

The Role of the Judiciary in Legislating Civil Liability for Damages Caused by Medical Errors

Associate Professor Doctor
Mahmoud Ibrahim Fayyad
University of Sharjah –
College of Law
mfayyad@sharjah.ac.ae

Professor Doctor
Syed Ahmed Mahmoud
University of Sharjah -
College of Law
Ain Shams University –
College of Law
sahmed2@sharjah.ac.ae

Receipt Date: 18/11/2022, Accepted Date: 15/12/2022, Publication Date: 25/12/2022.



This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

Abstract

This research discussed the role of the UAE high courts in interpreting the legal texts governing the objective civil protection for the injured due to medical errors. It utilized many issued judgments and concluded the importance of these rulings in interpreting the legal texts provided in the relevant legislation. Also, it emphasized the impact of these provisions on the legislative amendments recently made by the UAE legislator, namely the Medical Liability Law No. 4 of 2016 and its Executive Regulation No. 40 of 2019. Although the UAE law does not follow the case law system, this study proved the commitment of the lower courts to the judicial principles issued by these higher courts. The first part highlighted the concept of medical errors in light of the trends of the judiciary. Also, it indicated the scope and nature of the responsibility of healthcare professionals. The part focused on developing the medical liability insurance system in the UAE and interpreting the UAE judiciary for the controls and effects of this insurance. The study concluded the importance of the role of relevant case law in making modern legislative amendments that meet the needs and requirements of health workers in the state.

Keywords: Medical Liability, Medical Damages, Healthcare Liability, Emirati Health Law.

دور القضاء في تشريع المسؤولية المدنية عن الأضرار الناجمة عن الأخطاء الطبية

أستاذ دكتور
سيد احمد محمود
جامعة الشارقة – كلية القانون
جامعة عين شمس – كلية الحقوق
sahmed2@sharjah.ac.ae

أستاذ مشارك دكتور
محمود إبراهيم فياض
جامعة الشارقة – كلية القانون
mfayyad@sharjah.ac.ae

تاريخ الاستلام: ٢٠٢٢/١١/١٨, تاريخ القبول: ٢٠٢٢/١٢/١٥, تاريخ النشر: ٢٠٢٢/١٢/٢٥.

ملخص

بحثت هذه الدراسة في دور المحاكم العليا الإماراتية في تفسير النصوص القانونية الناظمة لضوابط الحماية المدنية الموضوعية للمتضرر بسبب الأخطاء الطبية. استعانت الدراسة بعشرات الأحكام القضائية الصادرة عن المحاكم العليا في الدولة، وخلصت إلى أهمية هذه الأحكام في تفسير النصوص القانونية الواردة في التشريعات ذات العلاقة. كما خلصت الدراسة إلى تأثير التعديلات التشريعية التي اجراها المشرع الإماراتي حديثاً بهذه الأحكام إلى حد كبير، وهي قانون المسؤولية الطبية رقم ٤ لسنة ٢٠١٦ ولائحته التنفيذية رقم ٤٠ لسنة ٢٠١٩. وعلى الرغم من القانون الإماراتي لا يتبع نظام السوابق القضائية، إلا أن هذه الدراسة أثبتت تواتر العمل بهذه الأحكام القضائية بشكل كبير لدى محاكم الدولة. بحثت الدراسة في قسمها الأول في مفهوم الأخطاء الطبية في ضوء توجهات القضاء إضافة إلى بيان نطاق وطبيعة مسؤولية مختصي الرعاية الصحية. بحث القسم الثاني في هذه الدراسة استحداث نظام التأمين من المسؤولية الطبية، وتفسير القضاء الإماراتي لضوابط وأثار هذا التأمين. خلصت الدراسة إلى أهمية دور السوابق القضائية ذات العلاقة في إجراء تعديلات تشريعية حديثة تلبي حاجات ومتطلبات تور العمل الصحي في الدولة.

الكلمات الافتتاحية: المسؤولية الطبية، الأخطاء الطبية، تشريعات الصحة الإماراتية، قانون الصحة الإماراتي.

1. Introduction

The medical profession has been one of the noblest human professions since ancient times. The doctor is considered a role model for society in his behavior and dealings and upright work to preserve people's bodies and souls, where doctors are called "the angels of mercy". God Almighty created the disease and the medicine, so human life, the safety of his body, and his health are among the most sacred issues according to Sharia and law Islam and Muslims knew medical responsibility following the words of the Messenger of God, may God bless him and grant him peace: "Whoever practices medicine, and no medicine was known from him before that; He is a guarantor" ¹. The means of medical services have developed ², and their tools have multiplied to provide treatment to many patients, or even for non-therapeutic purposes such as plastic surgery, which has led to an increase in disputes related to medical liability and the claims of those affected for compensation for the damages they have suffered as a result of medical errors during the practice of the profession³.

The issues of medical liability have been the subject of a doctrinal controversy for decades due to the ambiguity surrounding the relevant special legislation, as well as the different interpretations of the general rules governing the provisions of contractual liability and tort liability and the other application of them to related disputes. What is a medical error, its scope, its cases, the nature of the obligation of health care providers, and the scope of their legal liability have been topics that have sparked a doctrinal debate in an infinite number of relevant legal literature? The High Courts practiced their authority in interpreting ambiguous legal texts as these provisions are an interpretive source of the legal norm in the United Arab Emirates to ensure the harmony of the judgments issued by the lower courts. High Courts addressed these issues in

an infinite number of judicial rulings to add explanatory legal provisions that fill the shortage contained in the relevant legislation.

Considering this jurisprudence, the national legislator found himself obliged to keep up with this jurisprudence. Recently, the lawmaker issued Law No. 4 of 2016⁴ on medical liability and its Executive Regulation No. 40 of 2019,⁵ which repealed law No. 10 of 2008⁶ and Regulation No. 33 of 2009,⁷ respectively.

The federal judiciary is headed by the Federal Supreme Court, and the local judiciary at the level of local governments that are members of the Federation. The Federal Supreme Court of UAE is the highest federal court in the UAE. It judges legal challenges submitted by plaintiffs to decisions rendered by the Federal Court of Appeal. Additionally, it has original jurisdiction over some issues, such as conflicts between emirates. The Ministry of Justice has control over the court. The Dubai Court of Cassation was established in 1988 by Law No. 1 of 1988, dated 6/2/1988. It is the only court of Cassation at the emirate level and the highest in the judicial system and works to unify the application of the law in the courts of Dubai. Also, the Abu Dhabi Court of Cassation is the highest judicial institution in the emirate of Abu Dhabi. It is competent to consider appeals against judgments issued by appellate courts and conflicts of jurisdiction between the courts of the emirate.

This study answers the following questions: What are medical errors and their scope considering the jurisprudence issued by the Supreme Courts in the United Arab Emirates? The nature and scope of the doctor's legal liability, and to what extent has modern legislation been affected by the judicial decisions of these courts? Finally, the conditions for implementing the insurance system for damages resulting from medical errors and assessing the

success of this system in achieving the desired goals considering the trends of jurisprudence and judiciary.

This study aims to assess the success of the High Courts in the state in the exercise of their function by interpreting unclear legal texts. Also, it examines the extent to which modern legislation regulating this protection has been affected by court rulings.

2. Quiddity of Medical Errors in the Light of Judicial Trends

Medical errors are one of the elements or pillars of medical liability. Linguistically, liability is the condition or description of the person asked about a matter, the consequence of which falls on him. We say, for example, that I am not liable for this act. The liability in this sense means that a harmful act requires the perpetrator to be held accountable whenever this act harms others. Liability arises when the rule of law is violated and entails a legal penalty⁸. Medical errors related to civil liability may be regulated in a special regulation. In this case, the general provisions governing civil liability rules will be invoked to complement related regulatory gaps.

The quiddity and scope of medical errors have sparked a doctrinal debate for decades, whether it concerns the definition of these errors or the scope and nature of the doctor's obligation. Therefore, the High Courts have responded to many rulings by interpreting this concept and scope. These provisions have affected modern legislative trends, as explained in this study section.

2.1 The Concept of Medical Errors Under the Special Rules

The High Courts of the state unanimously defined medical errors as the error that is due to ignorance of technical matters, which every practitioner is supposed to be aware of, therefore, the source of which is negligence or failure to exercise the necessary care.⁹ Likewise, it is the physician's deviation from exerting due diligence in recovering the patient, according to the physician's standard of

attentiveness among his colleagues, with knowledge and know-how, taking into account the circumstances surrounding him and the traditions of the profession.¹⁰

Also, these courts unanimously that civil liability arises for all possible results obtained by his fault, even if indirectly, such as negligence in supervising the staff and the hospital equipment.¹¹ The employment of non-competent and unlicensed workers. The Dubai Court of Cassation emphasized this interpretation, establishing this liability on the follower. It judged that: However, he was not present in the state at the time of the incident, as all the errors attributed to him that contributed to the result and the death of the victim did not require his presence at the time of the incident.¹²

In apparent harmony with these provisions, Article 6 of Decree No. 4/2016 defines medical error as: "Everything committed by a practitioner of one of the medical or related professions, the determination of which is issued by a decision of the Minister as a result of any of the reasons set out in the text of Article VI of the Decree – Law, namely: 1 - ignorance of the practice of the profession of technical matters, which is supposed to be familiar to everyone who practices the profession of his degree and specialization 2-failure to follow the practice of the profession of the professional and medical rules. 3-the practitioner of the profession does not exert the necessary care. 4-neglect of the professional practitioner and failure to follow caution and caution".

Also, several judicial rulings prohibited the Prohibition of the profession from ending the patient's life for any reason, even if it is at the request of the patient himself or his guardian or custodian. It is also prohibited to lift the resuscitation equipment from the patient unless it is proven that the heart and breathing have stopped entirely and permanently, or if all brain functions have stopped entirely and

permanently, by the exact medical standards issued by a decision of the Minister of Health and Community Protection. But the legislator allowed natural death by not performing cardiopulmonary resuscitation of the patient in the dying state, by the conditions outlined in Article 11 of the decree above.

The law prohibited the conduct of human cloning and conducting research and experiments with the intent of cloning a human being (Article 12). It also banned the practice of assisted reproductive technology for a woman or implanting an embryo in her womb except by the spouses, based on their written consent and during the legal marital bond between them (Article 14). The legislator also prohibited the doctor performs any abortion or prescribing anything that would abort the pregnant woman, except in only two cases as an exception from the original, namely (Article 16):

1. If the continuation of the pregnancy endangers the pregnant woman's life.
2. If the fetus is deformed.

The legislator also stipulated for the implementation of either of these cases the fulfillment of a set of conditions contained in Article (16) of the Decree-Law. Also, the legislator required the fulfillment of all conditions in the case that permits a doctor to perform a surgical operation or to describe anything that leads to an abortion of a woman.

According to Art. 17 of the abovementioned law, dealing with cases of non-establishment of medical liability in the right to practice the profession as follows:

- 1- If the damage to the patient is not caused by any of the reasons specified in Article No. 6 of the decree and its executive regulations.

- 2 - if the patient's actions caused the damage, refusal of treatment, failure to follow the medical instructions issued to him by those responsible for his treatment, or was the result of an external cause.
- 3- if the doctor follows a specific medical method of treatment contrary to others in the same jurisdiction, as long as the treatment followed by him is generally accepted by medical principles.
- 4 - if the recognized or unexpected medical effects and complications occur in the medical practice and are not caused by a medical error.

2.2 Scope of Medical Errors Liable

Suppose the legislator does not regulate the physician's civil liability with particular texts. In that case, it is inevitable to refer to the civil liability rules stipulated in the Civil Code. Medical liability may be based on the breach of a contractual obligation, as it may result from a harmful act without a contract with the patient. Both types of liability require the availability of damage and causation conditions, in addition to the condition of error in the contractual liability and the act of the tortfeasor that damages the other party (*Idrar*) in the tortious liability.

However, relying on these rules will inevitably lead to a different interpretation from one court to another. The legal norm will lose one of its most essential characteristics, which is the property of generality of application. Consequently, many judicial rulings have been issued by the high courts interpreted this scope to ensure the uniformity of the operation of these general rules.

In this regard, the Federal Supreme Court judged that: the liability of doctors is subject to the general rule and that when the judge investigates and proves the error attributed to the doctor, whether it is professional or non-professional, severe or minor, the doctor must be held accountable for his mistake.¹³ This is because the permissibility of the doctor's work is conditional on that what

he performs conforms to the established scientific principles. Suppose he neglects to follow these principles or violates them. In such a case, his liability will be realized according to his intentional act or due to his negligence or failure to perform his work.¹⁴ Therefore, the doctor is convicted of a medical error for giving the prescription remotely based on the nurse's diagnosis.¹⁵ Also, a medical mistake was raised due to the delay in informing the consulting doctor about the urgent need for catheterization.¹⁶ In another case, the Dubai Court of Cassation ruled that "the operation performed on the victim with the knowledge of the doctor and with the participation of unlicensed persons, and these persons completed the operation on their own after the responsible doctor left the operating room and the hospital before the completion of the operation, is a medical error".¹⁷ It also judged that the anesthesiologist's departure from the hospital, leaving the patient's care to the supervision of nurses who are not qualified to deal with anesthesia cases, constitutes negligence, a severe error, and behavior that violates professional principles.¹⁸ Abu Dhabi Court of Cassation ruled in another case that the doctor was mistaken because he did not observe the duty of informing when he did not notify the pregnant mother of abnormalities in the fetus before 120 days.¹⁹

It is also judicially decided that estimating the error necessitating the liability of its perpetrator and assessing the existence of a causal link between the error and its result is one of the objective issues that the trial court decides without comment, as long as its assessment is justified based on acceptable evidence.²⁰ The common mistake within the scope of criminal responsibility does not absolve the accused from responsibility, and the multiplicity of errors for the occurrence of the accident requires the accountability of everyone who contributed to it, regardless of the

amount of the error attributed to him, whether it is a direct or indirect cause.²¹ The multiplicity of errors in the occurrence of the accident requires accountability for everyone who contributed to it, regardless of the amount of the error, whether direct or indirect, whenever there is a causal link between the error and the damage.²²

If the source of the relationship between the doctor and the patient is the contract, then the liability of the doctor towards the patient is contractual liability. Therefore, the Dubai Court of Cassation recognized the contractual liability, because the agreement to perform the surgery that takes place between the patient and the doctor establishes a contractual relationship that the doctor must, by the provisions of Articles 3 and 4 of Federal Law No. 10 of 2008 regarding medical liability, exercise a high degree of care and vigilance in his work.²³ The liability is contractual when the doctor performs the treatment at the request of the patient or his representative at his will, while it is tortious in case the patient does not have the choice of the doctor or if the insurance conditions of his workplace impose on him, or the doctor assumes treatment on his own, or to refrain from providing treatment to the patient without justification at a time when he must provide treatment²⁴. For example, in Egypt, it was ruled that the liability of the doctor chosen by the patient or his representative for his treatment is contractual, even if he does not abide by the contract between both parties with his recovery or the success of the operation he performs for him, because the doctor's commitment is not an obligation to achieve a result, but rather an obligation to take due care, except that such a care requires that he exert sincere and vigilant efforts for his patient that are consistent with the established principles in the science of medicine. The doctor will be asked about every shortcoming in his medical course that falls from a vigilant doctor

at his professional level who was found in the same external circumstances surrounding the responsible doctor.²⁵

Within the framework of contractual liability, the error is the physician's breach of what he is contractually committed to or obligations from the law. But the question arises is whether the physician is asked about every mistake he committed in breach of the contract, whether it was a minor or gross, ordinary or professional error. Or is he only asked if he made a gross professional mistake? Is conditioning the physician's commitment to such a responsibility a matter of taking due care or achieving a result to avoid the error?

Article 5 of the Bylaw 40/2019 provided a precise definition for gross negligence "if it causes a death to a patient (including a fetus), loss of a limb, impairment to a bodily function, or any other gross damage". It also conditions the availability of one of seven criteria (black and exclusive list of criteria) for which a medical error is a consequence. The trends of the UAE judiciary have settled in a many rulings that the liability of the doctor is subject to the general rule, and when the judge investigates and proves the error attributed to the doctor, whether it is professional or not, regardless of the degree of its severity, the doctor must be held accountable for his mistake.²⁶ As the permitting of the doctor's work is conditional on that what he is doing is by the established scientific principles, if he neglects to follow these principles or violates them, he will be legally responsible.²⁷ Whatever the degree of error, the doctor is asked for every shortcoming in his conduct that does not occur by a man who is vigilant in his professional level and found in the same circumstances.²⁸ This approach is supported by the fact that the legislator made the professional error an aggravating circumstance in the crime of murder and wrongful injury. So, if the deviation of the doctor that led to the death of the patient was caused

by a breach of the duties of public caution and care, legal liability arose.

The UAE judiciary has also explicitly considered in an infinite number of rulings that the doctor's liability is to exercise due care.²⁹ This conclusion is consistent with the explicit text of Article 2 of Bylaw 40/2019, which provides that: "...whoever practices the profession... (2)To exercise the due care in providing...". Liability is established if it is proven that the doctor did not perform his work with the skill required by his profession or did it with negligence, lack of caution, and care³⁰. It is an act based on deception because its result is not realized at the time of performing the work. The principle is that it is permissible, as his duty is based on the rule (that the duty does not adhere to the condition of safety), because the doctor should take the due care and not achieve the result.³¹ Ibn Juzayal.Maliki says in al.Qanunal.Fiqhiyyah p. 329 "Such a doctor waters the patient or cauterizes him, and he dies, the farrier throws the animal away, and it dies, the cupping circumcises the boy or removes the molar, and he dies, there is no guarantee for these.. if he did not make a mistake in what he did".³² The doctor's duty to exercise due care is based on what an attentive doctor from among his colleagues presents. This decision should consider knowledge and understanding of the circumstances surrounding him during the exercise of his work, taking into account the traditions of the profession and the established scientific principles as long as this error has interfered, linking it with the damage, as the link between the cause and the causer.³³

However, this ruling is not absolute, as this legal conditioning differs in many rulings issued by the higher courts to make it an obligation to achieve a result. The basis for this conditioning is the importance of this surgical intervention for

human life and health. If it is necessary, the judiciary does not strict in this conditioning. It makes it an obligation to take due care. Still, if this work is cosmetic or unnecessary, the judiciary is strict in conditioning it to make it an obligation to achieve a result. For example, the Dubai Court of Cassation judged that the plastic surgeon's obligation is an obligation to achieve a result because his work is not intended to cure the patient from a physical ailment but rather to treat a deformity that does not endanger his life. Therefore, he must keep a high degree of accuracy and caution in dealing with the patient.³⁴ In another case, the Abu Dhabi Court of Cassation ruled that the doctor was responsible for failing to sew the wound with cosmetic threads that did not cause disfigurement in the patient's abdomen.³⁵ In this case, the doctor's liability is objective; it is based on the condition of damage only without the error, based on the theory of risk or bearing the consequences provided in Islamic jurisprudence. Therefore, it is sufficient for the aggrieved party to prove the harm inflicted by the doctor, which is usually, in our opinion, the liability of the doctor or his superior when his obligation towards the patient is to achieve a result and not to take care, such as his obligation to examine the patient before performing the surgery and to perform the surgery. In this case, the doctor can ward off the responsibility for himself by proving that the damage was caused by an external factor unrelated to his action or patient error.

Otherwise, if the source of the relationship between the doctor and the patient is tortious relation, then the basis of the liability. Therefore, the doctor is liable in all cases for harming others. The Abu Dhabi Court of Cassation ruled that the doctor's deviation from exercising due diligence in the patient's recovery by a standard of an attentive doctor from among his most knowledgeable and know-how colleagues. Circumstances

surrounding him and the profession's traditions should be considered, leading to a negligent error that holds him responsible for compensation.³⁶ In most cases, the judiciary tends to recognize the tortious liability for the hospital's responsibility, given that the patient does not have the will to contract with the doctor for this purpose. The same rule applies if the insurance company forces the patient to visit a doctor or health center. The sanction for breaching this obligation is the compensation provided by Article 282 of the UAE Civil Code: "every harm to others obliges the doer, even if he is indiscriminate, to guarantee the damage". Article 283 of the same law states, "1. Damage can occur by direct action or by causation. 2. If it is by direct action, the guarantee is obligatory, and there is no condition for it; if it is by causation, then infringement or premeditation is stipulated, or the act leads to harm."

The judiciary also settled that the error assessment is among the objective issues that the trial court decides on without comment, as long as its review is justified based on acceptable evidence.³⁷ Accordingly, the Federal Supreme Court refused to raise controversy before it in the trial court's authority to assess the evidence, the extent of the damage, and the amount of compensation for it.³⁸

3. Objective Protection from Damages Resulting from Medical Errors

It is not enough for the doctor to commit a mistake. Rather, this mistake must cause harm to the patient or his family, which the aggrieved party must prove. It is agreed upon for a judgment of compensation in contractual liability that such damage must exist or its existence in the future is inevitable³⁹; mere possibility is not enough to rule for compensation. Also, missing the opportunity according to what is judicially decided is in itself real damage for

the responsibility to arise, and it must be decided to compensate for it. It is stipulated that this opportunity exists.

In addition, the commission of a mistake and causing the patient harm are not sufficient for establishing the physician's liability. Rather, this harm must be a natural result of that mistake. No doubt about the existence of a causal relationship is raised unless the causes are multiple and successive. Articles 6, 8, and 14 of Law No. 4 of 2016⁴⁰ and Article 287 of the Civil Transaction Code provide for many cases in which the causal link between error and damage is negated by proving the occurrence of the foreign cause.

Investigating the objective protection for the aggrieved party requires starting this part with the scope of this protection. Also, it requires showing judgments issued by the UAE judiciary to fill the deficiency in the general rules. Also, the conditions of civil liability insurance as one of the legal guarantees added by Decree No. 4 of 2016 to compensate those affected for damages arising from medical errors are identified in this part of the research.

3.1 Scope of Objective Protection

The medical error may result in partial or total damage to the patient's body. It is necessary to pay compensation equal to the value of the damage to their body or to oblige the doctor or the health facility to which he is affiliated to treat the injured person at their expense. The court estimates the financial value of the compensation based on the medical committee's report that examined the patient's condition and the severity of the damage sustained. The Decree No. 4 of 2016 did not define compensation or specify its cases. Instead, Article 18 stipulated that "... compensation claims brought on the grounds of medical liability shall not be accepted except after resorting to and referring to the medical liability committees by the provisions of this Decree-Law."

The UAE courts judged in many cases that compensation should be in kind (specific performance), i.e., restoring the situation to what it was before the harmful act occurred. The judge must rule on it based on the patient's request, if possible, and does not cause the physician to be burdensome, such as the physician's obligation to treat the injured patient at his own expense. Since there is often an impossibility to rule for compensation in kind, a request for monetary compensation has resorted. In this case, the compensation must be equal to the actual damage, not more or less than anything. Also, the courts agree in their judgment that compensation must include the damage suffered by the injured and the gain lost. It is not permissible to compensate for lost profit within the scope of contractual liability (Article 389, Civil Code).

UAE judiciary agrees on that compensation is defined as the obligation to compensate others for damage to money, loss of benefits, or partial or total damage to the human soul.⁴¹ It is as payment for the damaged one. It is also the money by which a judgment is passed on a person who inflicted harm on others in a person's life, money, or honor. Jurists defined it as the guarantee that discloses the fine for the value or decrease of the thing or it is "the obligation to compensate others for the damage that has occurred to him in terms of money damage or loss of benefits, or for partial or total damage caused to the human soul⁴².

Tortious Liability differs from contractual in that the first may be compensated for expected and unexpected damage. In this regard, the French Court of Cassation has established the doctor's liability for doing the wrong thing to the surgeon due to the fall of one of the surgical tools on a child's lung⁴³. The Court of Appeal in Egypt allied with this approach; it judged that the presence of damage and its realization is a must, even if it is in the future as long as it is certain, where every person has the right to the safety

of his body, and that damaging an organ or causing a wound or injuring the patient's body with harm would disable the person's ability to earn, which is considered a real physical harm that requires compensation. The Federal Supreme Court ruled that the obstetrician was responsible for a technical error due to her extracting the fetus from his mother's womb using an unusable suction device, which led to the rupture of the uterus. The doctor decided to transfer the patient only after her condition worsened, and the patient was then transferred to one of the specialized hospitals in the country, where she arrived dead.

Also, compensation in contractual liability is limited to direct damage because the extent and scope of contractual liability are determined by the will of the contracting parties. The law assumed the will of the parties to consider such liability as much as what the debtor expects as an agreement condition; when the condition is void in the cases of fraud and serious error, the debtor is compensated for all expected or unexpected damage, because he returned to the original and in it must be proven fraud and serious error on creditors⁴⁴. In contrast, compensation extends to include indirect damage in tortious liability; tortious liability arises, according to the jurisprudence of the UAE high courts, "for all the possible consequences that may occur under fault, even if they are indirect, such as negligence in the supervision of workers and hospital equipment, and the employment of unspecialized and unlicensed workers". The criterion for distinguishing between direct and indirect damage lies in the natural result of the harmful act and the inability of the creditor to avoid and prevent the damage by making a reasonable effort, which requires standing at a certain limit of sequential and successive damage. In the case of indirect damage, the causal relationship between the act and the harm is broken⁴⁵. Contrary to contractual liability, it is not permissible to

agree on an exemption from liability for the tortious liability because it is related to public order (Article 296 and 267 Civil Code), given that the patient does not have the will to contract with the doctor according to this purpose.

Compensation is assessed in all cases to the extent of the harm suffered by the aggrieved party and the lost profit, provided that this is a natural result of the harmful act (Article 292 Civil Code). Damage includes moral damage represented in the infringement of freedom, reputation, social or financial status, and sexual assault (Article 293/1 Civil Code). In all cases, it may be decreed for spouses and those close to the family for moral damage caused to them due to the death of the injured (Article 2 / 293 Civil Code). Also, the right to moral damage is not transferred to other parties unless its value is determined under an agreement or a judicial or final judgment. The presentation to the medical liability committees is a condition for accepting the liability lawsuit before the judiciary by Law No. 11 of 2016, amending Law No. 10 of 2008. This may be due to the judge's lack of knowledge of medical and technical issues and because the medical liability lawsuit requires defining the elements of liability from a technical point of view; that is, it needs medical expertise. Then the court's role comes based on the report of the medical committee in estimating the compensation imposed for reparation.

The UAE lawmaker was also affected by the provisions of Islamic Sharia when it stipulated that *Al-Diya*⁴⁶ or *Al-Irsh*⁴⁷ must be paid in compensation for bodily damage. *The Diya* is a punishment and compensation at the same time, where moral and physical damages to the deceased are covered except for financial damages. So, *the Diya* is paid by the appropriate and proper monetary compensation to the extent of the material damage.⁴⁸ In Islamic Sharia, the money must be paid instead of a felony on a person's life

or less. The court does not rule on it at the opponent's request but is committed to ruling on it on its own.⁴⁹

As for the *Al-Irsh*, it is the compensation of the injured person who did not die for depriving him of the bodily organ that he lost or lost its benefit. According to Article 299 Civil Code, "compensation is required for harm to a person's life.

However, in cases where the *Al-Diya* or *Al-Irsh* is due, neither of them may be combined with compensation unless the two parties agree otherwise." In the sense of violation, combining *Al-Diya* or *Al-Diya* and compensation for financial and physical damages is permissible. The court justifies this approach by saying that the *Al-Diya* is the money that must be paid instead of a person's life or less. In addition to being considered a punishment for a harmful act, it constitutes compensation for families for losing their relatives. *Al-Irsh* is considered compensation for the injured for depriving him of the organ that he lost or lost its benefit. That is, it is not permissible for the injured person to whom the *Al-Diya* has been decided for the loss of an organ or the loss of its benefit to request compensation for the psychological or moral damages that befall him as a result of that loss, because the ruling on the *Al-Diya* or the *Al-Irsh* has necessarily included it because that request is included in the purpose of the ruling on the *Al-Diya*, which is to satisfy the injured and console him for the loss of the organ or its benefit.⁵⁰ In another judgment, the Federal Supreme Court overturned the ruling of the Court of Appeal to grant the injured girl and her father an amount of 200,000 dirhams equally between them as moral compensation because the girl received compensation of forty seven thousand and five hundred dirhams for the amputation of her left hand up to the middle of the left humerus.⁵¹

Moreover, it is not sufficient for the physician to commit a mistake and to cause the patient harm; rather, this harm must be a

natural result of that mistake. The UAE legislator addressed cases of non-approval of medical responsibility against the practitioner in Article 17 of the Decree-Law and limited them to the following: "1. If the harm to the patient was not caused by any of the reasons specified in Article 6 of the decree and its executive regulations; 2. If the damage occurred due to the patient's own action, refusal of treatment, failure to follow the medical instructions issued to him by those responsible for his treatment, or as a result of an external cause; 3. If the doctor follows a specific medical method of treatment in contrast to others in the same specialty, as long as the treatment he follows is by the recognized medical principles; 4. If the known or unexpected medical effects and complications in the medical practice occur and are not caused by a medical error".

Doubt is not raised about the existence of a causal relationship unless the reasons are multiple and successive; that is, the reliance of the contested judgment on the error is insufficient to establish a causal relationship between it and the damage. The diversity of the accused in the non-intentional crime does not envision establishing the agreement, but it is not correct to generalize with it. The elements of responsibility must be determined, including fault, damage, and a causal relationship on the contestant's part.⁵² The Court of Cassation ruled that as long as the injured person was recovered after the surgery, she was given what should be given to recover, the heart was working normally, she was given the *Prosgamine* drug opposite to the anesthetic drug, the ventilator was stopped after her breathing was regular and her blood pressure was in a natural state, which negates a causal relationship.⁵³

Also, the principle is that the accused be held accountable for all possible consequences resulting from his criminal act, unless foreign external factors interfere, severing the causal link. The

diversity of errors that lead to the occurrence of the accident necessitates the accountability of everyone who contributed to it, regardless of the amount of the error attributed to him, which is equal to being a direct or indirect cause.⁵⁴ Although this medical negligence indirectly participated in the death, the main responsibility for this is the treating doctor and, in part, the hospital against which they are being challenged.⁵⁵ A causal link does not arise if foreign external factors intervene to break the causation link.⁵⁶ Therefore, the Abu Dhabi Court of Cassation denied the existence of a causal relationship because the deceased received due medical attention in such a condition, starting with his urgent summoning to follow up in the hospital, then sedating him and prescribing the appropriate treatment for him. Still, his condition was advanced, and he died due to its complications.⁵⁷ The Supreme Administrative Court also ruled that sudden bleeding in the left lung during the heartbeat battery transplant is a medically recognized complication, although it is rare. There was no medical error or negligence on the part of the doctors supervising the treatment of the deceased while she was in the hospital.⁵⁸ If many errors lead to the accident, everyone who contributed to it must be held accountable whether direct or indirect, regardless of their degree of contribution.⁵⁹

3.2 Civil Liability Insurance

Liability insurance is subject to the provisions of the UAE Civil Code, Articles 1026 to 1036, and Articles 1046 to 1055. Article 1026/1 defines insurance as: "...a contract in which the insured and the insurer cooperate to face insured risks or accidents according to which the insured pays the insurer a specified amount or periodic premiums. In the event of the risk or the event specified in the contract, the insurer pays to the insured or the beneficiary in whose favor the insurance is stipulated, a sum of money, a regular income,

or any other financial right". A similar definition is stipulated in Article 3 of the Companies and Insurance Agents Law No. 9 of 1984 UAE and Article 3 of the Law No. 6 of 2007⁶⁰ establishing the Insurance Authority and regulating its business stipulated that: Jurisprudence defines it as "a process whereby one of the parties, who is the insured, obtains, in return for a consideration he pays, which is the premium, the undertaking of the other party, which is the insurer, to pay an amount in favor of the insured or to others when a certain risk is realized. The insurer bears many risks, among them, the set-off takes place by the laws of statistics" ⁶¹.

Article 1029 of the Civil Code permits the agreement to exempt the insurer from the guarantee if the beneficiary pays a deposit to the injured without the insurer's consent. This agreement may not be adhered to if it is proven that the guarantee payment was in the insurer's interest. According to Article 1030, the insurer may replace the insured with the guarantee he paid for damage in the claims that the insured has before the one who caused the harm resulting from the liability of the insurer unless it was caused by the unintentional harm from the ascendants and descendants of the insured or of his spouses, or those with him in the same household, or a person for whom the insured is responsible for his actions. The insurance company may represent, upon its litigation in the liability claim, the compensation of the injured and then return with the claim of subrogation on the one at fault.

Articles 1039, 1048/1, and 1049/1 Civil Code would be understood that the doctor's liability insurance does not mean that he is exempted from liability. Still, the compensation is owed by the insurance company acting on his behalf for the benefit of the aggrieved party⁶². Also, the doctor may not insure against his responsibility for the intentional error, where the burden of proof falls on the insurer (the insurance company) by proving the

voluntary cause of the accident, that is, the insured intended the act and the result together⁶³.

The critical question that may arise in this field is: Considering the multiple forms of medical risks due to the development of diagnostic and treatment tools, is there a medical insurance fund, and what is the mechanism for subscribing to it? Is it uniform for all doctors, or each according to his specialization? How much will be paid for medical malpractice insurance?

Due to the high rate of medical errors and the increase in the number of lawsuits before the courts, the importance of medical liability insurance appears. It does not affect the doctor's financial responsibility for the existence of medical liability insurance companies because it includes the monetary value imposed by the court on the erring doctor with the inclusion of these companies in the lawsuit among the defendants, which contributes to the payment and shortening of time in the liability lawsuit⁶⁴. Therefore, the judiciary turned to objective liability, based on the element of damage without the error in medical liability, which led to the expansion of insurable medical errors until they became mandatory in developed countries⁶⁵. The insurance agreement aims to insure against returning the injured to him as being responsible for the damage by compensating him. Article 26 of Law No. 4 of 2016, "Liability Insurance for Medical Errors," obligates the facility's owner to insure his practitioners against liability for medical errors. The insurance company bears total compensation for damages resulting from unintentional medical errors (Art. 27).

There is an insurance policy from the Ministry of Health against the liability of medical error on medical and technical staff since October 2004. The policy covers doctors, dentists, pharmacists, nurses, and technicians working in all facilities of the Ministry. The insurance coverage was done for one group with one

document, where the Ministry bears the entire annual insurance premium and burdens the insurance company with the defense of the Ministry's cadres before the competent courts⁶⁶. The Emirati legislator adopted a system of compulsory insurance for the damages arising from the liability of those who practice medical activities to provide reassurance to doctors during their practice of medical activities, as well as ensure appropriate compensation is granted to the patient. Visiting physicians are excluded from this provision; according to article 25 of Federal Law No. 4 of 2016, "a health facility hosting a visiting physician shall be liable for compensating the injured party for the physician's medical error".

Conclusion

This study showed the role of the High Courts in the UAE in interpreting general medical liability provisions. The lawmaker successfully adopted many of these jurisprudences in recent legislation. Thus, these judicial rulings contributed to the development of the regulation of the provisions of this responsibility. These amendments explicitly stipulated that the physician's obligation is, in principle, to exercise due care. In some cases, they have adopted the objective liability that relieved the aggrieved party from the burden of proof by assuming the physician's responsibility once the damage was achieved. The establishment of the medical committee has also improved this protection; assessing the existence and gravity of the error condition has become based on professional and objective standards. Thus, the aggrieved party has become exempt from the burden of proving this damage. Introducing the liability insurance system eases the aggrieved party's process to restore his compensation resulting from the medical liability.

Finally, this research recommended the following: (1) to explicitly stipulate the objective liability for medical liability- as a general rule- to exempt the aggrieved party from proving the existence of the medical error; (2) to amend the text of Article 2 of the Regulation 40 of 2019, so that the nature of the doctor's liability to take a due care is to be exclusive to human health and life actions; (3) to amend Article 5 of the Regulation No. 40 of 2019 and change the notion of the list, related to the criteria for medical severe error, to be an indicative and gray list (non-exhaustive), to authorize the medical committee and the national judge to deal with various cases and development of medical errors; (4) to amend the text of Article 25 of the Decree No. 4 of 2016 and extend compulsory medical liability insurance to include visiting physicians; (5) to amend the

text of Article 18, Law No. 4 of 2016 and delete the restriction on the right to litigate; to amend the jurisdiction of the medical committee to be an administrative committee with judicial jurisdiction that can be resorted to before resorting to the judiciary, in order to reduce the work before the regular courts, so that its decisions can be objected to before the courts; (6) to include within the formation of the Higher Committee for Medical Liability a legal expert familiar with medical law to evaluate the conditions of the medical liability.

الهوامش

Footnotes

¹ Ibn Majah, *Sunan Ibn Majah, Book of Medicine* (House of Revival of Arabic 2019).

² For more details about this development in international perspective, see: Bruno Peyrou, Jean-Jacques Vignaux and Arthur André, 'Artificial Intelligence and Health Care' (2019) 31 29; Mary Law Review and Tyler D Wolf, 'Telemedicine and Malpractice: Creating Uniformity at the National Level' (2020) 61 William & Mary Law Review 15.٠٥

³ For more details, see: Wafaa Abu Jamil, *Medical Error, A Judicial and Judicial Analytical Study in Egypt and France* (Dar Al-Nahda Al-Arabiya 1987).

⁴ Published in the Official Gazette, No. 601 of 2016, p. 9, dated 2/8/2016.

⁵ Issued by the Council of Ministers on 2/7/2019.

⁶ Published in the Official Gazette, No. 488 of 2008 dated 16/12/2008.

⁷ Published in the Official Gazette on 1/10/2009.

⁸ For more details liability, see: Tawfiq Faraj, *Introduction to Legal Sciences* (Mansha'at al-Maaref 1981); Samir Tanago, *The General Theory of Law* (2nd edn, Mansha'at al-Maaref 1987).

⁹ See, for example: the Abu Dhabi Court of Cassation, Criminal Judgments, Appeal No. 379 of 2013 Judicial, Criminal Chamber of 2/6/2013, Technical Office No. 7 Part 2 Page No. 370; the Abu Dhabi Court of Cassation, Administrative Judgments, Appeal No. 3 of 2017 Judicial, Administrative Department, dated 20/2/2017, Technical Office 11, Part No. 1, page number 520.

¹⁰ The Abu Dhabi Court of Cassation, Civil and Commercial Judgments, Appeal No. 368 of 2011 Judicial, Civil Department, dated 24/5/2011, Technical Office No. 5 Part 2 Page No. 890.

¹¹ Dubai Court of Cassation, criminal judgments, judicial appeal No. 201 of 2010, criminal department, dated 10/5/2010, Page No. 292.

¹² Dubai Court of Cassation, criminal judgments, judicial appeal No. 16 of 2010, criminal department dated 8/2/2010, page 53.

¹³The Federal Supreme Court, Criminal Judgments, Appeal No. 581 of 2016 Judicial, Criminal Chamber, dated 16/1/2017.

¹⁴The Dubai Court of Cassation, Criminal Judgments, Appeal No. 28 of Judicial Year 11, dated 4/26/2016.

¹⁵The Federal Supreme Court, Administrative Provisions, Appeal No. 410 of 2018 Judicial, Administrative Department on 6/3/2019; the Federal Supreme Court, Criminal Judgments, Appeal No. 610 of 2019 Judicial dated 27/4/2020.

¹⁶ The Federal Supreme Court, Criminal Judgments, Appeal No. 610 of 2019 Judicial dated 27/4/2020.

¹⁷The Dubai Court of Cassation, Criminal Judgments, Appeal No. 20 of 2010 Judicial, Criminal Chamber on February 8, 2010, page number 53.

¹⁸The Dubai Court of Cassation, Criminal Judgments, Appeal No. 20 of 2010 Judicial, Criminal Chamber on February 8, 2010, page No. 53.

¹⁹The Abu Dhabi Court of Cassation, Civil Judgments, Appeal No. 61 of 2014, Judicial Department, Civil Department, dated 29/1/2015, Technical Office 26, Part No. 1, page 249.

²⁰The Dubai Court of Cassation, Criminal Judgments, Appeal No. 29 of 11 Judicial, dated 04/26/2016: Federal Supreme Court, Criminal Judgments, Appeal No. 581 of 2016 Judicial, Criminal Chamber, dated 16/1/2017.

²¹The Dubai Court of Cassation, Criminal Judgments, Appeal No. 20 of 2010 Judicial, Criminal Chamber on February 8, 2010, page number 53.

²²The Federal Supreme Court, Criminal Judgments, Appeal No. 450 of 2012, Judicial on December 30, 2013.

²³The Dubai Court of Cassation, Civil Judgments, Appeal No. 411 of 2014, Judicial Department, Civil Department, on 16/4/2015, Technical Office 26, Part No. 1, page 563.

²⁴ Charles Baker, Tom & Silver, 'How Liability Insurers Protect Patients and Improve Safety' (2019) 86 DePaul Law Review.

²⁵ Abu Jamil, Wafaa. 1987. *Medical Error, A Judicial and Judicial Analytical Study in Egypt and France*. Cairo: Dar Al-Nahda Al-Arabiya.

²⁶The Dubai Court of Cassation, Criminal Judgments, Appeal No. 20 of 2010 Judicial, Criminal Chamber on February 8, 2010, page No. 53.

²⁷The Dubai Court of Cassation, Criminal Judgments, Appeal No. 24 of 2010 Judicial, Criminal Chamber on February 8, 2010, page No. 53.

²⁸The Dubai Court of Cassation, Criminal Judgments, Appeal No. 29 of Judicial Year 11, dated 4/26/2016.

²⁹The Abu Dhabi Court of Cassation, Administrative Provisions, Appeal No. 11 of 2017, Judicial Appeal No. 3 of 2017, Judicial Department on 04/24/2017 Technical Office 11 Part 2 Page No. 1160: the Abu Dhabi Court of Cassation, Administrative Provisions, Appeal No. 3 of 2017, Judicial Department, Administrative Department, dated 20/ 2/2017, Technical Office 11, Part No. 1, Page No. 520.

³⁰ For more details, see: Imad Jabara, Zafer ; Salman, 'The Creditor's Duty to Reduce Damage in Contractual Liability, A Comparative Study' (2016) 12 , Journal of Law, Studies and Legal Research, Dhi Qar University.

³¹The Abu Dhabi Court of Cassation, Criminal Judgments, Appeal No. 379 of 2013 Judicial, Criminal Chamber on 2/6/2013, Technical Office No. 7 Part 2 Page No. 370.

³² Mentioned in: The Abu Dhabi Court of Cassation, Criminal Judgments, Appeal No. 379 of 2013 Judicial, Criminal Chamber on 2/6/2013, Technical Office No. 7 Part 2 Page No. 370.

³³The Abu Dhabi Court of Cassation, Administrative Provisions, Appeal No. 11 of 2017, Judicial Department, Administrative Department on 04/24/2017 Technical Office No. 11 Part 2 Page No. 1160.

³⁴The Dubai Court of Cassation, Criminal Judgments, Appeal No. 24 of 2010 Judicial, Criminal Chamber on February 8, 2010, page No. 53.

³⁵The Abu Dhabi Court of Cassation, Civil and Commercial Judgments, Appeal No. 368 of 2011 Judicial, Civil Department, dated 24/5/2011, Technical Office No. 5 Part 2 Page No. 890.

³⁶The Abu Dhabi Court of Cassation, Civil and Commercial Judgments, Appeal No. 368 of 2011 Judicial, Civil Department, dated 24/5/2011, Technical Office No. 5 Part 2 Page No. 890.

³⁷The Dubai Court of Cassation, Criminal Judgments, Appeal No. 20 of 2010 Judicial, Criminal Chamber on February 8, 2010, page No. 53; the Abu Dhabi Court of Cassation, Criminal Judgments, Appeal No. 379 of 2013 Judicial, Criminal Chamber on 2/6/2013, Technical Office No. 7 Part 2 Page No. 370.

³⁸The Federal Supreme Court, Civil and Commercial Judgments, Appeal No. 217 of 2013 Judicial, Commercial Department, on 9/30/2013.

³⁹ Jihad Al-Shawabkeh, 'The Civil Responsibility of the Doctor for the Medical Mistakes in His Profession' (Middle East University 2011).

⁴⁰Article 14/a of the Medical Liability Law states that this liability is not established if the damage occurred as a result of an external cause or due to the patient's own action, and emergency cases are exempted from liability according to Article 8 of the same law.

⁴¹ Federal Supreme Court, civil and commercial judgments, Appeal No. 217 of 2013 judicial, commercial department, dated 30/9/2013.

⁴² For more details see: Abdul Razzaq Al-Sanhouri, *The Intermediate in the Explanation of the Civil Law*. (Dar Ihya al-Turath 1998).

⁴³ Jean-Patrice Storck, 'Le Défaut d'un Médicament' [2019] Recueil Dalloz 61.

⁴⁴ For more details, see: Abdel Razek Al-Sanhouri, *The Mediator in Explaining Civil Law, Sources of Obligation* (Dar Alhalabi Lilnashr Waltawzie 1998).

⁴⁵ See: Munir Hanna, *The General Theory of Medical Liability in Civil Legislation and Claims for Compensation Arising from It* (Dar al-Fikr Al-Arabee 2011).

⁴⁶ It is defined as the money that is due in a felony against oneself or the like

⁴⁷It is the money that is due in a felony for what is less than the soul.

⁴⁸The Federal Supreme Court, Civil and Commercial Judgments, Appeal No. ٢٣٥ of ٢٠١٣, dated ٣٠/9/201٣.

⁴⁹The Abu Dhabi Court of Cassation, Criminal Judgments, Appeal No. 379 of 2013 Judicial, Criminal Chamber on 2/6/2013, Technical Office No. 7 Part 2 Page No. 370.

⁵⁰The Federal Supreme Court, Civil and Commercial Judgments, Appeal No. 188 of 2013 Judicial, Commercial Department on 9/30/2013; the Federal Supreme Court, Civil and Commercial Judgments, Appeal No. 235 of 2013 Judicial, Commercial Department on 9/30/2013.

⁵¹The Federal Supreme Court, Civil and Commercial Judgments, Appeal No. 235 of 2013 Judicial, Commercial Department, on 9/30/2013.

⁵²The Dubai Court of Cassation, Criminal Judgments, Appeal No. 20 of 2010 Judicial, Criminal Chamber on February 8, 2010, page number 53.

⁵³The Dubai Court of Cassation, Criminal Judgments, Appeal No. 20 of 2010 Judicial, Criminal Chamber on February 8, 2010, page number 53.

⁵⁴The Dubai Court of Cassation, Criminal Judgments, Appeal No. 16 of 2010 Judicial, Criminal Chamber on February 8, 2010, page No. 53.

⁵⁵The Federal Supreme Court, Civil and Commercial Judgments, Appeal No. 333 of 2012 Judicial on 19/12/2012.

⁵⁶The Dubai Court of Cassation, Criminal Judgments, Appeal No. 28 of Judicial Year 11, dated 4/26/2016.

⁵⁷ The Abu Dhabi Court of Cassation, Civil and Commercial Judgments, Appeal No. 488 of 2012 Judicial, Civil Department, dated 19/3/2013, Technical Office 7, Part No. 2, page number 583.

⁵⁸The Abu Dhabi Court of Cassation, Administrative Provisions, Appeal No. 2 of 2016 Judicial, Administrative Department, dated 3/21/2016, Technical Office 10, Part No. 1, page No. 572.

⁵⁹The Dubai Court of Cassation, Criminal Judgments, Appeal No. 16 of 2010 Judicial, Criminal Chamber on February 8, 2010, page No. 53.

⁶⁰Official Gazette of the UAE Issue 4625 of February 37, 2007.

⁶¹ For more details about the civil liability for medical errors, see Mokhtar Kawadri, 'Civil Liability for Medical Error, Ph.D. Comparative Study' (Oran University, Algeria 2010).

⁶² For more details about the civil liability for doctors, see: Ashraf Jaber, *Civil Liability Insurance for Doctors* (Dar Al-Nahda Al-Arabiya 1999).

⁶³ Kholoud Abdel Ghani, 'No Title Medical Error: A Study in the UAE Medical Liability Law for the Year 2016' (College of law, United Arab Emirates University 2017).

⁶⁴ See: Abdul Rashid Mamoun, *Insurance from Civil Liability in the Medical Field* (Dar Al-Nahda Al-Arabiya 1986).

⁶⁵ Ghazi Abu Orabi, *Insurance Provisions* (Dar Wayi Inshar 2011).

⁶⁶ Basil Abdul-Jabbar, 'Insurance against Medical Error Liability in the Ministry of Health, an Analytical Study', *The First Arab Conference on Medical Liability* (2009).

المصادر

References

- i. Abdel Ghani K, 2017, 'No Title Medical Error: A Study in the UAE Medical Liability Law for the Year 2016' (College of law, United Arab Emirates University)
- ii. Abdul-Jabbar B, 2009, 'Insurance against Medical Error Liability in the Ministry of Health, an Analytical Study', The First Arab Conference on Medical Liability.
- iii. Abu Jamil W, 1987, Medical Error, A Judicial and Judicial Analytical Study in Egypt and France, Dar Al-Nahda Al-Arabiya.
- iv. Abu Orabi G, 2011, Insurance Provisions, Dar Wayi Ilnasher.
- v. Al-Sanhouri AR, 1998, The Intermediate in the Explanation of the Civil Law, Dar Ihya al-Turath.
- vi. Al-Sanhouri AR, 1998, The Mediator in Explaining Civil Law, Sources of Obligation, Dar Alhalabi Lilnashr Waltawzie.
- vii. Al-Shawabkeh J, 2011, 'The Civil Responsibility of the Doctor for the Medical Mistakes in His Profession', Middle East University.
- viii. Baker, Tom & Silver C, 2019, 'How Liability Insurers Protect Patients and Improve Safety' 86 DePaul Law Review 209.
- ix. Faraj T, 1981, Introduction to Legal Sciences, Mansha'at al-Maaref.
- x. Hanna M, 2011, The General Theory of Medical Liability in Civil Legislation and Claims for Compensation Arising from It, Dar al-Fikr Al- Arabee.
- xi. Ibn Majah, 2019, Sunan Ibn Majah, Book of Medicine, House of Revival of Arabic.
- xii. Jabara, Zafer ; Salman I, 2016, 'The Creditor's Duty to Reduce Damage in Contractual Liability, A Comparative Study' 12 , Journal of Law, Studies and Legal Research, Dhi Qar University 76.
- xiii. Jaber A, 1999, Civil Liability Insurance for Doctors, Dar Al-Nahda Al-Arabiya.
- xiv. Kawadri M, 2010, 'Civil Liability for Medical Error, Ph.D. Comparative Study', Oran University, Algeria.
- xv. Mamoun AR, 1986, Insurance from Civil Liability in the Medical Field, Dar Al-Nahda Al-Arabiya.
- xvi. Peyrou B, Vignaux J-J and André A, 2019, 'Artificial Intelligence and Health Care' 31 29.
- xvii. Review ML and Wolf TD, 2020, 'Telemedicine and Malpractice: Creating Uniformity at the National Level', 61 William & Mary Law Review 1505
- xviii. Storck J-P, 2019, 'Le Défaut d'un Médicament', Recueil Dalloz 61
- xix. Tanago S, 1987, The General Theory of Law, 2nd edn, Mansha'at al-Maaref.