

Civil liability and Criminal liability of Public Notary through comparative legislation s Algeria –UK-USA

المسؤولية المدنية والمسؤولية الجنائية للموثق من خلال التشريعات المقارنة

الجزائر – المملكة المتحدة – الولايات المتحدة الأمريكية

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الملخص:

ساهمت التطورات الاجتماعية والاقتصادية والثقافية في زيادة الوعي القانوني لدى الأفراد، الذين أصبحوا حريصين على حماية أموالهم وحقوقهم بشتى الوسائل القانونية، ولعل من أهمها توثيق مختلف معاملاتهم. وقد كان للتطور الذي عرفته مهنة التوثيق دورا مهما في الاهتمام بالمسؤولية المدنية والجنائية الناجمة عن ممارسة المهنة، التي أضحت أكثر تعقيدا من ذي قبل، نظرا لزيادة أعباء ومكانة الموثق ودوره في نشر ثقافة العدالة الوقائية من جهة.

ومن جهة ثانية لتمتع محرراته بالقوة التنفيذية والرسمية، ولزيادة وتشابك مسؤولياته، الأمر الذي جعل تحقيق أهدافه من رسمية للعقود وإنشاء عقود فاعلة، رهين بمدى احترام الموثق لالتزاماته المهنية القانونية والعقدية عند تحريره للعقود في شتى مراحلها، وفي هذا الشأن أثارت مسؤولية الموثق العديد من التساؤلات حول مدى كفاية القواعد العامة في المسؤولية المدنية والجنائية من حماية المتضررين من خطئه، وهو ما نسعى إلى التطرق إليه من خلال تحديد كل من المسؤولية المدنية والجنائية للموثق، مع تبيان الالتزامات المهنية للموثق ومسؤوليته عن الضرر الذي يمس العملاء أو أطراف ثالثة، وهذا في إطار دراسة مقارنة مع التشريع البريطاني والأمريكي.

الكلمات المفتاحية: الموثق –الالتزامات المهنية –القانون رقم 06-02 المتضمن تنظيم مهنة التوثيق –المسؤولية المدنية والجزائية –كاتب العدل البريطاني –كاتب العدل الأمريكي.

Abstract:

Social, economic and cultural developments have contributed to increasing the legal awareness of individuals, who have become keen to protect their money and their rights by various legal means, including referring to the notary.

The development of the notary profession has played an important role in paying attention to the civil and criminal liability resulting from the practice of the profession, which has become more complex than before, due to the increase in the burdens and status of the notary and his role in spreading the culture of preventive justice on the one hand.

On the other hand, because his editors enjoy the executive and official power, and to

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increase and intertwine his responsibilities, which made the achievement of his goals of formal contracts and the creation of effective contracts dependent on the extent to which the notary respects his legal and contractual professional obligations when drafting contracts in its various stages, and in this regard the responsibility of the notary raised many questions about The adequacy of the general rules in civil and criminal liability in protecting those affected by his mistake, which is what we seek to address by defining both the civil and criminal liability of the notary, with an indication of the professional obligations of the notary and his responsibility for damage affecting clients or third parties, and this is within the framework of a comparative study With British and American legislation.

Key words: the notary publique-professional notary obligations-civil liability-criminal liability-law n°06-02 of february20, 2006regulating the profession of notary-the american notary- the british notary.

Introduction:

In exercising his powers regulated by law, the public notary public fulfils a very important social function, his activity being found in most areas of real life, from the purchase of property to inheritance division. The notary must show confidence, professionalism, probity and efficiency. All these attributes have as foundation professional impartiality a high level of legal training and the status of agent invested with the state authority a status that makes him a guarantor of the documents authenticity and lawfulness.

When the notary drafts and authenticates the documents, he must advise the parties as regards the pursuant legal consequence. he must ensure a balance between the parties' interests, permanently focusing on meeting the intended purpose which should be exclusively located within the boundaries of law or morality. At the moment of document's signing, the notary must ensure that the parties have understood exactly the content of the document, that they have discernment and their will is free and unaltered.

The publique notary exercises his attributes as a liberal profession and his contributes significantly to the efficiency and reliability of services provided access to this profession requires extensive specialist trainee ship and an objective selection mechanism under the supervision of the Ministry of justice. Notaries are required to constantly update their knowledge by means of professional training.

The Algerian legislator define notary in article three from the law N°06-02 of February 20,2006 regulating the profession¹ of notary state that the notary public officer authorized by the public authority is responsible for writing the contracts in which the law requires the official authenticates, as well as the contracts that people want to give this authenticates beside this this law aims to lay down general rules for the notary's profession and define how to organize and practice it according to the first article of this law .

The problematic:

How Algerian legislator regulating the profession of notary through the law number **06-02** relating the profession of notary? **what is the civil liability and criminal liability of notary public in case violation their obligations and redaction their contracts through comparative legislations?**

Methodology used:

This study will employ the comparative descriptive analytical approach, where the concept of the notary and its obligations in the **Algerian legislation** is addressed, and the important role of the notary in the legal system is demonstrated through the performance of a variety of official acts, such as ratification of documents, witnessing the signing of legal instruments, and then describing the historical development of the concept in both England and the United States of America,

In addition to analyzing the obligations of notaries to strict rules and regulations. and hold them liable if they make a mistake or engage in misconduct, for any damages arising from their actions.

Which can take the form of civil and criminal liability, which we will compare according to the specific laws and regulations surrounding this liability by each of the three countries.

General division of the study:

1-Tilte I: definition of notary public through Algerian legislations.

2-Tilte I: The Historical development of Notary profession in England.

3-Tilte I: The definition of notary public through United States legislation.

4-Tilte I: Civil liability and Criminal liability of Notary public.

5-Tilte I: Civil liability and Criminal liability of Notary public.

1-Tilte I: definition of notary public through Algerian legislations.

1.1- First Subtitle: Algerian legislations.

The Algerian legislator define notary in article **three** from the law **N°06-02** of February **20,2006** regulating the profession² of notary state that the notary public officer authorized by the public authority is responsible for writing the contracts in which the law requires the official authenticates, as well as the contracts that people want to give this authenticates beside this this law aims to lay down general rules for the notary's profession and define how to organize and practice it according to the first article of this law.

The purpose of the law **N°06-02** regulating the profession of notary lay down general rules for the notary's profession and define how to organize and practice it according to the first article of this law, in addition the Algerian legislator allow notary for opining notary offices to which the provisions of this law and the applicable legislation apply, and their territorial jurisdiction extends to the entire national territory, public notary offices shall be established and cancelled according to objective criteria, according to a decision by the minister of justice and governor seals³ The notary is a personnel invested with a mission of public authority who prepares contracts in the authentic form on behalf of his clients. He exercises his functions in a liberal framework, the notary acts on behalf of the State and is appointed by the Minister of Justice according to Algerian legislator⁴.

Currently to qualify as notary public in Algeria according to article **05** from the previous law the conditions for joining the profession and how to practice it.

The Ministry of justice organizing a competition to join the training to obtain a certificate of professional competence for Notary after consulting the National Chamber of

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Notaries⁵ in this regard ,the conditions and modalities of application of this article by regulation.

There are conditions must the candidate reach it according to article **06** from the previous law those conditions are:

-Algerian nationality- Have bachelor's degree in law-at least **25** old-have civil and political rights-have good health conditions physical in order practice- It must be good behavior and morals as well as not to be a judicial precedent or a verdict of a misdemeanor that violates morals as well as not to be convicted of a felony the profession other conditions and how to apply this article are determined by regulation⁶.

The candidate when he or she pass this competition the written exam and oral exam she or he went to especial center for **2** months and pass another exam according to article **07** from the previous law she or he consider as winner of certificate of professional and training notary where they swear (take the oath) that they perform their duties in earnest and sincerity and kept the secrets of the profession.

Every public notary is assigned a public office for notarial studies that he or she manages for his or her account and under his or her responsibility and it can run in the form of a professional civil company or group offices⁷.

According to law N°**06-02** The notary is protected by the force of law from any physical or verbal threats during the performance of his duties, and no one can search his office or seize documents or contracts except on the basis of a judicial order authorized by the public prosecutor to inspect the office and in the presence of a member of the National Chamber of Notaries⁸any procedure that violates the provisions of article 04 shall be subject to nullity.

1.2- Second Subtitle: The mission of Notary and their obligations toward clients.

The notary is independent: with regard to his clients, but also vis-à-vis public administrations. To guarantee this independence, he is subject to a fixed rate, determined by law, and from which he cannot deviate: he cannot ask for more, but neither can he grant a reduction.

He must remain impartial: even if he is appointed by one of the parties, he must remain completely neutral.

The notary is bound by professional secrecy: he cannot reveal to a third party what has been entrusted to him under the seal of this secret. Thus, he will not be able to reveal to you if your aunt has drawn up a will, or if your wife wishes to revoke a donation between spouses⁹.

What does a notary do?

Notarial a acts: The main activity of notaries is the realization of notarial acts: in an act, the notary authenticates the agreements: this means that he will give them a particular force (probative force and enforceability)¹⁰.

The development of a notarial act is complex: First of all, the notary receives the private individuals who consult him, gives opinions and suggests solutions, guides the parties in their choice, analyzes with them the civil and fiscal consequences of the different solutions, and estimates the costs inherent in the transaction¹¹.

-When the parties have made their decision, it collects the information and collects the necessary administrative information.

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- The notary will draw up the deeds and send the draft to the parties.
- The notary receives the documents by reading and explaining them to the parties, certifying their additional declarations and collecting their signature before signing it himself.
- By receiving the documents, he will engage his responsibility.
- He will ensure the completion of subsequent formalities (such as registration, registration in the Central Register of wills or marriage contracts, etc.
- He keeps the acts in his study.

Agreements under private signature:

A notarial act is not always necessary. Sometimes, at the request of the parties, the notary writes a document that he does not sign himself: for example, a simple contract for the loan of money between individuals. It will then be an act under private signature, which does not offer the same guarantees as a notarial act. However, it will not be subject to the same formalities, and will not entail the same costs.

Estate liquidations:

the liquidation of an estate is traditionally entrusted to notaries. He will receive the authentic wills; will often be consulted for the establishment of the holograph will, which will generally be entrusted to him until death. He will contact the heirs, provide the information relating to acceptance or renunciation, ensure that the heirs can take possession of the property, proceed to the division of the estate and take care of the tax declaration. Sometimes the heirs entrust him with other tasks, such as paying various invoices, collecting rents, selling furniture, appraising property.

Consultations and opinions:

Notaries can give consultations or opinions without necessarily having to draw up an act or agreement. As specialists in family law, notaries can give informed opinions, possibly requiring research, and for a fee¹².

Notaries may have other activities for example:

- Real estate negotiation: this is a traditional activity of notaries, but, in Brussels, it is often entrusted to real estate agencies.
- Real estate appraisals: for example, in the context of the sale of the building or in the context of the estate tax declaration.
- Signature certifications: the notary will be able to certify the signatures of the people who sign any document in his presence. It is this activity that is recognized by "notary public" under Anglo-Saxon law.
- Asset management, with, for example, rental and rental management Mediation and conflict prevention, mainly in family matters.

The notarial attaches the highest importance to ethics. The notary must refrain from any behavior which undermines the confidence of citizens in the notarial institution or which is contrary to the dignity of the notary. A whole series of ethical rules have thus been established by regulation¹³.

Each public notary is assigned a public office of documentation that runs it for its own account and under its responsibility and that it can run in the form of a professional civil

company or group offices. The notary office must be subject to special conditions and standards¹⁴.

The notary shall preserve the contracts he writes or receives for deposit and ensures the implementation of the procedures stipulated by law, particularly the registration, announcement, publication and publication of contracts within the specified deadlines, and also archives the archiving and its management in accordance with the terms and conditions determined by regulation¹⁵.

Another role according Article 11 stipulates that the notary shall, within the conditions stipulated in the law, deliver executive copies of the contracts he makes or ordinary copies thereof, extracts and contracts whose origin is not preserved¹⁶.

The notary public is obliged with professional secrecy, before it is permissible to publish or disclose any information except with the permission of the parties or the requirements or exemptions stipulated in the applicable laws and regulations¹⁷.

1.3- Second Subtitle: Cases where the law prohibits the notary with the following acts.

The notary may not refrain from writing any contract he is required of unless the contract to be released is in violation of applicable laws and regulations¹⁸. The notary may not receive a contract that:

In it shall be a party concerned, representative or authorized in any capacity. Includes measures for its benefit.

- It means or has an agent, conductor or any other capacity that was:
- One of his relatives or in-laws in relation to the pedigree to the fourth degree
- One of his relatives or in-laws related to him is related to the footnotes, and includes the uncle, nephew and nephew¹⁹.

The notary public is prohibited, either by himself or by persons directly or indirectly:

- Carrying out a commercial or banking operation, and in general, every banking operation.
- Interfering with the management of any company.
- Carry out speculation related to acquiring real estate, reselling it, transferring debts, inheritance rights, industrial or commercial shares, or other moral rights.
- Benefiting from any process he participates in.
- The use of pseudonyms, regardless of circumstances, even in relation to relation other than the operations and behaviors mentioned above.
- Practicing the profession of brokerage or business agent by his wife.

Allow his aides to enter into contracts he receives without a written power of attorney²⁰

1.4- Second Subtitle: Cases of inconsistency or combination between the profession of notary and other profession.

The Algerian legislator forbid and warned him to combined between two professions at the same time and the reason for that it is because the notary as profession needs more focus on it and concentrate in formations of contracts and the point of it the notary when do two job

he will be banned and excluded from the profession of notary according to article number 25 from the previous law.

According to Article 20 states that it is incompatible with:

- Membership in Parliament.
- Chairing one of the elected local popular councils.
- Every public or subordinate position.
- Every profession is liberal or private.

Beside to those cases incompatible with notary professions the notary will be punished and penalized according to penal law²¹ The notary elected to membership of Parliament or to the chairperson of an elected local people's assembly shall inform the relevant regional chamber stipulated in Article 46 of this law within a period not exceeding one month from the date of commencement of his tenure²² Except for the case of the concerned notary belonging to a professional civil company, the provincial chamber appoints a notary public to replace him from the jurisdiction of the same judicial council that handles the discharge of current affairs.

1.5- Second Subtitle: Forms and contents of notarial contracts.

The notarial contracts at the risk of nullity in the Arabic language are never written in one clear and easy-to-read text without abbreviation, white or shortage, the amounts, year and month of the contract are written in letters. Other dates are written in numbers²³.

Referrals are authenticated in the margin or at the bottom of the pages, and the number of words crossed out in the contract is signed by initials by the notary and the parties, and when necessary, witnesses and translators²⁴.

Article 27 states that the contracts shall not include any alteration, writing between the lines, or adding words.

Modified or written words between the lines are considered invalid. The undisputed words written in their number shall be written in a manner without any doubt or endorsement at the end of the contract.

The aim of this article is to warn the notary that he is under the law's microscope if he or she does not consider his good intentions, so he directly adapts this act as falsification in official documents and the Algerian Penal Code in its article 214 punishes jail for entire life.

Article 28 states the following: "Contracts that a notary public holds shall be under his responsibility, whether they are written by hand, and typewriter, printed or reproduced by the apparatus and by any other means.

Article 29 Without prejudice to the data required by some texts, in particular, the contract drawn up by the notary must include the following data:

- The name and surname of the notary.
- The name, surname, title, nationality, date and place of birth of the parties, and their nationality.
- The name, surname, title, home, date and place of birth of the witnesses, as appropriate.
- Name, surname and domicile of the translator, if necessary. Determine its subject.

- The place, year, month and day when the contract was concluded.
- Approved party agencies that must be attached to the original.
- Notice that the notary reads to the parties the tax texts and the applicable legislation.
- Sign parties, witnesses, notary and translator when necessary.

2-Tilte I: definition of notary through United Kingdom legislations.

2.1- First Subtitle The historical development of Notary profession in England

After the passage of Ecclesiastical licenses Act **1533**²⁵, which a direct result of the reformation in England, all notary appointment were issued directly through the court of faculties. The court of faculties is attached to the office of the Archbishop of Canterbury.

In England and Wales there are two main classes of notaries' general notaries and scrivener notaries. Their functions are almost identical. All notaries like solicitors, Barristers, legal executives, costs lawyers and licensed conveyances are also commissioners for oaths. They acquire the same power as solicitors and other law practitioners with the exception of the right to represent others before the courts unless also members of the bar or admitted ones are also solicitors and usually practice as solicitors.

Commissioners of oaths are able to undertake the bulk of routine domestic attestation work within the UK. Many documents including signatures for normal property transaction do not need professional attestation of signature at all a lay witness being sufficient.

In practice the need for notaries in purely English legal matters is very small for example they are not involved in normal property transactions. Since a great many solicitors also perform the function of commissioners for oaths and can witness routine declaration (all are qualified to do so but not all offer the service) most work performed by notaries relates to international matters in some way. They witness or authenticate documents to be used aboard many English notaries have strong foreign language skills and often a foreign legal qualification.

The work of notaries and solicitors in England is separate although most notaries are solicitors. The Notaries society²⁶ gives the number of notaries in England and Wales as about **1.000** all but seventy of whom are solicitors.

Scrivener notaries get their name from the Scriveners Company until **1999** when they lost this monopoly, they were the only notaries permitted to practice in the city of London they used not to have to first qualify as solicitors but they had knowledge of foreign laws and languages²⁷.

Currently to qualify as a notary public in England and wales it is necessary to have earned law degree or qualified as a solicitor or barrister in the past five years, and then to take a two-year distance learning course styled the postgraduate diploma in notarial practice. At the same time any applicant must also gain practical experience. The few who go on to become scrivener notaries require further study of two foreign languages and foreign law and two-year mentorship under an active scrivener notary.

The other notaries in England are either ecclesiastical notaries whose functions are limited to the affairs of the church of England or other qualified persons who are not trained

as solicitors or barristers but satisfy the master of the faculties of the Archbishop of Canterbury that they possess an adequate understanding of the law .Both the latter two categories are required to pass examinations set by master of faculties²⁸ .

2.2- First Subtitle: The Notarial Profession in United Kingdom.

Notaries represent the oldest and smallest branch of the legal profession in England & Wales. (Notaries in Scotland are regulated separately like the other Scottish legal professions). Some legal work is reserved to the various legal professions. The Legal Services Act **2007** lists these as:

- the exercise of a right of audience (in Courts).
- the conduct of litigation.
- reserved instrument activities (the legal side of convincing).
- probate activities.
- notarial activities.
- the administration of oaths.

The Notarial Profession in England and Wales:

A notary is defined by what he is and what he does. A notary is a qualified lawyer whose task it is to authenticate documents and transactions so that they can be effective in countries outside England & Wales²⁹ .

Until **1533** notaries were appointed on papal authority by the Archbishop of Canterbury³⁰ . Following the break from Rome, appointments continued to be made by the Archbishop of Canterbury - but on the authority of the Crown. The archbishop's jurisdiction was, and is, exercised through one of the oldest of the English courts - the Court of Faculties, now physically located at the Precinct adjoining Westminster Abbey in London. The Court is presided over by the Master of the Faculties who is the most senior ecclesiastical judge and commonly also a judge of the Supreme Court. Since 1801 the appointment and regulation of notaries has been underpinned by statutes enacted by Parliament.

The qualification, appointment and regulation of notaries:

The current machinery for the education and appointment of notaries is established under rules made by the Master of the Faculties under powers given to him by the Courts and Legal Services Act **1990**. Applicants will generally hold a university degree, or be qualified as solicitors or barristers. All applicants must also obtain a Diploma in Notarial Practice after following a course of study prescribed by the rules and currently offered by the University of London. Once the Diploma is obtained, an applicant may petition the Court of Faculties for a 'Faculty' - a formal warrant under the seal of the Archbishop of Canterbury confirming their appointment as a Notary Public and enabling them to practice as a Notary Public subject to supervision by an experienced Notary for the first two years.

A notary may take additional qualifications in foreign law (as prescribed by the rules) and may then apply to become a freeman of the Worshipful Company of Scriveners (one of the City of London livery companies) which carries the right to practice as a Scrivener Notary.

Once appointed, a Notary Public is subject to the rules and disciplinary control exercised by the Master through the Court of Faculties. Scrivener Notaries are subject also to regulation by the Worshipful Company of Scriveners.

The organization of notaries in United Kingdom:

There are approximately **775** notaries in England and Wales. Of these, about **725** are members of the Notaries Society - the membership body which represents the interests of notaries. The work of the Notaries Society is wide ranging but includes education, international representation and the development of professional standards. The Society is run by a Council of **15** members headed by the President and employs a secretary to run the organization.

The Secretary is Mr. C.J. Vaughan and may be contacted at Old Church Chambers **23** Sand hill Road St James Northampton **NN5 5LH**.

Throughout England and Wales, all, save about 150 notaries, are also qualified as solicitors. A further **30** Scrivener notaries belong to the Society of Scrivener Notaries³¹. Within England and Wales, a Notary Public is authorized to carry out all legal work other than the conduct of litigation. The authority of a notary is derived both from statute and from the faculty granted to the notary by the Court of Faculties. The faculty enables a notary to perform notarial acts in the public (or authentic) form recognized in civil law jurisdictions as well as in the private form which is accepted in England and Wales and other common law jurisdictions. A notarial Faculty states that full force and effect should be given to all instruments (including acts in both the public or private form) made by a notary. Notaries who are also solicitors carry out most of this domestic work (including litigation) in their capacity as solicitors and are subject to regulation by the Solicitors Regulation Authority.

This introduction to the notarial profession is not the place for a detailed study of notarial work. However, there are distinctive aspects which formally emphasize the authority of notarial acts³².

Until the eighteenth-century notaries would authenticate their acts with an individual sign³³ - often extremely elaborate. At the same time the government and corporations authenticated their transactions under seal. Governments still use seals for important transactions, and their regular use by companies is only now going out of fashion. The use of seals to authenticate 'deeds' was the normal way of establishing their validity in the courts. Gradually, notaries adopted seals in substitution for their signs and by the nineteenth century it had become established that any notarial act should be attested by a notary's signature supported by his individual seal. All Notaries Public now have such a distinctive seal - often illustrated with professional or historical signs. In addition, notarial acts are prepared in established forms which can easily be understood and recognized wherever they are produced, and which may, in many jurisdictions, carry significant weight in courts and registries. Just as Notaries certify documents and transactions so they in turn are certified by the legalization process which is described elsewhere.

Members of the Notaries Society may also incorporate the badge of the society, in their documents and stationery.

Where a notarial act is for use overseas, it is commonly a requirement that a notary's execution of the act is further attested by HM Government through the Foreign and Commonwealth Office who will attach to the document an 'Apostille' or certificate confirming the authenticity of the notary's signature and seal - both of which are registered with the Foreign and Commonwealth Office. The process is called '**legalization**'. Some countries require further authentication by the consulate of the receiving jurisdiction.

Functions:

One of the most frequent notarial functions is the attestation or authentication of powers of attorney for use abroad. Many foreign legal systems require powers of attorney to be executed before a notary³⁴.

A Notary Public may also be called upon to certify the proper execution or signing of any sort of document that is to be used overseas and, if required, to confirm that it is binding in English law. After identifying the person or persons concerned and the substance of any fact or event, he may issue a certificate confirming such fact or event. This is frequently useful in relation to immigration or emigration matters or issues relating to status, marriage divorce or adoption and many like matters³⁵.

Other functions include the completion of documentation for the registration of a company in different parts of the Commonwealth or overseas and sometimes for the entry of a person to overseas territories.

The administration of oaths has always been an important function of the notary. We can sum up the most roles of British notary:

-Attesting the signature and execution of documents-Authenticating the execution of documents-authenticating the contents of documents-Administration of oaths and declarations-drawing up or noting(and extending)protests of happenings to ships-crews and cargoes-presenting bill of exchange for acceptance and payment noting and protesting bills in cases of dishonor and preparing acts of honors-attending upon the drawing up of bonds-drawing mercantile documents ,deeds, sales or purchases of property and wills in English and (via translation) in foreign languages for use in Britain, the commonwealth and other foreign countries-providing documents to deal with the administration of the estate of people who are abroad or own property abroad.-Authenticating personal documents and information for immigration or emigration purposes or to apply to marry ,divorce, adopt children or to work aboard-verification of translations from foreign languages to English and vice versa-taking evidence in England and wales as a commissioner for oaths for foreign courts-provision of notarial copies-preparing and witnessing powers of attorney, corporate records, contracts for use in Britain or overseas-Authenticating company and business document and transaction-International internet Domain name transfers.

3-Tilte I: The definition of notary public through United States legislation

We know that every state had their own laws and regulations we can mention some states such as New York³⁶ and Pennsylvania and South Carolina and Washington as examples, A Notary Public (“**notary**”) is a state government official of integrity appointed by a top official of their state, to serve the public as a witness in performing a variety of official fraud-deterrent acts related to the signing of important documents. Notaries derive their authority from their state governments. A notary’s duty is to screen the signers of important documents for their true identity, their willingness to sign without duress or intimidation, and their awareness of the contents of the document of transaction. Some notarizations require the notary to put the signer under an oath, declaring under penalty of perjury that the information being signed on is true and accurate. Powers of attorney, affidavits, wills, and mortgages are common notarized documents. Unlike notaries in foreign countries, a U.S. notary is not an

attorney, judge or high ranking official. Notaries should be very clear, especially when dealing with foreigners to steer clear of any misconceptions as to their role as a U.S. notary, which is not the same role notaries play in foreign countries

3.1- First Subtitle: Definition of notary and their legal farm in America.

In the United States a notary is person appointed by a state government (example the governor lieutenant governor³⁷, state secretary or in some cases the state legislature) and whose primary role is to serve the public as an impartial witness when important documents are signed. Since the notary is a stat officer, notary duties may vary widely from state to state and in most cases bars a notary from acting outside their home state unless they also have a commission there as well.

In **32** states the main requirements are fill out form and pay fee many states have restrictions concerning notaries with criminal history, but the requirement vary from state to state, Notaries in**18** states and the district of Columbia are required to take a course, pass an exam or both the education or exam requirements in Delaware and Kansas only apply to notaries who will perform electronic notarizations.

A notary is almost always permitted to notarize a document anywhere in the state where their commission is issued. Some states simply issue a commission at large meaning no indication is made as to from what county the person's commission was issued, but some states do require the notary include the county of issue of their commission as part of the jurat³⁸ or where seals are required to indicate the county of issue of their commission on the seal. Merely because a state requires indicating the county where the commission was issued does not necessarily mean that the notary is restricted to notarizing documents in that county although some states may impose this as requirement.

Notaries in the United States are much less closely regulated than notaries in most common law countries typically because U.S notaries have little legal authority. In the United States a lay may not offer legal advice or prepare documents except Louisiana and Puerto rico and most cases can not recommend how a person should sign a document or what type of notarization is necessary there are some exceptions form example Florida notaries may take affidavits draft inventories of safe deposit boxes draft protests for payment of dishonored checks and promissory notes and solemnize marriages in most states a notary can also certify or attest a cope or facsimile.

The most common notarial act in the United States is the taking acknowledgement and oath³⁹ many professions may require a person to double as a notary public.

4-Tilte I: Civil liability and Criminal liability of Notary public.

4.1- First Subtitle: Algeria case.

The legal responsibility of the notary is divided between civil, criminal and disciplinary responsibility, and this is what we will study below:

1-The civil liability:

Liability is defined as compensation arising from the harmful act of a person and is called civil responsibility as a distinction from criminal responsibility. They differ in several ways, including a basic principle which is the principle of personal punishment and crime, so the perpetrator is the only responsible while we find not others sometimes in relation to civil

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liability. Where can someone be held accountable other than the one from whom the harmful act was issued, such as the case of the responsibility of the person responsible for the actions of his subordinate⁴⁰ The importance of civil liability is evident in enabling the injured person to receive compensation for reparations for him in connection with the performance of his duties by the notary However, talking about the civil responsibility of the notary is beset by many difficulties, mainly due to the special nature of the notary's profession, as the Algerian legislator considered him a public official authorized by the public authority⁴¹ On the other hand, the profession of notary is considered a free profession that he practices on his own account and in line with his responsibility⁴² It is well known that civil liability is divided into two parts, contractual responsibility and tort liability The former is the result of a breach of a contractual obligation, and the second is the result of a breach of a legal obligation Given the importance of distinguishing between contractual responsibility and default liability and its consequences in terms of proving error, exemption, payment of responsibility and solidarity between the debtor, and in how to estimate the compensation that is limited in the first to the expected damages, or could be expected at the time of the contract if there was no fraud or error from the debtor, and the second covers every damage Expected or unexpected regardless of the official's bad faith⁴³ Therefore, a juristic dispute was found regarding determining the nature of the civil responsibility of the notary and the reason for this dispute is due to the silence of the law regulating the profession of notary regarding the determination of the responsibility of the notary, which resulted in difficulty in adapting it.

It is agreed that every person who is a civilian is responsible for the mistakes he commits while performing his duties and causes harm to others, but the dispute over its nature may cause the binder if he performs his job a mistake that causes harm to a customer and here the question arises about the provisions of the responsibility that the notary is asked in light of whether it is contractual or default?

The extent of the contractual responsibility of the notary:

For the contractual responsibility of the notary public to exist, a valid contract is required between him and the customer, and it results from a breach of the obligations arising from it, a damage that affects his client in the interest of his interests, but in the absence of a previous contract between them, then there is scope to talk about contractual responsibility, but rather we have a tort liability⁴⁴ According to the foregoing, if the contractual link is available between the notary and the customer, the relationship of the two parties is contractual, and the breach of the obligations arising from the contract will result in the annulment of the contract and the return of the contractors to the state they were in before the contract with the claim of the injured party for compensation, A juristic controversy has arisen over the issue of the notary's relationship with the customer, whereby the jurisprudence has gone to deny this contractual relationship in the first place, while the other jurisprudential trend has gone to confirm this contractual relationship between the notary and his client.

The first idiosyncratic trend negates the contractual relationship because of the following arguments:

- The duty to provide the service by a notary public, as the latter is considered a public officer obligated to provide his services⁴⁵.

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- Legal determination of notary fees : According to Article 07 of Executive Decree **No. 08-243** that determines the notary's fees, the notary must deliver to the parties a detailed receipt of the service showing the various calculations that he performed even if the customer did not request the invoice and according to Article 09 of the previous decree, it is forbidden for the clerk to obtain, in the performance of fees, fees other than those stipulated in the official tariff for services , Pursuant to the provisions of the advanced texts, the notary has no freedom to determine his fees and he is not permitted to demand the customer for fees that are not specified by law.

Legal determination of notary obligations:

Law No. 06-02 containing the regulation of the legal profession specifies a set of obligations for the notary, and through these obligations, there is no room for the will of the notary or the customer in deciding these obligations or excluding them because the law set them in advance and did not leave them to freedom of contract⁴⁶.

The second trend confirms the existence of a contractual relationship between the notary and the customer and is based on the following arguments:

-The commitment of the notary public to perform a service does not negate the existence of the freedom to contract because it is formed immediately after taking the oath, as it is assumed that merely taking the oath is tantamount to accepting the service for the customer. Well, it means responding to the text of Article 08 of Law No. 06-02 which includes organizing the profession of notary.

-The contract linking the notary public with his client is considered a compliance contract like some contracts, such as the insurance contract, the maritime and air transport contract that often includes the duty to perform the service when requested and this offering is the obligation of the notary to provide the service whenever he is required to do so, and that defining the law for his fees does not change who The nature of the service if the customer is not obligated to pay the fees to the notary in his capacity, but rather because he gets a service at his request⁴⁷.

The legal determination of the notary's obligations does not totally negate the idea of the contract, and many are contracts that contain legal provisions of public order, and it is not permissible to agree to violate them.

According to the foregoing, this trend confirms the existence of a contract between the notary and the customer, which is the most correct opinion, And by considering the notary public officer a public official whose task is to inform the contracts he writes within his office, which is a public office established according to objective criteria in the courts, a kind of confusion arises in terms of jurisdiction. For the administrative judiciary, that the notary public officer performs his profession inside a public office?

According to the general rules for lawsuits for liability, jurisdiction belongs to the ordinary judiciary, and this is confirmed indirectly by the state in its decision issued on 11-02-2002 under No. 5680, where it is ruled that the administrative judiciary is not competent to adjudicate the appeal filed in two documents edited by the notary, Likewise, the State Council's decision dated 11-11-2001 in its decision No. 8631 that the administrative judge is not permitted to hear a case related to the annulment of a civil contract and the jurisdiction belongs to the court in which the defendant's notary public office is located.

Tort liability of notary public:

If it is established that the responsibility of the notary public is a contractual responsibility towards his client⁴⁸, then in the event of a fraud or serious error being issued from him, the contractual responsibility of the notary will be transformed into a tort liability in accordance with Article 182⁴⁹ of the Algerian Civil Code where it is understood from the text of the aforementioned article that the debtor when he commits a grave error or fraud It is obligated to compensate for expected and unexpected damage.

Just as a notary may harm his client, his tort liability will be fulfilled unless he finds fraud or serious error according to the above.

Tort liability of others:

The notary uses users and persons it deems necessary to run the office⁵⁰ These agents exercise their duties under the supervision and direction of the notary, where he has effective authority in their supervision and as a result of this he bears responsibility for the damages that they cause by their mistakes during the writing of contracts on the one hand and on the other hand as a responsible official responsible for the work of his assistants who are his followers according to Article 136⁵¹ of the Civil Code except That in order for the notary to be responsible for the harmful actions of his subordinates, the conditions for the responsibility of the subordinate and the subject must be fulfilled, There may be Circumstances that prevent the notary from performing his duties temporarily⁵² Like illness or going on vacation, a deputy is appointed after submitting a vacation request to the regional room for a notary book.

In this case, the notary also bears the mistakes made by his deputy⁵³ Here, it cannot be said that the nature of this tort liability is governed by the responsibility of the follower and the follower for the actions of his follower due to the lack of a dependency relationship between the defected notary and the notary public, the deputy, Because the essence of the procure is not to preserve the material income of the notary but rather the Algerian legislator's keenness on the continuity of the office in providing public services to clients without their interests being disrupted if the original notary absent or a temporary objection has occurred for him due to the public nature of the notary's office, It can be said that the responsibility of the documented recipient in this form is a default responsibility that is due to a breach of a legal obligation that comes from the law.

2-Criminal liability of notary public:

Law No. **06-02** related to the profession of notary did not provide for penal provisions for the notary, with the exception of what is mentioned in Article **53** of the aforementioned law Which states that: "Without prejudice to the criminal and civil liability stipulated in the applicable legislation, the notary public shall be subject to any failure in his professional obligations or on the occasion of its performance of the disciplinary punishments stipulated in this law." It is understood from the text of the article that in order to determine the criminal responsibility of the notary we have only to touch upon the general rules in the penal code.

With reference to Article **09** of Law No. **06-02**, which states: "Every public notary is assigned a public office of the notary who undertakes it for his own account and under his responsibility and may walk in the form of a civil company or grouped offices.

Thus, the provisions applied to the public office run by a notary and the combined offices that do not have a legal personality differ from the provisions applied to civil companies that have a legal personality thus in essence, notary exercise a liberal profession which is not associated with the exercise of public authority and must show a guarantee of safety, legality and independence any breach of professional duties causing damages engages the public notary's liability and he must bear the consequences according to article number **214** from penal code⁵⁴ states that:

Every judge, employee, or public office employee who committed counterfeiting in public or official documents while performing his job is punished with life imprisonment:

- 1 - Either by placing forged signatures,
- 2 - Either by making changes to the documents, lines, or signatures,
- 3 - Either by impersonating or substituting for someone else,
- 4 - Either by writing in the records or other public documents or by changing them after completing or closing them.

Also, the article **215** from penal code state that Article **215**.

Any judge, employee, or public official who, during the liberation of works of his job, has forged the essence or circumstances of fraud by means of fraud, either by writing agreements of contradiction that are written or dictated by the parties, or by his report of facts that he knows are false in the form of true facts or by testifying as false that any facts He may admit it, fall into his presence, drop it or intentionally alter the declarations he received.

5-Tilte I: Civil liability and Criminal liability of Notary public.

5.1- First Subtitle: United Kingdom case.

The legal responsibility of the notary is divided between civil, criminal and disciplinary responsibility, and this is what we will study below:

-The civil liability:

The civil liability of the British public notary arises from their profession being considered a reflection of it. Its regulation is found in the provisions of law 36/1995 on the public notaries activity⁵⁵ supplemented with the provisions of the civil code regarding civil liability in general as for the provisions of **law 36/1995** we note that article 72 sets as a premise the followings:” the civil liability notary can be engaged under civil law for breach of his professional obligations when he caused an injury guilty and in bad faith and this is established by final judgment therefore the conditions for the initiation and the success of the civil action in professional liability are essentially those provided by civil code on-obligations- title 02-Sources of obligations-chapter 08” civil liability” the specific elements which are going to be analyzed in detail in the subsequent sections lie in the professional quality of the offender.

We underline that in the regulation for the application of law **36/1995**⁵⁶ expressed mentions are given as regards the public notary's liability for damages caused by the way he or she exercises his incumbent professional duties furthermore from the beginning of his

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professional activity the public notary has become a member of the civil liability insurance fund which operates within the national union of public notaries according to its statutes, regarding the provision of the civil code in addition to the general ones we note that in article 1258 of the civil code a special hypothesis for the notary's liability is included and it states as follows: "In case of cancellation or finding of nullity of a contract concluded in authentic form a nullifying case whose existence results from the actual wording of the contract the prejudiced party may request remedies from the public notary for the damages in terms of tort for his own deed".

We notice that topographically the cited article is contained in the civil code section dedicated to the principles governing the effects of nullity of the legal act therefore it is admitted the possibility of engaging the notary's liability for injurious consequences produced by the void act, the hypothesis referred to in article 1258 a form of tort liability for the public notary's own deed, and he or she made responsible for the existence of ground for nullity cause arising from the actual content of the contract. The premises of this liability regard the situation of a contract concluded in authentic form made by a notary a contract which is null and void.

In order to engage the public notary's liability on this legal basis the following essential requirements must be fulfilled as regards common law tort liability and the following special conditions must be met:

- 1-The public notary status of the responsible person.
- 2-improper performance of professional duties during a contract (s conclusion or authentication.
- 3- The ground for nullity should result from the actual wording of the contract the notary's liability being engaged only where there is a close connection between this and the notary activity for the instrumentation and authentication of documents.
- 4- The existence of a damage it should be noted that the article refers to the injured party but it is possible that the both sides could be harmed by a contract's nullity which for instance can be partially performed in the same context the retention of an injured part does not necessarily imply guilt of the other party, but does not exclude it either because this article refers to the notary and not to the co-contractor.
- 5- the existence of a final judgment by which it ordered the cancellation or the establishment of the nullity of the contract concluded in authentic form on a nullity because which results from the actual wording of the contract.
- 6- Engaging public notary's liability is left to the choice of the injured party the special feature of the liability mainly takes into account the field of its application and only then the liability mainly takes into account the field of its application and only then the liability will be related to the common law rules laid down by the provisions of article 1357 of civil code therefore the provisions of article 1258 have principle the value of a textual empowerment of the injured party to bring an action against a public notary substantiating this particular form of liability is found in the idea of safeguarding the parties confidence in the notary activity⁵⁷.

- Criminal liability of Notary public:

The criminal responsibility of the notary is committed when committing a felony of forgery in official documents at the British legislator, where the elements of the crime are complete from

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a legal corner and a physical corner and a moral corner represented in the intention and the will where the will of the notary tends to cause forgery where the British Penal Code punishes the notary for life.

Conclusion:

Overall, in all three countries, Public Notary have a civil and criminal liability in case of negligence or fraud in the performance of their duties.

In Algeria, the Civil liability and Criminal liability of a Public Notary is governed by the Notaries Act and the Code of Civil Procedure. Under the law, a notary is responsible for any damages caused by their negligence or fraud in the performance of their duties. They can also be subject to criminal prosecution for certain offenses such as forgery or falsification of documents.

In the UK, the Civil liability and Criminal liability of a Public Notary is governed by the Notaries Act and the Notaries (Qualifications) Order. Notaries are required to be insured against civil liability and can be subject to disciplinary action by the Faculty Office of the Archbishop of Canterbury if they are found to have been negligent or fraudulent in their duties. They can also be subject to criminal prosecution for certain offenses such as forgery or fraud.

In the USA, the Civil liability and Criminal liability of a Public Notary is governed by state law. Each state has its own laws and regulations regarding the responsibilities and liabilities of notaries public. They can be held liable for damages caused by their negligence or fraud in the performance of their duties, and can also be subject to criminal prosecution for certain offenses such as forgery or fraud.

Finally, we can confirm that the Algerian, British and American legislators have stressed the responsibility of the notary public for the seriousness of the actions he takes that affect the rights of individuals and contribute to destabilization, through the imposition of civil penalties and compensation. The penalties are in the form of a fine, and life imprisonment.

Citations:

- 1 -Official Gazette N°14 dated March 08,2006.
- 2- Official Gazette N°14 dated March 08,2006.
- 3 -See article 02 from law N°06-02 regulating the profession of notary.
- 4- See article 03 from law N°06-02 regulating the profession of notary.
- 5 -The duties of the National Council of Notaries have been defined through Executive Decree No. 242-082 on the first of Sha`ban 1429 AH corresponding to 3 August 2008 AD, which specified the conditions for joining the notary profession and its disciplinary system and rules for its organization, as its articles stipulated the following:
The first branch: tasksArticle 25:
The National Council of Notaries takes care of ensuring that the rules of the profession are respected and defined.
In this regard, it is charged, in particular, with the following:
 - Preparing a code of professional ethics,
 - Representing notaries in relation to their common rights and interests,
 - Implementing the decisions taken by the Supreme Council for Documentation,
 - The continuous training of documenters and their users,
 - Organizing forums, conferences and school days.
 - Prevention of any conflict of a professional nature that exists between the regional chambers and the certifiers of the various regions and the pursuit of their reconciliation and separation in case of non-reconciliation by issuing executive decisions,
 - Study the inspection reports and the views of the regional chambers related thereto and take the appropriate decisions thereon.
- 6- Executive Decree No. 18-84 of March 05, 2018 amending and completing Executive Decree No. 08-242 corresponding to August 3, 2008 setting out conditions for admission to the notary's profession, its practice, its disciplinary system and its rules of organization. Official Gazette No. 15 dated March 07, 2018
- 7 -See article 09 from law N°06-02 regulating the profession of notary.
- 8- See article 04 from law N°06-02 regulating the profession of notary.
- 9 -See article 14 from law N°06-02 regulating the profession of notary.
- 10- See article 03 from law N°06-02 regulating the profession of notary.
- 11- See article 13 from law N°06-02 regulating the profession of notary.
- 12 -Article13 from law N°06-02 regulating the profession of notary.
- 13-Code of ethics
Adopted by the general assembly of the National Chamber of Notaries on June 22, 2004 and approved by AR of September 21, 2005 (MB, November 3, 2005), modified by the general assembly of April 22, 2008 and April 23, 2015, approved by AR of May 31, 2016 (MB, July 4, 2016), modified by the general meeting of June 22, 2017, approved by AR of December 21, 2018 (MB, January 23, 2019), and modified by the general meeting of June 28, 2018 , approved by AR of February 3, 2019 (MB, February 19, 2019) see article 1 and 2 and 3.

14 -Article 09 from Law No. 06-02 related to organizing the profession of notary public

15 -Article 10 from Law No. 06-02 related to organizing the profession of notary public

16- Article 11 from Law No. 06-02 related to organizing the profession of notary public

17 -Article 14 from Law No. 06-02 related to organizing the profession of notary public

18 -Article 15 from Law No. 06-02 related to organizing the profession of notary public

19- Article 19 from Law No. 06-02 related to organizing the profession of notary public

20 -Article 22 from Law No. 06-02 related to organizing the profession of notary public

21 -Article 25 from Law No. 06-02 related to organizing the profession of notary public

22 -Article 24 from Law No. 06-02 related to organizing the profession of notary public

23- Article 26 from Law No. 06-02 related to organizing the profession of notary public

24- Article 26 alinéa03 from Law No. 06-02 related to organizing the profession of notary public

25 -**The Ecclesiastical Licences Act 1533 (25 Hen 8 c 21)**, also known as the Act Concerning Peter's Pence and Dispensations, is an Act of the Parliament of England. It was passed by the English Reformation Parliament in the early part of 1534 and outlawed the payment of Peter's Pence and other payments to Rome. The Act remained partly in force in Great Britain at the end of 2010. It is under section III of this Act, that the Archbishop of Canterbury can award a Lambeth degree as an academic degree see The Chronological Table of the Statutes, 1235 - 2010. The Stationery Office. 2011. ISBN 978-0-11-840509-6. Part I.

Page 43, read with pages viii and x.

https://en.wikipedia.org/wiki/Act_Concerning_Peter%27s_Pence_and_Dispensations date 11-06-2020 hour 23.02.

26- The Notaries Society represents most of the 850 Notaries or Notaries Public who practice in England and Wales. The society was founded in 1882 and incorporated in 1907. Since 1553 Notaries have practiced under the authority of the Archbishop of Canterbury they are regulated by the court of faculties one of the oldest courts in England. It is presided over by the most senior ecclesiastical judge who may also be a High court judge. See The Oxford History of the laws of England, Volum1, The canon law Ecclesiastical jurisdiction from 597 to the 1640, R.H. Helmholz, Oxford university press edition 2004, P10

27 -Australia and New Zealand college of notaries, Biennial conference, Notaries –from stones to electrons, chief justice, Robert French, 11-09-2009, Malebourne, P25.

28 -The regulation of notaries was modernized by section 57 of the Courts and legal Services Act 1990.

29 -Michel P. Chany OBE, The modern Notary public in England and Scotland, Guidance for notaries, P70. ARTICLE Published in site:

www.hcourt.gov/assets/publications/speeches/current-justices hour 14.21 date 15-06-2020.

30 -Patrik Zutshi, Notaries public in England in the fourteenth and fifteenth centuries, Oxford university press, 1972, P12.

31- Noel Cox, The Notary public the third arm of the legal profession, Barrister and lecturer in law, Auckland University of Technology, New Zealand business law Quarterly, Article published on gat frees access journal P45.

- 32 -Emonn hall and Erory o’connor, The notary of Ireland law and practice ,Cambridge edition,2018,P53
- 33- State of Maine, Department of the secretary of state, notary public handbook and resource Guide,P75.
- 34 -The Notary,Published in september2012,notaries society,UK,P56
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- 36 -Notary public,License law april2019,New York department of states written by Andrew mcuom governor and Rossana Rosado secretary of stat,P45
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- 38 -A **jurat** is the official written statement by a notary public that they have administered and witnessed an oath or affirmation for an oath of office or on an affidavit that is that a person has sworn to or affirmed the truth of information contained in a document under penalty whether that document is a lengthy deposition or a simple statement on an application form. See Wikipedia hour 21.11 date 12-06-2020
- 39 -**An acknowledgment** is a formal oral declaration before an authorized public office it is made by person executing signing an instrument who states that it was their free act and deed that is the person signed it without undue influence and for the purposes detailed. See oxford dictionary .
- 40 -El koucha youcef, responsibility of bailiff, thesis master in private law, University of mouloud maameri tizi ousou,2013-2014,P03
- 41- See article 03 from law N°06-02 regulating the profession of notary.
- 42 -See article 09 from law N°06-02 regulating the profession of notary.
- 43- Souliman mourkous ,el wafi in the explanation of civil law and harmful act and civil liability,5 edition ,sader edition and publishing,lebenon,1989,P23
- 44 -Article 124 of the Algerian Civil Code stipulates that: `` As a result of a person who commits a wrongdoing and causes harm to others, the person who caused it is obligated to pay compensation. "
- 45-See article 15 from law N°06-02 regulating the profession of notary.
- 46- Kadourin ben cherif hamou,criminal liability of notar public IN Algerain legislation, Thesis magestaire degree,university of moustaganime,2018-2019,P65
- 47 -El koucha youcef,op-cit,P13
- 48-Nour hamouch and laderch haicham, The dual criminal liability of notary public, thesis of magestaire degree in private law ,2017-2018,university of bouira,P120.
- 49- Article 182 from civil code state that:’’ if the compensation is not assessed in the contract or in the law, the judge is the one who appreciates it. The compensation includes the loss of the creditor and the loss he has made, provided that this is a natural result of the failure to fulfill the obligation or the delay in his obligation and the damage is considered a natural result if it is not possible for the creditor to expect him to make Reasonable effort. However, if the obligation comes from the contract, the debtor who did not commit fraud or

gross wrongdoing shall not be obligated except to compensate the damage that was normally expected at the time of the contract."

50 -See article 16 from the law N°06-02 regulating the profession of notary.

51 -Article 136 states that : " The Follower shall be responsible for the damage he causes by his harmful act whenever it is occurring from him in the event that he fulfills his job or because of it or its occasion.

The dependency relationship is achieved even if the follower is not free to choose his follower when the latter works for the follower"

52 -See article 33 from law N°06-02 regulating the profession of notary.

53- See article 34 from law N°06-02 regulating the profession of notary.

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55- Published in official Gazette N°92/16.05.1995 Republished for the first time in the O.G N°732/18.10.2011.

56-Published in the O.G. with number479, on August,1ST,2013, approved by the order of the Ministry of justice N°2333/c of July 24th ,2013

57- C.Zams Annotation to article 1258 in the new civil code, articles annotations, Second edition, revised and annotated, Coordinators F.A .Baias ,E. Chelaru,R .Constantinovi, I.Macovi, C.H beck publishing house,Bucharest,2014,P1396