

## **The Civil Liability of the Pharmacist for the Professional Errors of Their Assistants**

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### **Abstract:**

The profession of pharmacy is one of the vital health professions, given its fundamental role in safeguarding public health through the provision, preparation, and dispensing of medicines—whether pursuant to medical prescriptions or in accordance with established pharmaceutical standards. The Algerian legislature has accorded this profession significant attention by incorporating it within the legislative framework of Health Law No. 18/11.

However, the pharmacist does not perform their duties in isolation. They rely on technical and professional assistants entrusted with carrying out preparatory and technical tasks related to the compounding of medicines and their sale to customers, all under the pharmacist's supervision and oversight. This relationship establishes a legal bond of subordination, thereby opening the door to the pharmacist's civil liability—whether contractual, where a direct relationship with the patient exists, or tortious, where such a relationship is absent—for damages resulting from the professional errors committed by their assistants in the course of, or in connection with, their duties.

### **key words:**

Pharmacist – Assistants' Errors – Contractual Liability – Tortious Liability

### **Introduction:**

The human body enjoys legal and moral protection, conferring upon it an inviolable status that prohibits any form of infringement—whether total or partial—regardless of the nature of the resulting harm. This protection derives its legitimacy from multiple sources: codified legal norms, national legislation, religious principles, and societal values. Consequently, any encroachment upon the human body constitutes an unlawful act warranting legal accountability.

Nevertheless, this prohibition, despite its general scope, is subject to a legitimate exception: the state of therapeutic necessity. This constitutes a legal justification for medical or pharmaceutical intervention when the purpose is to preserve human life or restore health. In such cases, interference with the human

body is not considered harmful conduct but rather a lawful practice grounded in prior consent or an implied presumption of consent—provided that the intervention adheres to scientific and professional standards and is carried out under the supervision of qualified specialists.

In this context, the profession of pharmacy<sup>1</sup> emerges as one of the most significant and indispensable health professions, owing to its central role in the healthcare system: providing, preparing, and dispensing medicines in accordance with medical prescriptions or established scientific and pharmaceutical norms. The pharmacist's role extends beyond the mere commercial sale of medicine<sup>22</sup>; it encompasses precise professional tasks requiring specialized scientific training and strict ethical commitment.

To regulate this essential profession, the Algerian legislature enacted Law No. 18/11 on the Protection of Health, dedicating specific regulatory provisions to the practice of pharmacy. Additionally, the Code of Medical Ethics—promulgated by Executive Decree No. 92/276<sup>3 3</sup> contains a set of ethical rules that pharmacists are obliged to observe in the exercise of their profession, ensuring patient protection and adherence to professional conduct standards.

In actual professional practice, however, the pharmacist seldom works alone. More often than not, they employ technical or professional assistants to perform preparatory or operational duties, such as compounding certain pharmaceutical preparations or dispensing medicines according to the pharmacist's instructions. These assistants operate within the premises of the pharmacy and under the pharmacist's direct supervision, creating a relationship of legal subordination both in organizational terms and in respect of civil liability.

Accordingly, any error committed by the pharmacist's assistant in the course of their duties may give rise to liability on the part of the pharmacist—not only as the technical manager of the pharmacy but also as the direct supervisor who is presumed to exercise oversight and guidance.

This raises the central question underpinning this study: **To what extent has the Algerian legislature established the civil liability of the pharmacist for the professional errors committed by their assistants in the performance of their duties?**

Based on this, the present research is divided into two sections:

The first Topic addresses the contractual liability of the pharmacist for the errors of their assistants.

The second Topic examines the tortious liability of the pharmacist for the errors of their assistants.

## **THE FIRST TOPIC: The Contractual Liability of the Pharmacist for the Errors of Their Assistants**

Since the purchaser of medicine has no direct contractual relationship with the pharmacist's assistant, but instead contracts with the principal pharmacist, any error committed by the assistant in performing contractual obligations arising from that agreement will give rise to liability on the part of the pharmacist. This indirect contractual liability is based on the intervention of a third party—the pharmacist's assistant—in carrying out a contractual obligation limited to compounding or dispensing medicine. Such liability can only arise if certain conditions are met, most notably: the existence of a valid contract between the pharmacist and the injured party; the assistant's intervention in fulfilling the pharmacist's contractual obligation; and the commission of an error by the assistant that causes harm to the purchaser.

### **FIRST REQUIREMENT: Existence of a Valid Contract Between the Pharmacist and the Injured Party**

Article 178 of the Algerian Civil Code<sup>44</sup> (as amended) permits the limitation of a debtor's liability by stipulating an exemption in cases of fraud or gross fault committed by persons employed to carry out the debtor's obligations. This means the debtor may bear contractual liability for their employees' errors unless there is an agreed-upon exemption. Accordingly, the pharmacist bears liability for errors committed by their assistants while carrying out contractual obligations stemming from the pharmacist–consumer relationship, provided a valid contract exists between the two parties. This contract is formed when the customer or patient approaches the pharmacy with a prescription and the pharmacist agrees to dispense the medicine, creating reciprocal obligations that give rise to contractual liability.

The proper formation of the contract is essential for establishing liability for the act of another. If the contract is void or non-existent, the matter falls outside the scope of contractual liability and into that of tortious liability under general legal rules. This liability rests on the pharmacist as the supervisor and director of the assistants' work, as in private pharmacies where the pharmacist is the debtor bound to fulfil the obligation of preparing or selling the medicine, while the consumer—whether a patient or otherwise—is the creditor.

The assistant, in turn, works on behalf of the pharmacist and under their supervision, placing the assistant in the position of an agent executing the primary obligation. The assistant's subordination to the pharmacist is based on an employment contract between them, which defines the legal nature of their relationship and frames the scope of the pharmacist's liability.

However, if the relationship between the pharmacist and the person performing the obligation is one of agency, liability falls under the rules governing

an agent's acts, depending on whether the agent exceeded the scope of authority or breached the terms of the agency agreement<sup>5</sup>.

Distinguishing between a contract of employment and an agency agreement is therefore crucial in determining the type of legal subordination and, consequently, identifying who bears responsibility for the professional error committed in the performance of the contract. It should be noted that this distinction has no direct impact on the injured party—the purchaser or patient—since the pharmacist's civil liability toward third parties remains regardless of the assistant's legal status, so long as the error occurred while fulfilling a professional obligation within the pharmacist's responsibility.

However, this differentiation is essential in the internal relationship between the pharmacist and the assistant, as it determines whether the pharmacist has the right to seek recourse against the assistant for compensation paid to a third party, and on what legal basis. In employment relationships, recourse may be limited by labor law—particularly if the error is not gross. In agency relationships, the pharmacist generally enjoys broader rights of recourse under contractual liability between principal and agent. A simple example of such liability arises when a pharmacist's assistant dispenses the wrong medication that does not match the patient's prescription, thereby causing health damage to the consumer—whether the assistant is professionally qualified. In all such cases, the pharmacist remains liable to the injured party as the person directly responsible for executing the contract and ensuring the safety of pharmaceutical products provided through their assistants<sup>6</sup>.

### **SECOND REQUIREMENT: The Assistant's Intervention in Performing the Pharmacist's Contractual Obligation**

The pharmacist's liability for an assistant's actions arises only if it is proven that the assistant intervened in carrying out the professional obligation incumbent upon the pharmacist, and that such intervention was undertaken on behalf of and with the knowledge or at the request of the pharmacist. This typically occurs when the pharmacist entrusts the assistant with dispensing a prescription or compounding medicine under direct supervision. If, however, the assistant acted independently, without the pharmacist's knowledge or authorization, and in a manner that contravenes instructions or exceeds assigned duties, the pharmacist's liability is excluded, and the gross error is attributed solely to the assistant.

This severs the subordination link and prevents the pharmacist's contractual liability toward third parties—consistent with Article 178 of the Civil Code. The pharmacist's knowledge of the assistant's intervention, even without giving direct orders, plays a critical role in assessing liability. Silence in the face of such

conduct, coupled with awareness, may be construed as tacit approval—especially if the act is repeated or occurs within an ongoing employment relationship.

In such cases, this implied consent produces legal consequences and may establish the pharmacist's liability if harm results to the consumer. A practical evidentiary challenge arises in this context due to the nature of the pharmacist–consumer contract.

Article 178 of the Civil Code—both in its explicit text and by implication—permits exemption clauses for an assistant's fraud or gross fault. However, in the context of pharmacist–consumer dealings, such an exemption from liability for gross fault or fraud is practically inapplicable, and even if stipulated, it would be difficult to prove. This means that the pharmacist will generally be held liable for an assistant's act and bear the burden of proving the assistant's fraud or gross fault to recover damages from them. Another common scenario involves a consumer approaching the pharmacy without a prescription, seeking advice on a suitable medicine.

The pharmacist's assistant, drawing on personal judgment or prior experience, may recommend a product and explain its use. While well-intentioned, this practice carries serious legal and professional risks, as the medicine provided may be unsuitable or harmful to the consumer's condition, potentially leading to pharmacist liability as the legal supervisor of the assistant's

### **Third REQUIREMENT: Commission of an Error by the Assistant**

#### **Causing Harm in the Performance of the Contract**

The contractual obligation owed by the pharmacist extends to the assistant whenever the latter intervenes in executing the pharmacist–consumer agreement.

Thus, the obligation to achieve a specific result—namely, providing the patient or consumer with medicine that matches the prescription and is free from harm—also applies to the assistant. Contractual liability is triggered by two elements: the failure to achieve the intended contractual result (the contractual breach), and the occurrence of actual harm to the consumer as a result of that breach. In the absence of harm, liability cannot arise.

This liability is also subject to temporal and substantive limits: the error must occur while the assistant is engaged in selling or compounding medicine, pursuant to the pharmacist's instructions and supervision, and within the legal setting of the consumer being in the pharmacy to have a prescription filled or to receive a compounded medication. If the assistant acted independently, without instruction from the pharmacist, at the direct request of the consumer—particularly outside the pharmacy's premises or working hours—the pharmacist cannot be held liable, as the contractual link with the consumer is absent and the assistant's conduct constitutes the direct cause of the harm.

Similarly, the pharmacist is not liable for acts committed by a former assistant who has been dismissed but unlawfully enters the pharmacy in the pharmacist's absence to dispense or prepare medicine. In such cases, the legal subordination element—an essential requirement for vicarious liability—is lacking. In conclusion, the pharmacist's contractual liability for an assistant's errors arises whenever it is proven that the contractual purpose was not fulfilled due to the assistant's intervention, whether active (e.g., incorrectly dispensing medicine) or passive (e.g., refusing to dispense available prescribed medication)<sup>7</sup>.

This liability may only be excluded by proving an external cause, such as the injured party's own contribution to the harm (e.g., failure to follow the prescription, allergic reaction to an ingredient), the assistant's fraud or gross fault, or proof that the act occurred outside the temporal and substantive scope of the pharmacist's contractual obligation.

### **THE SECOND TOPIC: Tort Liability of the Pharmacist for the Errors of Their Assistants**

As previously noted, a pharmacist's liability for the errors of their assistants may arise on the basis of contractual liability. However, the scope of such liability remains limited, given the requirement of a valid contract between the pharmacist and the injured party — a condition that is often not met in many cases where the transaction occurs outside a clear contractual framework.

In this context, and with the legislator's aim of providing effective legal protection to consumers of medicines, the scope of liability has been expanded by enshrining the rules of tort liability of the principal for the acts of their agents. This allows the pharmacist to be held liable for damages caused by the actions of their assistants, even in the absence of a contractual relationship, or where the contract is invalid. This ensures that the liable party cannot evade compensation and provides broader legal protection for patients and consumers.

The Algerian legislator has expressly provided for the liability of a principal for the acts of their agents in Article 136 of the amended and supplemented Civil Code, which states:

“The principal shall be liable for the damage caused by their agent through a harmful act whenever such act occurs in the performance of, because of, or in connection with their duties. The relationship of subordination shall be established even if the principal was not free to choose their agent, so long as the latter works for the benefit of the principal.”

Based on this provision, the pharmacist, as a principal, incurs tort liability for damages caused by their assistants, as subordinates, whenever the legal conditions are met: the agent commits a harmful act, and that act occurs during, because of, or in connection with their duties. A legal relationship of subordination

must exist between them, even if the pharmacist did not freely choose the assistant, so long as the assistant works under the pharmacist's supervision and for their benefit.

### **FIRST REQUIREMENT: Commission of the Harmful Act**

As a rule, a pharmacist is only liable for the acts of their assistant if it is proven that the latter committed an error that caused harm to the consumer. However, from the substance of Article 136 of the Algerian Civil Code, it appears that the legislator has adopted the principle of strict liability in this context, requiring only proof of the harm and the existence of a relationship of subordination — without the need to prove fault on the part of either the principal or the agent.

This means that the legislator has established a presumption of liability on the part of the principal, which can only be rebutted by proving the existence of an external cause that breaks the causal link between the act of the agent and the harm. Consequently, the pharmacist bears the burden of proving the absence of liability, as an exception to the general rule.

This legislative approach is justified by the legislator's desire to enhance the protection of creditors and consumers, particularly given the inequality in the relationship between the pharmacist and the purchaser of the medicine. Pharmacists and their assistants possess technical and professional expertise, whereas consumers generally have limited knowledge of the medical and scientific aspects of medicines. This calls for adequate legal protection, which the Algerian legislator has explicitly enshrined in Article 136.

### **SECOND REQUIREMENT: Connection of the Harmful Act to the Duties**

The Algerian Civil Code requires, in Article 136, that for the principal to be liable for the acts of their agent, the harmful act must be connected to the duties performed by the agent. Therefore, a pharmacist is only liable for the acts of their assistant if the latter's error is closely linked to the performance of their duties in the pharmacy — i.e., if the harmful act occurred in the course of, or because of, their duties, or was occasioned by them<sup>8</sup>.

#### **Firstly: Commission of the Act During the Performance of Duties**

A pharmacist is liable for a harmful act committed by their assistant while carrying out assigned work, the results of which are attributable to the pharmacist (principal). This applies where the harmful act occurs during working hours, in the workplace, using work tools, and with the aim of serving the principal's interest. It is not necessary for the pharmacist to have given a direct order for the act, or even to have been aware of or approved it<sup>9</sup>.

The essential criterion is that the harmful act occurred in the performance of duties and for the benefit of the principal<sup>10</sup>, in line with the maxim “the burden accompanies the benefit”.

This differs from contractual liability, which requires the pharmacist’s knowledge or implicit approval of the assistant’s actions.

Example: If a pharmacy assistant, during working hours, dispenses a toxic or non-compliant drug to a patient without the pharmacist’s knowledge, the pharmacist is still liable under Article 136, even if contractual liability does not apply.

### **Secondly: Commission of the Act Because of the Duties**

The wrongful act is deemed to have occurred “by reason of the function” when there is a direct causal link between the act and the employment; that is, when the position held by the subordinate (the pharmacist’s assistant) provided him with the opportunity<sup>11</sup>, means, or authority to commit the act. In other words, the act would not have taken place without the position, or the tools placed at the subordinate’s disposal<sup>12</sup>. Thus, the causal connection between the function and the wrongful act is akin to the relationship between cause and effect<sup>13</sup>.

Accordingly, establishing liability requires the existence of a causal link between the wrongful act committed and the tasks assigned to the subordinate. It is sufficient that the position created the conditions for the subordinate to commit the wrongful act—meaning that he would not have contemplated or been able to commit it otherwise.

It is worth noting that, as in the previous case, liability also requires that the wrongful act occur within the temporal and spatial scope of the employment, and that it be committed using its means and for the benefit of the employer—even if done without the employer’s knowledge or without their explicit or implicit consent.

However, if the act occurs outside the scope of work in terms of time, place, means, and purpose, the pharmacist’s liability for the act of their assistant does not arise. This is due to the absence of the relationship of subordination at the time of the act, and thus the absence of the “employment element” required for the employer’s liability. For example, if the assistant finishes his working hours, leaves the pharmacy, and on his way encounters a person suffering from severe pain, and proceeds to assist him with a medicine in his possession, which then causes the person’s death, the pharmacist is not liable<sup>14</sup>. This is because the act took place outside the functional relationship, whether in terms of time, place, purpose, or means, thereby severing the link between the harm and the assistant’s professional role in the pharmacy.

Moreover, the pharmacist remains liable for the acts of their assistant even if the latter exceeds the limits of their position, undertakes tasks for which they were not appointed, performs actions explicitly prohibited, or misuses the resources and tools provided to them by virtue of their employment.

In practice, the patient's general ignorance of the identity of the person they are dealing with inside the pharmacy is a decisive factor in establishing liability. In most cases, the patient cannot distinguish whether they are interacting with the pharmacist themselves or with one of their assistants<sup>15</sup>. Even if the patient is aware of the assistant's status and the scope of their duties, they often remain unaware of the precise limits of the assistant's authority.

However, if it is proven that the patient knew the assistant's position and the boundaries of their function, the pharmacist's liability is excluded, since the interaction in such a case took place with the assistant in a personal capacity, not as a subordinate of the pharmacist.

For example, if the assistant prepares a medication despite being restricted to selling ready-made medicines only, this constitutes exceeding the scope of their position. Depending on the circumstances, such conduct may or may not result in the pharmacist's liability, subject to the fulfilment of the conditions outlined above.

### **Thirdly : Commission of the Act on the Occasion of Duties**

This situation arose pursuant to the recent amendment to Article 136 of the amended and supplemented Civil Code, which now stipulates the liability of the employer for the harm caused by the employee "on the occasion of performing their duties," whereas previously, liability was limited only to acts committed "in the course of" or "by reason of" the employment.

This amendment represents a legislative expansion of the scope of the employer's liability, aimed at strengthening the protection of third parties harmed by the acts of the employee. It removes the requirement for a direct link between the wrongful act and the function, and instead suffices with the act being connected to the performance of the duties.

The meaning of the expression "on the occasion of performing the duties," as introduced by the recent amendment to Article 136 of the amended and supplemented Civil Code, is that the role of the employment may merely be to provide the opportunity for the wrongful act to be committed by the employee, without necessarily being the direct or primary cause of the damage<sup>1616</sup>.

Applied to the relationship between a pharmacist and their assistant, the pharmacist's liability arises even if the wrongful act committed by the assistant is not directly related to the task assigned to them, as long as there exists some connection—however indirect—between the act and the function. This could

occur, for example, if the assistant exploited their professional status, their presence inside the pharmacy, or used its tools to commit the act.

For the pharmacist's liability to apply, it is not required that they have ordered or been aware of the act; it is sufficient that the employment has provided the means or circumstances that enabled the act—for instance, selling a non-prescribed medicine or delivering an incorrect pharmaceutical preparation while working inside the pharmacy.

### **Conclusion:**

The study reveals the critical importance of the pharmacist's role and the significant legal implications that require caution. Key findings include:

1. Fault remains a core element of civil liability — contractual or tortious — though in tort under Article 136, proof of fault is not required.

2. Tort liability applies when no contractual relationship exists, based on the general legal duty not to harm others.

3. The pharmacist may be liable for acts committed during, because of, or on the occasion of duties, even without knowledge or instruction, if the job facilitated the act.

4. Liability is excluded when the act is entirely outside the scope of duties, or when the consumer knowingly dealt with the assistant in their personal capacity.

### **Recommendations:**

1. The legislator should adopt an explicit general rule on contractual liability for the acts of others, similar to Article 136's provision on tort liability, to avoid ambiguity.

2. Clear regulations should define assistants' roles and responsibilities in pharmacies to prevent overreach.

3. Stricter administrative and professional sanctions should be imposed on pharmacists who are negligent in supervising assistants, to reinforce the duty of oversight.

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<sup>1</sup> It means by the profession of pharmacy: the task performed by the pharmacist. Quoted from **A. Oumari, W. Cheribit**, "Regulations Governing the Practice of Pharmacy," *Journal of Legal and Political Sciences*, Faculty of Law and Political Sciences, University of Martyr Hamma Lakhdar El Oued, Algeria, Vol. 11, No. 1, April 2020, p. 735

<sup>2</sup> Article 249, paragraph 2, of Law No. 11/18 of 2 July 2018, *Official Gazette* No. 46 of 29 July 2018: "The pharmacist is the sole owner and manager of the commercial premises of the pharmacy they own

<sup>3</sup> Executive Decree No. 276/92 of 6 July 1992 containing the Code of Medical Ethics, *Official Gazette* No. 52 of 8 July 1992.

<sup>4</sup> Ordinance No. 58/75 of 26 September 1975 on the Civil Code, *Official Gazette* No. 78 of 30 September 1975, as amended and supplemented by Law No. 05/07 of 20 May 2007, *Official Gazette* No. 31 of 13 May 2007.

<sup>5</sup> **H.A. Al-Dhannoun**, *Al-Mabsout fi Sharh al-Qanoun al-Madani "Responsibility for the Acts of Others"*, Dar Wael for Printing, Publishing, and Distribution, Jordan, 2006, p. 51.

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<sup>6</sup> **H.A. Al-Dhannoun**, *Ibid.*, p. 53.

<sup>7</sup> **A.A.M. Al-Husseini**, *Civil Liability of the Pharmacist for Professional Errors*, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Jordan, 1999, p. 150.

<sup>8</sup> **M. Makhloufi**, *Liability of the Employer for the Acts of the Employee in Algerian Civil Law*, Master's Thesis in Contracts and Liability, Faculty of Law, University of Algiers, 1987, p. 86.

<sup>9</sup> *Ibid.*, p. 90.

<sup>10</sup> **A.A.M. Al-Husseini**, *op. cit.*, p. 157.

<sup>11</sup> **A.I. Al-Hayari**, *Tort Liability for the Acts of Others: An Analytical, Critical, and Historical Comparative Study with the Jordanian Civil Code and the French Civil Code*, Dar Wael for Publishing, Jordan, 2003, p. 275.

<sup>12</sup> **Z. Issaoui**, *Civil Liability of the Pharmacist*, Master's Thesis in Law, Branch of Professional Liability Law, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, 2012, p. 90.

<sup>13</sup> *Ibid.*, p. 93.

<sup>14</sup> **E.E. El-Dinosaur**, **A.H. El-Shawerbi**, *Civil Liability in Light of Jurisprudence and Case Law*, Vol. 2, 6th ed., Manshat Al-Maaref, Alexandria, 2004, p. 248.

<sup>15</sup> **A.I. Al-Hayari**, *op. cit.*, pp. 275–280.

<sup>16</sup> **A.R.A. Al-Sanhouri**, *Al-Wasit fi Sharh al-Qanoun al-Madani al-Jadid: General Theory of Obligations – Sources of Obligation*, Vol. 1, Al-Halabi Legal Publications, Lebanon, 2009, p. 11.