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FRAUD AND CONTRACTUAL DECEPTION IN BRAZIL: ANALYSIS OF CIVIL AND CRIMINAL CONSEQUENCES AND THE CHALLENGES OF DIGITAL FRAUD UNDER BRAZILIAN LAW

FRAUDE E ENGANO CONTRATUAL NO BRASIL: ANÁLISE DAS CONSEQUÊNCIAS CIVIS E CRIMINAIS E OS DESAFIOS DA FRAUDE DIGITAL SOB A LEI BRASILEIRA

FRAUDE Y ENGAÑO CONTRACTUAL EN BRASIL: ANÁLISIS DE LAS CONSECUENCIAS CIVILES Y PENALES Y LOS DESAFÍOS DEL FRAUDE DIGITAL BAJO LA LEY BRASILEÑA

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ABSTRACT

Property-related fraud represents one of the main challenges faced by the Brazilian legal system due to the economic losses caused to victims and the continuous evolution of mechanisms used to obtain unlawful advantages. Among the most common modalities are fraud, contractual deception, and, more recently, electronic fraud committed in digital environments. This study aims to analyze the civil and criminal aspects related to fraud and contractual deception in Brazil, examining the applicable legislation, mechanisms for damage compensation, and challenges arising from the expansion of digital fraud and romance scams. The methodology consisted of a qualitative literature review based on recent scientific articles and relevant Brazilian legislation. The results demonstrate that the proper distinction between contractual breach, civil fraud, and criminal fraud is essential to ensure legal certainty and prevent the improper criminalization of patrimonial disputes. It was also found that Law No. 14,155/2021 strengthened the fight against electronic fraud, although challenges related to criminal investigation, digital evidence production, and recovery of losses suffered by victims remain. It is concluded that the integration of civil and criminal legal instruments, combined with the strengthening of preventive and technological mechanisms, constitutes a fundamental element in effectively combating contemporary property-related fraud.

Keywords: Fraud. Contractual Fraud. Electronic Fraud. Civil Liability. Criminal Liability.

RESUMO

A fraude relacionada à propriedade representa um dos principais desafios enfrentados pelo sistema jurídico brasileiro devido às perdas econômicas causadas às vítimas e à evolução contínua dos mecanismos utilizados para obter vantagens ilícitas. Entre as modalidades mais comuns estão a fraude, o engano contratual e, mais recentemente, a fraude eletrônica cometida em ambientes digitais. Este estudo visa analisar os aspectos civis e criminais relacionados à fraude e engano contratual no Brasil, examinando a legislação aplicável,

mecanismos de compensação de danos e desafios decorrentes da expansão da fraude digital e golpes sentimentais. A metodologia consistiu em uma revisão qualitativa de literatura baseada em artigos científicos recentes e legislação brasileira relevante. Os resultados demonstram que a distinção adequada entre inadimplemento contratual, fraude civil e fraude criminal é essencial para garantir segurança jurídica e prevenir a criminalização imprópria de disputas patrimoniais. Também foi constatado que a Lei nº 14.155/2021 fortaleceu o combate à fraude eletrônica, embora desafios relacionados à investigação criminal, produção de provas digitais e recuperação de perdas sofridas pelas vítimas permaneçam. Conclui-se que a integração de instrumentos legais civis e criminais, combinada com o fortalecimento de mecanismos preventivos e tecnológicos, constitui elemento fundamental no combate efetivo à fraude contemporânea relacionada à propriedade.

Palavras-chave: Fraude. Fraude Contratual. Fraude Eletrônica. Responsabilidade Civil. Responsabilidade Criminal.

RESUMEN

El fraude relacionado con la propiedad representa uno de los principales desafíos enfrentados por el sistema jurídico brasileño debido a las pérdidas económicas causadas a las víctimas y la evolución continua de los mecanismos utilizados para obtener ventajas ilícitas. Entre las modalidades más comunes se encuentran el fraude, el engaño contractual y, más recientemente, el fraude electrónico cometido en entornos digitales. Este estudio tiene como objetivo analizar los aspectos civiles y penales relacionados con el fraude y el engaño contractual en Brasil, examinando la legislación aplicable, los mecanismos de compensación de daños y los desafíos derivados de la expansión del fraude digital y las estafas sentimentales. La metodología consistió en una revisión cualitativa de la literatura basada en artículos científicos recientes y legislación brasileña relevante. Los resultados demuestran que la distinción adecuada entre incumplimiento contractual, fraude civil y fraude penal es esencial para garantizar seguridad jurídica y prevenir la criminalización impropia de disputas patrimoniales. También se encontró que la Ley Nº 14.155/2021 fortaleció la lucha contra el fraude electrónico, aunque persisten desafíos relacionados con la investigación penal, la producción de pruebas digitales y la recuperación de pérdidas sufridas por las víctimas. Se concluye que la integración de instrumentos legales civiles y penales, combinada con el fortalecimiento de mecanismos preventivos y tecnológicos, constituye un elemento fundamental para combatir efectivamente el fraude contemporáneo relacionado con la propiedad.

Palabras clave: Fraude. Fraude Contractual. Fraude Electrónica. Responsabilidad Civil. Responsabilidad Penal.

1 INTRODUCTION

The protection of property constitutes one of the central functions of the legal system. For this reason, Brazilian law provides mechanisms intended to prevent and repress fraudulent conduct capable of causing economic losses to individuals, corporations, and public institutions. Among such conduct, fraud and contractual deception stand out due to their intersection between Civil Law and Criminal Law, requiring careful legal analysis to ensure the proper application of legal norms.

The crime of fraud is established in Article 171 of the Brazilian Criminal Code and is characterized by obtaining an unlawful advantage to the detriment of another person through inducing or maintaining the victim in error by means of deceit, trickery, or any other fraudulent mechanism. It is a property crime whose configuration requires proof of fraud aimed at obtaining an improper economic benefit.

On the other hand, contractual fraud is predominantly situated within the scope of Civil Law and is related to violations of good faith, defects in consent, and fraudulent conduct during the formation or execution of contracts. In such situations, the legal consequences may include contract annulment, restitution of amounts paid, and compensation for losses and damages, without necessarily giving rise to criminal liability.

The increasing digitalization of economic relationships has significantly expanded the complexity of these practices. The growth of electronic commerce, social networks, instant messaging applications, and digital platforms has encouraged the emergence of new forms of fraud, requiring legislative and institutional adaptation. In this context, Law No. 14,155/2021 introduced important amendments to the crime of fraud by creating qualified forms of electronic fraud and increasing applicable penalties.

In addition to electronic fraud, recent literature has focused on so-called romance scams, a modality characterized by the exploitation of emotional relationships for the purpose of obtaining economic advantages. The growth of this practice has generated debate regarding the adequacy of the current legal framework and the need for legislative improvements.

Given this scenario, this article seeks to analyze the main legal aspects related to fraud and contractual deception in Brazil, examining their legal foundations, civil and criminal

consequences, and the challenges arising from new forms of fraud developed in digital environments.

2 METHODOLOGY

This study has a qualitative and exploratory-descriptive nature and was conducted through a bibliographic and documentary review.

Scientific articles published between 2018 and 2025 addressing fraud, contractual deception, civil liability arising from fraudulent conduct, electronic fraud, romance scams, and mechanisms for property damage compensation were analyzed. Additionally, relevant Brazilian legislation was examined, including provisions of the Criminal Code, Civil Code, Law No. 14,155/2021, and the Brazilian Civil Rights Framework for the Internet (Marco Civil da Internet).

The analysis focused on identifying the elements that distinguish contractual breach, civil fraud, and criminal fraud, as well as the challenges related to offender accountability and compensation for damages suffered by victims.

3 FRAUD UNDER BRAZILIAN CRIMINAL LAW

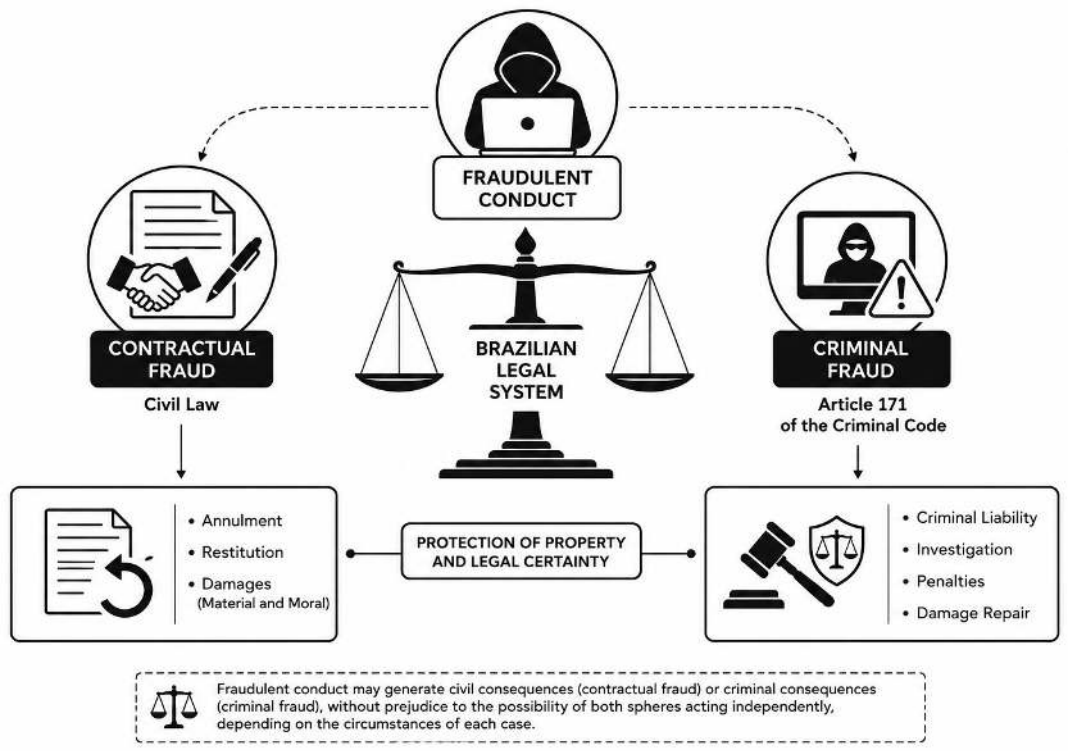
Article 171 of the Brazilian Criminal Code defines fraud as obtaining an unlawful advantage to the detriment of another person through fraudulent means. The offense requires the presence of specific elements, including the use of deceitful conduct, the induction or maintenance of the victim in error, and the acquisition of an unlawful patrimonial benefit.

The literature emphasizes that not every contractual loss constitutes fraud. The characterization of the crime depends on demonstrating that fraudulent intent was present from the beginning of the legal relationship and was used as a tool to obtain an improper economic advantage [7].

This distinction is fundamental to prevent the criminalization of simple contractual breaches, which are generally resolved through civil legal remedies. The interaction between civil and criminal responses to fraudulent conduct under Brazilian law is conceptually illustrated in Figure 1.

Figure 1

Legal Responses to Fraudulent Conduct in Contemporary Brazilian Law



Source: created by author.

4 CONTRACTUAL FRAUD AND CIVIL LIABILITY

Within Civil Law, contractual fraud is grounded in the provisions concerning defects in consent contained in Articles 138 to 165 of the Brazilian Civil Code. According to Yun [7], the use of false information, relevant omissions, or any mechanism capable of compromising the free expression of will may render a legal transaction voidable or, in certain circumstances, null and void.

The principles of the social function of contracts (Article 421 of the Civil Code) and objective good faith (Article 422 of the Civil Code) play a central role in the interpretation of contractual relationships. When these principles are violated through fraudulent conduct, legal consequences arise to protect the injured party.

Legal scholarship also highlights the importance of Articles 186 and 187 of the Civil Code, which address unlawful acts and abuse of rights, providing a legal basis for civil liability arising from fraudulent conduct.

Civil liability arising from contractual fraud seeks to restore the patrimonial balance disrupted by unlawful conduct. Articles 389, 402, and 927 of the Brazilian Civil Code establish the obligation to compensate damages resulting from contractual breach or unlawful acts, including direct losses, lost profits, and other proven damages.

Vasconcelos [9] emphasizes that the unjustified termination of negotiations may generate pre-contractual liability when there is a violation of the legitimate trust established between the parties.

Serpa [10] notes that certain situations may justify not only material compensation but also moral damages resulting from contractual breach. Diniz [11] observes that civil compensation should aim at full restoration of damages, including situations involving loss of chance and lost profits when properly demonstrated.

5 ELECTRONIC FRAUD AND RECENT LEGISLATIVE CHANGES

The advancement of digital technologies has significantly increased opportunities for property-related fraud. In response to this phenomenon, Law No. 14,155/2021 introduced important amendments to Article 171 of the Criminal Code by creating qualified forms of fraud committed through electronic means.

According to Cavalcante, Morato, and Almeida [5], the new legislation sought to adapt the criminal justice system to emerging forms of fraud committed through social networks, messaging applications, and digital platforms.

The authors emphasize that the legislative reform recognized the high harmful potential of electronic fraud, thereby justifying stricter criminal sanctions.

However, the literature indicates that increasing penalties alone is insufficient to fully address the problem. Challenges remain regarding offender identification, digital evidence collection, and recovery of diverted assets [5,6].

6 ROMANCE SCAMS AND CONTEMPORARY FRAUD

Romance scams represent one of the most recent forms of property-related fraud discussed in Brazilian legal literature. According to Pertussati and Almeida [8], this practice occurs when an individual establishes an emotional relationship with a victim and uses that bond to obtain economic advantages.

The primary challenge associated with this modality lies in evidence production. In many cases, financial transfers appear voluntary, making it difficult to demonstrate fraudulent intent.

The authors also point out doctrinal disagreements regarding the need for a specific criminal offense addressing romance scams, as part of the legal scholarship considers Article 171 of the Criminal Code sufficient to encompass such conduct.

7 DIGITAL EVIDENCE AND INVESTIGATION CHALLENGES

The expansion of electronic fraud has increased the importance of digital evidence in judicial proceedings. In this context, the Brazilian Civil Rights Framework for the Internet (Law No. 12,965/2014) plays a fundamental role by regulating issues related to data retention, user rights, and disclosure of electronic records through judicial authorization.

De Souza Jales and Campos [6] emphasize that the collection and preservation of digital evidence constitute one of the greatest challenges in cybercrime investigations, particularly due to anonymity tools and identity-concealment mechanisms.

8 PREVENTIVE MECHANISMS AND TECHNOLOGICAL SOLUTIONS

In addition to criminal prosecution and civil compensation, the literature highlights the importance of preventive mechanisms. Winter, Klein, and Lazarin [13] propose the use of technological tools designed to analyze administrative data and identify potential fraud risks in electronic transactions.

The authors conclude that automated solutions can significantly reduce user exposure to digital scams, complementing traditional legal mechanisms for property protection.

9 CONCLUSION

The analysis demonstrates that the Brazilian legal system provides both civil and criminal instruments capable of addressing various forms of property-related fraud. The Criminal Code, Civil Code, Brazilian Civil Rights Framework for the Internet, and Law No. 14,155/2021 form an important legal framework for preventing, repressing, and compensating damages resulting from fraudulent conduct.

The study revealed that the distinction between contractual breach, civil fraud, and criminal fraud remains essential for ensuring legal certainty and preventing the inappropriate criminalization of private patrimonial disputes.

It was also possible to observe that digital transformation has significantly increased challenges related to investigation and evidence production, requiring continuous legislative and technological adaptation.

Finally, it is concluded that strengthening preventive mechanisms, expanding institutional cooperation, and improving digital investigation tools are fundamental measures for enhancing the effectiveness of property protection and reducing the impacts of contemporary fraud.

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