


CIVIL LIABILITY: AN ANALYSIS OF THE LIABILITY OF ACCOUNTING PROFESSIONALS IN THE FACE OF BOOKKEEPING ACTS AUTHENTICATED BY THE BOARD OF TRADE <https://doi.org/10.56238/sevened2024.037-161>**Edmilson Soares Campos¹, Danilo Rafael da Silva Mergulhão², Tiago Mota dos Santos³ and Marcos Vinícius Pontes da Silva Campos⁴.****ABSTRACT**

The present research aims to analyze the civil liability of the Accountant in relation to the acts of bookkeeping authenticated by the Board of Trade. It is important to understand the civil liability of the accountant, as a liberal professional, within the scope of his duties, which include the preparation of reports, accounting entries, articles of incorporation, trial balances and financial statements, which are, depending on the legal nature of the organization, authenticated by the Securities and Exchange Commission, Boards of Trade and Registry Offices. The methodology adopted is based on a basic and qualitative research approach, based on the Accountant's Code of Ethics and on bibliographic, legal and jurisprudential analysis. The analysis revealed that the civil liability of accountants is a complex and multifaceted topic, covering legal, ethical and practical aspects that must be strictly observed by accounting professionals to ensure the integrity and legality of accounting information. The accountant's civil liability is an extremely relevant area that requires a constant commitment to ethics, legislation and the quality of accounting information. Thus, it goes beyond the civil and criminal spheres, covering a broader and more collective view.

Keywords: Civil Liability. Accountants. Acts of Bookkeeping. Board of Trade. Ethics.

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INTRODUCTION

This work aims to analyze the civil liability of the Accountant in relation to the acts of bookkeeping authenticated by the Board of Trade. To this end, it is crucial to address the dogmatics of civil liability in its broadness, which concerns the legal obligation to repair or compensate for damages caused to third parties or their property, resulting from negligent, reckless, deliberate or unlawful conduct.

Accountants and administrators of organizations share responsibility for the potential negative impacts of the information they generate and disclose. According to the principles of civil liability, it is widely accepted that anyone who, by inappropriate conduct, causes damage to others can be held legally responsible and obliged to compensate for the damage caused. This responsibility can emerge in various scenarios, such as traffic accidents, medical negligence, environmental damage, and even in the case of providing incorrect information, as occurs in accounting fraud. However, the main objective is to ensure the reparation of the damage and offer fair compensation to the injured party, aiming to reestablish the situation prior to the harmful event.

In this essential perspective, it is crucial to understand the civil liability of the accountant, as a liberal professional, within the scope of his duties, which include the preparation of reports, accounting entries, articles of incorporation, trial balances and financial statements, which are, depending on the legal nature of the organization, authenticated by the Securities and Exchange Commission, Boards of Trade and Registry Offices.

The faithful representation of the patrimonial, economic and financial situation of the entities through these reports is a crucial and indispensable factor. Thus, it is essential that the accountant is in full compliance with the legislation that regulates consumer relations in his area of expertise, maintains strict adherence to the ethical principles outlined in the Code of Ethics for Accounting Professionals and is aware of the jurisprudence consolidated in the courts.

Regarding the consumer relationship, the exception established by the Consumer Protection Code (CDC) in relation to the liability of liberal professionals is brought to the fore. While the CDC adopts strict civil liability as a rule, prioritizing consumer protection (principle of vulnerability) in consumer relations, it establishes an exception for liberal professionals, requiring the consumer to prove the fault of the professional in his conduct to hold him responsible for damages or threats of damage, due to the personal and assumed nature of the risks inherent to the activity of these professionals.

The complexities of this subject arise from the lack of understanding of those involved about the implications of the Consumer Protection Code in commercial relations, especially when the consumer is in a position of vulnerability (BRASIL, 1990). It is essential for suppliers to understand that they cannot escape responsibility to provide quality services or products and to repair damage caused by recklessness, malpractice, or negligence. This prevents them from taking advantage of the consumer's fragility in search of undue advantages.

It is important to emphasize that the concept of consumer of accounting services is comprehensive, as those interested in the information provided by these professionals go beyond the internal users of organizations. They also include the tax authorities, investors, financial institutions and others, who are external users of this information. In this way, the impact of fraudulent information can be devastating.

The accountant's civil liability must also be evaluated under the prism of the Accountant's Code of Ethics (CFC, 2019). The relationship between the accountant's civil liability and the accountant's code of ethics is quite significant. While tort refers to the legal obligation to repair damage caused due to improper conduct, the accountant's code of ethics sets out the principles and standards of conduct that accountants must follow in their professional practice.

The accountant's code of ethics defines standards of professional behavior and conduct, emphasizing the importance of honesty, integrity, competence and confidentiality in the provision of accounting services. By following these ethical principles, accountants can help prevent situations that lead to civil liability, such as providing incorrect information, professional negligence, or fraudulent conduct.

In addition, in cases of civil liability proceedings, the accountant's conduct can be evaluated in light of the professional code of ethics. If an accountant acts in accordance with established ethical principles, this can be considered as a mitigating factor in a tort action.

Therefore, the relationship between the accountant's civil liability and the accountant's code of ethics lies in the importance of complying with ethical standards to avoid situations that may result in legal liability and ensure an upright and responsible professional practice.

As for the jurisprudence on the civil liability of the accountant, it highlights the importance of compliance with professional standards, precision and accuracy in the provision of accounting services, the duty of communication and the legal consequences of negligence or professional misconduct. It seeks, in a more precise way, to analyze the trend

and direction of decisions related to the autonomy and responsibility of the accountant regarding the information provided for registration with the Board of Trade.

In view of the above, the relevance of the theme is justified by addressing the trilogy of studies that contemplates the accountant's civil liability, due to the information it generates and evidences, having as pre-established limits the expected consumer relationship (CDC), the Accountant's Code of Ethics and settled jurisprudence (BRASIL, 1990).

In view of the above, the importance of this theme is evident, since it explores the trilogy of studies related to the accountant's civil liability, centered on the information he generates and evidences. In this context, the limits pre-established by the consumer relationship provided for in the Consumer Protection Code (CDC), by the Accountant's Code of Ethics and by consolidated case law stand out.

In this case, the general objective of this article emerges as a general objective to analyze the accountability of accounting professionals in the face of Bookkeeping Acts Authenticated by the Board of Trade. With the goal of achieving this objective, it is necessary to:

- Understand the foundations of civil liability under the aegis of the doctrine and precepts of the CDC regarding the consumer relationship;
- Verify how the dictates of the accountant's code of ethics have contributed to mitigating situations that result in legal liability and ensuring an upright and responsible professional practice
- Analyze the trend and direction of decisions related to the accountant's autonomy and responsibility regarding the information provided for registration with the Board of Trade.

The methodology adopted is based on a basic and qualitative research approach, based on the Accountant's Code of Ethics and on bibliographic, legal and jurisprudential analysis. The objective is to provide a descriptive and formative evaluation of the topic in question.

PRECEPTS OF CIVIL LIABILITY

In order to further support the issue that we wish to address in this article about the civil liability of the accountant professional in the face of the information prepared and published by him, it is important to hover over the concept of liability. According to Rosenvald and Braga Neto (2024, p. 11) in civil law, liability is still defined in its classic

sense as: "obligation to repair damages that we have infringed due to our fault and, in certain cases determined by law; in criminal law, by the obligation to bear the punishment". In this context, and still following the line of the authors, it can be inferred that anyone who is subject to the obligation to repair or suffer the penalty is responsible, regardless of whether it is in the civil or criminal sphere.

In contemporary terms, Ehrhardt Júnior (2020, p. 303) states that the trend of civil liability more than points out the person responsible for the damage. For the author, legislators and law enforcers claim that it must be evidenced how it will be repaired. Therefore, the core of the concern in matters of civil liability is no longer man considered in isolation, but man collectively and socially considered. A fact that leads to understand that the limits of civil liability go beyond any sphere, be it criminal or civil.

In this line of opening and expanding the incidence of civil liability brought by the aforementioned authors, Cavalieri (2019) in his work Civil Liability Program, advocates that "liability has as its core element a voluntary conduct violated by a legal duty". Civil liability is a legal duty that arises later to repair the damage caused by the breach of a previous legal duty. Thus, it can be said that civil liability represents an obligation to compensate for a loss or damage caused to another person (CAVALIERI FILHO, 2019).

However, based on the Civil Code (BRASIL, 2002), it is opportune to understand the theory of objective civil liability as well as subjective liability. Subjective civil liability, based on fault, is provided for in articles 186, 187 and in the caput of article 927 of the Civil Code. On the other hand, strict civil liability, based on the theory of risk and summarized in presumed fault, can be found in several legal provisions, especially in the sole paragraph of article 927 of the Civil Code. According to Gonçalves (2017), the classification of civil liability based on the element of fault is subdivided into objective and subjective, and subjective civil liability has fault as its primary element, if there is no fault, there is no need to speak of liability.

Thus, it is suggested to divide it into different species, depending on where it comes from and what is the subjective element of this conduct. For Cavalieri (2019) it is possible to outline civil liability in two major groups, which are extracontractual and contractual. These, having in their essence the assumptions of subjective liability, namely: a) culpable conduct of the agent; b) the causal link; and c) the damage. Rosenvald and Braga Neto (2024, p. 943) state that classic civil liability was unaware of the causal link and was satisfied with fault and damage as triggering assumptions of the obligation to indemnify.

The texts of Rosenvald and Braga Neto, Ehrhardt Júnior and Cavalieri converge in their views on civil liability, agreeing that it goes beyond the spheres of Civil and Criminal

Law. They state that liability involves both the obligation to repair damages and the obligation to bear penalties, regardless of the civil or criminal context. Ehrhardt Júnior points out that civil liability today focuses on the collective and social, while Cavalieri reinforces the importance of understanding liability as a voluntary conduct that violates a legal duty, proposing its division into non-contractual and contractual liability, based on subjective liability.

This common perspective among the authors indicates that civil liability should be seen in a comprehensive way, concerned not only with the isolated individual, but with man in his collective and social context. The core of modern civil liability is, therefore, an integrative approach that considers the social and collective implications in the reparation of damages, promoting a broader and more inclusive justice, and the harmful act may come from companies, individuals or liberal professionals, such as accountants.

ACCOUNTANTS AND THE ACT OF REGISTRATION

The legal relationship between the accountant and his contractors, whether they are an individual, entrepreneur or business company, involves a series of responsibilities and obligations that must be strictly complied with to ensure the integrity and legality of the accounting information. The accountant, as a liberal professional, is responsible for the correct preparation and recording of accounting information, and must act with diligence, competence and ethics. According to Reale (2000), the legal relationship is the relationship of social life that seeks diverse and multiple ends, not only strictly legal, which are formed under legal models established by the State or that are inserted in a normative structure, so that the Law acts as an instrument for the realization, protection and realization of these ends.

The legal relationship between accountants and contractors is also governed by the Consumer Protection Code, since the accountant provides services of a technical-scientific nature and must ensure the quality and reliability of the accounting information provided.

The accountant may be held civilly liable for any damages caused to his contractors as a result of errors or omissions in the preparation of accounting information, and this liability is of a subjective nature, that is, it depends on proof of guilt (Article 14, paragraph 4 of the CDC). Thus, the provision of services by the accountant to his clients characterizes a legal consumer relationship, since it is possible to identify the subjects and the object of the relationship, that is, it is essential that there is in one of the poles of the relationship the consumer(s) and in the other the supplier(s) and, between both, the transaction of products or services (NUNES, 2017). Civil liability arises from this relationship.

It is important to consider that (CAVALIERI FILHO, 2019) argues that the Consumer Protection Code has as its primary objective the intention of "reestablishing balance and equality in consumer relations", since the consumer will always be the weak party in the consumer relationship. In addition, the institute of civil liability aims to repair the damages suffered by the injured party. In this way, there is a relationship of reciprocity between them and, together, they act in the protection, defense and reparation of the rights of the parties involved in the consumer relationship.

On the other hand, the poor quality of accounting information can bring numerous problems to the company and its stakeholders. Incomplete or imperfect accounting information can lead to misguided decisions, harming the company's management and potentially resulting in significant financial losses. In addition, the lack of clarity and precision in the information can generate distrust among investors, creditors and business partners, negatively impacting the company's reputation and making it difficult to raise funds (MOURA, ZILIOOTTO and MAZZIONI, 2016).

Informational asymmetry, which occurs when there are divergences in the information available between different parties, is one of the main problems generated by the poor quality of accounting information. For example, an investor who does not have access to accurate information about a company's financial health may make poor investment decisions, leading to financial losses. Similarly, a lender may grant credit based on incomplete information, resulting in default risks (NASCIMENTO et al, 2012).

In addition, the poor quality of accounting information can lead to the incidence of fraud. Incomplete or imperfect information can be manipulated to hide the company's real financial situation, resulting in accounting fraud that can have severe legal consequences and undermine the confidence of markets and society in the integrity of financial statements (MOURA, ZILIOOTTO and MAZZIONI, 2016).

The Civil Code in articles 1,179 to 1,184 shows that the registration of accounting information in the Public Registry of Mercantile Companies is a legal requirement that aims to ensure the transparency and legality of companies' accounting operations. According to the Civil Code, the entrepreneur and the business company are obliged to follow an accounting system based on the uniform bookkeeping of their books, in correspondence with the respective documentation, and to annually draw up the balance sheet and the economic result (BRASIL, 2002)

Also according to the Civil Code, mandatory books, such as the Journal and the Trial Balances of Journals and Balance Sheets, must be authenticated in the Public Registry of Mercantile Companies before being put into use (Art. 1.181). This authentication is

essential to ensure that the accounting books are maintained regularly and in accordance with the established standards, providing a solid basis for the analysis and verification of accounting information by the competent authorities and other stakeholders.

The requirement to register accounting information in the Public Registry of Mercantile Companies also aims to ensure the legality of accounting operations, prevent fraud and ensure the integrity of the financial information disclosed. Failure to comply with this requirement can lead to severe penalties and compromise the confidence of markets and society in the veracity of the company's financial statements.

However, the poor quality of accounting information generated by accountants and organizational managers can bring numerous problems to companies and their stakeholders. Incomplete or imperfect accounting information can lead to misguided decisions, harming the company's management and potentially resulting in significant financial losses. In addition, the lack of clarity and precision in the information can generate distrust among investors, creditors and business partners, negatively impacting the company's reputation and making it difficult to raise funds (MOURA, ZILLOTTO and MAZZIONI, 2016).

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The accountant has civil liability for this information, regardless of its quality, as the registration of accounting information in the Public Registry of Mercantile Companies is a legal requirement that aims to ensure the transparency and legality of the companies' accounting operations. According to the Civil Code, the entrepreneur and the business company are required to follow an accounting system based on the uniform bookkeeping of their books, in correspondence with the respective documentation, and to annually draw up the balance sheet and the economic result (Art. 1,179). (BRAZIL, 2002)

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The requirement to register accounting information in the Public Registry of Mercantile Companies also aims to ensure the legality of accounting operations, prevent fraud and ensure the integrity of the financial information disclosed. Failure to comply with this requirement can lead to severe penalties and compromise the confidence of markets and society in the veracity of the company's financial statements. Failure to comply with the requirements for registration of mandatory books in the Public Registry of Mercantile Companies can result in various penalties for the entrepreneur or business company.

According to the Civil Code, article 1,182, bookkeeping will be under the responsibility of a legally qualified accountant, and any irregularity in the maintenance and registration of accounting books may result in legal consequences (Brasil, 2002).

Penalties for not registering the mandatory books can include fines, the impossibility of issuing negative debt certificates, which can prevent the company from participating in public bids or obtaining financing, and even the opening of legal proceedings by creditors or investors harmed. In addition, the company may be subject to inspection by the competent authorities, resulting in audits and inspections that may reveal other accounting and financial irregularities.

The absence of registration of mandatory accounting books can also lead to the disregard of the company's legal personality in cases of legal litigation, causing the partners or managers to be personally liable for the company's obligations. This can have significant financial and legal consequences for those involved, compromising their reputation and personal assets

From this perspective, it is essential that the accountant maintains an ethical and transparent professional posture, ensuring the quality of accounting information and strictly complying with the legal requirements for registration and authentication of accounting books. In this way, it contributes to the protection of the interests of its contractors and to the trust and integrity of the accounting and financial market (CFC, 2019).

JURISPRUDENCE OF THE ACCOUNTANT'S CIVIL LIABILITY

The civil liability of liberal professionals is a recurring theme of great importance in the discussions of the Brazilian courts, especially in situations involving consumer relations. Regarding the performance of the accounting professional, the Court of Justice of Rio Grande do Sul highlighted that, generally, this activity is result-oriented, which implies subjective liability with presumed fault. This means that the accountant must prove that he did not act with fault.

In a specific case, the Court of Justice of Rio Grande do Sul held an accountant responsible for negligence in failing to collect the ICMS Information and Calculation Guides (GIA), resulting in the client's enrollment in the active debt. The client had hired the accountant to open a company, but due to the lack of habitation of the rented property, the location permit was not granted, making it impossible to qualify for the Simples Nacional and requiring the monthly presentation of the ICMS GIAs. The accountant's failure to inform these GIAs led to the enrollment in the active debt, characterizing negligence.

The reporting judge was based on article 14, paragraph 4, of the Consumer Protection Code (CDC), which establishes the subjective liability of liberal professionals, with an obligation of result, and concluded that the accountant was negligent in not following accounting and financial standards, causing losses to the client.

In another case, the Court of Justice of Sergipe held accountant liable who, in a consumer relationship, committed an unlawful act by not clearly informing about the costs of the service, disrespecting the consumer's basic right to adequate and clear information, according to article 6, item III, of the CDC. The accountant was hired to calculate the termination of the employment contract, but withheld 73% of the severance payments as fees without a written contract detailing the amounts due and the service provided. The practice was considered abusive and extremely disadvantageous to the consumer, violating the good faith that should guide legal relationships.

The reporting judge, based on article 6, item III, and article 51 of the CDC, decided that the accountant should indemnify the consumer in R\$ 2,000.00, with default interest of 1% per month, and return the amount that exceeded 20% of the severance payments, considering this percentage as reasonable for the fees for the service provided. The application of article 42, sole paragraph, of the CDC, which deals with the double refund of undue charges, was not considered appropriate, as there was a provision of service, characterizing a charge above reasonable, but not undue.

It is concluded that it was the defendant's obligation, as an accountant, to be aware of accounting and financial standards, in order to fit the plaintiff's company, his client, in the

correct system of tax collection. By not having done so, he acted negligently and is held responsible for the resulting losses.

Finally, it is worth noting that the Court of Justice of Sergipe decided to hold accountant liable who, in the consumer relationship, committed an unlawful act (abusive conduct), not acting in good faith when she did not clearly inform about the costs of the service, disrespecting the basic rights expressed in the Consumer Protection Code, especially that of article 6, item III, which guarantees the consumer adequate and clear information, so that it culminated in an extreme disadvantage for the consumer³⁷.

The case narrates a consumer relationship in which a consumer in a situation of fragility works in one pole and, in the other, an accountant hired to calculate the value of the termination of the plaintiff's employment contract.

According to the report, the accountant acted in bad faith when she withheld 73% of the plaintiff's severance payments, justifying that they would be her fees. There is no written contract in the records, however, for the provision of the service in which precise and clear information about the amounts due and the service to be performed would be included, thus violating one of the basic rights of the consumer to adequate and clear information.

The rapporteur relies on article 6, item III, of the CDC, to affirm that there was a violation of consumer rights, as well as on article 5138, of the same provision, to recall that the practice is abusive, since contractual clauses that establish unfair and unfair obligations, that are excessively disadvantageous to the consumer or contradict good faith or equity are null and void. Now, even if the contract made by the parties was oral, it is evidently abusive and extremely disadvantageous to charge 73% of the amount to which the plaintiff was entitled, as well as an act that is an attack on the good faith that should guide legal relations.

Finally, the rapporteur pointed out that, in addition to the undue retention of an exorbitant amount by the defendant, the amounts arising from labor termination are of a food nature. It was decided, therefore, that the accountant was liable, who was ordered to pay compensation of R\$ 2,000.00, with default interest of 1% per month, in addition to the return of the amount that exceeded 20% of the severance payments, which is the percentage considered fair for the provision of the service.

It was also emphasized that the application of article 42, sole paragraph, of the CDC, which provides for the double refund of the excess amount in cases of undue collection, does not apply. This is because, although the charge was excessive, the service was provided, therefore not constituting an undue charge as specified in the legal provision, but rather a charge above reasonable.

FINAL CONSIDERATIONS

Throughout this article, it was possible to deepen the understanding of the accountant's civil liability, especially in relation to bookkeeping acts registered with the Board of Trade. The analysis revealed that the civil liability of accountants is a complex and multifaceted topic, covering legal, ethical and practical aspects that must be strictly observed by accounting professionals to ensure the integrity and legality of accounting information.

The dogmatics of civil liability establishes that any negligent, reckless or willful conduct that causes damage to third parties may result in an obligation to repair. For accountants, this translates into the need for diligent professional practice that complies with the standards established by the Code of Ethics for Accounting Professionals. Compliance with these ethical standards is essential not only to avoid situations that may result in legal liability, but also to maintain confidence in the accounting and financial market.

The consumer relationship, governed by the Consumer Protection Code (CDC), imposes an additional degree of responsibility on accountants, since the CDC adopts strict civil liability as a rule, with the exception of liberal professionals, where fault must be proven by the consumer. This highlights the importance of transparent and ethical performance by accountants, who must provide clear and accurate information to their clients and stakeholders to avoid any type of conflict or litigation.

The theoretical foundations presented by civil liability scholars, such as Rosenvald, Braga Neto, Ehrhardt Júnior and Cavalieri, reinforce the idea that civil liability goes beyond the civil and criminal spheres, encompassing a broader and more collective view. This integrative approach is crucial to understanding the responsibility of accountants, whose work impacts not only their direct clients, but also a wider range of stakeholders, including the tax authorities, investors, and financial institutions.

The case law analyzed demonstrates that Brazilian courts have recognized the importance of compliance with accounting standards and the liability of accountants in situations of negligence or misconduct. Exemplary cases show that failure to follow correct accounting procedures can result in severe penalties, reinforcing the need for rigorous and law-compliant professional practice.

Finally, it is imperative that accountants are always up-to-date and attentive to the legal and ethical requirements of their profession. The proper recording and authentication of accounting information are not only legal obligations, but also essential practices for maintaining transparency and trust in the market. By acting ethically and competently,



accountants not only avoid civil liability but also contribute significantly to the integrity of the economic and financial system.

Thus, it is concluded that the accountant's civil liability is an area of extreme relevance and complexity, which requires a constant commitment to ethics, legislation and the quality of accounting information. Success in accounting practice depends on the ability of professionals to act responsibly, ensuring the protection of the interests of their contractors and the trust of the market.

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