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Notarial and registry errors and civil liability under the new framework established by the STF ruling on Theme 777

O erro de cartório e sua responsabilização civil, sob os novos contornos traçados pelo julgamento do Tema 777 do STF

El error notarial y registral y su responsabilidad civil bajo el nuevo marco establecido por la sentencia del STF sobre el Tema 777

Jeferson do Nascimento Santos Lima – Real Faculdade de Brasília, Bachelor of Laws Program.

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Abstract: This study examines civil liability arising from errors committed in notarial and registry activities in Brazil, based on the understanding established by the Brazilian Federal Supreme Court in Theme 777 of general repercussion. It starts from the legal nature of the delegation provided for in article 236 of the 1988 Federal Constitution, the concept of registry error and the delegate's duty of diligence, and traces the evolution of State civil liability up to the administrative risk theory, the basis of the rule in article 37, paragraph 6. It then analyzes the Theme 777 thesis, according to which the State is objectively liable for damages caused by notaries and registrars in the exercise of their functions, with a right of recourse in cases of intent or fault, and its relationship with Theme 940, as well as the inapplicability of the Consumer Protection Code, the evolution of article 22 of Law No. 8,935/1994, the absence of succession of liability between office holders and the exemption from fees for correcting errors attributable to the registry office in the Federal District and in the State of Goiás. The last chapter brings together federal legislation, the rules of the National Justice Inspectorate and of the Federal District, and decisions of the Federal Supreme Court, the Superior Court of Justice and the Court of Justice of the Federal District and Territories. The research is qualitative, follows the deductive method and uses bibliographic, documentary and case law procedures, with a time cut-off in September 2026. It concludes that liability is organized in two relationships: before the user, the State is directly and objectively liable; before the State, the delegate is personally liable on a fault basis. The initial hypothesis is confirmed with a caveat, since divergences persist regarding the delegate's standing to be sued, the regime for acts prior to 2016 and the limitation periods.

Keywords: Civil liability. Theme 777. Notarial and registry activity. Objective liability of the State. Right of recourse.

Resumo: Este trabalho examina a responsabilidade civil decorrente de erros cometidos no exercício das atividades notariais e registrais no Brasil, a partir do entendimento firmado pelo Supremo Tribunal Federal no Tema 777 da repercussão geral. O estudo parte da natureza jurídica da delegação prevista no artigo 236 da Constituição Federal de 1988, do conceito de erro registral e do dever de diligência do delegatário, e percorre a evolução da responsabilidade civil do Estado até a teoria do risco administrativo, fundamento da regra do artigo 37, parágrafo sexto. Em seguida, analisa a tese do Tema 777, segundo a qual o Estado responde objetivamente pelos danos causados por tabeliães e registradores no exercício de suas funções, assegurado o regresso nos casos de dolo ou culpa, e sua relação com o Tema 940, além da inaplicabilidade do Código de Defesa do Consumidor, da evolução do artigo 22 da Lei nº 8.935/94, da ausência de sucessão de responsabilidade entre titulares e da gratuidade da retificação por erro da

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serventia no Distrito Federal e em Goiás. O último capítulo reúne a legislação federal, as normas da Corregedoria Nacional de Justiça e do Distrito Federal e decisões do Supremo Tribunal Federal, do Superior Tribunal de Justiça e do Tribunal de Justiça do Distrito Federal e dos Territórios. A pesquisa é qualitativa, segue o método dedutivo e utiliza procedimentos bibliográfico, documental e jurisprudencial, com corte temporal em setembro de 2026. Conclui-se que a responsabilização se organiza em duas relações: perante o usuário, o Estado responde de forma direta e objetiva; perante o Estado, o delegatário responde de forma pessoal e subjetiva. A hipótese inicial é confirmada com ressalva, pois persistem divergências quanto à legitimidade passiva do delegatário, ao regime dos atos anteriores a 2016 e aos prazos prescricionais.

Palavras-chave: Responsabilidade civil. Tema 777. Atividade notarial e registral. Responsabilidade objetiva do Estado. Direito de regresso.

Resumen: Este trabajo examina la responsabilidad civil derivada de errores cometidos en el ejercicio de las actividades notariales y registrales en Brasil, a partir del criterio establecido por el Supremo Tribunal Federal en el Tema 777 de repercusión general. El estudio parte de la naturaleza jurídica de la delegación prevista en el artículo 236 de la Constitución Federal de 1988, del concepto de error registral y del deber de diligencia del delegatario, y recorre la evolución de la responsabilidad civil del Estado hasta la teoría del riesgo administrativo, fundamento de la regla del artículo 37, párrafo sexto. A continuación, analiza la tesis del Tema 777, según la cual el Estado responde objetivamente por los daños causados por notarios y registradores en el ejercicio de sus funciones, garantizándose la acción de regreso en los casos de dolo o culpa, y su relación con el Tema 940. También aborda la inaplicabilidad del Código de Defensa del Consumidor, la evolución del artículo 22 de la Ley n.º 8.935/94, la ausencia de sucesión de responsabilidad entre titulares y la gratuidad de la rectificación por error de la oficina en el Distrito Federal y en Goiás. El último capítulo reúne la legislación federal, las normas de la Corregiduría Nacional de Justicia y del Distrito Federal y decisiones del Supremo Tribunal Federal, del Superior Tribunal de Justicia y del Tribunal de Justicia del Distrito Federal y de los Territorios. La investigación es cualitativa, sigue el método deductivo y utiliza procedimientos bibliográficos, documentales y jurisprudenciales, con límite temporal en septiembre de 2026. Se concluye que la responsabilidad se organiza en dos relaciones: ante el usuario, el Estado responde de forma directa y objetiva; ante el Estado, el delegatario responde de forma personal y subjetiva. La hipótesis inicial se confirma con una salvedad, pues persisten divergencias sobre la legitimación pasiva del delegatario, el régimen de los actos anteriores a 2016 y los plazos de prescripción.

Palabras clave: Responsabilidad civil. Tema 777. Actividad notarial y registral. Responsabilidad objetiva del Estado. Derecho de regreso.

Introduction

Notarial and registry activities occupy a prominent position in the Brazilian legal system because they combine a public nature with private performance, pursuant to Article 236 of the 1988 Federal Constitution. Errors committed by notaries and registry officers in performing these functions have effects beyond the individual interests of the parties involved in the act, affecting the legal certainty and public authenticity attributed to this type of delegated service.

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This study therefore falls within the field of civil liability as applied to notarial and registry activities.

Within this broad field, the research focuses on civil liability arising from errors committed in notarial and registry activities, emphasizing the legal effects of the interpretation established by the Federal Supreme Court in Theme 777 of general repercussion, decided on February 27, 2019, with Justice Luiz Fux as rapporteur.

In light of this interpretation, the following research problem is formulated: what is the scope of civil liability arising from errors committed in notarial and registry activities in Brazil?

From a legal and social perspective, notarial and registry activities play an important role, since the legal certainty and public authenticity attributed to acts performed by extrajudicial offices underpin a significant portion of the private legal relationships formalized in Brazil. Failures in these activities may cause concrete losses to service users and generate disputes over the applicable liability. The legal importance of the subject became clearer after the ruling on Theme 777, which established parameters for liability arising from acts performed by notaries and registry officers, while its practical implications still require broader doctrinal systematization. Further academic study is therefore justified both by the recent and still limited consolidation of scholarship specifically addressing the effects of Theme 777 on notarial and registry activities and by the social value of clarifying the limits and avenues of redress available to users when errors occur.

The general objective is to analyze the scope of civil liability arising from errors committed in notarial and registry activities in light of the interpretation established by the Federal Supreme Court in Theme 777. The specific objectives are to investigate the concept of error in civil law and its relationship with errors in notarial and registry activities; analyze the evolution of State civil liability in the Brazilian legal system, emphasizing strict liability; examine the legal framework of notarial and registry activities and their nature as public services performed through delegation; analyze the interpretation established in Theme 777 and its effects on the civil liability of notaries and registry officers, including the applicability of the Consumer Protection Code to their services; and analyze the legislation and case law concerning civil liability arising from errors in these activities.

The initial hypothesis is that Theme 777 established relevant parameters for civil liability for errors committed by notaries and registry officers: the State is strictly liable for the damage caused by these acts and must seek reimbursement through recourse against the person

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responsible where intent or fault is established. To confirm or refute this hypothesis, the research examined the relevant legislation, legal scholarship and case law.

The theoretical framework draws on authors specializing in civil liability, State civil liability and administrative law, including Sérgio Cavalieri Filho in Programa de Responsabilidade Civil, José dos Santos Carvalho Filho in Manual de Direito Administrativo, and Maria Sylvia Zanella Di Pietro in Direito Administrativo. This core is supplemented by recent scholarship specifically addressing notarial and registry activities after Theme 777, by Kleber Cazzaro, Rodrigo Bley Santos and Aline Rodrigues de Andrade; by Maureci Marcelo Velter Junior, a notary and civil registrar, together with Rafael Peteffi da Silva; and by Murilo Meneguello Nicolau and Roberto Wagner Marquesi.

Methodologically, the research adopted a qualitative approach and the deductive method, starting from the general foundations of civil liability and the legal framework of notarial and registry activities to examine their application to errors in extrajudicial services. Three technical procedures were used. Bibliographic research covered civil liability, administrative law, and notarial and registry law. Documentary research focused on the Federal Constitution and federal legislation governing notarial and registry activities. Case law research brought together decisions of the Federal Supreme Court, the Superior Court of Justice and the Court of Justice of the Federal District and Territories concerning civil liability in these activities, particularly those related to Theme 777, consulted through September 2026.

To achieve these objectives, the study is organized into four chapters. The first presents the legal nature and delegation of notarial and registry services, the concept of error in these activities, its consequences and the delegate's duty of diligence. The second traces the evolution of State civil liability, administrative risk theory and the ruling on Theme 777. The third examines liability in notarial and registry activities, addressing the inapplicability of the Consumer Protection Code, the interaction between Themes 777 and 940, the evolution of Article 22 of Law No. 8.935/94, the personal nature of liability, and fee exemption regimes in the Federal District and Goiás. The fourth analyzes the relevant legislation and case law, emphasizing convergences and divergences concerning Theme 777. Finally, the conclusion revisits the research problem and presents the answer developed throughout the study.

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Chapter 1: Notarial and registry activities and errors in extrajudicial services

1.1. Legal nature and delegation of notarial and registry services

Notarial and registry services occupy a distinctive position in the Brazilian legal system because they are performed privately through delegation by public authorities, pursuant to Article 236 of the 1988 Federal Constitution. According to Carvalho Filho (2025, p. 289), this delegation is classified as statutory or legal delegation, distinct from the contractual delegations that characterize public service concessions and permits, governed by Article 175 of the Constitution.

The Federal Supreme Court addressed the distinction between these two forms of delegation in ADI 2602/MG, decided on November 24, 2005, with the judgment authored by Justice Eros Grau. The Court established that notarial and registry services are activities belonging to public authorities, although they must be performed privately. This distinguishes them from the optional use of concessions and permits, which are always governed by legislation enacted by the federative entity responsible for the service. Whereas contractual delegation arises from a discretionary act of the public entity, formalized through an administrative contract with a fixed term, legal delegation is lifelong and may be exercised exclusively by a natural person approved through a competitive public examination assessing knowledge and qualifications, pursuant to the third paragraph of Article 236.

Loureiro (2022, p. 3) reinforces this distinction by stating that notaries and registrars perform legal activities rather than the material administrative activities of public works and services. They are remunerated by users through fees rather than from public funds, which distinguishes them from ordinary concessionaires and permit holders. Under the principle of specialty, the rules governing concessions and permits, based on Article 175 of the Constitution, do not apply to notarial and registry delegation, which is governed by specific legislation: Law No. 8.935, of November 18, 1994.

1.2. Errors in notarial and registry activities

Like any service performed by human beings within the State's sphere, notarial and registry activities are not immune to errors. Many are recorded in books prepared by former holders of extrajudicial offices and often become apparent only years after they were committed. Before the 1988 Constitution, no minimum legal education was required to hold such an office: in many cases, literacy and receipt of the delegation were sufficient, and the

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office was sometimes transferred in an almost hereditary manner. From 1988 onward, however, notarial and registry activities began to require legal education and success in the competitive public examination assessing knowledge and qualifications provided for in the third paragraph of Article 236 of the Constitution, in accordance with the principle of impersonality in Article 37.

This does not mean that Brazilian extrajudicial activities originated in 1988, since they predate it, including Law No. 6.015, of December 31, 1973, the Public Records Law, which was received by the current constitutional order. Records drawn up before the Constitution, and even some later ones, remain in registry books with errors produced under that less stringent system of access to office.

According to Kümpel and Ferrari (2017), a registry error is a failure occurring in the preparation of a registry or notarial act when the entry does not meet the minimum requirements established by the relevant legislation, such as those in Article 54 of Law No. 6.015/73 for birth registration. In registry practice, however, it is not unusual for registry books to omit some legally required information.

1.3. Legal consequences of registry errors

Significant consequences follow. Under Law No. 6.015/73, the presumption of truthfulness attaches to the entry in the registry book, rather than to the certificate that the interested party may present, even though the latter is more accessible to the public. Moreover, the registered person often discovers the error only years later, when a new copy of the document or another related service is needed. This delays the pursuit of compensation and increases the potential harm arising from the registry failure.

1.4. The duty of diligence in notarial and registry activities

Cavalieri Filho (2023, p. 337) identifies the characteristics that distinguish notarial and registry activities, which explain the specific legal treatment of errors in this field. The first concerns their origin: these are public functions whose performance the Constitution necessarily entrusts to private individuals, whereas private performance of other public services is an option available to the responsible entity. The second concerns the instrument: the transfer occurs through delegation, rather than a concession or permit. Other characteristics are entry through a competitive public examination assessing knowledge and qualifications, restricting

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delegation to natural persons; supervision reserved to the Judiciary; and remuneration through fees, which case law classifies as a type of tax.

These characteristics produce a more demanding standard of care than that expected of an ordinary person in civil life. Justen Filho (2025, p. 883) identifies a special duty of diligence inherent in the nature of the State function: those performing it must anticipate the effects of their actions and omissions and act to prevent harm to third parties. When that duty is breached and damage occurs, the conduct becomes unlawful and gives rise to civil liability.

Applied to notarial and registry activities, this heightened duty of diligence requires the office holder to exercise particular care both in checking submitted documents and in correctly preparing the acts. Compliance prevents the registry errors examined in this chapter and reduces the exposure of the State and the delegate to the civil liability addressed in subsequent chapters.

Chapter 2: State civil liability and Theme 777 of the Federal Supreme Court

2.1. From State non-liability to State strict liability

State civil liability did not always exist in its present form. In the early modern State, the prevailing view was State non-liability, based on the notion of absolute public sovereignty. According to Carvalho Filho (2025, p. 461), until the mid-nineteenth century, the dominant view in the Western world was that the State was not liable for acts committed by its agents. The terminology itself is debated: Di Pietro (2023, p. 821) prefers the expression State civil liability because it encompasses the administrative, judicial and legislative functions of State power, rather than merely the activities of public administration.

In that setting, the injured private individual had to seek compensation directly from the official who caused the damage rather than from the State. This often resulted in a lack of effective redress, particularly where the agent lacked sufficient assets. As Cavalieri Filho (2023, p. 303) observes, individuals had an action only against the official, while the State remained outside the compensation relationship, even when the agent acted beyond the limits of their duties.

French law played a major role in gradually overcoming this theory through the case law developed by the Council of State (CAVALIERI FILHO, 2023, p. 303). Nevertheless, State non-liability persisted in some countries well into the twentieth century: in the United States and the United Kingdom, for example, it remained in place until 1946 and 1947, respectively (MEDAUAR, 2024, p. 369).

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After this initial phase, a civil-law theory prevailed, distinguishing sovereign acts, associated with State sovereignty and excluded from liability, from management acts, closer to private law and capable of giving rise to compensation (CARVALHO FILHO, 2025, p. 462). This phase aligned State liability with employers' liability for employees' acts, requiring proof of fault by the public agent who caused the damage (CAVALIERI FILHO, 2023, p. 304).

The distinction between sovereign acts and management acts proved difficult to apply in practice, since classifying a particular State action was not always straightforward (CARVALHO FILHO, 2025, p. 462). This difficulty, together with the injured individual's obligation to prove fault, favored the development of the theory of administrative fault, also called anonymous fault. Under this theory, identifying the particular public agent responsible for the damage is unnecessary: it is sufficient to demonstrate service failure, whether through non-provision, malfunction or delay.

Although an advance over earlier approaches, administrative fault theory continued to impose on the injured individual the burden of proving service failure, which was not always feasible, particularly in the absence of previously defined objective operating standards (MEDAUAR, 2024, p. 370). This limitation gave rise to modern administrative risk theory, now the foundation of State strict liability. Under this theory, the benefits of State activities are shared by the community as a whole, so any losses caused by those activities should also be borne collectively, regardless of the agent's fault.

2.2. Administrative risk theory and defenses to liability

Administrative risk theory dispenses with proof of fault by the public agent, but does not make the State liable for every injury occurring during its activities. According to Justen Filho (2025, p. 880), State liability does not arise when the harmful event results exclusively from the injured person's own conduct, a third party's act or a natural circumstance unrelated to public service performance. Liability arises only when the damage results from defective performance by the service or State body.

Thus, the victim's exclusive fault, a third party's fault, the lawful exercise of a right, and fortuitous events or force majeure operate as defenses to State strict liability. When the victim contributes only partially to the harmful event, State liability remains in proportion to the State's own contribution to the outcome (JUSTEN FILHO, 2025, p. 887). Third-party fault generally excludes State liability, unless the State had a specific duty of diligence capable of preventing

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the harmful outcome, in which case failure to fulfill that duty may give rise to liability for omission (JUSTEN FILHO, 2025, p. 887).

Two more far-reaching variants derive from administrative risk theory: integral risk and social risk. Under integral risk, the duty to compensate would remain even in the presence of the victim's exclusive fault, a third-party act or force majeure, with the State's involvement in the event alone being sufficient (CAVALIERI FILHO, 2023, p. 307). Brazilian law permits this only in exceptional, expressly established situations, such as nuclear damage, governed by Article 21, item XXIII, subparagraph c, of the Federal Constitution.

Social risk theory shifts the focus from liability of the agent causing the injury to the injured person, proposing that compensation be borne by the community as a whole, regardless of whether the injury is attributable to the State (CARVALHO FILHO, 2025, p. 464). This theory is not adopted as the general rule in Brazilian law, and its broad application could generate legal uncertainty and an unjustified burden on public funds (CARVALHO FILHO, 2025, p. 464). Administrative risk theory therefore prevails as the general basis of State strict liability because it reconciles protection of the individual with the public entity's ability to demonstrate defenses excluding liability.

2.3. The sixth paragraph of Article 37 of the Constitution and Theme 777 of the Federal Supreme Court

The 1946 constitutional text expressly introduced strict liability in Brazil: Article 194 imposed on domestic public-law legal entities the duty to compensate third parties for damage caused by their employees, with recourse against the official at fault (MEDAUAR, 2024, p. 371). The same approach continued through the 1967 Constitution and Constitutional Amendment No. 1 of 1969 and was expanded in 1988. The sixth paragraph of Article 37 of the current Constitution extended the regime to private-law legal entities providing public services, referred to agents acting in that capacity rather than merely employees, and made recourse conditional on proof of the responsible person's intent or fault.

According to Medauar (2024, p. 372), this provision establishes two distinct liability relationships: the first, based on strict liability, between the public authorities and the injured person; the second, based on fault, between the agent causing the damage and public administration, requiring proof of intent or fault to justify a recourse action.

The Federal Supreme Court applied this same logic to notarial and registry activities in Extraordinary Appeal 842.846, recognized as Theme 777 of general repercussion and decided

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on February 27, 2019. The judgment was published on August 13, 2019, and became final on August 19, 2020. The ruling was not unanimous. By eight votes, the prevailing view held that the State is directly and strictly liable for a delegate's error, provided that damage and causation are established. A second position accepted State strict liability only subsidiarily to the office holder's assets, while a single dissenting vote excluded State liability altogether in this situation (ABELHA, 2023). The first position prevailed, establishing that the State is strictly liable for acts of notaries and official registrars that cause injury to third parties in the performance of their duties, with a duty to seek recourse against those responsible in cases of intent or fault, under penalty of administrative misconduct (CAZZARO; SANTOS; ANDRADE, 2022, p. 847).

Velter Junior and Peteffi da Silva (2022, p. 223) describe notarial and registry activities as a tertium genus, with distinctive characteristics separating them from both the civil service regime and the general regime of State civil liability. Before the ruling, legal scholarship was divided between those who derived State strict liability for delegated agents directly from the sixth paragraph of Article 37 and those who regarded the first paragraph of Article 236 as a special rule leaving the applicable regime to ordinary legislation (CAZZARO; SANTOS; ANDRADE, 2022, p. 844-845). In deciding Theme 777, the Federal Supreme Court endorsed the latter approach, recognizing the precedence of the special rule in Article 236 over the general rule in Article 37 (VELTER JUNIOR; SILVA, 2022, p. 254).

This precedence has a direct practical consequence. Since the current wording of Article 22 of Law No. 8.935/94, introduced by Law No. 13.286 of 2016, makes a notary's or registrar's liability conditional on proof of fault or intent, direct liability of the delegated agent depends on that proof. The State, in turn, remains primarily and strictly liable to the injured user (VELTER JUNIOR; SILVA, 2022, p. 254). Cazzaro, Santos and Andrade (2022, p. 852) summarize this logic in three successive layers: the State is strictly liable to the injured person; the delegated agent is liable to the State through recourse based on fault or intent; and the delegated agent's employee is likewise liable, on grounds of fault or intent, to the delegated agent.

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Chapter 3: Civil liability in notarial and registry activities

3.1. The inapplicability of the Consumer Protection Code to notarial and registry activities

A party harmed by a registry error commonly seeks to base a compensation claim on consumer legislation, as though the extrajudicial office were an exclusively private service provider. Leite (2020) notes that consumer legislation, which belongs to private law, became effective only in 1991, so service events predating its entry into force would, in principle, fall outside its protection.

One might consider Article 22 of the Consumer Protection Code, under which “public bodies, whether directly or through their companies, concessionaires, permit holders or any other form of enterprise, are obliged to provide adequate, efficient and safe services and, for essential services, continuous provision” (BRASIL, 1990), failing which they must compensate for the damage caused. However, this provision presupposes a provider organized as a legal entity or enterprise, which does not correspond to an office holder: a natural person receiving the function through delegation rather than a concession or permit. Fanti (2006) reaches the same conclusion, arguing that the rule addresses public companies, concessionaires and permit holders with legal personality, excluding agents who, like notaries and registrars, perform their functions in their own name.

Furthermore, notarial and registry activities are remunerated through fees legally classified as taxes rather than prices arising from a consumer relationship, and notaries' and registrars' civil liability is already governed by specific public-law rules in Article 22 of Law No. 8.935/94. The prevailing interpretation is therefore that errors arising from extrajudicial activities must be corrected and compensated under the specific legislation governing them, rather than consumer law.

3.2. The interaction between Themes 777 and 940 of the Federal Supreme Court

The debate on liability in notarial and registry activities extends beyond Theme 777. In 2019, the Federal Supreme Court also decided Theme 940 in Extraordinary Appeal 1.027.633, with Justice Marco Aurélio as rapporteur. The holding establishes that an action for damage caused by a public agent must be brought against the State or the private-law legal entity providing the public service, and that the person who performed the act is not a proper defendant. Recourse against the responsible person is assured in cases of intent or fault.

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Read together, Themes 777 and 940 reinforce the conclusion that an injured user of notarial and registry services must direct a compensation claim against the State rather than directly against the notary or registrar. The latter is called to account only in a recourse action brought by the State itself. Nicolau and Marquesi (2023) observe that the combined application of the two themes to notarial activities still produces divergent responses in the courts, warranting caution before asserting that the matter is definitively settled.

3.3. The evolution of Article 22 of Law No. 8.935/94

Article 22 of Law No. 8.935/94, governing the civil liability of notaries and registrars, has undergone significant changes since its enactment. The original text merely stated that they would be liable for damage caused to third parties, by themselves or their employees, in performing acts pertaining to the office, and mentioned intent or fault only in connection with recourse against employees. Because the law was silent about the office holder's own fault, the Superior Court of Justice adopted the interpretation that the holder was strictly liable for the risk inherent in the activity.

Law No. 13.286, of May 10, 2016, published the following day, displaced this interpretation. Under its amended wording of Article 22, the personal liability of notaries and registrars, including for substitutes they appoint and clerks they authorize, became dependent on fault or intent. The sole paragraph established a three-year limitation period for compensation claims, running from the date the act was drawn up.

In practice, this legislative change produced the current coexistence of two liability regimes for the same notary or registrar, depending on the date of the disputed act: strict liability for acts predating May 10, 2016, and fault-based liability, conditional on proof of fault or intent, for acts performed from that date onward. The Third Panel of the Superior Court of Justice reaffirmed this distinction in Special Appeal 2.185.399, with Justice Nancy Andrighi as rapporteur. The Panel held that the legislative change is not retroactive and that notaries and registrars remain strictly liable for damage arising from acts predating Law No. 13.286/2016 (IBDFAM, 2026).

3.4. The personal nature of liability when office holders are succeeded

By requiring proof of fault or intent, Law No. 13.286/2016 reinforced the personal nature of notaries' and registrars' liability, already established in Article 22 of Law No. 8.935/94. This personal character is particularly relevant when the alleged error was committed

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by a previous delegate, sometimes years or decades earlier, rather than by the current office holder. Extrajudicial offices have no separate legal personality, and delegation is granted personally and originally to the natural person appointed after each new competitive examination. As a rule, civil liability therefore does not pass between successive delegates.

As discussed in section 4.3, the Superior Court of Justice accepted this reasoning by excluding an office holder's liability for harmful acts committed by a predecessor. It held that a delegate's personal liability begins with delegation and that notarial and registry activities do not involve business succession comparable to that of private-law legal entities. The wording of Article 22 of Law No. 8.935/94 reinforces this view by attributing liability for damage caused to third parties through fault or intent personally to the notary or registrar, rather than to the office as an abstract unit.

3.5. Fee exemption regimes for rectification of office errors: the Federal District and Goiás

Nationally, the prohibition on charging fees for errors attributable to an office follows from Article 3, item IV, of Law No. 10.169, of December 29, 2000. This law establishes general rules for setting fees and leaves their amounts to the federative units, subject to that restriction. The specific rules therefore vary between entities, allowing a brief comparison between the Federal District, where this study was prepared, and another member of the federation.

In the Federal District, Article 32 of the Code of Standards for Notarial and Registry Services, introduced by Extrajudicial Provision No. 67 of April 17, 2026, issued by the Justice Inspectorate of the Federal District and Territories, governs this matter. No fees are payable for renewed acts or deeds of rectification and ratification arising from errors attributable to the office, whether clerical errors or failures to comply with legal requirements. In other rectification cases, the fees amount to half the amount charged for the original act; where there is a novation or another substantial alteration, the full fees are payable. The same logic appears in Article 15 of Law No. 14.756, of December 15, 2023, the federal law governing fees in the Federal District and Territories. It provides that no new fees are payable for rectification, restoration or repetition of acts arising from error, negligence or lack of professional skill in notarial or registry services.

Goiás regulates the same matter directly through its own costs and fees legislation, Law No. 14.376, of December 27, 2002. Its sixth article prohibits, without additional exceptions, the charging of costs or fees for rectification or renewal acts arising from an error attributable to

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the office. Although worded differently, the two rules follow the same principle: the cost of correcting an error demonstrably attributable to a notarial or registry service must not be borne by the injured user, either in the Federal District or in Goiás.

Chapter 4: Analysis of legislation and case law

4.1. Applicable federal legislation

The Constitution forms the foundation of the regulatory system. The opening provision of Article 236 states that “notarial and registry services are performed privately through delegation by public authorities” (BRASIL, 1988), while its first paragraph reserves to legislation the regulation of these activities and the civil and criminal liability of notaries, registrars and their employees. Alongside it, the sixth paragraph of Article 37 establishes the general rule of strict liability for public-law legal entities and public service providers. At the statutory level, Article 43 of the Civil Code reproduces this rule for domestic public-law legal entities, without prejudice to recourse against the person causing the damage where fault or intent is established.

The law referred to by Article 236 is Law No. 8.935/94. As amended by Law No. 13.286/2016, its Article 22 provides that “notaries and registry officers are civilly liable for all damage they cause to third parties through fault or intent, personally or through substitutes they appoint or clerks they authorize, with the right of recourse assured” (BRASIL, 1994). The sole paragraph establishes a three-year limitation period running from the date the act was drawn up. Three specific rules supplement this framework concerning errors. The fifth paragraph of Article 110 of Law No. 6.015/73, as amended by Law No. 13.484/2017, exempts the interested person from stamp charges and fees where rectification results from an error attributable to the officer or their employees. Article 3, item IV, of Law No. 10.169/2000 prohibits fees for acts rectified, redone or renewed because of errors by the service itself. In the Federal District, Article 15 of Law No. 14.756/2023 supplements these rules.

This last provision deserves attention for two reasons. First, it is federal legislation, enacted by the Union because Article 22, item XVII, of the Constitution assigns it responsibility for legislating on the judicial organization of the Federal District and Territories; it is not district legislation. Second, its content combines, in a single article, free correction of errors with the statement that the office holder is liable, on grounds of intent or fault, personally or through employees, for damage caused to the interested person or third parties, with recourse assured.

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The rule thus reproduces the fault-based model of Article 22 of Law No. 8.935/94 and says nothing about the public entity's liability, which remains governed by the Constitution and Theme 777.

The difference in limitation periods completes the picture. A compensation claim against the public entity is generally subject to the five-year period established by Decree No. 20.910/1932, whereas a claim against the delegate becomes time-barred after three years from the date the act was drawn up, under the sole paragraph of Article 22 of Law No. 8.935/94. The choice of defendant is therefore consequential, a point revisited in section 4.4.

4.2. Regulations concerning civil liability in notarial and registry activities

Below the statutory level, the rules governing these activities are supplemented by regulatory acts of the Judiciary, which the first paragraph of Article 236 of the Constitution entrusts with supervision of notarial and registry acts. Articles 37 and 38 of Law No. 8.935/94 elaborate this power by assigning supervision to the competent court determined by each federative unit's judicial organization and charging it with ensuring efficient and adequate service provision.

Nationally, the National Justice Inspectorate consolidated its rules on extrajudicial services in Provision No. 149/2023, published in the CNJ Electronic Justice Gazette on September 4, 2023, establishing the National Code of Standards of the National Justice Inspectorate, Extrajudicial Division. The code standardizes procedures throughout the country but neither changes nor could change delegates' civil liability regime, a matter that the first paragraph of Article 236 of the Constitution reserves to legislation.

In the Federal District, the same function is performed by the Code of Standards for Notarial and Registry Services, introduced by Extrajudicial Provision No. 67/2026, whose fee regime for error rectification was examined in section 3.5. For civil liability, these rules matter less as a source of compensation obligations, which they cannot create, than as standards of conduct. When a delegate breaches them, that breach provides concrete evidence of the fault required in a recourse action, reconnecting regulation with the duty of diligence discussed in section 1.4.

4.3. Analysis of relevant case law

In the Federal Supreme Court, the central precedent is Extraordinary Appeal 842.846/SC, Theme 777, whose holding recognizes State strict liability for harmful acts of

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notaries and registrars, with mandatory recourse against those responsible in cases of intent or fault. Alongside it, Extraordinary Appeal 1.027.633/SP, Theme 940, held that the public agent who performed the act is not a proper defendant in a compensation action based on the sixth paragraph of Article 37. The content of both holdings was presented in Chapters 2 and 3; the focus here is how other courts have applied them.

At the Court of Justice of the Federal District and Territories, the Fifth Civil Panel reconsidered Civil Appeal No. 0737027-11.2017.8.07.0001 under Article 1.040, item II, of the Code of Civil Procedure, in a judgment dated December 7, 2022, with Judge Angelo Passareli as rapporteur. Applying Themes 777 and 940 together, the panel found that the notary was not a proper defendant and dismissed the proceedings against him without deciding the merits, since the compensation claim must be directed against the State entity, without prejudice to recourse (GUEDES; GUEDES, 2024, p. 6). The precedent shows that the combined reading of the two holdings has already had a concrete effect on who may be sued in the Federal District.

The Superior Court of Justice has addressed the intertemporal problem created by Law No. 13.286/2016. In Special Appeal 1.849.994/DF, originating from the Court of Justice of the Federal District and Territories, the Third Panel decided the case on March 21, 2023, with Justice Moura Ribeiro as rapporteur. It upheld a notary's liability for a notarial act bearing a forged signature and recognized strict liability for a failure predating that law, observing that the dispute concerned the delegate's direct liability rather than the State liability addressed by Theme 777. The same approach was reaffirmed in Special Appeal 2.185.399, with Justice Nancy Andrighi as rapporteur, mentioned in section 3.3, which rejected retroactive application of Theme 777 to acts predating 2016 (IBDFAM, 2026).

Also in the Third Panel, Special Appeal 1.340.805/PE, with Justice Paulo de Tarso Sanseverino as rapporteur and decided on June 4, 2019, established that a real estate registry office holder is not liable for harmful acts committed by a predecessor, because personal liability begins with delegation and there is no business succession between delegates. The decision provides case law support for the personal nature of liability examined in section 3.4 and rejects attempts to transfer liabilities from earlier administrations to a new office holder.

4.4. Convergences and divergences regarding the interpretation established in Theme 777

The legislation and precedents examined converge on three points. The first is the State's strict and direct liability to the injured user, which none of the decisions disputes. The second

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is the fault-based nature of a delegate's personal liability for acts following Law No. 13.286/2016, an approach endorsed by the Federal Supreme Court in giving precedence to Article 236 of the Constitution (VELTER JUNIOR; SILVA, 2022, p. 254) and repeated for the Federal District in Law No. 14.756/2023. The third is the absence of succession of liability between office holders, affirmed by the Superior Court of Justice and consistent with offices' lack of separate legal personality.

The courts diverge first on who may be sued. Reading Themes 777 and 940 together, as the Court of Justice of the Federal District and Territories does, leads to the conclusion that a notary is not a proper defendant in a compensation action. However, the Superior Court of Justice examined the merits of delegates' direct liability for acts predating 2016. Moreover, the wording of Article 22 of Law No. 8.935/94 and Article 15 of Law No. 14.756/2023, stating that the office holder is liable for the damage caused, keeps the debate over direct claims alive even for later acts.

Notably, both precedents originated in the Federal District: while the local court removed a notary as a defendant in 2022, the Superior Court of Justice upheld a local delegate's direct liability in 2023 for an act predating 2016. The holding in Theme 777 addresses State liability and recourse but does not expressly resolve whether the notary may be sued directly. This gap helps explain the lack of uniformity identified by Nicolau and Marquesi (2023).

The second divergence concerns timing. For acts predating May 10, 2016, the Superior Court of Justice applies delegates' strict liability, derived from the earlier wording of Article 22; for subsequent acts, the fault-based regime applies. The same registry error may therefore receive different treatment depending on when the act was drawn up. This is particularly sensitive for the older records discussed in Chapter 1, where errors are often discovered many years after the records were prepared.

A third divergence follows from the first two and concerns limitation periods. Where an action is brought against the public entity, the five-year period under Decree No. 20.910/1932 generally applies; where it is directed against the delegate, the period is three years from the date the act was drawn up. Because the sole paragraph of Article 22 establishes that date, rather than discovery of the damage, as the starting point, a belatedly discovered error may theoretically encounter a claim against the delegate that is already time-barred. This remains subject to judicial interpretation and reinforces the practical importance of the route against the State ensured by Theme 777.

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In summary, Theme 777 strengthened users' position by ensuring a solvent party liable for compensation and dispensing with proof of fault, while leaving legislation and the courts to define the relationship between the State and the delegate, where the described divergences persist. In the Federal District, the combination of federal fee legislation, the new Code of Standards and local Court of Justice case law outlines a model in which error correction is free, compensation to the user is concentrated on the public entity, and the delegate bears fault-based liability through recourse.

Conclusion

This study began by asking about the scope of civil liability arising from errors committed in notarial and registry activities in Brazil in light of the interpretation established by the Federal Supreme Court in Theme 777. The answer developed across the four chapters can be summarized as a model of two distinct relationships, each governed by its own rules.

The first chapter demonstrated that notarial and registry activities are public functions performed privately through delegation, governed by Article 236 of the Constitution and Law No. 8.935/94. It also showed that registry errors, often inherited from books prepared before the professionalization introduced by the 1988 Constitution, may remain hidden for years, imposing a heightened duty of diligence on delegates. The second chapter traced the evolution of State civil liability through administrative risk theory and demonstrated that Theme 777 applied the logic of the sixth paragraph of Article 37 to extrajudicial services while recognizing the precedence of the special rule in Article 236.

The third chapter established that the Consumer Protection Code does not fit these activities; that Article 22 of Law No. 8.935/94 shifted from a regime interpreted as strict liability to an expressly fault-based regime from 2016 onward; that liability does not pass between successive office holders; and that the Federal District and Goiás exempt correction of errors attributable to the office from fees. Finally, the fourth chapter showed that legislation and case law converge on the core holding but diverge on whether delegates may be sued directly, the regime applicable to acts predating 2016, and limitation periods.

The research problem is therefore answered as follows. The State is directly and strictly liable to the injured user, with proof of damage and a causal link to the service act being sufficient. The notary or registrar is personally liable to the State on a fault basis through recourse, which Theme 777 made mandatory under penalty of administrative misconduct. The initial hypothesis that Theme 777 established relevant parameters by recognizing State strict

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liability with recourse in cases of intent or fault is confirmed, with one qualification. The established parameters resolved the user-State relationship but did not settle the user-delegate relationship, which continues to depend on the date of the act and the court hearing the case.

As a limitation, the case law analysis focused on decisions of the Federal Supreme Court, the Superior Court of Justice and the Court of Justice of the Federal District and Territories consulted through September 2026, without claiming to exhaust the decisions of other courts. Directions for future research include examining recourse actions actually brought by public entities after Theme 777, standardizing the interpretation of whether delegates may be sued directly, and determining the starting point of limitation periods where an error is discovered long after the act was drawn up.

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