarding the confidentiality of correspondence transmitted via electronic communications. JORF No. 162 of July 13, 1991: "*The confidentiality of correspondence transmitted via electronic communications is guaranteed by law.*"

⁴⁷. Said Naoui, *op. cit.*, pp. 108-109. See also: Article 66-5 of Law No. 71-1130 of December 31, 1971, reforming certain judicial and legal professions: "*In all matters, whether in advisory services or in defense, consultations, correspondences, meeting notes, and, more generally, all documents within the case file are covered by professional secrecy.*" Article 2-2 of Normative Decision No. 205/003: "*Professional secrecy applies in all matters, whether in advisory services or defense, regardless of the material or immaterial means of communication (paper, fax, electronic transmission, etc.).*"

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Corruption includes provisions allowing disclosure in specific circumstances⁴⁸.

The Algerian legislator has also addressed the issue of testimony in both civil ⁴⁹and criminal⁵⁰ cases. This raises an important jurisprudential question: Can legal professionals disclose confidential client information if called to testify? This dilemma arises from the conflict between two competing legal principles: one that mandates the preservation of professional secrecy and another that requires truthful testimony. Should independent professionals be compelled to testify like any other witnesses, or must they adhere to their duty of confidentiality? This leads to the key question: Are independent legal professionals subject to the same testimonial obligations as other witnesses, or must they prioritize professional secrecy?

To resolve this issue, jurisprudence generally supports the non-comparability of legal professionals as witnesses when confidentiality is at stake. The prevailing legal

⁴⁸. The Algerian legislator has linked the duty to maintain professional secrecy to compliance with legislative provisions that dictate otherwise, as stated in Article 13 of the Legal Profession Law and Article 14 of the Notarial Law, without specifying these exceptions in detail.

⁴⁹. Article 150 of the Algerian Code of Civil and Administrative Procedure (C.C.A.P.) states: *"Witnesses may be called to testify regarding facts that are, by their nature, admissible as evidence through testimony."*

⁵⁰. Article 89 of the Algerian Code of Criminal Procedure (C.C.P.) states: *"Any person summoned by a law enforcement officer to testify must be informed of this obligation, take an oath if required, and provide their testimony."*

opinion asserts that maintaining professional secrecy takes precedence over testifying⁵¹. Judicial rulings in multiple jurisdictions have upheld this position, recognizing that professionals may face legal consequences for both breaching confidentiality and withholding information. However, since professionals have the right to remain silent, it is generally recommended that they do⁵² so when faced with such a dilemma.

Referring to Article 97, paragraph 1 of the Algerian Code of Criminal Procedure, the legislator grants professional secrecy a special status with specific exceptions, prioritizing confidentiality over testimony. This is reaffirmed in Article 232, paragraph 1 of the same code, which states: *"Other persons bound by professional secrecy may be heard under conditions determined by the judge."* Consequently, independent legal professionals do not fall under the categories specified in Article 301 of the Penal Code, which lists those not obligated to maintain secrecy. On the contrary, they are explicitly

⁵¹. Said Naoui, *op. cit.*, p. 112: *"The Court of Cassation affirms that a lawyer is entitled to refuse to testify regarding facts they have learned in the course of their professional duties (...). Additionally, both French and Moroccan legal doctrine unanimously recognize the absolute nature of professional secrecy."* See also: Mohamed Abd Abdel Zaher Hussein, *previously cited reference*, p. 145.

⁵². *"The disclosure of professional secrecy is punishable; however, if it occurs in court, it is not subject to punishment. Nevertheless, the custodian of the secret is not obligated to testify, and since they have the right to remain silent, they must remain silent."* Leclercq Clio, *Duties and Prerogatives of the Lawyer*, Delta, Beirut, 1999, p. 164.

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required to uphold confidentiality in the cases outlined in this article⁵³.

Comparative legal frameworks, along with scholars and judicial authorities, have emphasized the paramount importance of professional secrecy, considering it a fundamental obligation for all professionals, particularly legal practitioners. Violating this duty can lead to serious consequences, exposing the professional to civil liability for damages caused to clients due to the disclosure of their secrets. It also opens the door to criminal prosecution, allowing the initiation of public action against the professional for breaching confidentiality obligations.

Conclusion

The need to establish a clear and structured framework for the civil liability of legal professionals remains essential, particularly given the increasing volume of disputes in this area. In recent years, legal scholarship has sought to challenge and move beyond the traditional binary classification of civil liability, arguing that it no longer adequately captures the complex nature of professional liability. At the same time, comparative judicial rulings have played a key role in shaping and expanding professional obligations, reinforcing the legal foundation for the accountability of professionals.

⁵³. Ahsan Bousqia, *Summary of Special Criminal Law, Volume 1*, Houma Publishing, Algeria, 2005, p. 241.

This transformation has been accompanied by a strong jurisprudential movement advocating for the recognition of professional liability as an independent legal doctrine. This approach seeks to enhance clarity, coherence, and consistency within the general theory of civil liability by freeing professional liability from traditional constraints and restoring a fair balance between professionals and their clients, particularly in cases of potential harm.

In response to the growing demand for client protection, comparative legal systems have introduced bold legal innovations, such as reversing the burden of proof, expanding the definition of professional fault, and adopting an objective approach to liability. These measures reflect a shift from merely assessing professional misconduct to objectively evaluating the harm caused, ensuring stronger consumer protections and improved access to remedies.

Furthermore, in many cases, the law mandates the exclusive reliance on professionals for specialized services, granting them a legal monopoly over certain functions. This, in turn, imposes greater responsibilities on professionals—not only in terms of technical expertise but also in ensuring client support, guidance, and advisory services. This duty is further reinforced by the highly personal nature of the professional-client relationship, where trust, reputation, and credibility play a decisive role in a client's choice of legal counsel.

As a result, professional liability is increasingly grounded in the principles of solidarity, fairness, good faith, and professional ethics. Over time, these principles

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have evolved from abstract ethical considerations into legally enforceable obligations, compelling legal professionals to provide high-quality services while protecting the rights and interests of their clients. This shift underscores a broader consumer-oriented approach to professional obligations, recognizing the inherent power imbalance between professionals and their clients.

Moreover, the increasing integration of consumer protection principles into professional liability frameworks highlights the legal system's commitment to ensuring fair, effective, and adequate compensation for harm suffered by clients. This approach is supported by various compensation mechanisms, particularly collective remedies, which move beyond the traditional dichotomy of civil liability. Recent comparative legal debates have increasingly exposed gaps in conventional liability frameworks, reinforcing the argument for the autonomy of professional civil liability, particularly in light of the rapid expansion of the duty to inform and advise.

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