

# Negligent Civil Liability in Electronic Transactions

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## Abstract

The study dealt with the negligent civil liability in electronic transactions that carry a criminal description, as it concluded that the legislator has criminalized it based on the principle of legality, as they are actions that people make in a digital environment and harm others without constituting information crimes, meaning that they may be pure civil errors without That a legislative text introduces it into the circle of criminalization and punishment, which necessitates an attempt to adapt the various legal acts and actions in the digital environment and project them to the concepts mentioned by the civil law within the framework of civil responsibility to acknowledge the person's civil liability represented in the error that must be proven to avoid failure in the face of technological developments in order not to transform Without exercising the civil liability system for its basic function, which is based on compensation to the person for the harm he inflicts on electronic transactions, taking into account the nature of the digital environment and its privacy in the context of digital transactions.

**Keywords**— declarative civil liability, error, damage, electronic transactions.

## INTRODUCTION

The word responsibility, in its meaning, goes to the point that there is a harmful act that must be taken against whoever did that act, but in addition to this, one may be blamed for merely taking into account his intentions of taking action by himself or refraining from another. The act is based on the perpetration of either of them, and in another situation it is not concerned with that even as easy as possible, but what is counted is the external conduct of what comes from a person, hence the responsibility for what goes in meaning when the harm occurs to others must be compensated for the injured, but not every harm necessarily requires accountability In light of this, it was not easy to define the meaning of responsibility in general, but in what is expressed as the commission of something that requires the perpetrator to be held accountable, legal liability is generally defined as the accountability to which a person is exposed as a result of his committing any negative or positive behavior that results in harm to others, where That the legal effect of establishing the

responsibility of a person or persons is evidenced in relation to the various forms of material sanctions that possess the public authority represented in the judiciary in various forms of its bodies and levels, while it has the power on anyone who breaches one or all of the burdens or duties Selfishness or agreements based on the person's responsibility.

The association of legal responsibility with a material reward is the process of distinguishing between it and its ethical counterpart that results from violating behavioral rules that are not based on legislative texts or bilateral or collective agreements. Where every individual breaks the established moral boundaries subjected to immaterial moral and ethical punishments imposed by society, represented in its collective conscience on the offenders through society's disapproval of the wrong person.

That is, bypassing the breach or violation of the bounds of morals touches a legal rule; This exposes legal accountability associated with material penalties that guarantee their respect and effectiveness, provided that these penalties

differ in their scope according to the type of right attacked, so when the subject of the right is a general assault related to the public interest of a group of individuals, then the criminal responsibility is considered and the penalty is proportional to the nature of this responsibility, such as imprisonment or Financial fines that are paid to the public treasury, as for breaching an individual's personal right; The responsibility entailed is a civil responsibility, represented in obliging the perpetrator of the harmful act to make reparation for the harm caused to the injured, to restore the situation to what it was, if it was in kind, the violation was said, and in exchange for a material payment as a substitute for the right he lost as a result of the assault on him, in embodiment of what is known as the compensatory function of the rules of civil liability .

And since civil responsibility in its traditional form no longer raises fundamental problems, we find that the wide spread witnessed by modern means of communication has resulted in another form of responsibility, which is electronic responsibility or responsibility that results from the electronic transaction process, as the Internet is considered the most important modern method used by individuals. To fulfill their needs, especially in the developed world, because of its importance in the field of implementing contractual obligations, especially in the field of e-commerce, such as delivery, electronic payment, electronic clearing and other contracts that are concluded in the digital environment, which can raise legal problems, through Failure to implement obligations originating from electronic contracts.

Hence, the idea of civil liability is generally based, whether it is contractual or negligent, on three pillars, namely error and damage, and the causal relationship between them, so that if civil liability loses any of these elements, its idea collapses, and there is no place for compensation. Or abstinence is not permissible in the sense that it is a penalty for violating one of the duties entrusted to him, which in turn are either duties that come from the law or duties

imposed by society on the person because he is a being who lives within him.

### **The importance of studying:**

The importance of the study is evident in its novelty and modernity characteristic, as it brings together two temporally separated princes in light of the necessity to subjugate one of them to another, while the electronic transaction is a recent method of emergence in view of the privacy and complexity of the environment in which it takes place, we find that the subject of responsibility Civilization is considered one of the oldest topics addressed by the various old legal systems, and in light of this the importance of the study comes of a special kind as it works to drop old classic rules on modern digital transactions, which led us to choose the topic of "contractual and negligent civil liability in electronic transactions." , To search for its foundations, legal basis and cases of its absence without exposure to the legal effects resulting from it, mainly represented in the forms of judicial compensation, legal and consensual, within the framework of what the nature of the issue of civil liability in light of modernity represented in the means and methods of modern technology, as well as the many problems raised by technological development in Its relationship with traditional laws, especially those related to the subject of responsibility.

### **Objectives of the study:**

This study aimed to define the legal basis for the rules of civil liability within the framework of electronic transactions with regard to both the contractual and default parts, and in a manner that guarantees the right of the aggrieved victim, the victim of a contractual error or the electronic omission, to obtain compensation for the damages he suffered, within the framework of adapting the general rules of civil liability and harmonizing them with the world of Informatics, which makes these rules a factor that supports and encourages electronic transactions without undermining them.

### **the study Problem:**

That in light of the modernity and diversity of the electronic activity, the demand for it was

made by the dealers, whether in relation to the bilateral activity through electronic contracting, or it was unlawful acts practiced through digital spaces that provide a hypothetical field suitable for the process of committing various attacks on funds. The secrets are compared to the available possibility of committing the same acts in the physical and physical space, therefore, in the absence of special legislation that regulates civil liability for that type of newly created electronic transactions, the judge will find himself in the framework of adjudicating disputes resulting from electronic transactions forced to return to the enforcement of the rules. The general set forth in the civil law, in order to ensure that the conditions that are required to eliminate the responsibility of the person who committed the harmful act through the digital space are met, and in light of this the appropriate compensation for that damage is estimated, given that those rules were enacted at a time when they had not appeared. Most of the modern technology, that is, it came to rule the traditional transactions that were concluded in the field of physical physical spaces between people they know between them.

#### **Study questions:**

In light of the study problem, the study begins to answer the following questions:

- 1- How appropriate are the general rules of civil liability to apply to electronic transactions in light of the privacy of these transactions?
- 2- Are the general rules regarding civil liability in general and tort liability in particular, which are based on error and duty of proof, and are applicable to errors committed in the electronic environment?

#### **Study methodology:**

Within the framework of the necessities of addressing the problem of the study and in a manner commensurate with the nature of the subject of the study, the descriptive approach has been relied upon in a survey study to define the various technical and legal terms and concepts related to the subject of the study.

#### **The first topic: tort liability in electronic transactions:**

The importance of negligence resulting from digital dealings that all the legal system's

formators, including legislators, jurists and judges, have become increasingly important in the extent to which the tort liability theory in civil law accommodates the provisions of liability resulting from digital transactions, which is what the jurisprudential and legislative trends in comparative systems around tort liability have gone. As a result of digital transactions, through the introduction of legislation and special rules governing tort liability for electronic transactions, while some legislations went to introduce amendments to the traditional tort liability rules to keep pace with and harmonize the peculiarities that characterize electronic transactions, and other legislation applied classic tort liability rules to electronic transactions without work. The issue of proving the wrongdoing of the act is considered one of the sensitive issues due to the privacy of the digital environment and its difference from the traditional physical environment, which raises the problem of the adequacy of the traditional rules of proof for harmful electronic acts [1].

#### **The first requirement: the default electronic error:**

One of the basic pillars that arranges default responsibility is the existence of error on both sides, whether in relation to traditional or electronic transactions, and even in light of the difference in the basis of the legislation on which responsibility is based, the error and the duty of proof have been considered as the general rule, but the comparative legislation differed in the legal basis that is adopted. Responsible for default; This is due to the historical and ideological backgrounds followed in each country, as we find countries that have responded to the negligence of the error that must be proven, and some of them went to establish the responsibility on the basis of the harmful act, but the modern image regarding responsibility; It is the responsibility without error or what can be known as objective liability, and it is that which merely occurs or achieves damage with its known elements, away from all the subjective factors that relate to the perpetrator of the harmful act, as we find that the emergence of modern technical means

(computers) and linking it to the Internet, which is known as ( Online); Has created and introduced doubts about the ability of the proven error adopted by the legislator, as the perpetrator of the error in most cases is an unknown person. Which raises the problem of the body that is obligated to compensate the damages, in addition to that the issue of proving the wrongdoing of the perpetrator arises as it is one of the sensitive issues due to the privacy of the virtual digital environment, and thus it differs from the traditional physical environment, and this raises the problem of the appropriateness of the traditional rules of proof for actions Harmful electronic, as well as electronic transactions in their scope are no longer limited to the territory of the state, but exceeded legal relations with other individuals belonging to other countries, and in this he went to the establishment of a relationship tainted with a foreign element whose impact extended from a regional to an international scale [2]

The development in computers has produced new and different images of harmful acts such as attacking programs by planting viruses, violating privacy through hacking into individuals' e-mail, attacking corporate databases and other forms of harmful acts in the context of the electronic environment, other than manifestations of error. In its traditional image such as physical assaults, theft of others' money, vandalism of property and other forms of abuse that emerge within the physical, tangible environment, and this raises the question of the extent to which the classical rules regarding the default error are compatible with its newly created images in the electronic environment that is committed in a way unknown before [3 ].

#### **The second requirement: what is the electronic default error:**

Therefore, a problem arises about whether the default error according to the classical view is to be an effective means in the hands of the injured person to fulfill his right from the perpetrator of the harmful act. Therefore, liability for evidentiary error constitutes the general rule and the cornerstone of negligent liability in comparison to responsibility for the

action of others or responsibility for doing things, but in light of the requirement to discriminate in the person responsible for the damage, bearing in mind that discrimination is the moral pillar of error [4].

#### **The third requirement: the concept of electronic error:**

The definition presented by the French jurist Blagnol is considered one of the first attempts to define the error, as he defined it as “every breach of a previous commitment.” However, this definition was met with criticism that it was taken as an unrealistic defining of duties that the breach of is a mistake that deserves responsibility [5]. On the definition, it did not include the element of discrimination as a condition for the occurrence of the error, but Planiol tried to limit the obligations in which the breach would constitute a mistake in four elements, which are abstinence from violence, cessation of fraud, reluctance to act for which reasons have not been prepared for skill and vigilance in performing the duty of control over persons Or things, but this division resembled the defect in that it did not provide a definition of the error, as it divided its images and types, as counting errors is not practically possible within the framework of electronic transactions and it is considered a kind of imagination just to think about setting up a list of electronic errors, and that is the result of the acceleration process in The field of modern technology, and the consequent illegal acts differ in their range [6], but the error can be defined as a “breach of a legal duty associated with the perception of the violator” [7].

The general rule goes that the degree of error has no effect on the judge’s assessment of the amount of compensation, and here is what is known as the principle of unity of compensation for all degrees of error, that despite the theoretical validity of that rule and its compatibility with the spirit of the law that goes towards compensation for damages, not punishment for the perpetrator And in light of this, if we took it out of the theorizing circle and was projected onto reality, we find that it is related to the judge’s person in light of the influence of human feelings that make him,

when assessing compensation, enters into his calculation the extent of the error, which makes compensation for a fatal mistake greater than compensation for a simple mistake [8] However, this does not constitute an exception to the general rule, and this is a distorted application by judges of the legal texts that alone have some exceptions. The electronic error or the default error on the Internet and its privacy in terms of the environment in which it is committed is the digital environment It can be summed up in that it is a group of unlawful acts committed by an individual or group of individuals through the use of the computer as a tool and the virtual space as a mediator, which can be defined as a malicious act committed via the Internet in a manner that harms others and the perpetrator actually realizes Therefore "[9], the error is obligatory to prove in this form of responsibility, and here, the one who suffers from electronic omissions is the one who has the burden of proof and attributed it to the perpetrator, and he is responsible for implementing the general rule of proof, which is the evidence for whoever claims, and whoever claims a proven disagreement that He denies it by proving the contrary, and extracting the error that assesses tort liability, as it is one of the objective issues on which the judge is independent, through the facts presented before him, and with regard to the adaptation of the act committed as a mistake, this is a legal process that the judge performs [10], the Egyptian Court of Cassation approved the rule that "it is not The trial court has the right to assess the default on a mistake that was not claimed by the plaintiff when the basis for it was a mistake, which must be proven, as the burden of proof of the error in this case falls on the shoulders of the injured plaintiff. The court may volunteer to prove what he did not prove, and a fortiori, that which he did not claim in error, and it is not permissible for it to impersonate a harm that he did not say because he is also obligated to prove the harm[11].

### **The second topic: the elements of electronic error:**

The electronic error consists of two main elements, so that it can only do them, the

material element which is the infringement, and the second element is the moral, which is perception and discrimination, and the first material element, which is the infringement, that is, exceeding the limits that the individual must abide by In his behavior, whether intentional and that which is coupled with intent to harm; As an example of intentional errors: directing electronic messages that include defamation, slander, insulting or defamation on social media sites to the person to whom the message is addressed in a manner that causes material and moral damages, or unintentionally, which is the result of negligence and negligence, and an example of an unintentional electronic default error: such as that of the owner of the e-mail By leaving it open, which makes him vulnerable to tampering from another party, such as his minor children, and using it in a way that harms others; Thus, he shall be responsible for negligence for that act, either personally as he is the owner of the e-mail through which the harmful act was carried out, or his responsibility for that act by others in accordance with the rules of the responsibility of the censors, however, that there are two criteria for classifying the acts that occur by the individual as an infringement Or not, and the first criterion is that it is a subjective one by taking into account the personality of the perpetrator of the harmful act; As well as his own conditions related to age, gender and marital status, in addition to the temporal and spatial conditions that existed during the commission of the act, according to the personal criterion the robotic engineer is in a place of the ability to control various technological media, and from here he is held accountable for most of the mistakes that can be committed in Digital spaces as an educated person, while the uneducated person and the non-informational person is not asked about electronic errors that cause damage based on the personal criterion [12].

As for the second criterion, it is the objective criterion, which determines the element of transgression based on the measurement of the behavior of the perpetrator of the act with the behavior of the ordinary person if it is found in

the same circumstances in which the act took place, as the ordinary person represents everything that is in the middle between people in terms of diligence and care, such as knowledge, experience, integrity and honesty. This means that the process of defining the average person is based on the foundations of abstraction and moderation [13].

From the above, the process of comparing the objective criterion with the personal standard in traditional dealings is more accurate as it is stable, stable and easier to determine responsibility on the part of the judge, by appointing an expert in the field as he is most able to say whether there is a mistake or not, being what is considered a serious error for a person. It is the same for all other people, as a result of the abstract character of the person, and he does not take into account personal circumstances and personal qualifications, which is not possible by measurement to adopt the objective standard in electronic transactions as a general and abstract standard that applies to everyone, as it bears a lot. Some people are responsible for actions that they did not intend to do because of their inability to the aspects of informatics that qualify them to distinguish between what is considered infringement or otherwise, such as publishing promotional messages with viruses that harm databases, but in the case of a personal subjective criterion that takes into account individual differences and the circumstances of the perpetrator of the act. Al-Dharfa, in this case, requires civilian accountability for the damages caused by the viruses accompanying the message [14].

As for the second element, which is discrimination or perception, it represents the moral element of the error, as the material and the moral element must be present in the error that is the distinction or perception, which indicates that the person is only asked about his actions that have caused harm to others. If he was able to perceive her, and reached the age of adulthood and not a minor, and not foolish or careless [15], then Mustafa al-Zarqa knew the distinction that "when a person becomes a mental insight with which he can distinguish between good and ugly matters and discern

good from evil. And the benefit from harm, and that this insight was imprecise and this distinction is not complete" (16), and this definition is more valid in moral responsibility. While it cannot be applied in civil liability, which necessitates the person's knowledge of his behavior's violation of the laws, and what can ensue?

The Jordanian legislator took a middle course by establishing tort liability on the basis of harming others, so that he did not require proof of error as it is for the French legislator, also he did not make whoever has achieved the damage sufficient for the responsibility to take place without considering the legality of the act or the illegality of the act that was committed, and hence it is sufficient in the Jordanian law for the establishment of tort liability to have the material element of the error represented in the infringement intended to commit the act without the intention of its owner, without the need for the element of discrimination or the moral element [17]. Article (256) of the Jordanian law stipulates As follows: "Every prejudice to others, the perpetrator, even if he is indiscriminately, is obligated to guarantee the damage." The Jordanian legislator in that article of the civil law established tort liability on the basis of the existence of the harmful act and did not stipulate the error, since according to what was stated in the explanatory memorandum of the law: that the person exceeds the limit that must be met or falls short of the limit that must be reached in the act or omission, which leads Harm and harm, as this concept differs from harm, it is not synonymous with it, because it means causing harm by an unlawful act or causing it in a way that is intended to violate the law [18].

In light of the foregoing, we find that the element of discrimination in electronic transactions raises a great problem more than it can constitute in the framework of traditional transactions. This is due to the virtual nature of electronic transactions, so it can be said that the discrimination clause reduces and reduces the right of the person affected by modern technology to obtain his right to compensation. Many minors have accounts on social media

and there is nothing to prevent them from offending others, given the large number. Their use of the Internet in an indiscriminate and uncontrolled manner, which will increase cybercrime, which will constitute a burden on those affected by the right of recourse to the perpetrator of the harmful act due to the absence of the characteristic of the error from the harmful act due to the reason that the person who committed the act did not reach the legal age, and this is what goes towards skepticism regarding the error. It is established that it constitutes an optimal legal basis for tort liability to the extent that it guarantees the right of the aggrieved person to obtain adequate compensation for the damages that befall him as a result of digitization and informatics, as negligence is one of the main sources of commitment to compensation due to the large number and multiplicity of cybercrime at the national or international level [19].

#### **The first requirement: types of error electronic default:**

The rapid and regular development in the field of technology, especially with regard to computers and mobile devices themselves or with regard to the programs that are used through them, this adds and increases the images and the diversity of errors and actions that are electronic in nature, so we find it difficult to limit these errors, but it is possible to address the errors through which the criminal character of the crime or the so-called cybercrime occurs, the addition of the reference to electronic errors, which do not bear the criminal character and are not criminal by legal texts, but are errors that result in harm to others.

#### **The second requirement: cybercrime:**

That the act cannot constitute in the criminal law a crime; If there is no legal text that leads and confirms this, which is called what is known as the principle of legitimacy, since the original actions are permissible; But it is not permissible for a person to perform any of the acts in which there is an explicit provision that gives him a criminal character, so he goes beyond the limits of permissibility to the limits of the criminal act which is punishable in case the act is done, so the legal text defines the

elements of the crime, as well as the punishment, and security measures. The need to confront that crime, with the aim of achieving deterrence for the perpetrator and achieving societal security, as the crime in general is defined by three pillars: It is the legal pillar which is represented in the text on which the criminal offense purposes are based, establishing in light of this a specific penal penalty commensurate with the harmful act, such as imprisonment or a monetary fine, and the material element, which is the external behavior that comes from the person committing his crime, in addition to the moral element which revolves around the direction of the will to commit the act and achieve its result as a result of the act, despite his knowledge that this behavior is against the law, since due to the severe harm that the bad use of technology inflicts on individuals and institutions, the legislator had to intervene to criminalize some harmful electronic acts and consider them as electronic crimes, which is what we find that in the framework of Law No. (27) of 2015 AD, the Jordanian Cybercrime Law, which is in force according to the latest amendments that were introduced on 11/12/2018 AD, that cybercrime is defined as "all criminal behavior carried out with the help of a computer," and it is also known as "all unlawful behavior. Or unethical or unauthorized relating to automatic data processing or transmission "[20].

When reading the texts of the various laws that make some electronic acts punishable crimes, these crimes take two main forms: The first form is related to a group of traditional crimes such as theft and embezzlement, which is carried out through the use of digital devices and tools such as computers or some information programs. In the sense that digitization is a means of committing a classic crime through digital technology, as for the second form of electronic crime, this is achieved when the computer and its contents are the target of the crime and not just a tool or a means to assist in the implementation of electronic crime, such as the crime of unauthorized access to websites, When extrapolating Article 12 / A of the Jordanian

Cybercrime Law, it confirms that everyone who intentionally enters without a permit or in contravention or exceeds the authorization to the information network, shall be punished with imprisonment for a period of no less than four months and a fine of no less than (500) five hundred dinars and no More than (5000) five thousand dinars. As for Article 12 / b, it indicates that if the entry is intended to cancel that data or information, destroy it, destroy it, modify it, change it, transfer it, copy it or divulge it, then the perpetrator shall be punished with temporary hard labor and a fine of no less For (1,000) one thousand dinars and not exceeding (5,000) five thousand dinars; Without the person being authorized to do so by the official or from the owner or from one of the owners if there is more than one owner, likewise, in the case of individual ownership of the processing system, a person or his agent is the only one authorized to grant permission for the entry process, but in the case of a group of owners it is Every owner may grant him the license while adhering to the period for which it was granted or the purpose for which the license was granted [21].

As well as the crime of unauthorized manipulation of information; Whether in terms of entry, modification or removal, as it is considered a more serious and harmful crime for the owner of the automatic information processing system than the crime of unauthorized entry, and this criminalization is considered a positive matter in the field of civil liability lawsuits for every natural or legal person who has been affected by these crimes, And if the legislator confronts these behaviors with criminalization and punishment in making them punishable crimes, because the burden that was on the affected person falls on his shoulders because the Public Prosecution is the one that will search and investigate the crime to prove it and assign it to the accused and convict him [22].

As for the electronic errors of a purely civil nature related to the informational programs related to the error in the design of the program, which is one of the most important elements that make up the computer so that it loses its

value without those programs, which is considered a diminution of the value and role of the physical components, which is arranged in light of Those errors in computer programs, which lead to serious damage either at the design stage or during writing the program in one of the programming languages, leading to the program not performing the purpose for which it was created, leading to adverse results, as the error falls on the responsibility of the programmer from the error in designing The program, thus subjecting the perpetrator to the rules of responsibility for personal action and its consequences [23].

As for the error in running the programs, which is the next process after designing the program, so that during the development of the program in the field of service activation of the content of the program for the buyer, he may induce an error that prevents him from using it for some reason, hence the responsibility of the program producer falls within the scope of the necessary framework It is imposed on him, so if the operation process is among the obligations that fall on the operator, or if the error in the operation process is due to a defect in the same program, then the programmer is responsible for the damage caused by the error in the operation, but if the error in the program is due to lack of familiarity. By the person who acquired it in relation to the technical issues of the operation process or the inconsistency of other programs with the program, the responsibility of the programmer is under consideration [24], as it is the responsibility of the programmer or the program seller to inform the person about what is related to the product, which is known as the pre-contractual obligation The notification through which includes informing the person of how to use and operate the device or devices that the average person cannot properly operate [25].

As for the abuse of mental rights in the context of piracy, which is defined as "hacking of computers via the Internet, and this process is carried out by a person or a group of people who have extensive experience in computer programs, as they can do so by means of assistive programs to enter another computer



and know its contents" [ 26, that is, what some are exposed to piracy of e-mail or personal page on social networking sites, is a breach of privacy and sometimes it is related to material losses also when hacking bank data via the Internet, where exposure to such piracy is considered a warning bell to ensure the safety of the protection program Virus used [27]. Where hackers can cause a lot of harm, such as "Kevin Mitnick", who was described by the US Department of Justice as "the first computer criminal in the history of the United States because of his penetration into the network of Digital Equipment, as well as breaching the national defense alert system and stealing company secrets," and also what he did "Jonathan James" from the NASA hack and downloaded from the source code enough to know how the International Space Station works. The piracy operations are based on the fact that the perpetrator does not transfer possession of the programs, but rather that they remain with the owner, so the goal of the operation is to reproduce those programs Or copying it in order to benefit from it or sell it and obtain financial benefit, and the problem here lies in the denial in describing the piracy process as a crime of theft, and this is due to the failure of a basic pillar, which is the intent to possess, in which the criminal intent through which the perpetrator seeks to transfer the thing from its real owner to be She owned it instead of him [28].

Likewise, what is important in terms of rights is the copying process and the rights that the author enjoys over his digital works, and the violation of that right is considered a violation and violation of copyright, such as if a person scans the work and then transforms it into a digital copy and puts it on a web page. To enable third parties to view it and keep it on their own computers, and this work is forbidden for non-author to perform the copying process, unless he obtains permission and prior consent from the author, which can be circulated to various works, whether electronic books or computer programs or through Changing the body and re-equipping the work to suggest that we are facing a new product, whether in whole

or in part without a license or approval from the rights holder, whether individuals or companies [29] these types and other

The attacks on computer programs as well as digital works with respect to them from requiring the plaintiff to prove the error in them, it is considered extremely difficult in terms of proof, which may deprive the victim in most cases of fulfilling his right to compensation, due to the difficulty of proving discrimination or non-discrimination of the aggressor. Being in most cases an unknown person with respect to the owner of the right to the work or the patent or other works, and this matter does not assign civil liability towards the perpetrator of the mistake, compensation is considered as the legal effect of the establishment of civil liability [30], in light of what the legislator stipulated for entitlement Compensation is from the necessity of meeting its elements of error, damage and causal relationship, but these elements that constitute liability vary from one element to another, because damage is one of the most important of them at all, and civil liability cannot be established without it, whether on the error that must be proven or on the supposed error that can prove the opposite and not Those who are able to prove the opposite [31], or it is based on the harmful act, as it is according to the Jordanian legislator, when the tort liability is assessed on the basis of the harmful act, which is the basis of a middle ground between the sin liability that requires There is an element of error and objective liability that exists even if an error occurs on the part of the debtor. The damage has its importance in the traditional civil liability, and it grows and increases in the framework of electronic transactions due to the large size of material and moral losses that inflict upon the person as a result of the use of modern technologies on the Internet. "Jonathan James" and the US Space Agency (NASA) equivalent to 1.7 million dollars in 2000 AD, which forced NASA to close its network for a full three weeks to investigate the violation, as the closure cost reached an additional 41 thousand dollars [32], hence the damage is considered The main pillar of the civil liability

system, and the absence of damage leads to the absence and exclusion of liability, regardless of the severity or simplicity of the error, since the damage is what is based on the assessment of compensation and the justification for its existence and not the error, within the framework of negligence for electronic dealings due to an unlawful act that inflicts material harm to the person or The Corporation [33, 34, 35, 36].

### **The results:**

In light of this study, it has been shown that the general rule in tort does not serve the injured party in electronic transactions, as it is based on a legal basis that is not compatible with the information world, which is the error and the duty to prove that the harmful electronic act constitutes an error and that he can attribute it to the perpetrator within the framework of The application of the general rule in proof of evidence on the one who claimed, which cannot be achieved due to its difficulty due to technical and technical complications with regard to electronic transactions, as electronic transactions take place remotely between two parties through the Internet, which can increase the possibility of committing unlawful acts from A party who is incompetent or a minor, and this leads to denial of the harmful act, the characteristic of the mistake, for the reason for the failure of its moral element, which is based on perception and discrimination, and this in itself goes towards depriving the victim of the right to file a liability claim, especially since most of the laws are based on the existence of the wrong. For responsibility, there is also reliance on the objective criterion in the process of conditioning the act as a mistake, which is not consistent with the errors committed in the electronic framework as a result of the speed It is enormous in the development of modern technology and the degree of dealing and control over it at the level of ordinary individuals who do not have experience in dealing with it in comparison with experienced specialists who, unlike ordinary individuals, cannot evade civil liability provisions as a basis for negligence for their actions and harm others. It goes in its directions to work to ensure the

right of the injured to obtain the amount of compensation arising from the damage within the estimated material value of that damage to compensate the injured.

### **REFERENCES**

1. Rasheed, Enas (2009), Expressing the Will in Electronic Contracts, Journal of Law Message, University of Karbala, Volume 1, Issue 2, Iraq, p. 188.
2. Sheta, Muhammad (2001), The idea of penal protection for computer programs, New University Publishing House, Alexandria, Egypt, p. 36.
3. Filali, Ali (2010), Obligations, Action Deserving of Compensation, Mouffem El-Nasher, Algeria, p.52
4. Soliman, Ali (2007), The General Theory of Commitment, University Press, Cairo, Egypt, p. 36.
5. Tawfiq, Hisham (2011), Consensual Compensation, Penal Clause: A Comparative Study of Islamic Jurisprudence and Positive Law, National Center for Legal Publications, Cairo, Egypt, p.
6. Al-Sanhouri, Abdul-Razzaq Ahmad (2009), Mediator in Explaining the New Civil Law, Volume 1, Volume 1, Volume 2, Sources of Commitment, Volume 3, Al-Halabi Legal Publications, Beirut, Lebanon, p. 880.
7. Morcos, Soliman (1958), The Institute for International Arab Studies, Cairo, Egypt, p. 183.
8. Abu Saad, Muhammad (2001), Judicial Compensation, Penal Clause and Legal Benefits, University Publishing House, Alexandria, Egypt, p. 7.
9. Al-Masry, Samir (2016), Tort Liability Arising from Internet Use: A Comparative Study of Anglo-American Law, Ain Shams University, Cairo, Egypt, p. 33.
10. Khalil, Azza (1994), Civil Liability Problems in Confronting Computer Viruses, Cairo University, Cairo, Egypt, p. 241.
11. Decision issued by the Civil Department of the Egyptian Court of Cassation, session

- 6/22/1967 AD, Technical Office (Year 18, Rule 200, p. 1316) [www.cc.gov.eg/judgment](http://www.cc.gov.eg/judgment)
12. Kadada, Khalil (2010), *Al-Wajeez fi Explaining Civil Law: Sources of Obligation*, Bureau of University Publications, Algeria, p. 243.
  13. Al-Adawi, Jalal (1994), *Sources of Commitment: A Comparative Study of Egyptian and Lebanese Law*, University House, Cairo, Egypt, p. 330.
  14. Abdin, Muhammad (1995), *Compensation between Inherited Material and Literary Damage*, The Knowledge Foundation, Alexandria, Egypt, pp. 29-30.
  15. Boukazza, Ahmed (2015), *Civil Liability of Minors - A Comparative Study*, University of Constantine, Algeria, pp. 125-126.
  16. Sorour, Asmaa (2006), *The Error in Responsibility: A Comparative Study of Egyptian Civil Law and Jordanian Law*, An-Najah National University, Nablus, Palestine, p.91.
  17. Safwan Al Salaimeh, Eman Al Reyati, *Using of New Information Technology in the Creating of Promotion Products*, *Journal of Economics Sciences: Theory and Practice*, Vol. 75. Issue 2. 2018.
  18. *Adalat Muradov, Nazim Hajiyevev, Safwan Al Salaimeh, Salim Istyaq, [Software Design for Integrated Computerized Management Systems](#)*, *Journal of Economics Sciences: Theory and Practice*, Vol.75. Issue. 1, 2018.
  19. Al-Masa'a, Nael (2005), *Pillars of Harmful Electronic Act in Jordanian Law*, *Journal of Studies of Sharia and Law Sciences*, Volume 32, Issue 1, P55.
  20. Al-Khalayleh, Ayed (2011), *Electronic tort liability arising from the misuse of computers and the Internet: a comparative study*, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, p. 79.
  21. Suleiman, Ali (1984), *Studies in Civil Liability in the Algerian Civil Law, Responsibility for the Action of Others, Responsibility for Doing Things, Compensation*, University Publications Bureau, Algeria, p. 84.
  22. Safwan Al Salaimeh, Khaldoun Al Besoul, Ayman Al Halaybeh, *The Most Important Risks Resulting From The Computerization of Smart Decisions*, *iRASD Journal of Management*, Volume 2, Number 1, 2020.
  23. Safwat Al Tal, Safwan Ali Al Salaimeh, *The effect of social media sites on student's engagements and achievements*, *International Journal of Advanced Science and Technology*, Vol. 29, No. 7, 2020.
  24. Khaldoun Al Besoul, safwan Al Salaimeh, Ayman Al Halaybeh, Nazim Hajiev, *Development of the Functional and Management Structure for the Computerized Management System under the Influence of Direct Environment Factors*, *ENGINEERING TECHNOLOGIES AND SYSTEMS*, Vol. 30, no. 2. 2020.
  25. Ibrahim, Khaled (2009), *Information Crimes*, University Thought House, Alexandria, Egypt, p. 74.2.
  26. Dr. Ayman Nayef ALhalaybeh, Dr. Khaldoun Besoul, Prof. Safwan Al Salaimeh. *Development of a model for monitoring and analysis of road traffic using an algorithm for neural networks.*, *International Journal of Engineering Research and Technology*, Vol.13, Issue 2, 2020.
  27. - Nasser, Hammoudi (2016), *Criminal Protection for Automated Processing Systems*, *The Academic Journal of Legal Researcher*, Abdulrahman University, Volume 14, Issue 2, pp. 73-74.
  28. Salem, Muhammad Ali (2007), *Cybercrime*, *Babylon University Journal for the Humanities*, Vol. 14, Issue 2, P.1.
  29. Al-Khalayleh, Ayed, previously mentioned reference, p. 97.
  30. Al-Khalayleh, Ayed, a previously mentioned source, p. 98.
  31. Boubakeur, Fares (2018), *Media Advance Commitment as a Mechanism for Consumer Protection in Contracts Signed*

- Remotely, Journal of Law and Human Sciences, Issue 11, pp. 294-295.
32. Kandil, Abdel Raouf (1999), Institutional Framework for Copyright Protection, National Institute for Judicial Studies, Rabat, Morocco, p. 73.
  33. Afifi, Kamel and Fattouh Al-Shazly (2003), Computer Crime, Copyright, Artistic Works, the Role of the Police and the Law, Al-Halabi Legal Publications, Beirut, Lebanon, p. 58.
  34. Ali, Omar (2014), Intellectual Property in the Context of Electronic Commerce, Faculty of Law, University of Mouloud Mamary, Algeria, p. 12.
  35. Mansour, Muhammad (2003), Electronic Responsibility, New University House, Alexandria, Egypt, p. 288.
  36. Khaldoun Al Besoul, safwan Al Salaimeh, Ayman Al Halaybeh, Nazim Hajiev, Development of the Functional and Management Structure for the Computerized Management System under the Influence of Direct Environment Factors, ENGINEERING TECHNOLOGIES AND SYSTEMS, Vol. 30, no. 2. 2020.
  37. Al-Awji, Mustafa (2009), Civil Liability, Al-Halabi Legal Publications, Beirut, Lebanon, p. 54.
  38. Hussein, Mohamed Abdel-Zahir (2002), Legal Responsibility in the Field of Internet Networks, New University House, Cairo, Egypt, p. 76.
  39. Al Jazeera Net (2018), the 10 most famous information hacker in the world, [www.aljazeera.net](http://www.aljazeera.net)
  40. Mkrttchian Vardan, Safwan Al Salaimeh, Approximate algorithm for solving the general problem of scheduling theory with high accuracy, International journal of software innovation, Vol. 7, Issue 4, 2019.
  41. Mansour, Muhammad Hussein (2009), Electronic Responsibility, New University House, Cairo, Egypt, p. 65.