

CONSUMER SAFETY AND DEFECTIVE PRODUCTS: THE EGYPTIAN CONSUMER PROTECTION LAW AND THE FRENCH OBJECTIVE RESPONSIBILITY ACT

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Abstract

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The present study sets out to examine whether the Egyptian Consumer Protection Law has contributed to creating a private legal system that provides all damaged parties with actual protection against safety defects. To address this issue, we adopt a comparative-analytic approach, through which the legal rules adopted by the Egyptian consumer protection laws and the French Law of the Objective Responsibility Act are analyzed and compared. Our findings indicate that consumer protection laws have failed to provide an integrated legal system for consumer protection against damages from defective products. Furthermore, the Egyptian legislator has only adopted the general rules, through which the consumer may be compensated for damages of defective products. These findings lend support to those of Grynbaum (2013) and Abuhelala and Al Khatab (2021). Accordingly, it is necessary to stipulate other rules concerning the objective responsibility for defective products; taking into consideration that the ultimate goal of individuals' safety assurance against damages from defective products is a task of judicial oversight (Grynbaum, 2013; Abuhelala & Al Khatab, 2021).

Keywords: Consumer Safety, Objective Responsibility, Consumer Protection Law, Egyptian Law, French Law

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1. INTRODUCTION

With many products lacking basic standards of safety and security, legal systems play a major role in developing new and obvious provisions that ensure the safety of individuals against any damage

resulting from defective products. The Egyptian legislator has adopted several private legal systems (Fayed, 2006), including Consumer Protection Law No. 181 of 2018, which defines the responsibility of producers (or their counterparts) for damages from defective products. This law also includes certain

rules that guarantee consumer safety and protection against any potential risk from different products. Another law, Trade Law No. 117 of 1999, also addresses the concept of producer responsibility for damages from defective products.

This paper is thus concerned with consumer protection law and how its evolution in legislation has contributed to the activation of a legal system for consumer safety assurance against damage due to the lack of safety in defective products. It does not address in detail the issue of commitment to safety, which is addressed by the rules of contractual liability or tort liability. In this sense, the research focus is mainly on how the Egyptian Consumer Protection Law does not involve a consistent legal system that ensures individuals' safety in the absence of product safety and security. A consistent legal system is thus required in Egypt to form a coherent and united framework whose provisions are integrated to achieve this safety. Interestingly, an initial review of the consumer protection law identified some regulatory rules on product safety and deterrent penalties. However, the law does not stipulate a clear definition of safety defects when one is required as the basis of a legal system for safety assurance. Neither does this law contain an explicit legal provision on a commitment to safety as legal grounds for compensation claims by affected consumers.

The aim of this paper is thus to develop, in light of principles of French law, legal regulation on consumer safety against damages from defective products, for adoption as the Egyptian Consumer Protection Law (Grynbaum, 2013). Legal texts and provisions from Egyptian law are compared with their counterparts in French law concerning the concept of objective responsibility for defective products (Bin Tariya, 2013), as the latter has successfully managed to interact closely with its surrounding environment regarding both its relationship with other European Union Member States and its ability to keep pace with developments.

The remainder of the current paper is structured as follows. After the introduction, Section 1, Section 2 covers a number of previous studies that have addressed various aspects concerning the issue of consumer protection against damages from defective products. Then, Section 3 addresses the methodology used by the researchers to develop the study framework. Section 4 displays the results reached in this current research paper. After that, Section 5 discusses the legal system adopted by the Egyptian legislator to protect the consumer against damages from defective products. Then, we will analyze the provisions and controls adopted by the French legislator in the Objective Responsibility Act, with regard to defective products. In other words, this paper presents a complete comparative study, through which we could elicit some solutions and recommendations that should be adopted by the Egyptian legislator. Finally, Section 6 provides the conclusion of this research paper.

2. LITERATURE REVIEW

The right of man to the safety of his/her own body is considered as one of the most important priorities on top of the list of human needs. Hence, this right is one of the major objectives and pillars, on which

the various social and economic activities are based. Consequently, all legal systems have stipulated several provisions for the individuals' safety assurance; taking into account that these legal provisions shall represent the initial guarantee of human rights, and shall function as the primary factor for the control and achievement of stability in social and economic relationships.

In this sense, several previous studies have focused on the activation of some legal mechanisms, through which consumer safety could be guaranteed against defective products. For example, Mahjoub's (1996) study has focused on the role of the French Judiciary in activating the principle of commitment to contractual safety to protect the consumer against damages from defective products. In addition, this study has also focused on the necessity of adjusting the rules of contractual liability in order to include the commitment to safety assurance as a general and common obligation of the professional vendor. That is to say, the vendor shall stand as a guarantor of the defects and risks of his products against any damaged person, whether this person is a party in an actual contractual relation with this vendor or not.

Nonetheless, despite the high importance of this study, as well as other similar studies aiming to activate the legal system adopted for the individuals' safety assurance against damages of defective products in light of the principle of contractual liability, these studies have stopped at being mere attempts with the same purpose. That is to say, these studies have clearly lacked the spirit of harmony and unity that shall be fulfilled within the general rules of Civil Law. Hence, the guarantee of commitment to contractual safety has extended to raise several jurisprudential disputes, creating an atmosphere of jurisprudential and judicial controversy regarding the preference between the two systems of contractual liability and tort liability; taking into consideration that these principles represent the basics, on which the theory of civil responsibility in its entirety is based. Therefore, several modern studies have stressed that the task of unifying the legal systems concerning the liability for damages of defective products shall be left to the legislator, rather than the judiciary (Amazouz, 2018).

On this basis, modern jurisprudence has stressed the significant role of private legal systems in protecting the consumer against damages from defective products (Hemladji, 2021). For instance, these modern studies have included the following research by Shahida (2007), Bin Tariya (2013), and Hamitouch and Hamadi (2020).

These studies have focused on the privacy of the concept of a safety defect in products; and that is within the framework of the Objective Responsibility Act, taking into account its difference from the general rules of guarantee in Civil Law (Georges-Albert, 2021). In other words, this responsibility investigates the availability of the two elements of safety and security in products, i.e., it is a responsibility that focuses on the presence of defects in products and commodities, rather than focusing on the behavior of individuals. Moreover, these studies have also stressed the important role of objective responsibility as a protective means that could be used to compensate the consumer for damages from defective products (Barakat, 2021).

These studies have indeed addressed the issue of consumer protection against damages from defective products; however, these studies have failed to develop a general framework for the legal system of objective responsibility; and that is in a way that shall enable the Egyptian legislator to adopt the required legal mechanisms, through which the consumer could be protected against damages of defective products.

In this regard, after the issuance of the Egyptian Consumer Protection Law No. 67 of 2006, some jurists believed that the legislator has established an integrated legal system for consumer safety against damages from defective products. For instance, in a study by Fayed (2006), the researcher argues that the consumer protection law has adopted a legal system where the principle of commitment to safety plays two roles as follows: first, it plays a protective role through the protective procedures stipulated by the legislator; in addition, it plays another remedial role, as it represents the legal ground for compensating damages of the consumer. Nonetheless, this study has failed to propose a private legal system for consumer protection against damages from defective products; i.e., a system that clearly states the legislator's wish for its separation from Civil Law; taking into consideration that most consumer protection laws tend to conform to the general rules (Abuhelala & Al Khatab, 2021).

On this basis, despite the high importance of all previous studies, they have, however, addressed the issue of consumer safety against damages from defective products from a narrow angle. That is to say, some studies have focused exclusively on the role of the consumer protection law; while other studies have exaggerated their adherence to the Objective Responsibility Act adopted by the French Law. Therefore, this current study will cover both legal systems together, providing an argument-for-argument comparison between the two legal systems; and that is in an attempt to reach some decisive legal solutions suitable to the situation of Egyptian Law.

3. RESEARCH METHODOLOGY

In this research paper, the authors have employed the comparative-analytic approach to address the issue in question. That is to say, the authors have analyzed the legal rules adopted by the Egyptian consumer protection laws, whether it is in Law No. 67 of 2006, or the current Law No. 181 of 2018. Then, the authors analyzed the Objective Responsibility Act adopted by the French Law since its issuance on May 19, 1998, following the issuance of the European Council Directive of July 25, 1985, on the liability for defective products.

In addition, the authors have also covered other protective means adopted by these legal systems, hence proposing some legal provisions that shall be included for the purposes of harmony and clarity. Then, the authors examined the efficiency criterion of the proposed legal system, as well as the positive impact of its legal concepts and mechanisms, especially with regard to the required protective means that shall sustain the rights of vulnerable groups.

Furthermore, the authors' role was not limited to the mere analysis of all relevant legal provisions; however, this role has extended to include the verification of these principles, supported by a group of court rulings issued by both the French and Egyptian judiciaries; and that is in addition to reviewing some jurisprudence pieces of literature specialized in the field of consumer protection against damages from defective products.

3.1. Data collection

At the initial phase of preparing this research paper (i.e., at the beginning of the year 2021), the authors collected all relevant data and sources concerning the issue in question. That is to say, the authors of this paper have collected a number of highly significant sources, as well as a number of court rulings issued by both the French and Egyptian judiciaries, in addition to other data acquired from some websites. In this sense, it may be said that the information included in this research paper has been acquired from four major sources as follows:

1) It includes the relevant legal provisions mentioned in consumer protection laws as well as the Objective Responsibility Act concerning damages from defective products.

2) It covers the general publications in the field of consumer protection, which shed light on the analysis of different jurists for the concept of safety, including its importance, guarantees, and application mechanisms.

3) It covers some specialized publications that specifically address some concept, standard, or means that shall contribute to the establishment of an integrated legal system, whose major purpose is to protect the consumer against damages from defective products.

4) It includes some court rulings issued by both the French and Egyptian judiciaries, which clearly indicate how to apply those legal concepts and mechanisms effectively.

In this way, there is no doubt that the process of data collection has provided the authors with many legal thoughts that have in turn contributed to the completion of this current study. That is to say, those thoughts and ideas have paved the way for the completion of all required analyses, hence reaching a number of significant results that shall add true value to this paper, and shall open new horizons for future research works.

3.2. Document analysis

After the completion of data collection, the authors analyzed all relevant legal provisions collected from previous legislation. In addition, the authors addressed all explanations and interpretations available for these legal provisions in the various jurisprudential publications, whether they are general publications or specialized ones in the field of consumer safety assurance against damages from defective products. Furthermore, the authors have also supported their analysis work by covering the stance of the judiciary, based on a number of court rulings that have been issued according to these legislations; and that is in order to shed light on how these legal provisions are actually applied in practical reality. Eventually, the authors have

managed to reach the most appropriate legal system for consumer protection against damages from defective products.

4. RESEARCH RESULTS

After reviewing the mentioned legal systems concerning the ultimate goal of safety assurance, the following results have transpired.

4.1. Regarding the Egyptian Consumer Protection Law

This current study has found that there are no clear features for any integrated legal system that shall clearly reflect a legislative policy whose purpose is to ensure consumer safety through the rules of objective responsibility for defective products. That is to say, there is no clear definition for the concept of a safety defect, and there is no firm evidence indicating that the absence of the two elements of safety and security in products shall be considered as legal grounds for compensation claims initiated by the damaged parties due to defects of products and commodities.

Based on this current study, it seems that the Egyptian legislator believes that the goal of safety assurance could be addressed within some regulatory rules, through which the risks and damages of defective products and commodities available for trading in the markets could be managed.

According to this study, the said regulatory rules shall include specific duties imposed on the suppliers, which shall be monitored closely by the Consumer Protection Agency (CPA), in order to ensure their implementation through the enforcement of some precautionary measures and legal penalties.

According to the legislator, controlling the absence of the two elements of safety and security shall be the task of the Administrative Control Authority in the first place.

4.2. Regarding the objective responsibility for defective products as adopted by the French Law

According to this study, the recent development in the systems of markets, production, consumption, and products has led to transferring the responsibility's center of gravity from the liable person to the material itself (which is subject to one definite and strict law). Hence, in modern times, legal liability is not based on the person's behavior and faults, but rather on the defects of products that jeopardize the safety of individuals.

The legal system of objective responsibility for defective products is considered to be the most coherent and homogeneous system. That is to say, in the Objective Responsibility Act, the French legislator addresses the producers through specific legal provisions that clearly reflect his legislative purpose and goal of safety assurance; a purpose that has been formulated realistically and clearly. Therefore, the French legislator has clearly defined defective products as those products that lack the two elements of safety and security. This means that the French legislator has managed to translate his legislative purpose into a social reality that could function as a basis for the various dealings.

The legal system of objective responsibility for defective products as adopted by French Law has paid special attention to the purpose of guaranteeing the safety of damaged parties. In other words, this system is mainly based on the concept of safety assurance. In addition, this legal system is characterized by being internally coherent; i.e., its provisions are consistent with each other, regarding the necessity of placing the responsibility on each producer that provides the market with defective products, exposing consumer safety to risks and damages.

As for the connections between the Objective Responsibility Act and the rules of Civil Law concerning individuals' safety assurance, according to this study, the French Judiciary has considered the defect of lack of safety (i.e., the ultimate peak of objective responsibility) to be the only legal ground in claims of compensation for damages of products that lack the two elements of safety and security. Hence, the application of the general rules of civil responsibility is excluded in each case, when the plaintiff bases his claim on the defect of lack of safety.

As for the connections between the legal system of Objective Responsibility and the Egyptian Consumer Protection Law, according to this study, the judiciary in most cases does not base its rulings on the provisions of consumer protection law concerning the principle of commitment to safety.

5. DISCUSSION

Laws on consumer protection are not usually based solely on a state's internal laws. Even if the principle of commitment to safety is rooted in a state's legislative provisions (i.e., within the scope of private legal systems) rather than contractual terms and conditions, the principle is globally considered a key one. In this respect, the United Nations General Assembly stated that consumer safety against commodity risks is a most significant priority for countries cooperating to activate the legal mechanisms necessary for consumer protection. It also recommended that all Member States adopt a judicial system that guarantees effective protection for consumers by enacting legal provisions sustaining the stated role and discretion of the judge. In addition, regulations may be adopted to monitor the safety and security of products and commodities, under the oversight of administrative authorities able to supervise markets; these authorities ensure the fulfilment of the stated standards and specifications for safety and security, as stipulated by both local and international organisations.

Safety assurance is also governed by other objective behavioural rules concerning producer responsibility before the judiciary for any damages caused by their defective products (Sultan, 2005). Although the Egyptian legislator has indeed regulated the administrative control of safety with regard to markets and products, this attention has unfortunately failed to stipulate the concept of a safety defect as the firm legal ground for compensation claims seeking indemnity for damages incurred from defective products. Hence, there is an inconsistency in the legal system adopted by the Egyptian legislator.

5.1. Egyptian Consumer Protection Law safety rules

Art. 2 of the Egyptian Consumer Protection Law No. 181 of 2018 states that: The freedom to practise an economic activity shall be granted to all people; however, it is prohibited for any person to practise or enter into an activity that might violate the consumer's basic rights, especially the following rights: 1) the consumer's right to maintain [their] health and safety upon the common use of any products.

Having acknowledged the consumer's right to health and safety, there followed the enactment of legislative provisions in Art. 3 of the Consumer Protection Law No. 181 of 2018, which states: The supplier shall abide by following the rules of health and safety, as well as the standards of quality and quality assurance regarding [their] products; and that is in accordance with the stated Egyptian Standard Specifications (or the International Standard Specifications approved in Egypt, in case of any shortcomings in this context).

Most of these regulatory rules (including their standards for safety and security) tend to be based on provisions issued by an international organisation known as the International Organisation for Standardisation (ISO). In addition to these international standards, each country may adopt its own as appropriate for the fulfilment of safety and quality for industrial products in its various sectors. Such regulations can stipulate that the supplier must immediately notify the CPA if a defect appears in any products or commodities. Art. 19 of the Consumer Protection Law No. 181 of 2018 states: Within the maximum period of seven days of finding out or knowing about some defect in the product, the supplier shall inform the Consumer Protection Agency of this defect, as well as its potential damages; thus, if such defect may damage the consumer's health and safety, the supplier shall notify the Agency immediately of this defect. In addition, the supplier shall declare the immediate cessation of the production or trading of this product; and [they] shall warn the consumers of using this product by announcing the matter via different media.

Should a dispute arise between the consumer and supplier regarding this defect, the first clause of Art. 52 of the Consumer Protection Law No. 181 of 2018 stipulates that the matter shall be referred to the Consumer Protection Agency, which issues a binding decision. The second clause of the same article states:

In this regard, the Agency may decide any of the following courses of action: to replace the defective commodity; to refund its value in an amount estimated by the its purchase price as of the date of the consumer's complaint, plus the stated return according to the exchange rate of the Central Bank; or to refund the market value of the commodity; as all of these alternatives shall be executed in accordance with the stated procedures and controls as set forth in the executive regulation of this law.

Moreover, the CPA may decide to establish committees that investigate such disputes, which then make all necessary recommendations to the Agency. In addition, the Agency can order both parties to have the disputed products technically

inspected by an authorised laboratory or organisation. Despite the highly important role of these committees, the Administrative Judiciary Court considers this issue as follows.

To ensure that the Agency is duly fulfilling its duties, the Consumer Protection Law No. 181 of 2018 has adopted procedures to facilitate the work of Agency members so that they may efficiently cover all risks and damages of any product in question. In Art. 51, the legislator has granted judicial enforcement authority to all personnel of the CPA so that they may conduct any required inspection at places of production, as well as take samples of products and commodities for testing and analysis in order to identify any safety defects. The CPA is also entitled to enter all places specified for selling or storing products subject to the provisions of this law and is entitled to remove samples from these products for testing and analysis at their designated laboratories. According to Art. 67 of the Consumer Protection Law No. 181 of 2018, anyone who prevents the judicial enforcement officers from enforcing the provisions of this law in the performance of their duties shall be subject to a legal penalty of a fine of between 20,000–500,000 Egyptian pounds.

On the other hand, according to the provision of Art. 51(2) of the Consumer Protection Law No. 181 of 2018, the legislator obligates suppliers to keep all data and documentation on their products. All suppliers must provide the CPA with access to the same, and to data and information relevant to the inspection of cases of potential risk. This legal stipulation is considered a common principle of the United Nations. In this context, consumer protection law limits the authority to decide whether a product is defective to the CPA. However, the Egyptian Court of Cassation believes that the provisions of the consumer protection law exhibit inconsistencies, as follows.

To ensure efficient enforcement of the consumer protection law, the Egyptian legislator believes it necessary to attach the law's provisions to legal penalties characterised as both gradual and governed by proportionality between the act and its penalty. For example, if the supplier's failure to:

- inform the Agency of the potential damages inherent in [their] products within the period specified in this law, the supplier must be legally punished by a fine of between 50,000–2,000,000 Egyptian pounds, or by payment of the value of the goods in question, whichever is higher;
- inform the Agency and take all necessary measures in this regard has endangered the consumer's life or caused a chronic or incurable disease, then the legal penalty is imprisonment and/or a fine of between 100,000–2,000,000 Egyptian pounds;
- take all precautionary measures has caused permanent injury, the legal penalty is imprisonment and a fine of between 100,000–2,000,000 Egyptian pounds, or payment of the value of the commodity in question, whichever is higher;
- take all necessary measures has caused death, the legal penalty is life imprisonment and a fine of between 200,000–2,000,000 Egyptian pounds, or payment of the value of the commodity in question, whichever is higher.

The execution of these legal penalties does not immunise the supplier's legal position against a court order for refunding the value of the defective product in question to the consumer when the consumer is entitled to such a refund.

Under the consumer protection law, the supplier's violation of any duties as stipulated by the legislator constitutes a criminal offence. That is, under Egyptian Law, this offence constitutes an economic misdemeanour within the jurisdiction of the economic courts, established by Law No. 120 of 2008. Consumer Protection Law No. 181 of 2018 stipulates that the economic courts are exclusively concerned with any disputes arising from the implementation of its provisions.

5.2. Commitment to safety as legal grounds for compensation claims

Consumer Protection Law No. 67 of 2006 introduced the concept of commitment to safety as a legal ground for claims of compensation for damages resulting from any defective products. In this regard, this commitment to safety may be interpreted as follows.

It involves a double role in the Consumer Protection Law; thus, while the primary purpose of stating such stipulation by virtue of a legal provision is to justify the preventive measures stated by this law, this commitment to safety — on the other hand — may also constitute a legal ground for the compensation of any damages that might be incurred by the user of these products (Fayed, 2006). Moreover, Art. 27 of the Consumer Protection Law No. 67 of 2006 stipulates that producers' have responsibility for damages caused by defective products which could affect safety. Likewise, in Art. 67 of Trade Law No. 117 of 1999, the Egyptian legislator has adopted the legal system of objective responsibility for defective products (Dewidar, 2000). In this context, Art. 27 of the Consumer Protection Law No. 118 of 2018 states the following: A producer shall be responsible for all damages incurred from [their] product if it is proven that such damage is caused due to a defect in this product; a defect that is attributed to its design, manufacturing, or composition. In addition, the supplier shall be responsible for all damages incurred or caused by the defective product due to its misuse, if it is proven that this damage is caused due to the supplier's failure to take enough precautions, to prevent the occurrence of such damage, or to warn the users of its possibility. Moreover, the distributor or the vendor shall be responsible for all damages incurred or caused by the defective product, if it is proven that such damage is caused due to a defect attributed to the product's method of preparation for consumption, or its method of preservation, packaging, trading, or display.

Interpreting Art. 27, it seems that the Egyptian legislator has granted the damaged party the right to compensation for all incurred damages, including those potentially affecting physical safety. These damages from defects have been split into three categories associated with the stages of the product: 1) its design, manufacturing, and composition; 2) its use; and, 3) its marketing. A major question thus arises as to whether the legislator has adopted

an integrated legal system characterised by privacy and independence from the general rules, with the aim of safety assurance against damages from defective products. To answer this question, the three categories stated in Art. 27 of the new Consumer Protection Law No. 181 of 2018 will now be analysed in turn.

5.2.1. Defects of design and manufacturing

It may seem that a warranty for defects in design and manufacturing is closer to one of a guarantee against hidden or nonconformity defects than a guarantee of the principle of commitment to safety. On this point, the Consumer Protection Law No. 181 of 2018 defines defects in Art. 1(7) as "any lack or shortcoming in the value or benefit of any product in accordance with its intended purpose; as it shall necessarily lead to the consumer's full or partial deprivation of benefiting from this product within the purpose, for which it is made". Here, the legislator has not explicitly linked the presence of a defect to the absence of safety and security in defective products. That is, if the legislator had wanted to acknowledge commitment to safety as legal grounds for compensation claims by damaged consumers, they would have defined defective products as those that lack safety and security.

In addition, if this commitment to safety involves defects of manufacturing, this cannot be considered legal grounds for compensation claims; however, such involvement may be elicited by the judiciary as part of the product's shortcomings which caused the consumer to be fully or partially deprived of the use or benefit of the product. In other words, if a commodity does not fulfil the safety element expected by the buyer, it shall be considered as having a defect that makes it unfit for the purpose for which it is sold (Mahjoub, 1996).

5.2.2. Defects of usage

As for defects at the stage of using a defective product, the legislator stipulates that the damaged party must prove that the incurred damage was caused by the supplier's failure to take sufficient precautions to prevent the occurrence of such damage, or to warn against its possibility. According to this legal provision, it is clear that the legislator links the damage caused by the product to both the supplier's commitment to take sufficient precautions with their obligation to inform and caution.

On this basis, if the concept of commitment to safety is deemed to be involved, this involvement emphasises that it is just a secondary commitment subject to the previous obligations stipulated as the required legal grounds for compensation claims in cases of misusing sold products. In other words, the commitment to consumer safety is just another legal justification on which the previous legal obligations are based. Moreover, even if safety and security have come to be the major impetus propelling the modern legislative policies of the consumer protection law, such a commitment may still not be considered an independent obligation that constitutes legal grounds for a consumer claim. That is, if the Egyptian judiciary has attempted to accomplish such independence,

this evolution will collide with the need to respect the legal rules concerning the defects guarantee, as previously mentioned, taking into consideration that the legislator has provided a specific definition in this regard.

5.2.3. Defects of preparation and marketing

As for defects at the stage of preparation for consumption and marketing, it seems that these defects are concerned with the shortcomings of professional distributors and vendors, particularly regarding their failure to take due diligence for the preparation of a product free of any defects. Hence, consumer safety is the only motive behind their commitment to caution. In this context, their failure to duly inform the consumer may be considered the basis for any shortcomings at this stage, especially with a dangerous commodity (Shahida, 2007).

5.2.4. Conclusions on Egyptian Consumer Protection Law

The Egyptian Consumer Protection Law does not include an independent commitment to safety assurance (Bougherara & Hameur, 2020), as such a commitment is regulated either through the major obligations stated in the Consumer Protection Law (e.g., the obligation to inform and the obligation to take precautions), or through certain regulatory rules aimed to ensure safety under the oversight of an administrative authority known as the CPA. Consequently, these regulatory rules concerning the safety of offered commodities and services may not be considered an integrated legal system in terms of the principle of objective responsibility as stated and applied in French Law (Grynbaum, 2013).

In light of the above, it seems that the inefficiency of the legal system currently adopted for safety against damages from defective products can mainly be attributed to the Egyptian legislator (Abdullah, 1999). Obviously, the legislator believes that it is sufficient to link contractual liability and hidden defects guarantee claims in the general rules, a link that could establish a legal system for consumer safety against any lack of safety or security in defective products. Therefore, an instant legislative intervention is required to establish a legal system that can activate the actual means of ensuring consumer safety against defective products (Amazouz, 2018). In addition, this legal system must also determine the legal basis and nature of the proposed responsibility in this regard, as well as the incidents affecting such responsibility and the persons responsible for the stated compensation in this context. To settle these issues, there is a need to study the legal system adopted by the French legislator, so that we may elicit some major pathways in this regard.

5.3. An integrated legal system for consumer safety assurance against damages of defective products

Since the law is inseparable from reality, the French legislator believes that the legal system must keep pace with developments introduced within this reality; it is a reality characterised by a speed that can only be grasped through the adoption of a new

sort of responsibility. This responsibility must be objective as it transcends all aspects of the distinction between contractual and tort liabilities, to guarantee some sort of unified protection to all damaged parties against the risks and damages incurred from defective products. In this context, it is worth mentioning that the evolution of French Law may only be addressed by linking this law to its surrounding environment in the European Union and its directives, as issued to Member States. That is, after the issuance of the Council Directive of July 25, 1985, on the liability for defective products, the French legislator issued the Defective Products Act on May 19, 1998, which established the principle of objective responsibility for defective products. Following this, French civil legislation received this new law and listed it within the rules of liability; thus, Art. 1386 was dedicated to this law in over eighteen clauses. The article was later amended in the New Civil Act, issued by the Decree of February 10, 2016, and listed under Art. 1245, divided into seventeen clauses in French Civil Law.

Since the purpose of the current study is to develop a clear and unified legal frame that could be adopted by the Egyptian legislator, there is no need to address all the details of the French Law concerning the liability for defective products; instead, the goal is to identify an intellectual frame concerning the legal basis for safety assurance (i.e., regarding the concept of a safety defect), as well as the essential requirements concerning the applicability of this liability on damages from defective products.

5.3.1. The necessity of adopting a clear concept for safety defects in defective products

The issuance of the Law of May 19, 1998, led to the emergence of a new form of liability based on the legal grounds of the lack of safety defects in defective products (Hamitouch & Hamadi, 2020). This new sort of responsibility is based more on the products themselves, rather than the person and behaviour of the producer and their shortcomings. Hence, according to the provisions of the French Law concerning the objective responsibility for defective products, including the consequent judicial applications in this regard, we believe that the Egyptian legislator may adopt some legal basics and foundations that reflect the privacy of this legal system. For example, the Egyptian legislator may adopt a definition of defective products that covers a lack of safety and security as expected by the consumer of all marketed products and stipulated by the French legislator in Art. 1386(4), amended by Art. 1245(3). In other words, a defective product is one that lacks the element of safety as accepted by the public audience of consumers.

Furthermore, it is worth noting that French Law does not identify the lack of safety and security defects in the same way as used by the judiciary to identify the commitment to the contractual safety warranty. That is, before the Law of May 19, 1998, the French Judiciary had not acknowledged vendor liability except when the product exhibited a real defect compromising consumer safety. Nevertheless, the private legal system discussed here acknowledges objective responsibility for products by including aspects that could threaten consumer

safety, even if the product does not exhibit a real defect. What this means is that the concept of a safety defect in products is much broader than the contractual concept of commitment to safety as stated by the judiciary, and hence this expands the scope of the implementation of the principle of objective responsibility for damages and defects of products. Indeed, most of the guarantee provisions stated in the general rules have been drafted from the contractual perspective to fulfil specific economic purposes; hence, these provisions have moved away from the protective and preventive purpose stated by the producer's responsibility for the consequences of their defective products (Bin Tariya, 2013).

In light of the above results, a major question arises: *How has the French Court of Cassation handled the issue of competition between the principle of objective responsibility (with its firm legal ground in the defect of lack of safety) and the general rules of Civil Law?*

In principle, the Court of Cassation has indeed acknowledged that the application of objective responsibility for defective products may not affect the right of the damaged party to invoke the application of the general rules of civil responsibility provided the presence of some legal ground that is totally different from that of the absence of the two elements of safety and security in those products that have caused the damage (e.g., error or hidden defect). In other words, in a claim of compensation for damages caused by defective products, if the damaged party has based his case on the lack of safety and security, the judge may only apply the rules of objective responsibility for defective products.

Therefore, the Court of Cassation has ruled that if the damaged party has failed to prove the presence of another error other than the lack of safety and security in the disputed product, then, the objective responsibility shall exclude the application of the general rules of civil responsibility for a personal fault (Cass. Civ. 1e, 10-12-2014, N°13-14.314 F-PB: Bull. civ. I, N°209).

In addition, the court has also excluded the application of contractual liability, if the damaged party has failed to base its case on an error that is different from the principle of objective responsibility for defective products (Cass. Civ. 1e, 17-3-2016, N°13-18.876 F-PB: BRDA).

Moreover, in another court ruling, the French Court of Cassation has ruled that the damaged party may not base its case on the commitment to contractual safety, as long as he claims the absence of the two elements of safety and security in the defective product (Cass. Civ. 1re, 17-3-2016, F-P+B, N°13-18.876).

Therefore, the application of the general rules of civil responsibility shall be excluded, if the damaged party seeks an end that could be attained through the said private legal system, or if the plaintiff has based his claim on the same legal ground of that private legal system.

Moreover, to ensure absolute clarity with the concept of a safety defect, we believe that the Egyptian legislator should adopt the French legislator's standard for safety expectations, such that the law and reality are efficiently linked. This standard will enable the Egyptian legislator to develop legal controls that facilitate the judge's

work, and eventually sustain and ensure individuals' safety. This legal standard for safety expectations will now be addressed in more depth.

The legitimacy of safety expectations

The concept of legitimate safety expectations implies that a producer takes certain precautions into account, such as complying with standard and technical specifications of products and the applicable standards for safety and quality, as well as those for the products' intended method and purpose of use, especially for dangerous products (Gemiae, 2000). Hence, the producer must follow those safety precautions considered the most important legal controls in modern times. As such, modern legislative policies tend toward the adoption of technical and practical legal controls, i.e., those which include a preventive aspect, under which a professional must abide by certain preventive measures. In other words, for the legal rules to keep pace with ultra-fast recent technological developments, they must include legal controls with technical content so that they attain the desired balance between the producer and consumer. This is because a legal rule is socially more acceptable if it is drafted with controls that link law to the social, economic, and technological reality. Such legal controls facilitate the establishment of flexible legal rules, passed to balance scientific developments and legal aspects (Bernard, 2008).

Reasonability of safety expectations

The applied standard for legitimate safety expectations must be controlled by reasonability, i.e., that these expectations are reasonable and without exaggeration or extravagance. Practically speaking, it is impossible to attain a full assurance of safety and security against any defects, and, therefore, some aspects of safety assurance against defects may be sacrificed, especially in case of their exaggeration. On this basis, the French Court of Cassation states that all industrial products may involve some undesired effects; however, the effects which may be considered defects are those that are not expected under normal circumstances.

Obviously, the legal control of the reasonability of legitimate safety expectations will establish a balance between the principle of economic freedom (including its requirement for the expansion of the production of goods and services) and the protection of consumer rights, including its requirements for safety and security. In this sense, it is obvious that the legislative policy should adopt this specific legal control to strengthen the bonds of mutual trust between producers and consumers, and to maintain a close relationship between both parties. Although it is essential to build trust as one of the foundations of modern social life, the reasonableness of the legitimate safety expectations should provide the producer with the desired economic freedom to accelerate development, as a benefit to society. As such, consumer expectations should not involve any exaggeration that might discourage producers and distributors, and so the reconciliation of conflicting interests should be at the judge's discretion.

Relativity of safety expectations

According to the need to balance the conflicting interests noted above, the legislator's adoption of legal controls for legitimate safety expectations means that only some allegations will be accepted as legal grounds for compensation claims. Consequently, the judge's discretion regarding such expectations means that all surrounding circumstances must be considered (not the personal circumstances of the damaged party, but all circumstances surrounding the processes of production and marketing) (Domana & Shadani, 2020). In other words, this legal standard must be objective. Moreover, the application of these legal controls for legitimate safety expectations must be characterised by relativity. For instance, the evaluation of the legitimate safety precautions for medicinal or dangerous products must differ from that of other commodities prepared for everyday normal use.

5.3.2. Determining the rules of objective responsibility for safety defects in defective products

There are specific terms and conditions for the application of the proposed legal system, regarding objective responsibility for products considered defective due to a lack of safety. These terms reflect the privacy of that legal system so that it can be clearly distinguished from the general rules (Barakat, 2021). Moreover, the legislator must specifically identify who will pay compensation for the damage from the defective product caused by its lack of safety and security.

Terms of the objective responsibility for safety defects

The concept of available for trading is distinguished in the stated provisions of objective responsibility for defective products and may be regarded as the incident itself, i.e., it is the incident that brings about the producer's responsibility for the safety of their products. The concept has helped expand the scope of objective responsibility as it has broadened the range of those responsible for different product defects. Consequently, the available for trading concept has the goal of protecting the damaged parties during all stages of the process of offering products for consumption, from manufacturing until final display for the end user. Therefore, the concept includes all movable funds (whether new or used), including all material and intangible movables (such as software). Given the importance of the concept, we believe it should be adopted by the Egyptian legislator as the incident causing the objective responsibility for defective products, or as an incident that represents a clear failure to adhere to the safety assurance obligation with defective products.

The available for trading concept has also played a major role in establishing the private nature of the objective responsibility for defective products in French Law, by clearly distinguishing such responsibility from general rules. As such, it is deemed unnecessary to link this concept with that

delivery, as adopted in the stated rules concerning the contract of sale. Although it may be suggested that there is some resemblance between the two concepts in this context (Chaumet, 2008), most jurisprudential opinions tend to dismiss such a resemblance by taking into consideration that the process of making products available for trading is merely a material incident that could be conducted in any form of distribution, without the need for a specific contract (Ghestin, 2006). Furthermore, the legal acknowledgement of the available for trading concept has helped avoid legal issues resulting from the implementation of the adopted standard for custodianship transfer within the stated responsibility for custodianship, should the product move from the producer's custody to that of someone else. In this way, the scope of objective responsibility for defective products requires no further investigation into the methods and reasons behind transferring the control or custodianship of products, or whether these products were in the possession of someone else. What this means is that a detailed description of the concept of available for trading can be identified in many ways once the products have moved from the producer's custodianship.

The process of making the product available for trading can be inferred by certain standards. For example, the release of the product must be by the producer's free will and choice; if the product is marketed against the producer's will, this constitutes firm legal grounds for relieving the producer of any relevant responsibility. Alternatively, if a product was stolen from the producer's custody and marketed, subsequently causing damages, the producer might not be held as responsible for such damages due to their fulfilment of one of the causes of acquittal. Hence, making the product available for trading is identified through its release from the production chain to the market upon the full and free will of the producer (Grynbaum, 2013).

As for the elements of damage and causation, the French legislator obligates the damaged party to prove the defects in the product and their relation to the incurred damage. The seriousness of such claims initiated by a consumer thus undoubtedly and primarily depends on the plaintiff's ability to provide evidence of damage and its link to the alleged defect. However, if the producer's responsibility is linked to the consumer's proof of a defect in the product's design, manufacturing, or composition, this represents a large burden on the damaged consumer, as a typical consumer, will lack the required technical knowledge to prove such defects, and hence they incur further charges for technical experts. Consequently, the damaged consumer may be weaker in such a claim than the other litigant, who is well-equipped with the required economic and scientific knowledge to invalidate the consumer's arguments. Clearly, this scenario negatively affects the administration of justice.

To resolve these issues, French law stipulates that commitment to safety must be the legal grounds for any claim initiated by a damaged party instead of the hidden or nonconformity defects guarantee, the commitment to caution, or the obligation to inform, as stipulated in Egyptian Law. Thus, when a defect is defined as a lack or

absence of safety and security, the judge can elicit several facts by which producer responsibility can be established, hence lightening the burden of proof on the damaged party. In other words, acknowledging the principle of commitment to safety as legal grounds for claims by damaged consumers will significantly contribute to the judiciary's adoption of efficient solutions that will in turn provide the desired consumer protection.

One example of the application of this can be seen in the Toulouse Court of Appeal's ruling on the explosion of a car tyre that had recently been released to the market. The court considered the explosion is evidence of the tyre's lack of consumer safety (Grynbaum, 2013). Another example is seen in the High Court of Aix-en-Provence's ruling that a break in a glass drawer represented a defect for which damages were to be compensated in accordance with the rules of objective responsibility for defective products (Grynbaum, 2013). These cases show that, if the affected consumer is required to prove the causation between the defect and the incurred damage — a task fraught with difficulty — the judge may elicit and acknowledge certain facts to settle the case, especially those in which the judge fails to find any other causes explaining the occurrence of such defects (Borghetti, 2008).

Despite the aforementioned points, we believe it would be better for the Egyptian legislator to acknowledge the presence of legal evidence of the producer's violation of the commitment to safety guarantee as soon as the damaged party proves their incurred damages. Indeed, this view is consistent with some aspects of French jurisprudence, especially its explicit confirmation that "without presuming the producer's shortcoming in such case, it would be doubtful to hold this producer as responsible for the damages and incidents of [their] defective products" (Shahida, 2007).

Identifying responsibility for compensation for damages from defective products

Naturally, the producer of a commodity holds primary responsibility for its defects, and for this reason French legislation specifically defines the producer in Art. 1386(6): "[They are] every person who professionally manufactures any of the following: a fully finished end product, a primary material for the end product, or a part or component in the end product". In this sense, the producer of a commodity is identified to the public as any person who holds such capacity by putting their name or trademark on the offered commodity. Furthermore, in Art. 1386-6(3), as amended by Art. 1245-5, the French legislator has stipulated that the legal capacity of a commodity producer is assumed by any person who imports this commodity within the European Union for any of the following purposes: sale, promise to sell, lease, or distribution in any other way. The French legislator also specifies other persons who may assume the legal capacity of a producer, including the vendor, lessor, finance lessor, and distributor.

In this regard, it is worth mentioning that the European Court of Justice harshly criticised the French legislator for not taking into consideration a European Directive issued on July 25, 1985, on the basis that the French legal provision equated

the producer's responsibility with that of the distributor, instead of stating that the distributor's responsibility is a mere precautionary liability, in accordance with this European directive. Consequently, the French legislator issued a new law on April 5, 2006, which gives the distributor the right to be relieved from any responsibility if the name of the producer is disclosed (Art. 2 of the Law of April 5, 2006). French law now complies with the European directive issued in this regard by acknowledging the distributor's responsibility as a mere precautionary liability that may only be invoked by their failure to identify the producer. As a result, the professional liability of some self-employed persons (e.g., physicians) has been amended by this new law. In addition, the change has prompted several consequences which negatively affect the right to some categories of compensation, such as the patient's right to compensation for damages incurred due to surgical operations, especially operations requiring a blood transfusion or prosthetic implant (Maignan, 2006).

Since the Egyptian legislator is not subject to the same pressures as the French legislator, there is nothing to prevent the Egyptian legislator from expanding the concept of producer responsibility (as well as the liability of those who may hold the legal capacity of a producer), to ensure consumer safety against damages from defective products. Indeed, this view is compliant with many jurisprudential opinions which uphold the need to expand the concept of the producer or their legal counterpart, in order to activate the implementation of objective responsibility for defective products. This view may also be considered compliant with the Egyptian legislator's special attention to the new Trade Law, specifically to identify the concepts of producer and distributor, especially in liability claims (Al-Kalyoubi, 2007).

6. CONCLUSION

This current paper has introduced a comparison between the Consumer Protection Law and the Objective Responsibility Act, including the role of each law in providing an integrated and homogeneous legal system for consumer protection against damages of defective products. On this basis, the study has concluded a major result stating that the Consumer Protection Law has failed to provide an integrated legal system for consumer protection against damages of defective products. This failure is mainly attributed to the fact that the Consumer Protection Law is primarily concerned with the provision of preventive protection through a number of regulatory rules, where the competent administrative authorities are the major player tasked with the enforcement of severe criminal and administrative penalties on any violating parties. Furthermore, the Egyptian legislator has only adopted the general rules, through which the consumer may be compensated for damages of defective products.

Hence, this current paper believes that the said regulatory rules of the competent administrative authority are not good enough; that is to say, just like the French legislator, it is necessary to stipulate other rules concerning the objective responsibility for defective products; taking into consideration

that the ultimate goal of individuals' safety assurance against damages from defective products is basically a task of judicial oversight.

In this sense, we believe that the comparative study presented in this research paper, including its results and recommendations, shall contribute significantly to opening new horizons and visions for future work by researchers; particularly, with regard to the proposed legal framework as a model for a unified and homogeneous legal system for the objective responsibility for damages from defective products.

Finally, we truly believe in the high importance of the results and recommendations presented in this paper; however, the efficiency of those outcomes is mainly based on the Egyptian legislator's willingness to change his traditional views; i.e., the ultimate goal of safety assurance may be attained through the application of some regulatory rules, through which the risks and

damages of defective products and commodities available for trading in the markets could be managed. That is to say, the issue is basically about the Egyptian legislator's problematic belief that controlling the defect of absence of the two elements of safety and security shall be the task of the Administrative Control Authority in the first place.

As is the case with any research work, our study has a couple of limitations, which could be interesting future research avenues. First, despite the importance of French Law as a yardstick, our study could be expanded by making a comparison with the European Council Directive of July 25, 1985, on the liability for defective products. Second, the present study does not investigate Egyptian Commercial Law, which adopts some rules with respect to the producer's responsibility. Both limitations are left for future research.

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