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# CIVIL LIABILITY OF PHARMACEUTICAL MANUFACTURING COMPANIES UNDER ALGERIAN LEGISLATION – A COMPARATIVE STUDY

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## ABSTRACT

This study aims to examine the civil liability borne by pharmaceutical production companies when their activity results in causing harm to the drug consumer. The interest in this subject is due to the special nature of the medicine, as it is a product inseparable from human health, which makes any defect affecting it a possible cause of serious damage. It is observed in this field that the consumer is often not bound by a direct contractual relationship with the drug producer, but rather obtains the medicine through the pharmacist, which raises the problem of determining the legal basis of liability. From this perspective, the study addresses the forms of civil liability of pharmaceutical production companies, between contractual liability and tort liability, while also stopping at the tendency toward recognizing an objective liability that arises merely upon the occurrence of damage.

The study also relies on a comparison between Algerian legislation and both Jordanian and French legislations, in order to assess the adequacy of the current legal rules in protecting the drug consumer and repairing the damage that may be inflicted upon him.

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## KEYWORDS

Civil Liability, Pharmaceutical Production Companies, Defective Drug, Consumer Protection

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### Introduction:

The civil liability of pharmaceutical production companies raises many legal difficulties, especially when it is examined in relation to the protection of the consumer who is considered the weaker party in the field of drug consumption. The medicine, by its nature, is not an ordinary product, since it is intended for treatment and preservation of health, and any defect that affects it may lead to harm that exceeds the limits of normal material damage. For this reason, the problem of liability in this field becomes more complicated, not only because of the technical nature of pharmaceutical production, but also because of the legal relations that govern the circulation of medicines. In most cases, the consumer does not deal directly with the producer, but obtains the drug through the pharmacist, which makes the existence of a direct contractual relationship between the injured consumer and the producer difficult to establish.

At this point, it becomes necessary to shed light more closely on the contractual relationship between the injured consumer and the producer. In the field of medicines, determining this relationship appears to be difficult due to the multiplicity of operations involved in drug production, including manufacturing, storage, distribution, and processing of the product. In such a case, it is first required to determine the nature of the liability that should be activated in order to enable the injured party to obtain his right, whether it is contractual liability or tort liability as recognized under general legal rules, which is translated into what is known as the producer's liability for defective products. This liability may be established when the relationship is of a traditional nature and not a complex one, a matter that is complicated by the multiple stages involved in the production of medicines. Reference to French legal doctrine shows that it did not focus on the question of whether the civil liability of the producer is

contractual or tortious, but rather directed its attention toward the injured party, who has the right to compensation for the damage suffered as a result of the defective product, regardless of whether a contractual relationship exists between him and the producer or not. (Hamadi, 2011, p.21)

This situation has led to differences in legal approaches concerning the basis on which the producer may be held liable, whether on the basis of contractual liability, tort liability, or on an objective basis independent of fault. In Algerian legislation, the absence of a specific legal system governing the civil liability of pharmaceutical producers has resulted in reliance on general rules of civil law, particularly those related to hidden defects and tort liability, which raises questions about their adequacy in providing effective protection to drug consumers. Accordingly, this study seeks to analyze the civil liability of pharmaceutical production companies under Algerian law, with reference to Jordanian and French legislation, in order to clarify the legal foundations of such liability and to determine the extent to which current legal rules respond to the need for protecting consumers and compensating them for damages resulting from defective medicines.

On this basis, the study raises the following legal problem: **How did the Algerian legislator, as well as the Jordanian legislator, regulate the civil liability of pharmaceutical production companies, and does this regulation reflect the same approach adopted by the French legislator?.**

#### **First: Contractual and Tort Liability of the Producer**

We will address the clarification of contractual liability, which is considered difficult to apply between the consumer and the drug producer, given that the relationship between them is indirect. In the event that contractual liability is excluded, we naturally resort to applying the tort liability of the producer for the damages that affect the consumer when acquiring the pharmaceutical product.

#### **1- Contractual liability:**

For contractual liability to arise, it is required that there be a valid contract between the liable party and the injured party, that damage has arisen as a result of the breach of contractual obligations, and that the contract be existing at the time the damage occurs. However, as a matter of principle, the rules of contractual liability protect injured parties only within a narrow scope, namely those who are linked by a direct contractual relationship with the producer or the distributor.

By returning to the Algerian legislation, we find that it did not specifically regulate the liability of the producer for defective products, which leads us to operate under the general rules related to the warranty of hidden defects in the Algerian Civil Code, provided within the framework of the seller's obligations, starting from Article 361 and the following articles. The same approach was adopted by the Jordanian legislation, where the seller is obliged to deliver the sold thing to the buyer and to guarantee the defects existing therein, as stated in Article 512 of the Jordanian Civil Code (Jordanian Civil Code, 1976, Art. 512). However, as previously mentioned, it is difficult for a contractual link to exist between the producer and the injured party in the field of drug consumption, because it is very difficult for the patient to be connected by such a direct relationship with the pharmaceutical manufacturing company or drug warehouses. Accordingly, a large category of drug users who have suffered harm from these medicines remains outside the scope of contractual liability (Abbas, 2013, p.100).

The sale and circulation of medicines are among the sales known as successive sales that concern the sold thing (the drug). In this case, the courts allow the final buyer to bring a warranty action, since the producer in this case is considered a guarantor of the safety of the product from any defect, directly against any of the successive sellers starting from the manufacturer up to the distributor. The buyer is considered a third party with respect to the manufacturer or the producer, yet he may at the same time have recourse against him on the basis of the hidden defect (Boudali, 2005, p.69). Accordingly, it cannot be said that there is a contractual relationship between the consumer and the drug manufacturers. This was confirmed by the first paragraph of Article 5115 of the French Public Health Code (French Public Health Code, 2000, Art. 5115-1), which stated that the user of the drug cannot purchase the medicine directly from the manufacturer but rather obtains it from the seller (the pharmacist), and therefore no contractual relationship binds him with the drug manufacturer.

However, on the other hand, some have stated that the absence of a contract between the consumer and the producer does not constitute a sufficient argument to reject the contractual basis, since the existence of a contract today is no longer considered a necessary condition for bringing a contractual liability action\*. This is

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\* The absence of a contract between the user and the drug manufacturer is no longer a relevant argument for rejecting the contractual basis. Today, the existence of a contract is no longer a necessary condition for bringing an action in contractual liability.

in order to close the door before the producer from invoking the absence of a contract between him and the injured consumer to evade liability. It is also possible to consider that the drug leaflet included in the pharmaceutical product constitutes a contract between the producer and the consumer. It should be noted here that the acceptance of the contractual claim will lead to compensation for the risks of scientific progress, as these fall within the contractual obligations of the manufacturer, since he is obliged to guarantee all internal defects related to his product. The justification relied upon here is the existence of a chain of contracts that may be homogeneous or heterogeneous. The consumer purchased the medicine from the pharmacist, and despite the absence of a direct relationship with the drug manufacturer, he may be considered a sub-purchaser, and thus has the right to bring a contractual action for the warranty of hidden defects against the seller or the producer of the drug (Shalqami, 2008, pp.35–34).

We also find that the idea of the consumer's recourse against the drug producer according to the rules of contractual liability for damages resulting from the use of defective medicine has a legal basis in the rules governing the special successor. In this case, the consumer is considered as a special successor to the pharmacist who is contractually linked to the pharmaceutical company, whereby the rights established for the pharmacist vis-à-vis the drug producer are transferred to the buyer (the drug consumer). The special successor is defined as the person who receives from his predecessor (the pharmacist) a right that existed in his patrimony, whether this right is real or personal, such as the buyer (the consumer) or the holder of a usufruct right (Mansour, 2006, p.186). Accordingly, the pharmacist has the right to obtain a sound medicine free from any defects and fulfilling the purpose of its acquisition and use, which is most often treatment, according to the contract concluded between them. If the medicine is defective, the pharmacist has the right to have recourse against the producer for breach of his contractual obligations, and this right is transferred to the buyer as a special successor of the pharmacist. Thus, the consumer has the right to have recourse against the drug producer in accordance with the rules of contractual liability and in his capacity as a special successor.

And in conclusion, the injured party in successive and consecutive sales does not have the right to have recourse against the drug producer according to the rules of contractual liability, due to the principle of the relative effect of contracts, on the basis of the absence of a direct link between the injured consumer and the producer. This applies with respect to both Algerian and Jordanian legislations. Rather, the consumer may have recourse against the producer under the rules of contractual liability in his capacity as a special successor, and there is no direct legal text that allows the consumer who is harmed by a defective pharmaceutical product to have recourse against its producer according to the rules of contractual liability. However, the French Civil Code has expanded this warranty (the warranty against hidden defects) in such a way as to enable the injured party to claim against the producer on the basis of his contractual liability even in the absence of a contractual relationship. The consumer here has the right to have direct recourse against the producer, who is considered a guarantor of the risks that may result from his pharmaceutical product, as well as of the hidden defects that may affect it (Sorour, 1983, p.111). This is what was stated in Article 1386/01, which considers the producer liable for the damage caused by a defect in his product, whether or not a contractual relationship exists between him and the injured party (French Civil Code, 1998, Art. 1386/01).

For the first time, French courts ruled in favor of the contractual liability of the producer before the final buyer in 1984. The substance of the case concerned the existence of a defect in construction materials used in the building of a property. The French Court of Cassation allowed the acceptance of the claim brought by the purchaser of the property against the producer of the construction materials. This case constituted a turning point that allowed the injured party to hold the producer directly liable on the basis of contractual liability. Before the 1984 case, French courts did not grant the acquirer of a property the right to bring a contractual action except against the seller of the property. If the property had not been sold, the right of recourse belonged to the intermediate buyer or the employer who dealt with the contractor on the basis of the contracts binding them. As for claims related to defects in products, such as defects affecting construction materials, recourse was made on the basis of tort liability against the producer (Al-Dalala'a, 2011, p.62).

## 2- Tort Liability:

Tort liability is defined as the sanction for deviation from the conduct of an ordinary person. This was clarified by Article 124 of the Algerian Civil Code, which states: "Any act, whatever it may be, committed by a person through his fault...". It was also defined by Article 256 of the Jordanian Civil Code as follows: "Any harm caused to others obliges its perpetrator, even if not discerning, to guarantee the damage." This corresponds to Article 1383 of the French Civil Code, which provides: "Everyone is responsible not only for the damage he causes by his act, but also for that which is caused by his negligence or lack of attention"

(Mamash, 2012, p.28). Accordingly, it is observed that the Algerian legislator has based tort liability on fault, as stated in Article 124 of the Civil Code, as well as tort liability on the basis of presumed fault, namely liability for the act of others in general and liability for things in particular.

#### **A- Liability Based on Fault:**

Fault constitutes the essential element upon which tort liability is established. The producer is considered to have committed a fault when his product is defective in a manner that renders it harmful to the consumer, which gives rise to the obligation to compensate the injured party. In order for the latter to obtain compensation, he must prove the elements of liability, namely fault, damage, and the causal relationship. This means establishing evidence that the act of the producer, or his omission to perform a necessary act, transformed a non-harmful product into a harmful one and caused damage upon its use (Mamash, 2012, p.30). As is well known, proof in the field of tort liability may be established by all means, which is known as free or unrestricted proof (*système de la preuve morale ou libre*). In this system, the law does not determine specific methods of proof, but rather leaves the parties free to choose the evidence they consider capable of convincing the judge. The judge, in turn, plays a positive role by assisting the parties in remedying deficiencies in their evidence. This freedom enjoyed by the judge allows the judicial facts reached in his judgment to correspond, to a large extent, with the factual reality of the subject matter or the case before him (Al-Sa'di, 2009, pp.9–8). However, the injured party may face difficulties in the process of proof, especially in light of industrial progress, the development of production methods, and the complexity of product composition. In such cases, it becomes difficult for the injured party to establish evidence of fault, as this would require tracing all stages through which the product passes in order to identify the producer's fault. Proof thus becomes difficult whether the fault committed by the producer is ordinary or technical.\*

#### **B- Liability Without Fault:**

The liability of the producer may also be established on the basis of his guardianship over the thing (the drug) that caused the damage. In this case, the producer bears liability equivalent to that arising from fault, through the application of Article 138 of the Algerian Civil Code, which provides: "Anyone who assumes the guardianship of a thing and has the power of use, management, and control shall be liable for the damage caused by that thing." This system is of particular importance to those harmed by defective medicines, since the injured party is not required, in this case, to prove the producer's fault, on the basis that the latter is responsible for the damage caused by the product. It should be noted, however, that in order for a person to be considered a guardian of a thing, three conditions must be fulfilled: use, management, and control. At first glance, it is evident that pharmaceutical laboratories satisfy these three conditions and retain them until the medicine reaches the wholesale distributor and the pharmacist. In addition to these powers, there exists guardianship of the structure and guardianship of conduct or function (*la garde de la structure et la garde du comportement*). The first relates to the materials of which the thing is composed, while the second concerns the function of the thing when used and the consequences resulting therefrom. The producer is thus liable for damage resulting from the use of things characterized by danger, and his liability arises merely from the fact that he manufactured them. Accordingly, a person harmed by the consumption of a drug has the right to claim directly against the pharmaceutical laboratory if the drug, as a thing, is not under the producer's control. Reference to French law, particularly Law No. 389 of 1998 on liability for defective products, shows that it establishes the liability of the producer for a defective thing that causes damage to its consumers, even if the defect lies in the substance of the thing itself. The basis of this liability is that the producer contributed to the circulation of the product (Hamadi, 2011, pp.24–23).

In the absence of a special law governing the liability of the producer for defective products in Algeria and Jordan, recourse must be made to the general and classical rules governing producer liability in general. The drug producer is considered a professional seller of the product and is therefore subject to the obligations imposed on the seller. He must deliver a product that conforms to what was agreed upon in the contractual relationship, and he must also guarantee the product. Since there is no contractual relationship between the drug consumer and the producer, as previously mentioned, the consumer cannot, according to the general rules, have recourse against the producer on the basis of contractual liability. Reference to the Jordanian Civil Code shows that it considers damage to be the basis of tort liability, as stated in Article 256 thereof (Jordanian Civil

\* Ordinary faults consist in the producer's negligence in taking the necessary measures and precautions to avoid the occurrence of harm, such as failing to supervise or inspect the product before placing it on the market for consumption. As for technical faults, they are those related to the technical aspects of the production process, such as errors in the design stage or mistakes made during the manufacturing of the product, which lead to the appearance of a defect.

Code, 1976, Art. 256). Accordingly, the Jordanian legislator does not base tort liability on fault as the Algerian legislator does, but rather on harm. Whenever the consumer suffers damage, compensation becomes due. This position of the Jordanian legislator is consistent with technological and scientific progress, which has made it difficult for the injured party to prove that the producer committed a fault. It should be noted, however, that the idea of damage giving rise to compensation originally existed within the rules of Islamic Sharia. In this case, fault is presumed, and the injured party is only required to prove that he has suffered damage and that such damage resulted from the drug consumed. This establishes the causal relationship that allows the injured party to claim compensation for the damage suffered (Al-Dalala'a, 2011, p.70).

Islamic jurists express liability for a harmful act (tort liability) by the term "guarantee" (daman). For them, guarantee may refer to contractual guarantee, guarantee of destruction, or guarantee of possession. What concerns us here is the guarantee of destruction, which refers to a person committing an act that causes harm to another, such as destroying his life, a limb, or property. In such a case, he must guarantee what he has destroyed, in accordance with the general saying of the Prophet, peace be upon him: "There should be neither harming nor reciprocating harm." Guarantee was legislated in Islamic jurisprudence as a means to ensure the safety of members of society against any damage to their lives, bodies, or property, to preserve their rights, to prevent harm to them, to ward off aggression against them, and to repair the damage they suffer. Thus, guarantee serves to compensate for damage (Abd Al-Rahim, 2005, p.29).

### **Second: Objective Liability of the Producer**

The dual system of civil liability has been criticized on the ground that it does not ensure equal treatment among injured parties, due to the difference in the circumstances in which damage occurs and depending on whether the injured party is bound by a contractual relationship with the producer or not. This disparity led Professor André Tunc to state: "It is unacceptable that the mechanisms of protection differ between the case where the injured party is directly linked to the producer and the case of successive contracts or where he is a third party." The same idea was supported by Professor Gilles Petit Pierre, who stated: "The contracting consumer, as an injured party, is not the only one in need of protection, but also third parties, since they represent the category of injured persons most exposed to accidents" (Mamash, 2012, p.45).

French case law was the first to take the initiative in unifying the system of civil liability, which in turn influenced legislation to respond to the judiciary's insistence on such unification by enacting a special law governing the liability of the producer for defective products. The Algerian legislator was influenced by the French legislator and addressed this liability when amending the Civil Code in 2005, though it was limited to a single provision, as if following the French legislator with a certain degree of hesitation, namely Article 140 bis (Algerian Civil Code, 2005, Art. 140 bis). This reflects a clear orientation on the part of the Algerian legislator toward holding the producer liable for damage suffered by the buyer even if the latter is not bound to the producer by a contractual relationship.

Objective liability is defined as liability that is established by force of law. It is not based on fault or damage, but rather on the insufficiency of safety and security in products. This means that the producer is liable for damage resulting from a defect in the product, whether the injured party is contractually bound to the producer or not (Mamash, 2012, p.46). Accordingly, the French law of 19-05-1998 eliminated all forms of inequality among injured parties. Purchasers of medicines and others benefit equally from the rules of objective liability, with no distinction between damage suffered by the buyer of the medicine and damage suffered by others who are not parties to the contract. No discrimination is permitted among injured parties with regard to defects in medicines. The producer himself does not have prior certainty as to the nature of liability, whether contractual or tortious, as injured parties are free to choose between the general rules (dual liability) and the special regime governing liability for product defects. Moreover, French case law has not provided a clear and explicit answer regarding the nature of the liability of the drug manufacturer for damage arising from his product, nor has the law expressly determined this issue. In some cases, French courts opt for contractual liability, while in others they emphasize the application of tort liability rules. There is therefore no real benefit in determining the nature of liability for damage caused by medicines, since the legislator did not distinguish between injured parties and affirmed equality among them, whether or not they are bound by a contract (Shalqami, 2008, pp.37–36).

Consequently, whenever damage occurs as a result of consuming a defective product, the liability of the producer arises. It cannot be argued that the producer complied with technical standards of production, nor that he obtained an administrative authorization, since liability in this case is objective rather than fault-based. This was confirmed by paragraph 10 of Article 1386 of the rules governing producer liability for defective

products in the French Civil Code, which provides that: “The producer is liable for the defect even if the product was manufactured in compliance with the rules of the art or existing regulations, or was subject to an administrative authorization” (Salim, 2007, pp.64–63).

Accordingly, objective liability is based on the damage produced by the defective product, which gives rise to the liability of its producer. In order to allow the injured party affected by a defective pharmaceutical product to effectively obtain compensation, it is necessary to broaden the concept of the “producer”\*. This is the view adopted by Professor Laude, who stated that: “In order to always allow the victim to find a direct person responsible for the damage, the law must adopt a broad definition of the concept of producer.” Thus, the law of 19-05-1998 did not limit the definition of the producer to the person who manufactures the product in its final form, but also considered as a producer anyone who manufactures the raw material or undertakes the manufacture of a component part that enters into the composition of the final product. The French legislator aimed to facilitate the injured party’s access to compensation by clearly identifying the responsible party, and therefore allowed the victim to take legal action against any person connected with the product that caused the damage from all sides. Producers were thus considered to include the manufacturer, the seller, the distributor, the holder of the marketing authorization for the medicine, the professional distributor represented by the pharmacist, and anyone who imported the product, even if through illegal means (the black market). The first paragraph of Article 1386 of the French Civil Code provides that the producer is the principal party responsible for damage resulting from defective products, regardless of whether a contractual relationship exists between him and the injured party or not (Badr, 2008, pp.147–144).

Article 1386 of the French Civil Code eliminated any distinction between contractual liability and tort liability for damage caused by products, ensuring that the victim enjoys the same protection whether or not he is contractually bound to the producer. The text states that: “The producer is liable for damage resulting from a defect in his product, whether or not he is bound by a contract with the victim” (Abd Al-Rahim, 2005, p.182). It is well known in the field of pharmaceutical production and manufacturing that this process is complex. In order to reach the final form of the medicine, it passes through several stages: there are those who provide the raw material, those who carry out the transformation, those who package and label, until it reaches the wholesaler, the professional distributor, and finally the consumer. At the stages of manufacturing the medicine, every party that manufactures a part of the drug and contributes to bringing it into its final consumable form is considered a producer. Consequently, any damage suffered by the consumer renders all these producers jointly liable toward the injured party. This is what Article 1386 of the French Civil Code provides: “In the case of damage caused by a defect in a product incorporated into another product, the producer of the component part and the person who carried out the incorporation are jointly liable” (French Civil Code, 1998, Art. 1386). In this context, every producer of the medicine is liable toward the injured party due to the defective drug. For example, the extractor of raw materials is jointly liable with the processor of those materials. The difficulty increases when there is a group of producers, as each producer may seek to evade liability, leading producers to seek recourse against one another until the party responsible for the damage is identified. In all cases, what matters is compensating the injured consumer for the damage suffered, with compensation corresponding to the value and seriousness of the harm. Whether the first producer, the processor, or the final producer is responsible, the purpose of joint liability is the fair reparation of the damage suffered by the consumer as a result of the defective product (Badr, 2008, p.150).

The legal system of liability under the French law of 1998 concerning producer liability for defective products does not take fault as the basis of liability, as is the case under the general rules, but is instead founded on the risk to which injured parties may be exposed. Accordingly, all states should seek to enhance the level of protection afforded to consumers by amending laws and reformulating them from the perspective of the risks that injured parties may face. The traditional trilogy required to be proven under the general rules—fault, damage, and causal link—is not suitable for persons harmed by the use of medicines (Shalqami, 2008, pp.41–39).

Accordingly, the theory of risk has been adopted by French legislation as a basis for establishing producer liability, representing a positive approach aimed at providing better protection for the consumer. This raises the question of whether the Algerian legislator has followed the same path adopted by the French legislator.

As previously mentioned, the Algerian legislator adopted fault as the basis for the liability of the producer, as provided in Article 124 of the Civil Code. However, the question arises as to whether there is a

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\* In order to enable the victim to always find a direct interlocutor, the law adopts a broad definition of the concept of the producer.

place for the theory of risk within Algerian legislation. There are several considerations that may establish the idea of risk in Algerian law, including the following:

1- The liability of the producer under the Consumer Protection and Fraud Repression Law No. 09-03 arises from the non-conformity of the product or service with legal specifications and standards. According to what is stipulated in Article 9 (Algerian Consumer Protection Law, 2009, Art. 9), the producer is obliged to provide a sound product free from any harm, otherwise his civil liability shall arise.

2- By referring to the text of Article 138 of the Algerian Civil Code, the liability of the producer for damage resulting from defective products may be established on the basis of his guardianship over them. The wording of this article establishes the liability of the producer by force of law “La Responsabilité de plein droit”, without requiring the injured party to prove fault or even to prove the defect in the thing causing the damage. Mere occurrence of damage resulting from the defective product is sufficient for liability to arise (Qaida, 2005, p.200).

3- It is also observed that the Algerian legislator has adopted the idea of risk in certain systems related to compensation for damages, particularly in activities where the likelihood of risks is high. This is the case with the law issued in 1983 concerning compensation for work accidents (Algerian Work Accidents Law, 1983, p.1809), which establishes the employer’s liability on the basis of damage, with no possibility of exemption except where it is proven that the damage resulted from the worker’s own fault. This reflects that Algerian legislative policy has sought, since the late 1980s, to achieve protection for the injured party based on the risks threatening his safety and well-being, especially following the issuance of the first Consumer Protection Law No. 02 of 1989, after the opening of the Algerian market to a large volume of products, goods, and services imported from foreign markets that often lack the required and necessary safety and security standards (Qaida, 2005, p.201).

In all cases, the consumer of medicines must enjoy the highest level of protection, such that whenever harm occurs, the liability of the producer arises directly. The fundamental objective is the compensation of the injured party, and such compensation can only be achieved by holding the producer liable.

#### **Conclusion:**

Through this study, it has become clear that the civil liability of pharmaceutical production companies is established for the damages that may affect the consumer as a result of using different medicines. This study has led us to a set of results, which in turn prompted us to propose a number of recommendations.

#### **Results of the study:**

- In the field of drug consumption, it is difficult to establish a direct contractual relationship between the pharmaceutical producer and the consumer, which prevents the consumer harmed by a defective medicine from having recourse against the producer under the rules of contractual liability. According to both Algerian and Jordanian legislation, the person harmed by the use of a medicine does not have the right to claim against the producer on the basis of contractual liability, unlike the French legislator who granted the injured party the right to claim directly against the producer under contractual liability rules.

- The Algerian legislator establishes the tort liability of the producer either on the basis of fault or on the basis of custody of the thing, yet both bases do not sufficiently serve the injured party, as he bears the burden of proving the producer’s fault or proving his custody over the thing. In contrast, the Jordanian legislator establishes tort liability on the basis of damage, since every damage gives rise to compensation, following in this regard the rules of Islamic Sharia.

- The French legislator unified the system of liability through the law issued on 19-05-1998 concerning liability for defective products No. 389, by which equality was established among injured parties whether or not they were contractually linked to the producer. This law imposed an objective liability on the producer based on the idea of insufficient safety and security of products, which encouraged the Algerian legislator to follow the same approach, though not by enacting an independent legal regime, but rather by introducing a new provision into the Civil Code, namely Article 140 bis.

#### **Recommendations of the study:**

- The necessity of drafting special legal rules governing civil liability in the field of medicines, in order to provide effective protection for their users.

- The necessity that the liability imposed on pharmaceutical production companies be established by force of law, with fault excluded as its basis.

- The necessity of expressly stipulating that the risks of scientific and technological progress should not be considered a ground for exempting pharmaceutical producers from liability.

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