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The hyper-vulnerability of the elderly in digital relationships: from a consumer law perspective.

The hypervulnerability of older people in digital relationships: from the perspective of consumers rights

The hypervulnerability of older people in digital relationships: from the perspective of consumer rights

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SUMMARY

The purpose of this study is to analyze, from the perspective of Consumer Law, the hyper-vulnerability of older adults in digital consumer relations, especially in the context of The use of apps, electronic contracts, and virtual platforms. Technological advancement, although While promoting convenience, it has significantly increased the risks of fraud, scams, and abusive practices, which These problems affect elderly consumers more intensely. The research investigates the legal mechanisms involved. existing protections within the Brazilian legal system, as well as the role of the Judiciary. In light of these demands, a bibliographic, documentary, and jurisprudential methodology was used. It was found that, despite the existence of protective regulations, there are still gaps in their implementation. rights in the digital environment, which makes more rigorous action necessary on the part of the authorities. Regulators and jurisdictional bodies.

Keywords: Consumer Law. Elderly. Hypervulnerability. Digital Relationships. Scams Virtual.

ABSTRACT

This study aims to analyze, from a Consumer Law perspective, the hypervulnerability of elderly consumers in digital relationships, particularly in relation to applications, electronic contracts, and virtual platforms. Technological advances have facilitated consumption but have also increased

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the risks of fraud and abusive practices. This research investigates legal protection mechanisms and judicial responses. A bibliographic, documentary, and jurisprudential methodology was adopted. The results indicate that legal safeguards still face challenges in digital environments.

Keywords: Consumer Law. Elderly. Hypervulnerability. Digital Relations. Online Fraud.

1 INTRODUCTION

The consolidation of digital technologies has profoundly transformed social relationships. economic and legal changes in Brazil and worldwide, directly impacting how consumers... They contract services, purchase products, and interact with suppliers. E-commerce, the Banking apps, payment platforms, and social networks have become integrated into our daily lives. The daily lives of the population are transforming the virtual environment into a central space for consumer relations.

In this context, it is observed that the digitization process, although it has promoted greater Convenience, speed, and increased access to goods and services have also intensified the exposure of Consumers are exposed to risks, especially regarding the occurrence of fraud, online scams, and data breaches. abusive data and contractual practices. Such risks affect different groups unequally. social issues, impacting those in vulnerable situations most severely. According to As Miragem (2022) points out, consumer vulnerability intensifies in the digital environment, which requires greater legal protection.

Older adults, increasingly integrated into the digital environment, face obstacles. specific aspects related to technological literacy, understanding technical terms, and navigation. Security on electronic platforms and in the interpretation of digital contracts. As Marques points out. (2020), informational vulnerability intensifies in the virtual environment, compromising the ability conscious consumer choice.

According to Tartuce (2021), hypervulnerability is characterized by the sum of social factors, Economic, cognitive, and cultural factors that increase consumer vulnerability in the market. In the case of the elderly, this condition is exacerbated by limited access to quality information. due to difficulties adapting to technological innovations and, often, due to dependence on third parties for carrying out digital operations.

Furthermore, there has been a significant increase in scams targeting the elderly, especially due to... through messaging apps, fake banking services, irregular electronic contracts and social engineering highlights the need for a more in-depth legal analysis of protection. of this group in the digital environment. Recent data shows that a large part of online fraud...

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Its main target is consumers over 60 years of age, due to their greater susceptibility to Manipulations and misleading information.

Given this scenario, it becomes essential to reflect on the role of Consumer Law. in promoting the safety, transparency, and dignity of older people in digital relationships. The Brazilian legal system, by recognizing the vulnerability of the consumer and the need for special protection. For the elderly, it imposes on suppliers the duty to adopt preventive, educational and technological measures. capable of minimizing risks and ensuring balanced contractual relationships.

In this sense, the question arises: how can Consumer Law ensure protection? Effective for the elderly in digital relationships, given the increase in scams, abusive contracts, and failures. What about security on electronic platforms? What are the limits of the suppliers' responsibility? And what about the role of the State in the face of new configurations of virtual consumption?

The overall objective of this work is to analyze the hyper-vulnerability of the elderly in digital consumption. considering the legal, social, and economic impacts of virtual relationships. The objectives are... Specifically, the aim is to: examine the legal framework applicable to digital relationships; identify the main abusive practices directed at the elderly; analyze the role of the Judiciary through... case law; and to propose measures that contribute to strengthening the legal protection of this. group in the technological environment.

2. MATERIALS AND METHODS

This research adopted a qualitative approach, of an exploratory, descriptive and... analytical, with the aim of understanding, in depth, the hyper-vulnerability of the person. elderly people in digital consumer relations. The choice of this approach is justified by the need to interpreting complex social and legal phenomena involving technological and normative factors and humans.

Initially, a systematic bibliographic search was conducted, through the survey of doctrinal works, scientific articles, dissertations, theses, and specialized publications in the areas of Consumer Law, Digital Law, Data Protection, and the Rights of the Elderly. The foundations. The sources consulted included academic journals, digital libraries, and institutional repositories. prioritizing productions published between 2015 and 2025.

Next, documentary research was carried out, with a detailed analysis of the Constitution. Federal Constitution of 1988, Consumer Protection Code (Law No. 8.078/1990), and the Statute of the Person Elderly (Law No. 10.741/2003), the General Data Protection Law (Law No. 13.709/2018), as well as Resolutions, ordinances, and supplementary regulations related to e-commerce and services.

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digital and information security.

Case law research was a fundamental step in the study, carried out through... consultation of the databases of the Supreme Federal Court, the Superior Court of Justice and the State Courts of Justice. Decisions issued between 2017 and 2025 were selected that directly involved elderly victims of digital fraud and irregular electronic contracts. data leaks or failures in the provision of technological services. The analysis focused on identification of the legal grounds used, the liability criteria adopted and the application of consumer protection principles.

In addition, institutional reports, statistical data, and research were examined. produced by public bodies and relevant entities, such as the Brazilian Institute of Geography and Statistics (IBGE). Statistics (IBGE), the Central Bank of Brazil, the National Consumer Secretariat (SENACON) and CGI.br (Brazilian Internet Steering Committee). Data from the 2023 ICT Households Survey, prepared Data from CGI.br also demonstrates the growth in internet use among the Brazilian population. including among the elderly, which aims to contextualize the phenomenon being analyzed.

Regarding the analysis procedures, the content analysis technique was used. which allowed for the thematic categorization of the collected data, especially regarding the types of scams, to contractual breaches and legal protection strategies. The information was organized into thematic areas. analytical, which enabled the construction of a critical and systematized interpretation.

Regarding the methods of reasoning, the inductive method and the dialectical method were employed. The inductive method made it possible to formulate general conclusions from the observation of cases. concrete and specific judicial decisions. The dialectical method, on the other hand, allowed for a confrontation between the The legal protections provided for and the practical reality experienced by elderly consumers. highlighting contradictions, gaps, and challenges.

Finally, it is worth highlighting that the research respected ethical and scientific criteria, prioritizing... Reliability of sources, through correct citation of authors and impartiality in data analysis, ensuring the reliability and relevance of the results presented.

3 RESULTS

The analysis of data collected through bibliographic, documentary, and statistical research. and case law has revealed a significant increase in the participation of the elderly population in digital environment, especially in the use of electronic banking services and e-commerce platforms. Electronic and applications focused on the areas of transportation, health, and communication. This process of

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Digital inclusion, while representing a significant advance in access to goods and services, also exposes This group faces new risks inherent to the virtual environment.

According to data from the Brazilian Institute of Geography and Statistics (IBGE, 2023), more than 60% of people aged 60 or older use smartphones and access the internet. Regularly, and a significant portion of this audience engages in financial transactions and online shopping. and contracting services through digital means. However, only about 35% of those surveyed They stated that they fully understood the risks related to information security and protection. of personal data, which highlights a mismatch between technological access and the mastery of tools used.

The results demonstrate that the expansion of access to technology has not been accompanied, in In the same proportion, through effective public policies for digital education and informational inclusion. This gap directly contributes to the increased exposure of the elderly population to practices Fraudulent and abusive contractual practices. Institutional reports, such as those from FEBRABAN. (2023), indicate a significant increase in fraud in the digital environment, especially in Electronic banking operations. Among the most recurring situations identified, scams stand out. carried out through instant messaging applications, often associated with fake news. Banking services and improper requests for personal data; fraud in banking transactions. electronic transactions, such as unauthorized loan applications and transfers improper use and cloning of accounts; entering into digital contracts without proper understanding or informed consent; improper charges resulting from automatic subscriptions in applications; in addition to the leakage and misuse of personal data and the dissemination of advertising. Deceptive digital marketing targeting elderly audiences.

It was also found that a large proportion of the victims face significant difficulties in administrative resolution of conflicts. Such obstacles arise, above all, from the absence of channels. accessible services and the complexity of procedures required by digital platforms. In many cases, elderly consumers are subjected to long waiting periods and transfers. successive shifts between sectors and standardized responses, which exacerbates their vulnerability and This hinders the effective solution of the problem.

The case law analysis, in turn, indicated a significant increase in the number of lawsuits. court cases involving elderly victims of digital fraud between 2020 and 2025. The courts have have frequently been called upon to resolve disputes related to non-loans recognized, improper charges, unjustified account blocks, and system failures. security of financial institutions. It is observed that, in the decisions analyzed, the judges They tend to recognize the hyper-vulnerability of elderly consumers, adopting an interpretation

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expanded consumer protection laws. In several rulings, there is recognition of objective liability of suppliers, as well as the awarding of damages. for material and moral damages.

The data also shows that financial institutions and digital platforms figure as defendants in most lawsuits, being held responsible, above all, for the absence of Effective fraud prevention mechanisms and the failure to provide clear information, adequate and accessible. Another relevant aspect concerns the recurring claim, on the part of these companies, due to the victim's exclusive fault. However, the majority of case law has rejected this. This argument is made when deficiencies in security systems or a lack of guidance are observed. appropriate for elderly consumers, recognizing that such situations largely stem from informational vulnerability of this group.

Furthermore, it was found that a significant portion of elderly consumers stop seeking... judicial protection, whether due to ignorance of their rights or fear regarding the costs. procedural or access difficulties to digital means. Finally, the results show that, Although there is a robust regulatory framework aimed at protecting elderly consumers, its Practical effectiveness remains limited. The absence of integrated public policies and oversight. Continuous and ongoing digital education programs compromise the realization of rights. guaranteed by law. In this context, it is concluded that the hyper-vulnerability of the elderly in relationships Digital transformation constitutes a structural phenomenon that demands more consistent institutional responses. coordinated and focused on prevention, education, and the effective protection of this group in the environment. technological.

4. DISCUSSION

The discussion of the results highlights the hyper-vulnerability of the elderly person in relationships. Digital consumerism is not solely a result of chronological age, but rather a consequence of convergence. among social, technological, economic, and informational factors. The virtual environment, at the same time While expanding access to goods and services, it deepens existing inequalities, especially with regard to understanding the risks and the consumer's ability to protect themselves.

According to Dessaune (2022), informational asymmetry constitutes one of the main elements of the weakening of contemporary consumer relations. In the case of the elderly, this asymmetry is intensified by the difficulty of adapting to technological innovations, by the limited access to Continuing digital education and the lack of accessible language in virtual environments.

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The results obtained demonstrate that the complexity of electronic contracts, combined with The recurring practice of automatic enrollment compromises the autonomy of elderly consumers. This reality directly affronts the principles of transparency, objective good faith, and balance. contractual, as provided for in the Consumer Protection Code.

In this sense, it is observed that many digital platforms structure their systems in contracting in a way that prioritizes speed and automation, to the detriment of an effective understanding of user. Such conduct reveals a market logic that prioritizes economic efficiency in to the detriment of the protection of the fundamental rights of the highly vulnerable consumer. Another aspect The relevant issue concerns the inadequacy of the preventive mechanisms adopted by the suppliers. Case law analysis revealed that, in several cases, the frauds could have been avoided through... from the implementation of more robust authentication systems, to transaction monitoring. atypical transactions and prior confirmation of operations involving elderly users.

From this perspective, the civil liability of suppliers must be interpreted in light of The theory of activity risk, as defended by Farias (2019). By economically exploiting the In the digital environment, companies assume the responsibility of ensuring security, reliability, and protection. of consumer data, especially that of those in more vulnerable situations.

The application of the General Data Protection Law (LGPD) is also central to this. debate. The improper collection, storage, and handling of personal information amplifies significantly increases the exposure of the elderly to scams and fraud. The absence of effective policies to Data governance contributes to the weakening of legal protection in the digital environment.

Furthermore, it was found that difficulty in accessing humane care constitutes an aggravating factor of vulnerability. Many elderly consumers report obstacles to Establish direct communication with customer service representatives, being directed exclusively to specific channels. Automated processes compromise the efficient resolution of conflicts.

In this context, litigation often emerges as the only means of enforcing the law. rights. However, as observed in the results, access to justice itself presents obstacles. for a significant portion of the elderly population, especially due to the digitalization of legal proceedings and the need to use electronic platforms.

The dialectical analysis between norm and reality therefore reveals a dissonance between the The existing protective legal framework and its practical implementation. Although the Brazilian legal system expressly acknowledge the vulnerability of the consumer and the special protection afforded to the elderly, such Guarantees still face structural, institutional, and cultural limitations. According to Nunes (2021), vulnerability must be analyzed in a concrete way, considering personal conditions. from the consumer's perspective, which reinforces the hyper-vulnerability of the elderly.

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From a public policy perspective, there is a lack of permanent programs and integrated digital education programs aimed at the elderly population. According to Veras (2020), aging The growth of the Brazilian population is occurring at an accelerated pace, requiring social and institutional adaptations. The fragility of these initiatives compromises the formation of a preventive culture, which is essential for... Risk reduction in the virtual environment.

Furthermore, the actions of consumer protection agencies, while relevant, prove to be... insufficient given the complexity and speed of digital fraud. Cooperation between financial institutions, technology platforms, the government, and civil society reveal themselves. indispensable for building more effective protection mechanisms.

Thus, the discussion demonstrates that the hyper-vulnerability of the elderly in digital relationships cannot be addressed solely through the subsequent liability of providers. It is It is necessary to adopt a preventive, systemic, and multidisciplinary perspective that integrates aspects legal, technological, educational and social.

It can be concluded, therefore, that the effectiveness of protecting elderly consumers in the digital environment... It depends on the combination of adequate regulation, continuous monitoring, responsible innovation and Strengthening digital citizenship, in order to ensure fairer, safer and more sustainable consumer relations. inclusive.

4.1 Legal protection of the elderly in the digital environment

The legal protection of elderly people in the digital environment must be understood from a... systematic and integrated interpretation of the Brazilian legal system, which recognizes expressly acknowledges the consumer's vulnerability and ensures differentiated treatment for them. socially vulnerable groups.

The Statute of the Elderly Person, by enshrining the principles of dignity, respect and absolute priority imposes on the State, society and suppliers the duty to ensure conditions suitable for the full exercise of citizenship, including in the virtual environment. Such protection is not limited to access to technologies, but above all it encompasses guaranteeing security, clear information and Respect for the elderly person's autonomy in making decisions.

The Consumer Protection Code, in turn, establishes as its fundamental principles the Transparency, objective good faith, contractual balance, and the harmonization of consumer relations. In the digital context, these principles take on particular relevance, since relationships are characterized by impersonality, automation, and informational asymmetry.

As Gagliano (2022) teaches, the supplier must adopt an extended duty of care.

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when dealing with highly vulnerable consumers, adjusting their products, services and channels to meeting the specific needs of this audience. Failure to fulfill this duty constitutes a breach of contract. The provision of the service gives rise to civil liability.

In the digital environment, this duty is fulfilled through the adoption of accessible interfaces. Simplified language, enhanced confirmation mechanisms, humanized service channels. and effective fraud prevention policies. The absence of these measures compromises effectiveness. It undermines legal protection and increases the potential for abuse.

The General Data Protection Law (LGPD) also plays a central role in protecting... elderly consumer. By establishing principles such as purpose, need, transparency and Security, the regulation imposes limits on the processing of personal data, especially when it comes to Sensitive information or information related to financial transactions.

In the case of the elderly, the misuse of personal data can result in significant harm. Serious offenses include fraudulent hiring practices, unauthorized loans, and asset exposure. Therefore, data protection must be understood as an essential instrument for guaranteeing... of dignity and informational autonomy.

Brazilian case law has been advancing in the recognition of this expanded protection. Several Court rulings have affirmed that financial institutions and digital platforms have responsibility. The objective is to ensure the security of the systems used, and a mere allegation of fault is not sufficient. exclusive to the victim.

Furthermore, there is a growing emphasis on the duty to provide qualified information, which requires not only the formal provision of contractual data, but also its presentation in a way Understandable to an elderly audience. Lengthy contracts, with excessive technical language and terms. obscure, they violate the principle of transparency.

Another relevant point concerns the need to adapt public policies to reality. Digital. Technological inclusion programs aimed at the elderly are still in their early stages and, often, disconnected from the concrete demands of this group. The absence of ongoing training. It undermines the effectiveness of protective regulations.

In this context, the legal protection of the elderly in the digital environment should be understood as a multidimensional process, involving state regulation, corporate self-regulation, and education. Digitalization and institutional strengthening of consumer protection agencies.

It's not just about repairing damage after it happens, but about structuring mechanisms. Preventive measures capable of reducing the incidence of fraud and abuse. Judicial protection, although Essentially, it must act in a complementary way to prevention and awareness policies.

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Therefore, the effectiveness of legal protection for the elderly in digital relationships depends on... articulation between norms, institutions and responsible business practices, aiming to ensure relationships safer, more inclusive consumer markets that are compatible with fundamental human rights.

4.2 Digital scams and electronic contracts

Digital scams and irregularities in electronic contracts currently constitute a One of the main ways in which the rights of elderly consumers are violated in the virtual environment. accelerated expansion of digital platforms, coupled with the sophistication of social engineering techniques, This has significantly increased the incidence of these illegal practices.

Online scams targeting the elderly population have specific characteristics. exploiting, above all, the trust, good faith, and limited technological familiarity of this group. According to Doneda (2021), informational manipulation and the misuse of personal data They increase consumer vulnerability, facilitating the practice of structured fraud.

Among the most recurring scams identified in the research, the following stand out: the fake scam. Bank service scam, in which the criminal impersonates an employee of a financial institution; the scam unauthorized digital payroll loan; the fake technical support scam; cloning of messaging apps; sending malicious links; and creating fake apps that mimic official platforms.

These practices frequently resort to strategies of psychological urgency, intimidation, and... They persuade the elderly person to provide passwords, authentication codes, and bank details. The dynamics reveal the existence of a profound informational asymmetry, which compromises the consumer freedom of choice.

With regard to electronic contracts, there is a predominance of certain models. standardized adherence patterns, characterized by the absence of individual negotiation and by imposition. unilateral clauses by the supplier. According to Marques (2020), this contractual model, when Combined with technological complexity, this intensifies the imbalance between the parties.

The practice of so-called "single click," through which the consumer confirms the purchase. Without adequate access to essential information, it proves incompatible with the principle of transparency. In many cases, the elderly person is not even fully aware of the obligations assumed, of fees charged or contract duration.

Another recurring problem relates to automatic hiring linked to apps and Digital services that generate recurring charges without explicit consent. These practices In theory, these constitute digital tied selling, misleading advertising, and unjust enrichment.

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blatantly violating the Consumer Protection Code.

Case law has recognized the nullity of contracts entered into without information.
Inappropriate or through misleading information, especially when involving elderly consumers.
Several court rulings highlight that the mere electronic availability of the contract does not fulfill the duty to...
qualified information.

Furthermore, the fragility of the authentication systems used by some platforms.
This contributes to the execution of fraudulent contracts. The absence of biometric verification, of double-checking, contributes to the execution of fraudulent contracts.
Effective authentication and monitoring of atypical operations favors the performance of organizations.
criminals.

From a legal standpoint, the liability of suppliers in these cases is based on...
In the theory of business risk, this is because they economically exploit the digital environment.
Therefore, they must be held responsible for damages resulting from failures in security, information, and...
service.

It should also be noted that the mere allegation that the consumer voluntarily provided [the information] is insufficient.
Your data is not enough to absolve responsibility, especially when it is demonstrated that...
The use of sophisticated manipulation techniques. The informational vulnerability of the elderly should
to be considered in the analysis of the specific case.

Another relevant aspect concerns the difficulty of canceling electronic contracts.
Many elderly people face technical obstacles in exercising the right of withdrawal provided for in the law.
Article 49 of the Consumer Protection Code (CDC) was violated due to the absence of clear and accessible channels.

In this context, the effectiveness of legal protection requires the implementation of more robust mechanisms.
rigorous validation processes for hiring practices, as well as corporate policies aimed at preventing...
Fraud prevention. The adoption of simple language, educational tutorials, and specialized customer service.
This constitutes an indispensable measure.

Therefore, digital scams and abusive electronic contracts represent not only
Individual violations, but also a structural problem of contemporary consumer relations.
Addressing this issue requires joint action from the public sector, the private sector, and society, with
Focus on building a safer, more ethical, and inclusive digital environment for the elderly population.

5. Civil Liability in Digital Relations

Civil liability in digital consumer relations plays a central role in protection.
of the rights of the elderly, especially in light of the increasing incidence of fraud and omissions.
Systemic and abusive contractual practices. In the virtual environment, the risks inherent to the activity

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Economic benefits are boosted by the massive circulation of data and the automation of processes.
through technological intermediation.

The Consumer Protection Code, in its article 14, establishes objective liability.
from the supplier for damages caused to consumers as a result of defects in the provision of services.
services, regardless of proof of fault. In the digital context, this responsibility is...
This applies to financial institutions, electronic platforms, technology companies, and...
payment intermediaries.

According to Farias (2019), objective liability is based on the theory of risk of
undertaking, according to which whoever carries out a certain activity must bear the losses from it.
arising from this. Thus, by economically exploiting the digital environment, the supplier assumes the duty to...
to guarantee the safety, reliability, and protection of the consumer.

In digital relationships involving older adults, the application of this theory should be intensified.
considering the victim's heightened vulnerability, case law has recognized that the duty to
Suppliers take extra care when dealing with vulnerable consumers.
informational and technological.

Another relevant aspect concerns the characterization of the service defect. In the digital environment, the
The defect is not limited to obvious technical flaws, but also includes the absence of mechanisms.
Effective fraud prevention measures, deficiencies in authentication systems, and insufficient resources.
Monitoring of suspicious transactions and the poor quality of customer service channels.

According to Gagliano (2022), safety is part of the minimum content of contractual duty in
contemporary consumer relations. The inadequate performance of this duty constitutes a violation of good-kindness.
Objective faith and the principle of trust are essential to the stability of legal relations.

Analysis of court cases demonstrates that many frauds could be avoided through...
from the adoption of technologies available on the market, such as multifactor authentication, recognition
Biometric authentication, automatic blocking of atypical transactions, and proactive communication with the user.
The failure to implement these measures constitutes structural negligence.

Regarding the causal link, the courts have adopted an interpretation favorable to the consumer.
elderly, recognizing that the complexity of digital fraud makes it difficult to individualize the conduct.
of the agent. Thus, it is sufficient to demonstrate the damage and the service failure to establish the duty of
to compensate. The claim of the victim's sole fault, frequently used by companies, has
This has been relativized by jurisprudence. This is because, in many cases, the provision of data stems from...
sophisticated social engineering techniques, capable of misleading the consumer. In these
In these situations, the prevailing understanding is that informational vulnerability precludes imputation.
Exclusively for the elderly.

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In addition to material damages resulting from property losses, civil liability in Digital relationships frequently involve claims for moral damages. Security breaches Financial security, tranquility, and dignity of the elderly constitute a violation of their personality rights.

According to Tartuce (2021), moral damages in consumer relations should be analyzed under the A functional perspective, with a compensatory, preventive, and educational character. In the digital environment, this... This function takes on even greater importance given the need to discourage certain business practices. negligent.

Another relevant point concerns the joint and several liability among the various agents of The digital chain, including banks, platforms, payment operators, and technology companies. The CDC It allows for joint liability when there is direct or indirect involvement in the harmful event.

Civil liability is also linked to the General Data Protection Law. especially in cases of leaks, misuse, or improper handling of personal data. In these cases, in addition to civil compensation, administrative sanctions may be applied.

From a preventative standpoint, judicial accountability should encourage the adoption of Digital compliance, data governance, and risk management programs. Implementation These policies constitute a fundamental instrument for reducing litigation and protecting effectively the elderly consumer.

Finally, it should be noted that civil liability in digital relationships should not be... understood not only as a mechanism for subsequent repair, but also as an instrument of social transformation, capable of inducing ethical, transparent and business behaviors compatible with the dignity of the human person.

5.1 Judgments on digital fraud against the elderly

A case law analysis of digital fraud involving elderly consumers. This demonstrates a progressive consolidation of the understanding that the responsibility of institutions Financial resources should be expanded given the extreme vulnerability of this group. The courts have It is recognized that, in the context of digital relations, the duty of security and information takes on a character... This is particularly important when dealing with elderly consumers.

Within the Superior Court of Justice, the consolidation of the theory of risk is observed. This undertaking serves as the basis for the strict liability of financial institutions. In this regard, the understanding established in Special Appeal No. 1,199,782/PR, judged under the... systematic review of repetitive appeals, in which it was recognized that banking institutions are liable. objectively for the damages caused by fraud perpetrated by third parties, characterizing such

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events such as internal fortuitous events. This guidance has served as a basis for decisions in instances.
lower costs, thus dismissing the claim of sole fault on the part of the consumer.

> APPEAL. BANKING SERVICE. ACTION FOR RESTITUTION OF AMOUNT COMBINED WITH COMPENSATION FOR MORAL DAMAGES. UNDUE DISCOUNT ON BENEFITS.
>
> Social Security claim of the plaintiff. Judgment of partial merit. Appeal by the plaintiff, seeking recognition of compensable moral damages.
>
> RECEPTION. OBJECTIVE LIABILITY, IN TYPE OF RISK OF THE ENTERPRISE. MORAL DAMAGES
> In re ipsa. Existing emotional distress. Duty to compensate.
> CONFIGURED. PRECEDENT FROM THE HONORABLE SUPERIOR COURT.
> COURT OF JUSTICE. JUDGMENT REVERSED ON THIS POINT.
> In this regard, the ruling of the esteemed Superior Court of Justice stands out:
> "SPECIAL APPEAL REPRESENTATIVE OF CONTROVERSY.
> Judgment based on the system set forth in Article 543-C of the Code of Civil Procedure.
> CIVIL LIABILITY. BANKING INSTITUTIONS. DAMAGES CAUSED BY FRAUD AND CRIMES COMMITTED BY THIRD PARTIES. STRICT LIABILITY. FORTUITOUS EVENT
> INTERNAL. BUSINESS RISK. 1. For the purposes of article 543-C
> According to the CPC (Brazilian Code of Civil Procedure): Banking institutions are objectively liable for damages.
> caused by fraud or crimes committed by third parties — such as, for example
> For example, opening a checking account, receiving loans.
> through fraud or the use of false documents—because such
> liability arises from the risk of the undertaking, characterized by
> as an internal fortuitous event. 2- Special appeal granted." (STJ, REsp n.
> 1.199.782/PR, Rapporteur Justice Luis Felipe Salomão, decided on August 24, 2011)

This understanding was applied by the Court of Justice of Santa Catarina in the judgment of Appeal No. 0300734-73.2016.8.24.0020, in which liability was recognized.
The objective of the financial institution is to address the improper deductions from social security benefits. In the decision,
It was highlighted that moral damages, in such situations, are considered inherent (in re ipsa), being presumed in light of the...
The harm suffered by the consumer, especially when funds of an alimentary nature are affected.

> APPEAL. BANKING SERVICE. ACTION FOR RESTITUTION OF FUNDS COMBINED WITH COMPENSATION FOR DAMAGES.

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MORAIS. UNDUE DISCOUNT ON BENEFIT

Social Security. Strict Liability. Damages

MORAL.

"Strict liability, based on the risk of the undertaking."

Moral damages inherent in the act itself (in re ipsa). Existing emotional distress. Duty to compensate.

configured." (TJSC, Appeal No. 0300734-73.2016.8.24.0020,

(Rel. Miriam Regina Garcia Cavalcanti, j. 11 Dec. 2018)

Similarly, the Federal Regional Court of the 3rd Region, when judging the Unnamed Appeal Civil case no. 0000475-02.2022.4.03.6304, recognized the financial institution's liability in A case of fraud via PIX involving an elderly consumer. The decision emphasized that, in the face of transactions... For atypical transactions, such as the inclusion of a new device and short-term movements, it would be the bank's responsibility. adopt effective security mechanisms. Furthermore, the ruling reaffirmed that the condition of The consumer's hyper-vulnerability must be considered in the analysis of the specific case, setting aside the thesis of the victim's sole fault.

SUMMARY: CONSUMER LAW. APPEAL.

Compensation for material and moral damages. Bank fraud via PIX (Brazilian instant payment system). Institution's liability.

FINANCIAL. PLAINTIFF'S APPEAL GRANTED. I. Case under examination 1.

Unnamed appeal filed by the plaintiff against the judgment that ruled

The claims for compensation for material and moral damages are dismissed, under the basis for the victim's exclusive fault in bank fraud involving

Transfers via PIX. II. Question under discussion 2. The question under discussion

consists of determining whether: (i) the financial institution is responsible for

losses suffered as a result of fraudulent transfers made by

(i) social engineering means; and (ii) there is moral damage resulting from the deprivation of

financial resources and the need for legal action for reimbursement. III.

Reasons for the decision 3. **The objective responsibility of institutions**

Financial matters encompass fraud and internal fortuitous events, according to the Summary.

XXXXX/STJ, except in cases of exclusive fault of the consumer. 4. Proven that the

The transactions exhibited suspicious characteristics, such as the inclusion of a

new device and atypical transfers in a short period of time, it was appropriate

to the bank adopting appropriate security measures. 5. **The state is recognized.**

due to the author's hyper-vulnerability as an elderly person, and the existence of a failure in

provision of banking services. 6. Moral damages are evident in light of the

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deprivation of essential resources and the distress resulting from the need for judicialization. IV. Ruling 7. Appeal by the plaintiff granted to overturn the judgment, ruling in favor of the claims for compensation for material damages. (R$ 10,475.00) and moral damages (R$ 15,000.00), both adjusted and increased by Interest in accordance with the Federal Court's Calculation Manual. (Provisions)

Relevant articles cited: Consumer Protection Code, articles 6, VIII, and 14, § 3, II. Relevant case law. cited: TNU, Theme 331, j. 2023

Still within the scope of the Federal Justice system, the Regional Federal Court of the 4th Region, in its judgment... The Civil Appeal No. 5000463-71.2023.4.04.7100 analyzed a case of fraud involving A loan secured through the so-called "portability scam." At the time, it was recognized... the nullity of the contract, as well as the financial institution's responsibility for the failure in provision of the service. The Court highlighted that the availability of accessible contractual links to third-party breaches constitute a security failure, especially when involving elderly consumers, whose The condition of hyper-vulnerability demands greater rigor in verifying the authenticity of the contract.

COMPENSATION CLAIM. CONSIGNED LOAN AND Payroll Deduction Credit Card. Contract Agreement. THROUGH THE PORTABILITY SCAM. CONFIGURED A FAILURE TO PROVIDE SERVICE, THE FOLLOWING IS PRESENT INSTITUTIONAL RESPONSIBILITY FINANCIAL.

The contract was declared null and void, and the parties were ordered to pay costs.

Defendants ordered to pay compensation for material damages. AND MORAL DAMAGES. PLAINTIFF'S APPEAL PARTIALLY GRANTED AND DEFENDANT'S APPEAL DISMISSED. I. CASE UNDER EXAMINATION 1. Contracts of payroll-deducted loan and payroll-deducted credit card, contracted by amidst the portability scam. The nullity of the contract was recognized and The defendants were ordered to reimburse, in double, the amounts unduly paid. charged, as well as the payment of compensation for moral damages, 1. Credit offsetting authorized. 2. Unnamed appeal filed by The plaintiff's claim was partially upheld, holding the INSS liable. subsidiarily to the co-defendant bank and increase the amount of compensation for moral damages. The bank's appeal was also filed and denied. II. ISSUE UNDER DISCUSSION 3. Possibility of declaring the contract null and void through the portability scam and verification of the institution's guilt. financial, in the case of providing a contractual adhesion link by

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third party unrelated to the banking institution. III. REASONS FOR DECISION 4. According to the understanding of the Superior Court of Justice, there is a possibility declaration of contractual nullity and liability of the institution financial, when a failure in the provision of service is identified. It is The bank's liability is established in the case of internal fortuitous events or fraud. identifiable by the bank and a breach of duty by the victim. contractual care, through the use of highly effective social engineering methods sophisticated and due to **the victim's hyper-vulnerability (generally elderly).** 5. In this case, it is the second possibility: non-compliance, by victim, breach of duty of care, through social engineering methods highly sophisticated factors, coupled with the hyper-vulnerability of the elderly victim. Furthermore, the bank's failure was verified, given the use of [something] by the scammer. a hiring link that should only be accessible to agents authorized. IV. DEVICE AND THESIS 6. Unnamed appeal filed by the plaintiff, partially accepted, to hold the INSS liable. subsidiarily to the co-defendant bank and increase the amount of compensation for damages. Moral damages. Appeal by the co-defendant bank denied. Ruling thesis: **"It is possible to declare the contract null and void due to fraud." portability and verification of the financial institution's fault, in the case provision of a contractual adhesion link by a third party unrelated to "Banking institution."** Relevant case law cited: STJ, REsp no. 1,995,458/SP.

Within state courts, there is also a strong trend toward protection of... elderly consumer. The Court of Justice of Minas Gerais, in the judgment of Civil Appeal No. 1.0000.22.813007-9/001, recognized the nullity of a contract entered into using facial biometrics, Given the lack of sufficient guarantees for the free and informed expression of consumer rights. A The decision highlighted that the supplier has a reinforced duty of information and caution when contracting. elderly people, and the use of technological mechanisms without proper guidance is unacceptable. Transparency and security. Furthermore, the bad faith of the financial institution was acknowledged, with consequent application of double restitution, pursuant to article 42, sole paragraph, of the Code of Consumer Protection.

SUMMARY: CIVIL APPEAL - DECLARATORY ACTION OF NON-EXISTENCE OF DEBT COMBINED WITH COMPENSATION FOR DAMAGES MORAIS - DIGITAL HIRING USING "BIOMETRICS"

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> "FACIAL" - **HYPERVULNERABLE CONSUMER** - PROTECTION
> SPECIAL CONFERENCE GRANTED TO THE ELDERLY - NON-OBSERVANCE OF
> FORMALITIES ESSENTIAL FOR THE VALIDITY OF
> CONTRACT - DOUBLE RESTITUTION - BAD FAITH ESTABLISHED - ART. 42, SOLE
> PARAGRAPH, CDC - MORAL DAMAGES - DEMONSTRATION. The supplier has an
> even greater duty of care.
> at the time of contracting with **elderly (hyper-vulnerable) consumers,**
> especially with regard to providing clear, transparent, and truthful information.
> Even though the possibility of digital contracting is acknowledged, with
> When using facial biometrics, the supplier must ensure a statement.
> of free and conscious will to the highly vulnerable consumer, providing them
> all the information necessary for understanding the object of the contract and of
> its implications. **Bad faith in the conduct of is evident .**
> **financial institution, which took advantage of the fragility and**
> **hyper-vulnerability of the consumer, proceeding with the loan without**
> **compliance with legal formalities, which triggers the rule of article 42,**
> **sole paragraph of the CDC.** The consumer whose name is improperly
> bound by a contract that he did not enter into and, as a result, is subject to deductions.
> in his social security benefits, he suffers actual moral damage. A
> Compensation for moral damages must be determined by observing the criteria.
> punitive and compensatory aspects of reparation, without losing sight of the prohibition against
> unjust enrichment and the principles of proportionality and
> reasonableness.
>
> (TJMG, Civil Appeal No. 1.0000.22.813007-9/001, judgment of 2022)

Another relevant aspect, evidenced in the judgments, refers to the recognition of the damage.
presumed moral authority in situations involving improper deductions from social security benefits or
the deprivation of essential resources. In these cases, the courts have understood that the harm
It goes beyond the financial sphere, directly affecting the dignity of elderly consumers.

Furthermore, it is observed that case law has repeatedly rejected the argument of fault.
exclusive to the victim, especially in cases involving social engineering and sophisticated fraud.
The courts recognize that such practices exploit informational vulnerability and
The technological limitations of the consumer make it unreasonable to place sole responsibility on the victim.

Another recurring point concerns the requirement for effective security mechanisms on the part of
from financial institutions. The lack of monitoring of atypical transactions, failures in validation.

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The identity fraud and the inadequate provision of contractual instruments have been interpreted such as defects in the provision of the service, giving rise to the duty to compensate. Case law also... This highlights the importance of providing qualified information, especially in digital contracts. Courts have emphasized that simply making contractual terms available is not enough; it is necessary to ensure that the consumer, especially the elderly, fully understands the implications of legal transaction.

Finally, it is observed that the courts have adopted a pedagogical approach when setting... compensation, seeking not only to repair the damage suffered, but also to discourage such conduct. negligence on the part of financial institutions. This guidance contributes to building a A safer digital environment, aligned with the principles of human dignity and protection. of the consumer.

Thus, the analysis of precedents demonstrates that the Judiciary has been making progress. significantly in protecting elderly consumers from digital fraud, consolidating understandings that reinforce the responsibility of financial institutions and recognize the The need for differentiated protection due to the hyper-vulnerability of this group.

FINAL CONSIDERATIONS

This research has shown that the hyper-vulnerability of the elderly in Digital consumer relations constitute one of the main contemporary challenges of Consumer Law. Consumers are demanding more consistent and integrated legal, institutional, and social responses. Technological advancement, while expanding access to services and products, has also intensified inequalities and vulnerabilities, especially when not accompanied by effective policies of inclusion and protection.

Throughout the study, it was found that older adults face significant obstacles in use of digital platforms, in understanding electronic contracts and in identifying Virtual scams, which compromise their decision-making autonomy and asset security. Such difficulties These problems stem not only from individual limitations, but, above all, from the absence of mechanisms. Adequate information, prevention, and support from suppliers and public authorities.

The analysis of the normative framework demonstrated that the Brazilian legal system provides of relevant instruments for the protection of elderly consumers, notably through the Code Consumer Protection Code, the Statute of the Elderly Person, and the General Data Protection Law. However, It was found that the effectiveness of these standards still faces obstacles in practical application, due to... due to structural, institutional, and cultural flaws.

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Case law research has revealed progressive advances in the courts' understanding of
The hyper-vulnerability of the elderly, with the consolidation of understandings favorable to accountability.
from the suppliers and to the full reparation of the damages suffered. It was observed, however, that there are still
Divergent decisions, especially regarding the characterization of the victim's fault and the determination of damages.
compensation, which highlights the need for greater uniformity in interpretation.

It was also emphasized that civil liability, while essential, should not be...
understood as the only instrument of protection. Repressive action following the damage.
It proves insufficient in the face of the complexity and speed of digital fraud. It becomes
It is essential to adopt preventive policies based on digital education and transparency.
informational and responsible innovation.

In this regard, the importance of implementing permanent programs is highlighted.
technological training aimed at the elderly population, promoted in a coordinated manner between the State,
The private sector and civil society. The formation of a culture of digital citizenship constitutes a
a fundamental element for strengthening the autonomy and security of this group.

From a business perspective, there is a clear need to review business models and
contractual practices, with the adoption of accessible interfaces, simplified language, and channels of
Humanized service and robust fraud prevention systems. Compliance with these
These measures represent not only a legal obligation, but also an ethical commitment to...
human dignity.

The research also points to the importance of strengthening defense agencies.
consumer protection agencies and regulatory agencies, expanding their oversight, mediation and capabilities.
guidance. The integrated action of these institutions is essential to reduce litigation and
To promote more efficient and inclusive solutions.

Furthermore, the importance of inter-institutional and international cooperation is highlighted in
Combating digital fraud, considering the transnational nature of these practices.
exchange of information, regulatory harmonization and joint development of technologies
Security measures are important strategies.

Finally, it is concluded that the protection of the elderly in digital relationships should be understood as
an integral part of the constitutional project to promote the dignity of the human person and citizenship.
and social justice. Building a safe, ethical, and accessible digital environment represents not only social justice but also the importance of building a safe, ethical, and accessible digital environment.
It's not just a legal challenge, but also a collective commitment.

This study is expected to contribute to a deeper academic debate and
institutional efforts on the topic, encouraging the formulation of public policies and the adoption of best practices.
responsible business practices and the formulation of case law interpretations sensitive to

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Specific characteristics of the elderly population. Further empirical research is also recommended.
that broaden the understanding of the social and economic impacts of digital relationships on this
group, thereby strengthening the effectiveness of legal protection.

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