

Determination of Liability in Electronic Transactions

تحديد المسؤولية في المعاملات الإلكترونية

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abstract:

The civil liability of electronic operators is a modern legal issue driven by technological progress and the expansion of online transactions. It requires legal frameworks to protect users and institutions by defining the operators' responsibilities for any damages. This issue is critical due to challenges like digital security and electronic fraud, prompting the need for updated and evolving laws to address new technologies such as AI and the Internet of Things. The liability framework is part of a dynamic legal system that adapts to technological changes, ensuring protection and trust in digital dealings. Research in this field investigates the specific legal rules governing such liability, distinguishing it from other contract liabilities, and addressing complex legal relationships and debates about its nature.

Keywords: Electronic Contract, Electronic Liability, Electronic User, Electronic Contractual Liability, Technology, Nature of the Electronic Contractual Relationship

ملخص:

تعتبر من القضايا القانونية الحديثة التي نشأت نتيجة التقدم التكنولوجي وتوسع المعاملات الإلكترونية عبر الإنترنت. يتطلب الأمر وجود أطر قانونية تهدف إلى حماية حقوق الأفراد والمؤسسات من خلال تحديد مسؤوليات المشغلين عن الأضرار التي قد تترتب على استخدامهم لهذه الوسائل. وتكتسب هذه القضية أهمية بالغة بسبب التحديات المتعلقة بالأمن الرقمي وحماية البيانات والاحتيال الإلكتروني، مما يستوجب تحديث القوانين ومواكبتها لتكنولوجيات جديدة مثل الذكاء الاصطناعي وإنترنت الأشياء. ويُعد إطار المسؤولية جزءًا من نظام قانوني ديناميكي يتكيف مع

التغيرات التكنولوجية لضمان الحماية والثقة في التعاملات الرقمية. وترتكز الأبحاث في هذا المجال على دراسة الأحكام القانونية المنظمة لهذه المسؤولية، مع التمييز بينها وبين غيرها من أنواع المسؤوليات العقدية، والتناول القانوني للعلاقات المعقدة والنقاشات العقدية المتعلقة بطبيعتها. **الكلمات المفتاحية:** العقد الإلكتروني، المسؤولية الإلكترونية، التعامل الإلكتروني، المسؤولية العقدية الإلكترونية، التكنولوجيا، طبيعة العلاقة العقدية الإلكترونية

Introduction:

The civil liability of the electronic operator is a contemporary legal issue arising from technological advances and the expansion of electronic transactions on the internet. With technology increasingly used in sectors like e-commerce and digital banking, establishing legal frameworks to protect individuals' and institutions' rights and clarify the responsibilities of electronic operators for damages is essential. This issue is critical due to challenges such as digital security, data protection, and electronic fraud, necessitating laws that define operators' obligations and ensure fair compensation for affected parties.

Rapid technological progression, including AI and the Internet of Things, demands continuous legal updates, as current laws often cannot keep up. The civil liability of electronic operators is thus part of a dynamic legal system evolving alongside technology to safeguard users and businesses in digital transactions. Studying this liability highlights important aspects like technology development, rights protection, trust enhancement in digital deals, and legal awareness across jurisdictions. This research focuses on specific legal provisions governing electronic operators' civil liability, distinguishing it from other contractual liabilities, and addressing the complex relationships and doctrinal debates about its nature.

Through this, we seek to address the following problematic question: **What is the legal framework that regulates electronic transactions in light of modern technology?**

To address this issue, we divided the study into two sections: the first deals with liability in the conclusion of electronic transactions, while the second focuses on liability in their execution.

Section One: Liability in the Conclusion of Electronic Transactions

The use of the Internet has recently become a motivating factor in all fields of work, as it saves time and effort, given that most transactions are now conducted via the Internet, especially the conclusion of contracts.

Contracts concluded via the Internet are characterized by several features derived from the electronic environment, the most important of which is that they fall under adhesion contracts. This is because the service provider is generally specialized companies dealing with ordinary individuals referred to as consumers, who set contractual terms as fixed models that are not open to negotiation. Therefore, these contracts are subject to specific provisions related to adhesion contracts and consumer protection regulations¹.

The deliberate refusal or the impossibility of performance due to external circumstances disrupting the obligations arising from electronic contracts constitutes contractual liability. This refusal is considered an electronic contractual fault that gives rise to liability, provided it is accompanied by the other two elements, namely electronic damage and the causal link². This gives rise to many reservations, therefore, before the parties conclude the contract, they go through a negotiation phase first. This will be addressed in the following two subsections: the first subsection will deal with liability during the electronic negotiation phase, followed by liability in the formation phase of the electronic contract.

Subsection One: Liability During the Electronic Negotiation Phase

Any contract generally undergoes a preliminary period known as the “pre-contractual period,” during which it is in the process of formation. This period begins when one party expresses its intention to contract to the other party. Negotiations constitute the preparatory phase preceding the final offer of the contract and merely consist of proposals, ending once the offer is made³. Accordingly, electronic negotiation plays an important role in concluding the electronic contract, as it leads the parties to fulfill their obligations properly. Moreover, it helps avoid disputes that may arise during the execution of the contract⁴.

First: Concept of Electronic Negotiation

1/ Definition of Electronic Negotiation and Its Characteristics

A/ Definition of Electronic Negotiation

Negotiation is generally defined as a means of exchanging viewpoints to reach results acceptable to both parties. It is not required that the agreed matters between the negotiating parties be each party's ideal demands, but rather they are compromise solutions or acceptable reconciliations between the negotiating parties, provided that the minimum limits of concessions are not exceeded, and these do not conflict with the desired interests that the

negotiator should never concede or relinquish under any circumstances throughout the rounds or stages of the negotiation process⁵.

A part of the jurisprudence has defined negotiation as: "The exchange of proposals, bargaining, correspondence, technical reports, studies, and even legal consultations exchanged by the negotiating parties, enabling each party to be aware of the best legal forms that achieve the interests of the parties and to understand the rights and obligations resulting from the agreement for both parties⁶."

The Algerian legislator did not explicitly define negotiation in its texts but referred to it implicitly in Article 65 of the Algerian Civil Code. Likewise, Law No. 18-805 related to electronic commerce also did not regulate the matter of electronic negotiation⁷.

The contract formation phase must include all issues discussed by the parties during the negotiation phase for the contract to be validly concluded. In other words, it is not sufficient for the contract to include agreement on some matters only; rather, it must encompass all matters that were part of the negotiation phase as well⁸.

B/ Characteristics of Electronic Negotiation

- **The Bilateral Nature of Electronic Negotiation:** This means that it takes place between two or more parties, either through face-to-face discussion and dialogue or by correspondence. It is important to note that negotiation cannot occur in the case of contracting with oneself, as negotiation fundamentally aims at reconciling differing viewpoints and conflicting interests, which is not conceivable in such a scenario⁹.

- **It is conducted remotely:** It does not take place through traditional means of expressing will. Rather, it is among contracts concluded remotely, where the electronic negotiation contract is formed without an actual assembly or face-to-face presence of the parties. The entire contract formation is conducted electronically via the Internet, without the need to physically leave the tangible world. The expression of will and communication during negotiations all occur through electronic means such as email, and it is implemented via the Internet¹⁰.

- **Voluntary Act:** The negotiation process only occurs when the will of the negotiating parties is directed towards entering negotiations with the aim of concluding a specific contract. Additionally, the parties' will remains completely free throughout the negotiation stage¹¹. The general principle is that freedom prevails in the negotiations preceding the conclusion of the final contract, which means that contractual negotiations express the mutual will of the contracting parties and constitute an important reference for the interpretation of the contract¹², so the contract negotiation is based on the exchange and give-and-take, where the parties cooperate to reconcile differing viewpoints¹³.

- **The Probabilistic Nature of the Negotiation Outcome :** This negotiation phase may result in an agreement expressing satisfaction with the contractual terms and conditions, or it may not lead to any outcome, thus it has a probabilistic result¹⁴, In other words, the natural outcome of contract negotiation is the conclusion of the negotiated contract, whereby the parties successfully reach a final agreement on all essential terms of the contract, and then conclude the contract definitively through the exchange of offer and acceptance. However, this outcome is probabilistic because it may or may not be realized; not every negotiation ends with the conclusion of the contract¹⁵.

2/ Stages of Electronic Negotiation

For the negotiation to be successful, it must go through several stages, which are as follows:

- **Feasibility Study:** The feasibility study impacts the client's future regarding the performance of the expected informational service, which requires addressing the matter with precise informational methods. The feasibility study, in relation to the service provider or project, focuses on the fundamental pillars of the anticipated informational service performance. The client's success in preparing this essential study in accordance with their needs guarantees the success of the contract to be concluded in the future¹⁶.

- **Terms of Reference:** After completing the feasibility study, the client prepares a document presenting the contracting conditions, highlighting all their demands. This document serves as evidence of the serious intent to conclude the contract.

- **Service Provider Selection:** After the client finalizes their needs and prepares the list of conditions, they proceed to select the service provider based on the various submitted offers. The client may seek the advice of an expert to help choose the best service provider¹⁷.

3/ Methods of Concluding the Electronic Contract

Electronic negotiation is considered a reciprocal process between one or more negotiators aimed at reaching a mutually agreed compromise solution between the parties using various electronic means, including the following:

- **Negotiation via Email:** This is a method through which parties negotiate by exchanging electronic messages, especially since images, drawings, designs, and other materials can be shared. This makes email an effective means of communication and negotiation between the parties¹⁸, Email is considered one of the common methods through which the negotiation process is conducted and among its most important means.

Negotiation by Observation: This is done by connecting the device to audio and visual communication media installed on each negotiator's device, without the actual physical presence of the parties. It allows them to exchange written data immediately or communicate by voice and video¹⁹.

4/ Obligations Arising from Electronic Negotiation

Several obligations arise from the negotiation phase, which we list as follows:

A/ Obligation to Negotiate in Good Faith:

This principle requires both negotiating parties to negotiate honestly and faithfully while fully respecting the ethical rules governing obligations in general. In other words, it entails consistency between actions and words on one side, and thoughts and intentions on the other. Hence, it opposes bad faith, deception, cunning, and fraud. The negotiators must uphold integrity, honesty, and trustworthiness²⁰. Therefore, everything that may hinder negotiations or cause their failure or involve the use of deception to harm the other party is prohibited. Considering that the obligation to negotiate in good faith is an obligation to achieve a purpose, not merely to exercise care, the negotiator must not spread false information to the other party and must continue negotiating while respecting the agreed-upon time for negotiatio²¹.

B/ Obligation to Inform:

This obligation is among the fundamental duties imposed by various laws and regulations on parties dealing with consumers. Among them, the Algerian legislator, pursuant to Article 17 of Law No. 09-03 relating to consumer protection and combating fraud, imposes a general obligation on the party involved to inform the consumer of all matters concerning the product offered for sale²².

C/ Obligation to cooperate:

It constitutes a cooperative obligation incumbent upon the parties, whereby each party is enabled to examine the circumstances of the other and evaluate their capacity to fulfill the contractual agreement. This includes an inquiry into the conditions attendant to the subject matter of the contract and an assessment of the feasibility of satisfying the client's requirements. This is effectuated by the seller furnishing the contracting party with the maximum possible information concerning the goods or service sought²³, this obligation remains in effect throughout the negotiation phase, and not every act or conduct based on mutual cooperation and trust exclusively qualifies as cooperation under this provision²⁴.

D/ Obligation to Maintain Confidentiality:

Obligation to maintain confidentiality is considered one of the most important commitments diligently observed by the negotiating parties, whether the contract is ultimately concluded or not. At this stage, a vast amount of information related to the other party is disclosed with the purpose of incentivizing the contract conclusion²⁵. Accordingly, the obligation to maintain confidentiality is mandated because neither party would have become aware of such information except through negotiation; therefore, the

recipient of the information must not disclose or exploit it without the consent of its owner²⁶.

The 2004 International Chamber of Commerce Electronic Contracting Guide (ICEETERMS) on confidentiality protection stated: 'The old adage that information is power holds particular significance in the world of electronic contracting. Information is often commercially sensitive or legally restricted, such as personal data; however, electronic access to it is often available. Therefore, when designing an electronic contracting application, such as a website, special attention must be given to confidentiality issues²⁷.

Second: Civil Liability for the Negotiation Stage:

Every negotiator has the absolute freedom to terminate negotiations whenever they wish, pursuant to the principle of freedom of contract, which grants each party the right to desist or withdraw from negotiations at any time without liability, provided that such withdrawal is justified. The party withdrawing from negotiations is not compelled to continue negotiating towards the conclusion of the final contract. The negotiator is not liable for terminating negotiations but may be held accountable for breaching the trust engendered in the other negotiator, contradicting the principle of good faith in dealings²⁸, it may occur that the parties terminate a serious stage of negotiations on their way to a final contract. If the latter involves negotiation, the liability is contractual; whereas, if no agreement to negotiate exists, the liability is tortious²⁹.

Second Section: Liability in the Formation Stage of the Electronic Contract:

If the electronic negotiation stage represents the preparatory period during which each party seeks to achieve the greatest possible material and moral benefits in exchange for undertaking the least possible obligations due to conflicting interests among negotiating parties, then the formation stage is the decisive period in which all essential matters underlying the electronic contract are agreed upon, and the parties undertake to execute them as they stand. The event of convergence or matching between offer and acceptance constitutes the moment of contract birth, along with the legal effects embodied in the obligations imposed on both parties, which neither may unilaterally dissolve or modify in application of the principle of the binding force of the contract³⁰.

First: Liability at the Stage of Electronic Consent:

The existence of the contract requires the presence of consent and the concurrence of the contracting parties' wills to produce a specific legal effect represented by the contract³¹, Consent is considered the most important of

these pillars, as a person is not bound by any contract unless their will is directed toward its conclusion. Consent is achieved according to general rules by the meeting and concurrence of the contracting parties' wills at a specific moment intended to produce a legal effect. Electronic contracts do not differ from this concept except in the expression of will, which is carried out using modern communication means, where effective methods and formats are established that fulfill the purpose of expressing will with ease and convenience³².

Accordingly, consent in the electronic contract is established when the electronic offer and acceptance are exchanged. Although the electronic environment in which the contract is concluded has influenced the element of consent by characterizing it as electronic from the outset, it has not affected its formation. Consent still branches into two elements, each retaining its electronic character, yet they remain two distinct wills, one called an offer and the other acceptance³³.

1/ Liability for the Electronic Offer:

A/ Definition of the Electronic Offer:

For the contract to be complete, an offer must be made by one of the contracting parties³⁴, it is defined as: a final, decisive, and unequivocal expression indicating the will of the offeror to accept the contract according to certain conditions³⁵, the offer is singular whether made through traditional contracting methods or electronic contracts, The distinguishing characteristic of the offer made through electronic contracts lies in the particularity of these contracts as remotely programmed contracts, concluded by using modern communication tools and techniques. Computer technology has enabled the expression of will through closed and open electronic networks, especially via email and website³⁶.

B/ Conditions of the Electronic Offer:

A set of general conditions must be fulfilled in the electronic offer for it to have legal effect. This is evident in:

- The offer must be definite and unequivocal:

This condition is fundamental for the offer to be considered an offer, as it forms the basis for distinguishing between a definite offer and a non-definite offer, the latter being merely an invitation to negotiate. Additionally, the contract is not completed by the other party's offer expressing its will to accept. This distinction separates the negotiation phase from the contract formation phase. During negotiations, the offeror does not declare readiness to contract but instead intends only to negotiate contract terms, whereas in contract formation, the offeror has finalized the terms upon which they intend to contract³⁷, the offeror must have the definite intention to produce a legal effect³⁸.

- The electronic offer must be clear and specific:

This condition requires that the offer which concludes the negotiations—the first stage prior to contracting—must clearly specify the type of contract intended to be concluded and the elements of that contract, such that merely accepting this offer is sufficient for its formation without the need for addition or deletion of any terms; otherwise, the parties remain in the negotiation stage. On one hand, for the offer to be considered an offer in the aforementioned sense, it must specify the type of contract to be concluded, whether a sale or a loan, and it must include the specification of the contract elements relevant to the parties. To be clear, the offer must include the identity of the offeror³⁹.

- The language used in the electronic offer:

The global nature of the internet necessitates the use of multiple languages, especially since the use of the information network is not limited to a specific group, country, or language. This has led many website owners to translate their site pages into other languages to attract the largest number of audiences and different nationalities, allowing visitors to choose the language they wish to use for accessing the site to browse and select at ease and convenience⁴⁰.

2/ Liability for the Electronic Acceptance:

If an offer is made by the offeror and all the conditions recognized by law are fulfilled in the offer, it must be met with acceptance or rejection by the other party. Consequently, if the acceptance corresponds exactly to the offer, the contract is formed, producing its legal effects. In case of breach of any of these obligations by one of the contracting parties, liability for breach arises⁴⁵.

A/ Definition of Electronic Acceptance:

Acceptance is the second will in the contract issued by the party to whom the offer is addressed. Since the electronic contract is not final, the contract is therefore not binding on the consumer⁴⁶, the 1980 Vienna Convention on the International Sale of Goods (CISG), in its article 18 paragraph (1), defined acceptance as: 'A statement or any other conduct of the offeree indicating assent to the offer is considered acceptance'⁴⁷.

B/ Methods of Expressing Electronic Acceptance:

The expression of acceptance in electronic contracts occurs through various methods that align with the nature of these contracts and the means used to conclude them. Although the laws governing electronic commerce contracts have not stipulated special conditions for acceptance, the nature of electronic transactions has necessitated the use of innovative modern methods to express acceptance, developed by modern e-commerce technologies. These methods were previously unknown in the physical world and thus take multiple forms⁴⁸. Acceptance via email is represented by

writing that indicates consent or by using an electronic signature through email, which must be conducted in a manner that preserves its integrity, completeness, and prevents any alteration. Acceptance by email can be considered an unequivocal presumption and a true expression of the offeree's will to contract, provided that it is directed in a way that ensures its safety⁴⁹.

Acceptance is also made by pressing the acceptance button on the computer keyboard or by clicking the designated acceptance icon in contracts concluded via the web. This method is usually used to accept an offer made via web pages, and the offeror often resorts to this method to confirm the offeree's consent to the contract⁵⁰, the general principle is that acceptance can be express or implied, and this possibility is conceivable in electronic acceptance.

Acceptance can be explicitly expressed through various electronic means, or it can be implicit, such as when the offeree executes the contract proposed by the offeror—for example, by making a payment via credit cards by providing the offeror with the PIN without explicitly declaring acceptance, this is considered implied acceptance⁵¹.

C/ Conditions of Electronic Acceptance:

- Acceptance must be made while the offer is still valid:

Acceptance is considered a response to an offer; if the offer is no longer valid, the acceptance is a response to a nullity. Therefore, any acceptance made after that is considered a new offer requiring new acceptance⁵², in order for an acceptance that fully matches the offer to have its legal effect, it must be made while the offer is still valid, that is, within the period the offeror has bound themselves. If the acceptance and the offer do not coincide within the specified period and the acceptance is late, it cannot be considered valid acceptance online⁵³.

- Matching Acceptance to the Offer:

The general rule is that acceptance must precisely match the offer to conclude the contract, meaning that the parties agree on the essential terms of the contract, as well as other elements considered important. It implies that the acceptance must be an exact match to the offer, not in terms of wording or phrasing, but in the subject matter, such that the acceptance constitutes a genuine approval, regardless of whether the issues are fundamental or secondary details⁵⁴.

Second: Liability Regarding Defects of Consent

The theory of defects of consent takes an important place in the field of electronic transactions due to the technological complexities on one hand and the remote contracting methods on the other. In addition, these contracts are often concluded between two parties who are not on equal footing, with the producer possessing high expertise that the consumer finds difficult to follow⁵⁵.

- **Mistake:** It is an illusion occurring in the mind of the contracting party, causing them to perceive the matter differently from reality, which leads them to contract. If the mistake had not occurred, the person would not have entered into the contract. The mistake is a condition within the contracting party himself, making him perceive the matter inaccurately⁵⁶, Article 81 of the Algerian Civil Code stipulates that the contracting party who has made a fundamental mistake at the time of concluding the contract may request its nullification, Article 82 of the same law defines a fundamental mistake as one of such severity that it would have prevented the contracting party from entering into the contract had it not occurred⁵⁷.

In the field of electronic contracts, mistake and its various types can be contemplated, A mistake concerning the identity of the contracting parties may occur, such as when one party mistakenly believes that the other party is known for producing certain goods, based on whose expertise the contract is concluded, but it later becomes clear that it is merely a similarity in names and not the intended party. In this case, the contract is suspended for the mistaken party, who has the freedom to annul or ratify the contract, A mistake may also pertain to the substantive transaction, for example, if one party believes that the contracted goods were manufactured in a certain way, which later proves to be untrue. In such cases, the contract is unenforceable and suspended pending the consent of the mistaken party⁵⁸.

- **Fraud:** Fraud is one of the defects that may affect the consent of the contracting party, rendering their will defective, which impacts the validity of the contract and subjects it to annulment or relative nullity. This defect is defined as the use of fraudulent methods that lead the contracting party into an error, prompting them to enter into the contract⁵⁹.

According to Article 3, Paragraph 8 of the UNIDROIT Principles of International Commercial Contracts⁶⁰: UNIDROIT states that: 'Any party may invoke the nullity of the contract if the other party induced them to contract through fraudulent means, including resorting to the use of language or actions, or if the latter concealed certain circumstances by way of fraud from the other party, thereby violating the requirements of good faith and fair dealing in commercial matters⁶¹, Fraudulent defect is considered one of the most widespread electronic defects, given that the consumer views the product through the computer screen in electronic contracts. Additionally, there is an increasing judicial tendency to consider lying as a type of fraud that nullifies the contract, especially when the client is inexperienced or non-professional⁶².

- **Duress:** It is a physical or moral pressure exerted by one person on another, compelling them to contract. Had the pressure not been applied, the coerced person would not have contracted. Unlike mistake or fraud, the coerced party's will be not fully free when concluding the contract due to

the pressure exerted and the resulting fear⁶³, it is difficult to conceive of duress in electronic contracts as it involves either physical or moral coercion. However, it can be envisaged in cases where the contracting party is compelled to agree to a certain price for the goods by exploiting economic circumstances or ongoing wars in the region⁶⁴.

The occurrence of any of these defects by one of the contracting parties leads to a request for annulment of the contract, which differs from the right of withdrawal generally granted in distance contracts and specifically in electronic contracts. The consumer is usually given a short period to withdraw from the contract, generally ranging from one to two weeks, and there are cases in which withdrawal from the contract is not permitted⁶⁵.

Third: Liability for Determining the Essential Elements of the Contract

For a contract to be formed, the parties must agree on its essential elements. If a dispute arises concerning matters on which there was no agreement, the court rules on them according to the nature of the transaction and the provisions of custom and justice⁶⁶. Accordingly, we will address the most important of these elements

1/ The Object Element in the Formation of the Electronic Contract:

It refers to the obligations arising from the contract and is considered an element of the obligation, not something extraneous to the contract. Therefore, what is regarded as the direct object of the obligation is simultaneously the indirect object of the contract it creates⁶⁷.

The Algerian legislator has regulated the subject matter of the contract in the provisions of the Civil Code, specifically in Articles 92 and 95. Similar to other comparative legislations, the Algerian legislator requires that the subject matter be lawful and not contrary to public order and public morals, and that it be existing or capable of existing. Additionally, the subject matter must be determined or determinable, as pointed out in Article 94 of the same law. These are the same conditions prescribed for regulating the subject matter of electronic contracts⁶⁸.

In some contracts available online, their owners may stipulate that some differences between the description of the displayed product and the reality may appear, as an attempt to exempt themselves from liability due to such discrepancies between the image of the sold item and its actual reality. However, this clause does not exempt the seller from liability if there is fraud, deception, or a substantial or significant difference between the image and reality⁶⁹.

2/ The Cause in the Electronic Contract:

The cause is regarded as a fundamental element of the contract, and its absence leads to the nullity of the contract, in accordance with the general principles of Algerian law⁷⁰, this means the direct purpose the obligor intends to achieve through their obligation, it is a fundamental element in contract formation under Algerian law, where the absence of a lawful and valid cause leads to the nullity of the contract. The cause reflects the motivating reason behind the contracting party's commitment, distinct from the object (subject matter) of the contract but⁷¹.

The element of cause does not enjoy any particularity in electronic commercial contracts or in any of its aspects compared to the cause in traditionally concluded contracts. All provisions and rules established in civil law apply to the cause in electronic contracts. The cause stated in the contract is considered the true cause unless evidence proves otherwise. If evidence reveals the cause to be fictitious, the party claiming that the obligation has another lawful cause bears the burden of proving their claim⁷².

Section Two: Liability in the Execution of Electronic Transactions

Despite the utmost importance of both the formation and conclusion stages of the electronic contract, they are considered merely preparatory preliminary phases to the decisive stage towards which the parties' common will is directed—the stage of executing the electronic contract. The fundamental goal for each contracting party is for their debtor or contracting partner to perform the actual fulfillment of the obligation owed under the contract between them, which represents the optimal and best method for the discharge of obligations⁷³.

First Section: Breach of Electronic Obligation

When an obligation is not performed, depending on its nature, two types of obligations arise, the obligation to achieve a result and the obligation to exercise due diligence.

First: The Obligation to Achieve a Result

In electronic transactions, the subject matter generally consists of either delivering a thing or providing a service. Undoubtedly, the obligation to deliver a product or a good is an obligation to achieve a result, where the debtor is bound to deliver at the agreed time and place, and according to the specified specifications. The problem arises when the debtor responsible for delivery is merely a seller or distributor who reserves in the delivery receipt the phrase that the goods are delivered 'as is' from the producer, and argues that his duty is only to exercise due diligence in inspecting and presenting the goods in their actual condition, as we observe in delivery cases⁷⁴.

Second: The Obligation to Exercise Due Diligence

When the subject matter of the contract is the provision of a service, the matter varies depending on the type of service. There are services where the provider is obligated to achieve a specific result, such as satellite channels, mobile television, and internet network services, unless the service provider has previously reserved the right to only exercise due diligence to provide the best possible service to their clients. This is often the case because the service capacity is usually limited qualitatively, in time, place, and capability, as these companies accept more subscribers than their capacity allows, increasing pressure and reducing service quality. Here, the obligation shifts to merely exercising due diligence, it can be determined whether the subject of the obligation is to achieve a result or to exercise due diligence by looking at the intention of the contracting parties. This becomes clear by examining the desired outcome of the obligation's subject matter and whether this outcome is certain or probable. The definite or probable nature of the targeted result, given the circumstances under which the obligation arose, can reveal its nature⁷⁵.

However, this obligation should not be misunderstood. It does not require the debtor to achieve a specific result; it merely obliges the debtor to exert a certain degree of care to reach a particular purpose. The debtor does not undertake to guarantee the result desired by the creditor but commits only to making a certain effort to achieve that result, whether it actually occurs or not. If the debtor exerts this level of care, that is sufficient, and they are not liable if the intended purpose is not achieved⁷⁶, applying these established rules to electronic service contracts, we find that the obligation therein should be to achieve a result, according to the parties' intention, and the usual due diligence exercised in light of modern technologies that make the result certain. However, a company's failure to increase necessary expenditures to update and enhance its equipment, despite its eagerness to accept all subscribers, does not exempt it from the obligation to achieve a result, even if it reserves otherwise.

This reservation as a condition to exempt liability is void because it is characterized by abuse against the consumer in this adhesion contract, Contracts where it can be said that the obligation is to exercise due diligence include contracts for designing computer programs, where the obligation is to perform a task that may not succeed despite the necessary effort. Similarly, electronic contracts involving the provision of intellectual services such as medical or technical signals or information contracts through their subject matter fall under this category. Providing up-to-date, comprehensive information with accurate sources according to the data available at the time is an obligation to achieve a result, but the certainty and appropriateness of this information is an

obligation to exercise due diligence, as the world is constantly changing and evolving⁷⁷.

Second Section: Liability in Electronic Service and Delivery

According to Article 367, paragraph 1 of the Algerian Civil Code⁷⁸, The obligation to deliver means placing the sold item at the buyer's disposal so that the buyer can possess and enjoy it without any obstacle, even if the item is not physically handed over, provided the seller has informed the buyer of this, The concept of delivery in Algerian civil law, particularly Article 367, paragraph 1, signifies the placing of the sold thing at the disposal of the buyer so that they can possess and use it without impediments, even if the physical handover has not occurred, provided the seller has notified the buyer of their readiness to deliver. This reflects a broad understanding of delivery beyond mere physical transfer, emphasizing practical control and use aligned with the item's nature⁷⁹.

The contract is executed according to traditional rules by delivering the goods that are the subject of the contract, which leads us to presume that the seller has fulfilled their obligation of performance⁸⁰.

First: The Obligation of the Contracting Party to Deliver the Goods

The Algerian legislator stipulated the contracting party's obligation to deliver the goods in ordinary contracts in Article 167 of the Algerian Civil Code, stating that it is 'an obligation to transfer a real right which includes the obligation to deliver the thing and to preserve it until delivery.' Accordingly, delivery is an obligation on the seller in both traditional and electronic contracts, whereby the seller is bound to deliver the sold item to the buyer according to the information and specifications agreed upon⁸¹.

As for the subject of delivery, it is the goods agreed upon in the contract, which may be intangible goods without physical existence such as computer programs, databases, films, music, and others. In such cases, delivery occurs through embodying these items on a medium like a disc or through transferring them as an energy signal over the internet. Alternatively, the subject of delivery may be tangible physical goods like electrical devices, in which case traditional methods of delivery are resorted to⁸², as for the condition of delivery, Article 364 of the Algerian Civil Code stipulates: 'The seller is obligated to deliver the sold item to the buyer in the condition it was at the time of sale⁸³.

Accordingly, the condition in which the sold item must be delivered is the condition it was in at the time of sale. If the sold item is specifically identified (certain individual thing), it must be delivered to the buyer in the same condition as at the contract's conclusion. However, if it is identified by type (generic), the parties' agreement determines the quality grade, and

absent agreement, the seller must deliver an item of average quality. This applies when the sold item has tangible physical existence. If it is intangible, such as information, it must be comprehensive, covering the contract's subject matter and relevant to the contracting parties' interest. The seller's obligation to deliver the item in the condition it was at the contract time is an obligation to achieve a result. Therefore, if a change occurs in the item, the legal consequence depends on whether this change is for better or worse⁸⁴.

As for the quantity of the sold item, the legislator addressed the case of deficiency or excess in Article 365 of the Civil Code, which states: 'If the quantity of the sold item is specified in the contract, the seller is responsible for any deficiency according to what customarily applies to the seller. However, the buyer may not demand annulment of the contract due to a deficiency unless the buyer proves that the deficiency is of such significance that, had the buyer known, they would not have completed the purchase⁸⁵. Conversely, if it is found that the quantity of the sold item exceeds what was stated in the contract, or if the price was determined per unit, the buyer must pay the additional price if the sold item is indivisible, unless the excess is exorbitant. In such a case, the buyer may request annulment of the contract, all unless an agreement states otherwise⁸⁶.

From Article 367, it is clear that the Algerian legislator did not specify the methods of delivery, opting instead that there be a manner by which the sold item is placed at the buyer's disposal so that they may possess and benefit from it, the takes multiple forms in delivering the subject matter, as it may be performed by traditional means or by modern methods such as or Regardless of the method, it is determined by the mutual consent of the contracting parties, In the absence of agreement on the delivery method, reference shall be made to the nature of the subject matter and customary practice to ascertain the appropriate manner for delivery regarding place and time, It should be noted that the nature of electronic delivery influences the method of delivery. If the subject matter is tangible, delivery shall be made according to general rules, i.e., via the internet, thus constituting actual delivery. However, if the subject matter is intangible, delivery shall be affected through the internet, with the other contracting party receiving it via their electronic application. Furthermore, the electronic supplier must require the electronic consumer to sign a receipt upon the actual delivery of the product or performance of the service and the subject matter of the electronic contract, and must provide a copy of this receipt to the electronic consumer⁸⁷.

The law grants contracting parties the freedom to determine the time of delivery; it may be upon conclusion of the contract, after its conclusion within a specified period, or within successive deadlines. If there is no agreement on the delivery time, delivery must be made immediately upon

completion of the contract. Delivery may be delayed for some time according to customary practice and the nature of the subject matter. As for the delivery time in the electronic environment, it is almost negligible since time differences are not recognized; nevertheless, the delivery time in electronic contracts may, as in general rules, be upon contract completion or by prior explicit and precise agreement on the delivery time⁸⁸.

According to Articles 268 and 282 of the Algerian Civil Code, the place of delivery of the sold item is at the buyer's domicile unless otherwise agreed. Regarding the electronic environment through which contracts are concluded, it has influenced the place where delivery occurs by introducing unfamiliar concepts and sites: electronic addresses have replaced traditional addresses, device addresses have substituted for actual administrative locations, and virtual institutions have taken the place of physical establishments. This shift reflects the adaptation of delivery location principles to the realities of electronic contracting⁸⁹.

Legislation specifically regulating electronic contracts reveals that only a few rules concern the performance stage. Referring back to general principles, if the seller fails to deliver the item for any reason, the buyer may request the annulment of the sale along with compensation for damages caused by non-delivery, delayed delivery, or partial delivery. The buyer may also request specific performance from the seller; however, enforcing specific performance is difficult in electronic contracts due to the usual physical distance between contracting parties, making such enforcement impractical. Additionally, the consumer may seek recourse against the supplier who breached their obligation under claims of contractual liability, liability for product defects, and warranty against latent defects—particularly significant if a defect is discovered after the withdrawal period. It should be emphasized that the delivery obligation is an obligation of result, meaning that failure to achieve the result suffices to prove the debtor's fault, who may only escape liability by proving a force majeure event. The delivery obligation requires the seller to deliver the item in compliance with the quantity and characteristics agreed upon in the contract, ensuring the item's fitness for purpose and providing all necessary details for its use. This obligation is particularly crucial in electronic contracts since buyers cannot physically inspect the item online and accurately assess it, especially given the electronic means that may embellish or misrepresent the item's actual condition. Therefore, the seller is bound to guarantee conformity of the goods to the specified contractual conditions, and the buyer is entitled to pursue a conformity warranty claim in case of breach.

Second: The Contracting Party's Obligation to Provide Service

The commercial trade of services represents an instance of intangible goods such as information. In this context, the producer of the information database (the seller) offers specific information regarding the good they intend to sell. It is required that this information be current and comprehensive, fully encompassing the subject matter of the contract. An example of this is a contract that includes the provision of specialized information covering international investment movements. Services offered over the internet are numerous and varied, including legal consultations provided by lawyers or subscriptions to information databases⁹⁰.

This obligation is considered a periodic obligation characterized by continuity; therefore, it is regarded as a temporally continuous obligation, often extending over a period of time. For example, a subscription to an information database on the internet is not an instant contract in its execution but a successive contract, as its performance spans a duration of time⁹¹, such contracts require the cooperation of the customer with the supplier for inquiry purposes, allowing the customer to receive technical advice that enables them to obtain the best service needed. For instance, the contracting party may advise the customer to purchase the necessary equipment to conduct research in the information database, thereby facilitating communication and interaction between the customer and the database. Another example includes providing the customer with technical training through educational courses broadcast over the internet⁹².

As a general rule, the obligation to provide or supply a service is an obligation of result unless it is clearly stipulated in the contract or implied by the nature of the obligation that it concerns achieving an effort. Therefore, the electronic supplier cannot be relieved of liability except by proving a force majeure event, the fault of the buyer, or the fault of a third party⁹³.

To avoid all of this, the supplier must commit to providing accurate and comprehensive information, in addition to maintaining the confidentiality of the customer's requests concerning the services supplied. In the event of a breach of the agreed-upon service, the beneficiary may claim compensation, in addition to these two obligations, there is also the obligation to guarantee against latent defects, as well as the obligation of maintenance. Most comparative legislations have sought to protect the buyer who benefits from the service, recognizing that there is always a weaker party facing the producer or distributor. Since the seller is obliged to deliver the sold item to the buyer, the latter is obliged to pay the seller a monetary compensation⁹⁴.

Conclusion:

Considering the above, it is evident that the civil liability of the electronic operator constitutes a significant and continuously developing legal challenge that necessitates the formulation of flexible and comprehensive legal frameworks. Such frameworks must not only clearly delineate the duties and responsibilities of electronic operators but also strengthen the protection of users and institutions operating within the digital environment. Moreover, ongoing legal reforms are essential to keep abreast of swift technological innovations like artificial intelligence and the Internet of Things, ensuring that liability regulations remain both relevant and effective. This research endeavors to advance the discourse by analyzing the pertinent legal provisions, distinguishing electronic contractual liability from other liability forms, and examining the intricate legal relationships inherent in electronic transactions. Ultimately, it aims to reinforce the establishment of a dynamic and coherent legal system that promotes trust, security, and justice in the digital age.

Study Findings:

- Protection of Parties' Rights: Civil liability ensures that those harmed by any unlawful or illicit act in electronic transactions are entitled to fair compensation, this includes breaches of electronic contracts or damages arising from unauthorized use of data or personal information.
- Enhancement of Trust in Electronic Transactions : A clear legal framework governing civil liability contributes to increasing the confidence of individuals and corporations in electronic commerce, as reliance on technology grows in trade and services, this trust is a critical factor for the sustained growth of the digital economy.
- Prevention of Cybercrimes : Civil liability imposes obligations on electronic operators, whether individuals or entities, to comply with legal and ethical standards, legal accountability for damages resulting from cyber offenses (such as identity theft or data breaches) helps deter such acts and encourages stronger protective measures.
- Regulation of Personal Data Usage : With the rising use of personal data online, it is imperative to enact laws defining the collection, use, and safeguarding of such data, civil liability plays a role in ensuring personal data is not exploited unlawfully or in violation of privacy rights.
- Balance Between Rights and Obligations : The electronic operator is not merely a service user but also bears obligations, such as maintaining digital security and protecting their private information, Civil liability balances the rights of the various parties involved in electronic transactions by imposing reciprocal duties to ensure equitable conduct.

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