

Civil liability for breach of information prior to electronic contracting "Comparative Analytical Study"

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Abstract

The study aims to demonstrate the civil liability for breach of the obligation to inform before the electronic contracting, which is considered the necessary tool to protect the consumer and enable him to express his will properly. The obligation to inform in electronic contracts is considered a legal guarantee to achieve equality between the parties to the contractual relationship as a result of cooperation between them. The study reached several conclusions, the most important of which is that the obligation to inform is considered a legal tool to protect the consumer from exposure to legal problems after the conclusion of the electronic contract. In the light of the findings of the study, it concluded with several recommendations, the most important of which is the necessity of developing a special system for informing the consumer, especially in light of smart robots, in the pre-contracting phase due to its privacy, in addition to tightening the penalty in case the producer or supplier breaches the obligation to inform, by imposing Punitive compensation in addition to compensation for damage.

Keywords- Civil liability, Electronic Contracting, Inform, Compensation.

Introduction

Due to the information revolution that is driven by electronics, where computers play an important role in processing and creating information. And machines challenge humans to conclude contracts, so it is not surprising that pre-programmed computing plays an important role in concluding electronic contracts, as it makes choices and issues responses without the participation of humans. Electronic data interchange refers to a technique and method that enables one party to transfer legal information electronically to another for direct processing in the information systems of the other party.

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But electronic contracting raises many problems. Because IoT companies create, monitor, and implement contractual governance systems with weak legal fences to avoid potential consumer harm. Therefore, the consumer must be informed of all information before concluding the contract, such as the steps to be followed to conclude the contract, the technique used to correct errors, the language of the contract, and whether the contract will be presented directly by the service provider or reached by the consumer on the site. In addition to providing it with information related to the product, its method of use, and the precautions to be taken. The failure of the service provider to provide the consumer with this information before the conclusion of the contract is considered a breach of the principle of good faith that must prevail in transactions, which leads to the invalidation of the contract as well as the right of the consumer to claim compensation for damages incurred based on the rules of tort liability; Because the invalidation of the contract removes it retroactively.

The importance of the research:

The importance of the research lies in the fact that electronic contracting has become the tool of the current era in most contracts. Especially after the spread of the Corona pandemic. Electronic contracting is considered the best tool to satisfy the needs of people in society through the online store. In light of this, the importance of research appears in informing the product or service provider of the consumer with all the necessary information about it so that he is aware of his matter before concluding the contract, and therefore the obligation to inform is considered necessary to protect the contractual will as a source of expressing the desire to contract. In addition, it avoids falling under the contract. False, misleading or deceptive commercial advertising.

Research problem:

The problem of the study revolves around the fact that the contract via the Internet is not like the contract that takes place in the traditional way, in which the two parties see each other and are brought together by a real contract council, in addition to the consumer's inspection of the sale before the conclusion of the contract. In light of this, the supplier or producer was obligated to inform the consumer of the necessary information about the product before he entered into the contract and was exposed to unnecessary problems. It highlights the research problem in the effectiveness and adequacy of legal texts in protecting the consumer by stipulating the obligation of the supplier or producer to inform him. This problem raises several questions:

- What is the concept of commitment to the media and its nature?

- What is the nature of civil liability for breach of information in electronic contracting?
- What is the penalty for breaching the obligation to inform?

Research methodology:

To reach the answer posed by the research problem, we followed the comparative analytical approach between the Saudi regime and Egyptian and Algerian law, with the help of some of the opinions of the jurists followed in this regard, and expressing our opinion on some issues of jurisprudential disagreement.

Research Plan:

As a result of the above, the research was divided into three sections:
The first section: the concept of commitment to the media and its nature.

The second section: the nature of civil liability for breaching the media in electronic contracting.

The third section: the penalty for breaching the obligation to inform.

The first section

The concept of commitment to the media and its nature

Due to the digital transformation that humanity is witnessing at present, especially after the spread of the Corona pandemic, which prompted many people to contract remotely. This contract had many problems from which the consumer should be protected as the weak party in the contractual relationship. And that is through electronic notification by the provider before concluding the contract. For this reason, we will explain in this section the definition of commitment to the media and its legal nature as follows.

The first chapter

Defining the obligation to inform in electronic contracts

The commitment to flags in electronic contracts has a specificity that distinguishes it from flags in traditional contracts, as the electronic contract is done remotely via the Internet. The Saudi regulator defined the electronic contract as "the agreement that is concluded electronically between the parties who deal in electronic commerce." As for the Egyptian electronic signature Law No. 15 of 2004, he did not address the definition of the electronic contract, as well as the Algerian Law No. 5/18 of 2018 related to electronic commerce, except that he only referred to Law No. 2/4 of 2004, which defined the rules applicable to commercial practices, indicating that the electronic contract is concluded without meeting according to electronic means of communication.

In jurisprudence, some have argued that the electronic contract is "an agreement between the two parties to the contract through the

convergence of offer and acceptance by using the information network, whether in the convergence of the two wills, or the contractual negotiations, or the signature, or any part of its conclusion, whether it is This behavior is in the presence of the two parties to the contract in the contract council, or through convergence through computer networks, or any electronic audio or visual means.

Others defined it as the contract in which you meet via the Internet for the goods and services offered by accepting them from people belonging to multiple countries.

Based on the Saudi system and the Egyptian and Algerian legislation concerning electronic commerce, it was found that they did not deal with the definition of commitment to the media in electronic contracting. In light of this, some jurisprudence defined it as a pre-contractual obligation that imposes on the contracting parties to provide the counterparty with the necessary data to form the contract so that the consent is sound and focused on knowledge of all the details of the contract.

It was also defined as an obligation on the shoulders of the professional to provide the consumer with all the necessary information that enables him to make a positive or negative decision . It was also defined as alerting or informing the consumer of data that enables him to identify an incident or an element of the contract to be concluded to take the appropriate decision in light of his need and purpose of concluding the contract. It appears from these definitions that the obligation to inform in electronic contracting is no different from the obligation to inform in traditional contracting, in addition to the fact that the obligation may be in the stage before contracting and maybe during the implementation of the contract.

The idea of commitment to electronic media finds its echo in the principle of good faith that governs the formation and implementation of the contract, and as a result the legislator imposed the obligation to inform on the shoulders of the strong party in the contractual relationship, which is mostly the professional. For this commitment to be fulfilled, one of the contracting parties must be ignorant of the elements constituting the obligation as a result of the impossibility of knowing these elements, whether the impossibility is material or moral, and that the counterparty be aware of these data and that these elements, information and data affect satisfaction so that if he knew about them, he would not have done Contracting.

This was emphasized by the Algerian legislator No. 9/3 of 2009 by stating in Article 17 of the Consumer Protection and Fraud Suppression Law that "every intervening party must inform the consumer of all information related to the product that he puts for consumption by labeling and labeling or by any other appropriate means." Likewise,

Article 86/2 of the Algerian Civil Code Order No. 75-85 of 1975, stipulates that “willful silence about an incident or circumstance is considered fraud, as it is proven that the deceived person would not have entered into the contract if he had known about that incident or circumstance.”

As Article 125/2 of the Egyptian Civil Law No. 131 of 1948 stipulates that “it is considered fraud to remain intentionally silent about an incident or circumstance if it is proven that the deceived person would not have entered into the contract if he had known about that incident or circumstance”.

And Article 86/2 of the Algerian Civil Code stipulates that “willful silence about an incident or circumstance is considered fraud, as it is proven that the deceived person would not have concluded the contract if he had known about that incident or circumstance.” This was echoed by the Egyptian legislator in Article 125 of the Egyptian Civil Code No. 131 of 1948, as stipulated in Article Four of the Egyptian Consumer Protection Law No. 181 of 2018 that “the supplier is obligated to inform the consumer of all essential data about the products, in particular the price of the product, its basic characteristics and characteristics, and any other data specified by the executive regulations.” This law depends on the nature of the product. As for the Saudi system, it may seem close to the Egyptian and Algerian legislators, and this is evident from Article 7 of the Saudi e-commerce system, which obliges the service provider to provide data to the consumer, including the basic characteristics of the products or services subject to the contract.

It appears from the previous definitions that :

1. The obligation to inform is made before the conclusion of the contract.
2. The one who is committed to the media is the professional, and this means that the commitment is not limited to the sales contract.
3. Information is provided through the Internet.
4. Commitment to inform the consumer It is a positive commitment represented in providing information and data to the consumer in order to build his satisfaction on insight.
5. The purpose of the commitment to inform is to ensure the integrity of consumer satisfaction.

It is proven that the commitment to the media has played a major and effective role in the field of contracts, especially consumption contracts. Due to the disruption of the relationship between professionals and consumers due to inequality in the media. Informing the data and information is very important because it helps the

consumer to take action or not to contract. Where the media is considered a type of trust imposed by the law on the professional in some contracts such as consumption contracts.

It is noted that commitment to information is a general principle related to contract theory in general, and consumption contracts in particular. Information is done in e-commerce contracts through electronic tapes on websites, using e-mail service and others. According to this notification, the professional is obligated to provide the necessary information and data that allow him to provide a clear idea of the contract and its place, and an insight into every matter that affects his decision to conclude the electronic contract .

This is due to the use of electronics in most aspects of life, which has led to a discrepancy between the two parties to the contract and has had a significant impact in terms of the level of knowledge and know-how regarding the subject of the contract. The mechanism includes the specifications and standards of the contracting place, which can be sent via the Internet, and a thumbnail of the contracting place is also sent to indicate what it may contain .

Perhaps the text on the commitment to information at present has become an urgent need since the consumer has become ignorant in many cases of the benefits and harms of traded products, especially imported and unfamiliar products . To enhance consumer protection, the Algerian and Egyptian legislators stressed that the media should be in the Arabic language, which is considered the most important means of protection in light of modern legal principles, given that the electronic contract is global, which is done in the English language .

It can be said that the basis of the obligation to inform is the professional's knowledge of evidence and information related to the commodity or service subject of the contract and the consumer's legitimate ignorance of it , and the ineffectiveness of the traditional protection of the contractual will through the theory of defects of will because there are contracts in which the consumer needs special protection because of its nature, Including electronic contracts. This is since one of the parties is a professional and a professional, and the opposite party does not have full experience or knowledge of the subject matter of the contract, or that the subject matter of the contract is something modern and complicated to use .

The second chapter

The nature of the obligation to inform in e-commerce contracts

The obligation to inform in traditional contracts is not of the same importance in the field of electronic contracting. This is because traditional contracts are characterized by convergence between the contracting parties, and therefore either party can obtain from the other the information that it wants and therefore expresses its will

clearly and explicitly, because each party watches over its interests and defends them as long as the contract was concluded in the light of discussions and negotiations between the two parties, which is presumed. With him, the contract should be balanced .

Because of the specificity of e-commerce contracts, he differed about the nature of the obligation to inform, and this dispute revolved around whether the obligation to inform is a commitment to a means or an obligation to a result. Some have argued that the obligation to inform is a commitment to a means, and it means that the debtor exerts his efforts to reach a certain result, even if he does not guarantee its achievement . The debtor's mistake here is represented in his negligence and failure to take the necessary precautions and care in implementing his obligation to inform, whether this error is represented in the sale not containing any documents related to the use of the product, or warning of its risks, or the insufficiency or invalidity of the data and information attached to the product .

This opinion justifies his point of view that the professional cannot ensure that the creditor understands the data and information that he mentioned to him and makes use of them in the way that is issued based on his valid satisfaction (17).

Despite the relevance of this opinion, we do not agree with it, because the professional's commitment to informing the consumer is not limited to basic data, information, legal, material, and essential descriptions, but rather extends to a statement of how and how to use the good or service. Providing information has an effective role in the field of technological development, which has a role in Providing goods and services, because such information protects the consumer from the risks of the commodity, especially if its use involves some risk. This cannot be avoided except by providing the consumer with sufficient information in his national language, and this is what the Egyptian and Algerian legislators and the Saudi regulator should pay attention to in electronic contracts .

This was confirmed by the Egyptian and Algerian legislators in the general rules of the civil law, as we previously indicated, by saying that the seller must have sufficient knowledge of the sale by mentioning the basic and specific information about the sold item so that he can identify it. related to the product that he puts for consumption by marking and labeling or by any other means, and the data and information must be in Arabic or another easy-to-understand language. The same meaning was echoed by the article 4 of Egyptian law No. 81 of 2018 related to consumer protection, but he did not specify the language to be conveyed to the consumer, as did the articles 17 and article 18 of Algerian law No. 9-3 of 2009.

Some have argued that the obligation to inform is a commitment to a result, on the basis that the obligation to provide information is achieved by speaking or writing and is not achieved by silence or secrecy, so the mere presentation of information is considered a result achieved by this obligation. However, this opinion was criticized because it did not examine the validity of consumer satisfaction as a result of this commitment, but rather provided information or not as a result, and this is not considered a correct adaptation of this commitment. All in the matter is that he assigned the debtor to prove that he had conveyed the information to the creditor⁽¹⁸⁾. In addition, the obligation to achieve the result is only in dangerous things.

Some argued that the obligation to inform in the pre-contracting phase is an obligation to achieve a result and to exercise care at the same time, as the obligation to achieve a result is to transfer data and information to the creditor, while the obligation to exercise care is represented in the means used to transfer data to the creditor.

We see that the obligation of the debtor to inform during the negotiation stage in electronic contracts is an obligation to exercise strict care that differs from the care required in traditional contracts. Because the contract takes place between two absent parties, in addition to the international character of electronic contracts and the expertise enjoyed by the provider in such sales, which requires effective and adequate protection for the consumer who is almost inexperienced about the subject matter of the contract.

It should be noted that the notification in electronic contracts is not only related to informing the consumer of the characteristics of the sale, but rather includes his inspection, and this inspection is achieved by seeing if it is visual and hearing his voice if it is acoustic. This is achieved through the electronic catalog on the Internet site. We find that all of this is done remotely, as the professional may use technological cheating methods to deceive the consumer, which leads the latter to demand the annulment of the contract for fraud.

That is why we say that what was mentioned above is consistent with traditional contracts and is not in line with electronic contracts that were concluded through electronic means due to its specificity related to the method of concluding the contract and inspecting the sale. Care is a strict commitment that approaches the commitment to a result, in order to achieve the purpose intended by the legislator, which is to protect the consumer, who is considered in most cases to be unprofessional or professional. In addition, the information provided by the professional or craftsman to the consumer is not left to his personal discretion, but rather is estimated according to an objective criterion represented in whether this information affects the consumer's decision to proceed with the conclusion of the contract or conclude it according to certain conditions. In addition, making the

commitment of the professional craftsman an obligation to exercise care is contrary to Article 419 of the Egyptian Civil Code and Article 352 of the Algerian Civil Code(21).

In light of this, we can say that the data that the professional is committed to towards the consumer is every statement that can affect the rights of the electronic consumer, so every statement that is, according to the usual, relevant to the contracting process, whether in terms of the subject or the results, is considered a statement related to it. It is considered one of the necessary data that the consumer must be informed of, and it is the one that determines the personality and identity of the professional, because the consumer is interested in knowing the professional with whom he contracts in order to reassure his heart.

The second section

The nature of civil liability for breach of information in electronic contracting

Some jurisprudence differed about the nature of the civil liability of the debtor to the obligation to inform before the electronic contracting, whether it was contractual or tort. However, jurisprudence and judiciary in Egypt settled on tort liability. Because it makes it easier for the consumer to obtain compensation for the damages incurred by him. In light of this, we will review the types of civil liability of the debtor to the obligation to inform in the electronic negotiation stage through the following two chapters.

The first chapter

Contractual liability for breach of the obligation to inform in electronic contracting

Some argue that the responsibility of the professional or craftsman for breaching the obligation to inform is a contractual responsibility and based their opinion on the theory of error when forming the contract, and therefore the damage arising from the breach of the obligation to inform must be dealt with in the pre-contracting stage in accordance with the provisions of contractual liability. Hence, it is obscure to cancel the distinction between contractual and non-contractual commitment because it is not based on a realistic basis, based on the following arguments :

1. When the seller informs the buyer before the contract of the nature and characteristics of the thing sold, he informs him in his capacity as a contracting party, because when the seller fulfills his obligation to inform, he is not discovered until after the conclusion of the contract and during its implementation.
2. Describing the obligation to inform before contractually as a contractual obligation that protects the consumer because it is not

required to prove the professional's mistake, but it is sufficient to prove that the professional did not fulfill his obligation to inform.

Some add that the past, as has been said, prejudices the future, and the defect in the media extends from the negotiation stage to the implementation stage. Thus, the burden of proof is transferred to the debtor, as the latter is only obligated to prove the deficiency or defect in the information, due to the debtor's responsibility for this obligation. This prompted to say the application of contractual liability in the case of breach of the obligation to inform before the contractual whenever this breach has an impact on the implementation of the contract .

But this trend is based on a pure assumption that has not yet been established; Because there is no evidence of the existence of a pledge before the original contract in all contracts, it is not sufficient for liability in electronic contracts to have a physical link between this contract and the damage resulting from the breach of obligation by the debtor. Arranged by the contract .

In addition to the fact that the contract did not originate to establish responsibility on it, and there is no evidence of the existence of a tacit agreement before the contract, we can only say that the responsibility for breaching the obligation to inform before the electronic contract is a tort liability. This is because it is not logical and rational from a legal point of view for the obligation to arise before its source; The obligation to inform before contracting arises before the existence of the contract from a legal (22).

The second chapter

Negligence liability for breach of the obligation to inform in electronic contracting

The tort liability of the professional arises for the damage arising from the breach of the obligation to inform, if it is related to a mistake he committed outside the contractual relationship, as in the case of pre-contractual negotiation. This is confirmed by the Egyptian Civil Code in Article 163, which says that whoever commits a mistake that causes harm to a third party is obligated to compensate him, and Article 124 of the Algerian Civil Code corresponds to it.

This prompted some to say that the rules of tort liability are applied in the event of a breach of the obligation to inform before the contractual; Because it results from an act or omission before contracting(29).

And since the obligation to inform is a matter that occupies the responsibility of the professional in the stage before the contract, failure to implement it or abuse in its implementation entails tort liability. This does not contradict the invalidity decided by the judiciary due to the presence of a defect attached to the will, and this is in line

with the requirements of the law. However, some see the necessity of the period of responsibility to the stage before the contract if one of the parties is obligated to inform; because the obligation to inform is one of the requirements of the contract, as stated in Article 107 of the Algerian Civil Code. Accordingly, it can be said that the obligation to inform is one of the requirements of the contract, in which one of the parties is a professional and has a monopoly on basic information related to the subject of the contract.

Acknowledging the tort liability for breaching the obligation to inform makes it easier for the consumer to obtain compensation for the damage he sustained, on the basis that this obligation in itself is considered an ease in proving the mistake of the professional, and the quality of the professional is considered evidence of his bad faith in not providing information; Because it assumes his knowledge of this information and thus transfers the burden of proof to the debtor by the obligation to inform(26).

In addition, the obligation to inform during the negotiation stage finds its basis in the general principles of law, such as the principle of good faith required by the general principles of law during the negotiation stage, which require the parties to be honest and trustworthy in their confrontation with each other(22).

The third section

Penalty for breach of the obligation to inform

By extrapolating the legislative texts related to consumer protection and the rules of electronic commerce in Egypt, Algeria, and the Saudi system, we notice the absence of a legislative text that shows the special penalty resulting from breaching the obligation to inform before electronic contracting, and therefore it is inevitable to resort to general rules in this regard, as breaching the obligation to inform according to the rules This leads to a defect in the will of the inexperienced consumer, allowing him to claim the avoidance of the contract or claim compensation. The basis of the obligation to inform is due to the will being clear and based on a sound basis, which shows what is called good faith in the contract, which helps not to hide the hidden defects in the sale and avoid its risks. This is what we explain through the following two requirements.

The first chapter

Contract invalidation

The obligation to inform aims to protect the satisfaction of the contracting party, and the latter may have a defect in his will that affects his satisfaction, so the will tends to contract while he is not aware of the truth of the matter. Defects of consent mean what is caused by the will of one or both of the contracting parties. The contracting party's satisfaction exists, but all that is in the matter is

that the consent was not between him and his choice, and this makes extremism subject to nullification . The defects of the will lie in error, fraud and coercion, and we confine ourselves to error and fraud because they are closely related to the breach of the obligation to inform. A mistake is a false illusion generated in a person's mind, or a condition that a person experiences that makes him imagine the matter contrary to its truth .

To invalidate the contract for the mistake, it is essential and related to the other contracting party, or it occurred in one of the characteristics of the thing that the two contracting parties consider to be essential, or in the same contracting person, or one of his characteristics, and it was the main reason for the contract, and this is what is stipulated in Article 120 and Article 121 of the law. The Egyptian civil law and the Algerian legislator mentioned it in Article 82 of the Civil Code.

As for fraud, it appears if the electronic supplier did not disclose an incident or a circumstance that should have been disclosed, and it was the motive for the contract, so that if the consumer knew about it, he would not have initiated the contract. This is considered fraud that entitles the electronic consumer to claim the invalidation of the contract.

This was confirmed by the general rules in article 125 of the Egyptian civil code No. 131 of 1948 and article 86 of the Algerian civil code promulgated by order No. 75-85 of 9/26/1975 by saying that if the tricks used reached a level of gravity without which the second party would not have concluded the contract. Willful silence about an incident or its circumstances is considered fraud. If the other contracting party knew about it, he would not have preceded the conclusion of the contract.

The basis of the obligation to inform in electronic contracts may be the principle of good faith, the theory of hidden defects, or the commitment to safety. This is what we explain through the following paragraphs:

The principle of good faith: The principle of negotiation in good faith has many difficulties. Because the term good faith is a vague and unclear term, some defined it as "the negotiator's commitment to dealing with the other party based on honesty, honesty, and good morals, which makes him a trustworthy person."

In light of this, the will of the electronic consumer is considered unsound if it is based on incorrect information and data, and this justifies the intervention to achieve the nodal balance according to the principle of good faith. Thus, it is possible to impose obligations on the contracting parties to avoid the contractual imbalance that arose as a result of the different legal positions of the contracting parties.

However, the Egyptian legislator did not know good faith in contracts except in the implementation stage, not the negotiation stage. The reason for this lies in the fact that the Egyptian legislator did not regulate the stage before the contract and the negotiations that permeated it, and contented itself with regulating the contract, starting from the stage of its conclusion through its implementation, and ending with the stage of its expiration when the contract was such as continuous contracts or term contracts . This was echoed by the Algerian legislator in Article 107/1 of the Civil Code by saying, "The contract must be executed following its contents and in good faith." It is clear from this article that the principle of good faith is limited to the implementation phase of the contract. In application of this, jurisprudence in Algeria recognized that the general commitment to information is a manifestation of the principle of good faith that must be observed in the contractual relationship .

Although legislators did not expose the principle of good faith in the negotiation stage, it has an important role in the pre-contracting stage. Where the negotiators are required to be honest and trustworthy in the negotiation stage and these obligations must be fulfilled and respected. Because it is considered the cornerstone upon which contractual negotiations are based.

On the other hand, we find that the Saudi regime adopts the principle of good faith in the negotiation stage, and that includes the absence of the charm - deception - by a verbal or actual means that makes the person accept the contract, had it not been for this deception, he would not have accepted the contract. This is confirmed by the hadeeth of the Messenger, may God bless him and grant him peace, to Habban bin Munqith, when he was deceiving in sales, "If you sell, say: No, it is a good thing, and the choice is three days.". Islamic law urges everyone who has information to commit to informing it; Because the media is only evidence of good faith in the contract.

Finally, it should be noted that the obligation to inform is considered one of the manifestations of good faith in negotiation, according to which it is the responsibility of the parties in the negotiation stage to provide data and information related to the contract to be concluded, for the will to be built on a sound basis and each of them determines his needs from this contract, and in the event of a breach of one The negotiating parties are obligated to inform, such as concealing an incident affecting the establishment or conclusion of the contract, or having an impact upon its implementation, as this is a violation of the principle of good faith, which places the violator under the burden of fraudulent secrecy(41).

Good faith constitutes a rule of behavior that requires individuals to observe integrity and honesty in their dealings, and therefore this idea is considered objective, not personal. The principle of good faith is

imposed by law whenever it comes to the interpretation of contracts or the implementation of emerging obligations, and, usually, this principle is decided by an explicit legal text. As for the pre-contracting phase, there is no special text that imposes the principle of good faith in contractual relations in the pre-contracting phase.

However, the obligation of a professional to inform the consumer before contracting establishes ethical principles within the scope of the contract so that the contractor takes into account the principle of good faith and honesty in dealing, which makes the consumer aware of the information and data related to the contract to be concluded, and thus not falling into the trap of fraud and misleading. The information intended here is the information that would affect the will of the consumer whose interest and protection it was decided to inform. And leaves its appreciation to the subject judge (26).

The theory of hidden defects: Some argue that in electronic contracts the consumer can't know the specifications of the sale and all its data on his own, so the seller should inform the consumer of all these data on the basis that he is obligated to guarantee the hidden defects. However, this view was severely criticized, because the obligation to guarantee finds its source in legislation, while the obligation to inform may be at the hands of the judiciary, and the obligation to inform is before contracting. As for the guarantee, it is considered of a contractual nature, in addition to being narrower in scope than information (43).

Commitment to safety: Some say that the basis of the obligation to inform before contracting is based on the obligation to ensure safety , and this is clear from the text of article 176 of the Egyptian trade law No. 17 of 1999 , which states that "the producer or distributor of the commodity shall be liable before anyone who suffers physical or material harm caused by the producer if This person proves that the damage was caused by a defect in the product". This was echoed by the Algerian legislator in the civil law in Article 140, as well as the draft Saudi consumer protection system for the year 2022.

However, we do not agree with this opinion because ensuring the safety of the product in accordance with the aforementioned texts is related to the stage of implementing the contract and not to the stage prior to the contract, in addition to the commitment to safety, which is a legislative obligation. We conclude from the foregoing that the theory of the integrity of the will from defects is the basis of the obligation to inform before contracting, as it is the most appropriate according to the principle of good faith in the course of the contractual process. Because according to it, the electronic consumer can claim the invalidation of the contract in the event that he is not informed of the basic information and data of the service or commodity subject of

the contract. This is confirmed by the twenty-ninth article of the draft Saudi consumer protection system.

However, the defects of satisfaction theory in its current form are unable to provide the necessary protection for the electronic consumer due to the stringency in its application conditions and the difficulty of proof. That is why the commitment to the media before contracting removes this difficulty as a result of its preventive role in facing economic and knowledge disparities and working on the stability of the contract. The obligation to inform before contracting has an independent subjectivity, as it has a double-edged sword. The first is to enable the creditor of data in the pre-contracting stage that makes him proceed to conclude the contract, and the second is to spare the consumer fraud and misleading, which plays a fundamental role in complementing the theory of will after it has been proven. Its failure to achieve effective consumer protection in the pre-contracting phase.

The second chapter

Compensation

One of the most important problems facing electronic contracting is how to protect the consumer, because the parties to the contract do not meet and the sale is not in one place. In most cases, the consumer does not possess technical expertise that qualifies him to examine the product and find out its hidden defects . Therefore, the professional must notify the consumer of all the information and data on which he bases his clear and express will. Any breach by the electronic supplier by not implementing its prior commitment to inform would mislead the electronic consumer and force him to conclude the contract without his real will, which would cause him damage that requires compensation to achieve the contractual balance (36).

The reason for the electronic consumer resorting to a claim for compensation here revolves around the inadequacy of the invalidity penalty in compensating the consumer for the damage he suffered due to the debtor's breach of his obligation to inform him of all the terms and details of the contract before concluding the contract, or the invalidity penalty is not commensurate with the debtor's fault, or the consumer may not be able to e-mail of contract invalidation. Thus, there is no objection to the ruling of compensation in addition to the ruling of invalidity .

For the consumer to obtain compensation, it is required that there was a mistake that resulted in damage and that there is a causal relationship between them. An error in the field of contractual liability is a breach of a contractual obligation, while in the field of tort liability, it is a breach of a full legal obligation not to harm others . The element of error is achieved in the event of the debtor's breach of the

obligation to inform, which may be in a negative form when the debtor of commitment conceals some information or essential elements related to the electronic contract from the consumer, as the thing sold is in his possession and the buyer only knows his image on the website. The breach of the obligation to inform may take a positive form when false information is given to the consumer related to the specifications of the sale and how to use it contrary to the truth(31).

Also, harm, which is the harm that befalls a person concerning one of his rights or a legitimate interest for him , is considered the most important pillar of contractual and tort liability; The damage that gives rise to contractual liability must result from the debtor's failure to implement his contractual obligation, otherwise, his liability will be considered tort if it arises from a non-contractual obligation.

However, the existence of the error and the damage are not sufficient by themselves for the establishment of liability, rather there must be a causal link between the error and the damage, and the error is the direct cause of the occurrence of the damage. Accordingly, if other factors that cut off the connection of damage to the fault are abandoned, then the causal relationship is not achieved because the result is not naturally linked to the cause .

This was confirmed by article 182 of the Algerian Civil Code of 1975 and article No. 221 of the Egyptian Civil Code No. 131 of 1948 that the damage must be a natural result of failure to fulfill the obligation or delay in it, and the damage is considered a natural result if the creditor cannot anticipate it by making a reasonable effort.

A breach of the obligation to inform will result in material or moral harm. A breach of the obligation to inform may be represented in not giving sufficient data to the consumer about the product or service subject of the contract, which may cause material damage or physical harm when it comes to warning about the product when using it. The physical harm resulting from the breach of commitment may extend to thousands of people who will not be warned and informed of sufficient data about the dangerous product before contracting.

A professional's breach of his obligation to inform before contracting would mislead the electronic consumer and push him to conclude the contract without his real will, which would cause harm to the consumer. The electronic consumer can request the annulment of the contract and compensation for the damage incurred" .

On the other hand, we find that the Egyptian legislator decided in Article 27 of Law No. 181 of 2018 that the supplier is responsible for the damage caused by the product as a result of a defect in its design, manufacture, or installation, and is also asked about the failure to take sufficient precautions to prevent damage or warn of the possibility of its occurrence. In addition to the responsibility of the seller or

distributor for damage to the consumer due to a defect in preparing the product for consumption or in the way it is preserved, packaged, or handled.

As for article 28 of the draft Saudi Consumer Protection Law of 2022, it stipulates that the professional is responsible for his breach of the obligation to inform the data and information that would enlighten the consumer and take a decision based on sound and clear evidence.

In comparison between the Algerian and Egyptian law and the Saudi system, it is clear that what was decided by the Algerian and Egyptian law is related to the stage of implementation of the contract and not to the stage preceding the contract. As for the Saudi regime, it was clear that, in contrast to the Algerian and Egyptian laws. That is why the Algerian and Egyptian legislators must follow in the footsteps of the Saudi regime in this regard. Because the pre-contracting stage is importance and is considered an integral part of the final contract, and therefore it must be organized accurately.

Compensation in the field of tort liability in the event of a breach of contractual obligation takes the form of monetary compensation; Because it is impossible to restore the situation to what it was before the damage occurred, due to the insufficient information provided in the pre-contracting stage or its incorrectness .

The consumer shall be compensated for all damages to his health, security, or material interests, and this is what is called the material damage that befalls the victim in one of his rights, such as the physical damage, or the financial damage that befell him because of the defective commodity. As the material damage is the harm suffered by the consumer and affects one of his legitimate rights, whether it is the right of physical or financial harm .

Material damage is everything that occurs on the thing or is represented in its destruction, including the defective commodity itself, provided that the person who suffered the damage has owned this thing or used it for purposes other than his trade or the work of his profession or craft . As for moral damages, they are the damages caused to a non-financial interest of the injured party. Referring to the texts of the legislation, it was found that Article 182 of the Algerian Civil Code and Article 222 of the Egyptian Civil Code provide for compensation for moral damages.

- The justifications lie in the consumer's claim for compensation for the breach of the obligation to inform in the stage before the electronic contracting too.
- Difficulty for the consumer to know the conditions of the contract, and this is achieved when the level of technical expertise varies between him and the producer or distributor, which makes it

difficult for him to reach the facts of the conditions of the contract by his means.

- The unusual nature of the subject matter of the contract, when the subject matter of the contract requires detailed information that the consumer cannot access, such as in the case of electrical appliances or medicines. If the seller concealed it or remained silent about it, his responsibility would be realized because the electronic consumer made a mistake, which prompted him to contract for a price higher than the real value of the thing.
- Dangerousness of the subject matter of contracting. The subject matter of contracting may represent a specific danger in itself, in the circumstances of its use, or in the way it is preserved, such as medicines in general. If the seller fails to inform the electronic consumer of the seriousness of the product and how to avoid it, he will be liable.

The damage to be compensated is required to be real and result directly from the professional's breach of his obligation to inform. The damage must also be expected, and this is in the field of contractual liability, but in the field of tort liability, compensation includes expected and unexpected damage, and this is consistent with dangerous products (54).

When estimating compensation, the circumstances surrounding the accident that led to the occurrence of the damage, as well as the personal circumstances of the injured person and the person liable, shall be taken into account. So that his judgment is closer to justice when the damage occurs. The compensation shall be estimated at the time of issuance of the judgment, whether the damage increased or decreased after the occurrence of the accident. And if the injured person repairs the damage until the judgment is issued, the judge takes into account that when estimating the compensation, and he takes into account what the injured person spent in repairing the damage .

It should be noted that compensation for material and moral damages is in cash. Because monetary compensation is the predominant form in the field of tort liability and is represented in the monetary amount estimated by the judge to redress the damage to the consumer (28). And between the Algerian and Egyptian legislators, the method of paying compensation may be estimated at a cash amount paid as a single payment to the injured person, and it may also be in the form of installments or a salary income, and in these two cases it is permissible to oblige the debtor to provide a sufficient guarantee . The legislators left to the judge the discretionary power in the method of estimating compensation according to the circumstances of each case.

The compensation must be equal to the amount of the damage, whether the fault was serious or minor. Because compensation is not estimated according to the severity of the error, but rather based on the damage. But it takes the gravity of the error when estimating compensation. The compensation claim shall lapse with the lapse of three years from the date of knowledge of the harmed person and the person responsible for it. However, if the act constitutes a criminal offense, the compensation claim shall not lapse except with the lapse of the criminal action .

After completing our previous presentation, we concluded our research with a set of recommendations, results, and a list of references as follows:

First: Results:

- The Saudi system defined the electronic contract, but the Egyptian and Algerian laws did not address its definition, and this is positive and not negative because definitions are among the tasks of jurisprudence, in addition to that that makes the legislation characterized by stability and stability for a longer period. And we ended up defining the electronic contract as the electronic contract that takes place through the World Wide Web without requiring a meeting between the contracting parties, and this is what distinguishes it from the traditional contract, in addition to the fact that the subject matter of the contract or the service is in the form of an image, which requires adapting the traditional rules for harmonization between electronic and traditional contracts, from By adhering to consumer information.
- By extrapolating the Saudi regime and the Egyptian and Algerian laws, it was found that they did not define the concept of commitment to the media, but only referred to it. However, he stressed the need to inform the consumer of the necessary and necessary information about the product and the necessary precautions when using it. It can be said that the basis of the obligation to inform is the professional's knowledge of the evidence and information related to the commodity or service subject of the contract and the consumer's legitimate ignorance of it.
- Jurisprudence differed on the nature of the obligation to inform, some see it as an obligation to exercise care, while others see it as an obligation to achieve a result, but despite the relevance of these opinions, we tend to the opinion that says that the commitment of a professional is a commitment of a special kind, meaning that the obligation to exercise care is an obligation An aggravator is close to a commitment to a result, to achieve the purpose intended by the legislator, which is to protect the consumer, who is considered in most cases to be unprofessional or professional. In addition, the

information provided by the professional or craftsman to the consumer is not left to his estimation, but is estimated according to an objective criterion represented in whether this information affects the consumer's decision to proceed with the conclusion of the contract or to conclude it according to certain conditions.

- Jurisprudence has contradictory opinions about the nature of civil liability for breaching electronic media. Some see it as a contractual liability, while others see it as a tort liability. This is the last opinion that jurisprudence and the judiciary settled on in Egypt as the most appropriate for consumer protection. In any case, the liability of the service provider or the product entails two penalties, namely the invalidation of the contract and compensation to the consumer for the damages incurred.

Second: Recommendations:

- The necessity of developing a special system to inform the consumer, especially in light of smart robots, in the pre-contracting stage due to its privacy, as the contracting parties do not see each other, in addition to not seeing the product to which the contract is received except in the form of an image, in addition to the fact that the product may not make statements that he believes do not benefit the consumer. This requires emphasis in providing him with information, whether essential or secondary.
- The need for the legislator to intervene to determine the data that the consumer should be informed of and what is the method of advertising, in addition to tightening the penalty if the producer breaches the obligation to inform; because the producer is considered a professional in the marketing process unlike the consumer. The media is considered a mechanism to protect the consumer from falling into the prohibited and a necessary aspect for expressing a sound will. This can only be achieved by intensifying the penalty and imposing punitive compensation.

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