

## Legal Protection for Consumers in the Face of AI Technologies

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### Abstract:

This study aims to address the problem of determining legal liability for damages that consumers may be exposed to while contracting with smart systems that act as "smart agents" as the weak party in consumer contracts. Therefore, through this research, we will address the adequacy of traditional foundations of civil liability to meet the challenges posed by artificial intelligence and propose new legal mechanisms that are compatible with the technical environment.

**Keywords:** artificial intelligence technologies, civil liability, consumer, legal personality.

### Introduction:

The increasing impact of AI technologies)) on contract development raises several important legal issues especially as consumers increasingly interact with intelligent systems acting as agents under contracts. It has become necessary to analyze the effectiveness of current rules to protect consumers from the risks associated with these complex technologies. The increasing use of artificial intelligence in contracts raises several concerns about liability and consumer protection. One of the key legal issues is the extent to which current legislation can address the challenges posed by the use of smart customers. If a smart agent makes a mistake that results in harm to the consumer, the question arises as to who is responsible: Is it the agent himself, the AI developer, the user, or a group of these parties<sup>1</sup>.

According to the above, the use of artificial intelligence systems in the process of concluding contracts for consumers requires the adoption of specific legislative provisions to provide adequate protection, especially in light of the absence of a specific legislative framework governing these issues. Therefore, it has become necessary to adopt specific laws related to the responsibility of smart customers, and to clarify the concepts of civil liability and criminal liability in the context of the use of artificial intelligence<sup>2</sup>.

Hence, the importance of this study arises from the fact that the increasing technological development in contracts poses several challenges to the legal system, which requires a review of the classical rules of liability and the identification of those responsible for damages resulting from the use of smart technology.

In this context, the main problem of understanding this topic revolves around the following:

### **How adequate are traditional civil liability rules in protecting consumers from AI harms?**

To answer the main problem we will divide the study into two sections: where we will examine the extent to which traditional civil liability rules are unable to confront artificial intelligence technologies (**the first section**) and then examine a proposed new law for legal liability arising from artificial intelligence technologies in consumer protection (**the second section**).

## **Section One: The inability of traditional civil liability rules to confront artificial intelligence technologies**

Traditional civil liability rules are based on the perception that the legal actor is a rational human being who is aware of his actions, which has made some concepts such as will, error, and causality the focus of these rules. However, with the development of artificial intelligence technologies and its ability to make independent decisions without direct human intervention, these concepts have become insufficient, which constitutes a real shortcoming in the legislative system. Accordingly, through this research, we will attempt to address the issues related to the legal personality of artificial intelligence (**the first requirement**) and then address how civil liability arising from the use of artificial intelligence technologies arises (**the second requirement**).

### **The first requirement: Problems related to the legal personality of artificial intelligence**

The issue of granting legal personality to artificial intelligence applications is one of the most prominent contemporary legal problems that has sparked a jurisprudential debate between opponents of granting legal personality to artificial intelligence (**first**), supporters (**second**), and a trend that recognizes a special "virtual" legal personality (**third**).

#### **First: The trend of denying the legal personality of artificial intelligence**

Those who support this trend refuse to recognize artificial intelligence as an independent legal person and keep it within the framework of a technical thing or tool. Artificial intelligence does not enjoy complete independence because it always needs human intervention in the event of any technical problem. Also, in their view, legal personality is only granted to a natural or legal person, as a natural person enjoys a set of rights according to which he was recognized as a legal personality, such as name, domicile, capacity, status. The legal person also enjoys many rights except for those that are close to a normal person, such as financial liability, the right to litigation, domicile, and all rights that are difficult to provide in artificial intelligence, especially those that are close to the individual<sup>3</sup>.

The problem remains about the extent to which intelligence is granted legal personality, as the goal is not to grant artificial intelligence full human rights, but rather to determine who is responsible for the harm that occurs? Recognizing the legal personality of artificial intelligence like a natural personality is a violation of human rights, and granting rights and obligations reflects this personality, but artificial intelligence cannot be considered a legal person because it does not have an independent financial liability, but rather is managed by legal persons<sup>4</sup>.

#### **Second: The trend towards recognizing the legal personality of artificial intelligence**

The proponents of this trend believe that the great development witnessed by artificial intelligence systems, especially with regard to their independence in making decisions, processing data, and their automatic interaction with the environment, has produced a functional entity that has become close to basic human characteristics, which requires serious consideration of granting it the status of a special legal personality or what is called an electronic personality<sup>5</sup>.

Proponents of the trend in favor of granting legal personality to artificial intelligence applications relied on a number of legal and regulatory arguments, the most prominent of which are:

- Analogy on the legal personality of legal persons: Since a legal person such as a company or association is recognized as having legal personality despite not having a human body, it is possible to grant artificial intelligence a similar legal status, especially by granting every robot a legal personality upon its registration, which allows it to be held accountable civilly and criminally<sup>6</sup>.

- Relying on the European Parliament's recommendation: In its resolution of 16 February 2017, the European Parliament called on the European Commission to establish a special legal framework regulating the civil liability of autonomous intelligent robots and to recognize them as electronic legal personality granted to systems capable of making decisions and interacting autonomously with their surroundings<sup>7</sup>.

- Based on the subjective characteristics of artificial intelligence: It is also based on the fact that intelligent systems have become characterized by semi-human characteristics such as independence, the ability to learn and make decisions, which allows them to be granted a legal personality that gives them specific legal capacity<sup>8</sup>.

- Relying on practical necessities and legal implications of recognizing legal personality:

Some jurisprudential and legal trends are based on the necessity of having a legal party to whom the innovation resulting from artificial intelligence is attributed in order to grant it legal protection. Therefore, some believe that it is necessary to attribute the status of inventor or creator to artificial intelligence when it is proven that it produced the work independently without direct human intervention, which requires allocating a legal framework that regulates this status<sup>9</sup>.

### **Third: The trend towards recognizing artificial intelligence as a special "virtual" legal personality**

The virtual personality represents an alternative solution to the idea of responsibility for artificial intelligence errors, as devoting the legal personality to artificial intelligence, "the human machine", will reflect positively on the accountability system and the right to litigation<sup>10</sup>. This personality differs from the legal personality from the latter, as the latter is managed by humans, while intelligent robots will proceed with a self-automated thinking approach, not human thinking<sup>11</sup>.

Some believe that granting artificial intelligence a legal personality or a virtual personality poses many problems, as accepting the existence of virtual people among us is something that the legal system has never addressed, as the traditional legislator still looks at anything technological, no matter how advanced it is, with a look at something. Previous generations did not realize that the robot had arrived from science fiction stories to reality, and therefore merely talking about the virtual personality is considered absurd. Legal according to the current legislative environment, and from another angle, the question arises about the legal risks of the birth of a virtual person, since allowing the implementation of the idea of a virtual legal personality requires a radical amendment to the legislative text, which will lead to granting eligibility to the highly advanced robot and enabling it to have its own financial liability, then obligating it to civil compensation<sup>12</sup>.

### **The second requirement: the establishment of civil liability arising from the use of artificial intelligence technologies**

In order to determine the civil liability that arises from the use of artificial intelligence technologies, this requires us to define the concept of error in artificial intelligence (**first**) and determine damage (**second**) as well as the causal relationship in the artificial intelligence environment (**third**).

#### **First: The concept of error in artificial intelligence**

A contractual error is defined as a breach of one of the contractual obligations arising from an agreement between two parties, either by non-performance in whole or in part, or by delay in performance, which causes harm to the other party and is required to be stipulated or can be derived from the nature of the contract, and results in harm to the other party<sup>13</sup>.

However, applying a contractual error in contracts concluded within the framework of using artificial intelligence systems may result in a breach of some obligations, such as the supplier's failure to install a working system, the developer's failure to ensure software updates or corrections, or the intelligent system's failure to perform its tasks as stated in the contract. Therefore, the complexity of the artificial intelligence system makes it difficult to prove this error, so we find that international technical bodies are calling for the development of unified contract models (Model AI contracts) that clearly define obligations and responsibilities. Also<sup>14</sup>, applying contractual liability to artificial intelligence system technologies is no longer sufficient to confront the damages that result from it, especially since it is directed to a natural person in the event of his breach of the contract, not to artificial intelligence system technologies or robots, as these technologies cannot be a party to the contract<sup>15</sup>.

Applying contractual error to artificial intelligence system technologies may face legal problems since these systems are not considered natural or legal persons and therefore are not a responsible contractual party in the traditional sense. Although the supplier or developer can be held accountable in the event of a breach of contractual obligations, such as the inefficiency of the system or its failure to perform the agreed-upon functions, the technical complexity and the subjective ability to learn and make decisions make proving error a practical challenge. Therefore, applying traditional contractual liability rules alone is insufficient and requires support from customized contract models and supporting legal tools to ensure its effectiveness in this context<sup>16</sup>.

### **Second: Damage**

This element represents a result of the availability of the previous element, since a mistake often leads to harm. Therefore, during the implementation of the obligation, the person must take a degree of caution and care in his behavior so as not to cause harm to others. If he deviates from this obligatory behavior, this deviation is a harmful act that requires responsibility, and the use of artificial intelligence techniques may result in a certain harm<sup>17</sup>.

If an AI medical diagnostic system is used to analyze medical images, resulting in a delay in diagnosing a serious medical condition due to the system, the company developing the system and the users operating the system may be held civilly liable for the resulting damages. In this example, the damages component of the AI system's civil liability is identified, with the company developing and the users operating the system being held liable for any damages that may arise due to a diagnostic error<sup>18</sup>.

### **Third: The causal relationship in the artificial intelligence environment**

The causal relationship constitutes one of the basic pillars on which civil liability is based, as it must be proven that there is a direct link between the harmful act and the result. However, this traditional concept faces major challenges in the artificial intelligence environment, especially in systems based on self-learning or deep learning. In this environment, the damage is not always a direct result of a specific human act (such as user error or a manufacturing defect). Rather, it may be the result of a subjective action of the intelligent system that arose later as a result of the emergence of new data or changes in the electronic environment. Therefore, the traditional causal relationship is ambiguous or cannot be proven with certainty, which makes it difficult to determine who is legally responsible<sup>19</sup>.

Many jurists have also pointed out this difficulty, considering that the artificial intelligence environment may produce a new type of indirect or multilateral causal relationship, which requires either expanding the concept of legal causality or adopting alternative compensatory mechanisms

such as compulsory insurance or establishing a guarantee fund for damages resulting from artificial intelligence<sup>20</sup>.

## **Section Two: A proposed new law on legal liability arising from artificial intelligence technologies in consumer protection**

Traditional civil liability rules have proven ineffective in addressing errors resulting from the use of artificial intelligence technologies. This is due to their reliance on the concepts of fault, damage, and causation, concepts that are difficult to apply to autonomous, self-learning-based intelligent systems. This reality has therefore created a need for a new legal vision aimed at building a liability system consistent with the characteristics of artificial intelligence. Accordingly, we will address identifying alternative mechanisms for redressing the damage caused by artificial intelligence technologies **(the first requirement)** and then how to enhance consumer protection in light of the development of artificial intelligence **(the second requirement)**.

### **The first requirement: Alternative mechanisms for reparation for damage caused by artificial intelligence technologies**

Alternative legal mechanisms for redress for damages caused by AI technologies take three forms: either activating a joint liability claim in the field of AI **(first)**, relying on the human representative theory **(second)**, or implementing an AI damage insurance system **(third)**.

#### **First: Activating the joint liability lawsuit in the field of artificial intelligence**

The multiplicity of actors, including developers, programmers, users, and equipment in artificial intelligence systems, constitutes one of the most important difficulties faced by the civil liability system with its classical rules in determining who is responsible for compensating these damages? Based on the jurisprudential opinions that have tried to find a solution to this dilemma, we find the proposal of the French lawyer Alain Bensoussan, who specializes in this field and who relies on what is called a system of successive responsibility for actors in matters related to artificial intelligence, and thus they bear full responsibility in their capacity as the legal actor. This type of liability is inspired by American law by holding the designer of the artificial intelligence accountable, then the user, then the producer, and finally holding the owner accountable as the possessor of the artificial intelligence, in other words, devoting gradual responsibility to all those involved in the activity of artificial intelligence systems<sup>21</sup>.

#### **Second: The theory of the human representative**

The European Union has created a new legal concept, which is known as the human proxy (Human Proxy), which means that the human proxy bears legal responsibility for the risks posed by robots, so that artificial intelligence is viewed as a machine with human logic that can be developed. Therefore, it based its opinion on considering artificial intelligence as a natural server for humans as long as the robot is a creation of the intelligence attributed to the machine. By examining the content of the idea of the human deputy, which is based, without assuming a mistake and without describing the robot as anything, on distributing responsibility among a group of people according to who was proven wrong, we find that the European Union, with regard to adapting artificial intelligence systems, used only the word deputy without the word guard, which means that it is not considered something that needs special care<sup>22</sup>.

According to the above, the human representative theory is an exceptional legal case that aims to go beyond the traditional rules of liability, such as the liability of the custodian of the thing or the one in charge of control, by replacing it with a legal system that holds the natural person (developer, operator, supervisor) responsible, either on the basis of provable error during the manufacturing stage

or on the basis of breach of the duty to avoid the danger expected from the intelligent system. In this regard, the European legislator has distinguished between several categories so that the status of humanitarian representative can be assigned according to their role in operating the robot, including: the factory owner who participated in the design or programming, the operator who controls the performance of the system, the owner who has the legal right to dispose of the robot, and the user who activates the system in the environment of use<sup>23</sup>.

### **Third: Securing the harms of artificial intelligence**

Within the modern trends to regulate civil liability in the artificial intelligence environment, the European legislator proposed imposing compulsory insurance on the owner or maker of the smart system as a legal tool to ensure compensation for the injured party regardless of the nature of the liability, whether contractual, tortious or substantive. Jurisprudence has differed on the effectiveness of relying on this system, as there is a side that supports this trend, considering the latter, especially in cases of advanced applications such as self-driving vehicles, as an effective tool to cover emerging risks, given the possibility of designing insurance policies to include all types of potential damages without requiring accurate proof of the source of the error, while another side of jurisprudence believes that absolute reliance on insurance to compensate for artificial intelligence errors carries a pattern of Separation from the principle of individual legal accountability, which may also result in a weak spirit of prevention and real responsibility among developers and operators<sup>24</sup>.

The establishment of damage compensation funds has also been proposed as a complementary means to fill compensation gaps that may not be covered by either traditional civil liability or insurance. Their primary role lies in compensating for damage in some cases where it is difficult to determine who is responsible or in the absence of effective insurance coverage. However, despite the protective role of these funds, they are always set at a maximum compensation ceiling that may not be exceeded. It is also done as a reserve or supplementary measure and does not crowd out the original liability or insurance systems, but rather covers what the latter are unable to cover<sup>25</sup>.

### **The second requirement: Strengthening consumer protection in light of the development of artificial intelligence**

Strengthening consumer protection in light of the development of artificial intelligence requires following the following methods: legislative methods to enhance consumer protection (**first**), as well as following the method of transparency and trust in contracts that include artificial intelligence (**second**), in addition to consumer awareness and education on the other hand (**third**).

#### **First: Legislative means to enhance consumer protection**

Adapting the Algerian legislative framework in the face of rapid developments in artificial intelligence in the field of consumption is a very important issue to ensure adequate protection for the consumer. By reviewing the set of rules that regulate consumer protection under Law No. 09-03 as well as the regulatory texts applicable to it, We can say that although these rules are of a high degree of importance in protecting the traditional consumer, they may not be suitable for protecting the electronic consumer who concludes his contracts in their technical form. The electronic consumer conducts contracts that do not require physical presence like the traditional consumer and without the possibility of examining the product or service in a tangible way. Which makes it necessary to obtain a greater guarantee and deeper insight into the location of the contract so that he is aware of what he is doing<sup>26</sup>.

Although the Algerian legislator has referred in Executive Decree No. 13-378 to remote communication technologies and the possibility of using them in contracting, what is noticeable in

this regard is its neglect of the process of how to conclude contracts by this means, and its failure to regulate the methods of informing the electronic consumer through these means as well. It also did not address the issue of warranty: whether paper warranty certificates will be replaced by electronic warranty certificates and other issues not referred to in current legal texts that do not meet the standards for providing protection for the electronic consumer in light of the necessity of shifting towards the digital economy<sup>27</sup>.

Based on the above, the specificity of this technical environment through which contracting takes place makes traditional means of protecting the consumer, such as the rules for defects of will and ensuring hidden defects, limited to achieving the goal of protection and achieving the required balance in the relationship between contractors, so it is necessary for the legislator to intervene by establishing legal mechanisms to protect Consumer and prevent harm<sup>28</sup>.

### **Second: Transparency and trust in contracts that include artificial intelligence**

Consumers' reliance on AI systems in contracts can pose particular challenges. In order for consumers to make sound decisions and understand the potential risks they face, some transparency must be ensured in contracts involving AI. AI systems often operate in complex and ambiguous ways, making it difficult for consumers to fully understand how they work and their implications. One of the most important keys to ensuring transparency is the disclosure requirement. AI professionals should be required to provide clear and accurate information about the operation of their AI systems, including information about the algorithms used, input data, and decision-making processes<sup>29</sup>.

Furthermore, standards should be established to define and explain contractual rules related to AI. Contracts should include specific clauses governing the use of AI, including rights and obligations related to use, liability for damages caused by AI, and dispute resolution. They should also specify the perpetrator's liability for damage caused by the AI system and what remedies are available to consumers. In this context, trust is also an essential element in contracts that include artificial intelligence, and consumers must trust that the artificial intelligence system respects their rights and ensures their safety, and this is reinforced by specific contractual guarantees such as data privacy guarantees, security guarantees, and guarantees of compliance with consumer protection regulations<sup>30</sup>.

### **Third: Consumer awareness and education**

It has become necessary to educate and inform consumers about the risks that artificial intelligence can pose, especially with regard to managing the confidentiality of personal data, understanding the limitations imposed on algorithms and decision-making systems, and the reliability of the resulting results. Attributed awareness will enable consumers to realize the potential consequences and make informed decisions when asking questions or interacting with artificial intelligence systems. This will contribute to the use of these technologies in an informed manner and will help reduce the potential risks from this system<sup>31</sup>.

To ensure effective consumer awareness and education, a series of steps must be followed, such as developing awareness and education programs that specifically target consumers, taking into account their needs and interests. These programs may include communication campaigns and the dissemination of information materials about risks and good practices, in addition to organizing seminars, workshops and conferences that reduce the potential risks to which the application of artificial intelligence technologies may be exposed. These initiatives must be available and directed to a wide audience to reach all types of consumers regardless of their previous level of knowledge<sup>32</sup>.

## Conclusion:

At the conclusion of the study, we concluded that traditional civil liability rules based on error, damage, and causality are no longer sufficient to confront artificial intelligence technologies, and it is difficult to determine the responsibility of the perpetrator or prove error in the intelligent system, which weakens the effectiveness of the traditional model of legal accountability.

Based on the above, we will present some findings and suggest recommendations that can help us bridge the legal gaps:

### First: Results

- Current legislation, such as civil law or consumer protection law, is insufficient to address the challenges posed by contracts involving intelligent agents, as AI systems can operate autonomously without direct human intervention, raising the issue of liability for damages caused by these technical factors.

- The emergence of alternative models of legal accountability to artificial intelligence technologies, such as joint liability, the human representative theory, and the adoption of compulsory insurance and compensation funds, all constitute legal mechanisms to redress harm to the consumer without compromising technical and technological development.

- The need to provide adequate protection for consumers in the face of challenges arising from the use of artificial intelligence technologies.

### Second: Recommendations

- Reviewing Algerian legislation by including artificial intelligence in specific texts, specifying the liability that arises when it is used in the event of damage.

- The need for international cooperation through concluding bilateral or multilateral agreements to harmonize their national laws and enhance the harmonization of rules applied to the use of artificial intelligence in contracts. This may include the exchange of information, discussions among experts, and joint efforts to establish common standards.

- Promote awareness and training on legal issues related to artificial intelligence in contracts at the international level by intensifying efforts and exchanging experiences between countries to help guide legislators and policy makers in developing appropriate rules and policies.

- Companies developing artificial intelligence systems must adopt ethical practices by achieving transparency, fairness, and respect for data privacy related to consumer protection.

- The need to provide effective accountability mechanisms for companies using artificial intelligence and apply appropriate penalties in the event of violating consumer rights.

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