



THE WILL OF THE PATIENT IN THE MEDICAL CONTRACT IN THE WORLD

Wijdan Raham Khudhalr

Assistant Professor University of sumer ,Iraq ,Thiqar
Wijdanlawyer2014@gmail.com

Muhammad Raham Khudhalr

Academic Nurse Al-Rifai Hospital ,Iraq ,Thiqar
kasber207777hg@gmail.com

Prof Mostafa Fazaeli

University of Qom, Qom-Iran

Article history:	Abstract:
Received: December 11 th 2022 Accepted: January 11 th 2023 Published: February 20 th 2023	The discussion was modest in when it is regards to some medical issues, generally Associated with the patient, especially any concept will of patient in the medical contract supple hand of law where this research consists of introduction and four discussions. The introduction is about the legal nature of the medical responsibility and most prominent differences between liability in the case of contract and in the case of neglect. The second topic was the role of the legal nature of the body of man is in the two demands and the third section revolves around the increasing gravity of bodily injury to an injured resulting from neglect. The fourth matter is the last in the types of damage and medical staff action for compensation because of the lack of resources in this matter nine source of research have chosen which are brought in the reference section.

Keywords: The contract medical- The human body- The legal nature- The will of the patient- The medical contract

INTRODUCTION:

To the will of the patient in the contract medical have more importance than in other contracts, whether liquefied or unnamed because the contract related to the human body, which has the highest level of protection and the doctor has no any right for medical actions until after getting testimonial but there are some exceptions. Importance of these will and medical contract itself shows the necessity of clarification of the definition of the will idiomatically and al the steps to make that kind of will.

Definition of the Will:

The term of "Will" originally refers to request. As well as the means willed intent to thing and direction to him if there is good will that work under duty and will college and carry store willed individual and where and fairly each individual for selfish and give up himself and his rights to the community while it mean frequency in demand thing attached, as well as there will believe the ability to faith and there is a will power that love themselves and harsh on others, but discussion itself has come and will sense judgment has confuse willed to other terminology language idiom which means desire to act and satisfaction to him, so the term 'will' will be accepted by either consent shall be then or her ears rights amount , but to consent, satisfaction of the revenue at will but is a penalty

which also fails willed for Executive Who is at too did was in hindsight benefit of cured Owe removal damage in the future either Will not concerning the future also must distinguish between the will and choice people mean language do you prefer thing on the other

Idiomatically definition Will:

that the legislation did not specify the subject of but the Jurisprudence will have about defined and divided these definitions work myself held her determined to a certain thing but taken on this definition, he did not refer to the will phenomenon but following of the esoteric that will is a section of the will, but is revealing her. He knew another team of scholars willed it (just the intention of the act and the direction it). This definition is that it does not take account of what can be text must follow will of As defined by the other side of jurisprudence as (Activity Myself Turn to achieve impose by way concerned) is that this definition does not specify the stages of the volition of science and grasp and then follow the momentum took him.

Stages of the will:

After the definition statement willed and idiomatically language and distinguish what mix of linguistic terms to be clarified stages follows the will, because the volition passes through three stages as follows:



First stage:

The stages motive or intent is the first stages. "will" before announcing them as the emitter after the first mover of the will. If available, fled in the same one and I come palatable consists nucleus will first as the motive severely impact the ability of man to do something. Benxi in the same. If the man did not have the ability to foot the process of the emitter, reject then do not will, because capacity is generated described effect on willpower. Because that man when only feel the same validity in emitter pays to check with your doctor if this is the first core motivation to medical work force, it is reflected in the emitter and strongly if those need do so emitter.

Second stage:

The second phase, which follows the will is the stage of deliberation where rights and contemplates the act. Who will be prior to do with that this phase depends on the thinking and the ability to appreciate the consequences or results that have been achieved, which could interfere with him or wants to achieve, which requires the necessity of thinking and the second

The third stage:

This stage is the latest and essential if it is a stage determined that verification when stability Ray particular and the determination to implement it must be to have this resolved without hesitation any honest as this stage any stage torque is the implementation phase, which will either be Ababa any to do the work. Nie held rights to execute or be negatively any work left to do, and finally, the three relay (emitter 'prudence, determination) to be within the scope of the will esoteric)

Be within the scope of esoteric willed because the latter pass that we have mentioned earlier stages before it is expressed and when these end-stage display my will to the outside world and when Azntaleg it willed. Daher which could consider it after methods Kaacarh or writing, pronunciation and other

THE FIRST TOPIC

Legal nature of Medical liability:

The most prominent differences between the officials and medical Nodal at the level of medical liability

The first requirement;

To achieve the responsibility of the doctor when they do due diligence short which Petraqaha him his patient has been raised lot of Altsawlat about the natural Mzh responsibility of the legal side of the nodal or tort. Even so, the judiciary agreed that a doctor is the obligation of conduct to Apthakik result

The first branch;

Streptococcus nature of the medical liability
That the supposed emergence of a contract between

the good and the patient under the committed doctor to provide care required by the patient's condition and circumstances and consistent with the nature of Mhishh and the consequent prejudice to the doctor this commitment and that this was breach of inadvertently check the responsibility of the doctor Streptococcus Vamaadey patient that the doctor had breached his commitment to this is the responsibility offirst prove it by means of proof --- the other hand, if the check for medical care result on the degree of gravity to where inconsistent with the findings interim peace there falls to first prove it Boisaúl proof on the other hand, if for medical care - the result of a degree of gravity to where inconsistentwith the expected results Vlaiga the responsibility of the patient to prove mis doctor because this mis clear and obvious enough = As for Doctors beauty, the commitment also obligation of conduct is sufficient to achieve the responsibility and the existence of any mis-and that was easy - and remain the responsibility of the doctor Streptococcus list, though care Alkhaddmatabah provided without charge orfor friendship

Section II;

Cases that the medical liability tort

The general rule is that medical liability responsibility nodal Aln there are cases

Shortened be the responsibility I

1 - If prejudice doctor commitment of a criminal nature and therefore be caused by medical liability component is the act of the crime and that it was prejudice in gross negligence led to the death of the patient

2 - if the evidence indicates the lack of association doctrinal between the doctor and the patient next be the responsibility of the doctor Mqsromen these cases when intervene doctor to Rescue a wounded person or unconscious and that was intervention by a doctor of his own without being given to the patient therefore be the responsibility of the doctor Mqsromen these caseswhen interfere doctor because no rescue a wounded person or unconscious and was Malk intervention by a doctor of his own without being given the patient the opportunity to choose a doctor, and also the case when it agrees factory owner or a company with a doctor to treat their employees in this case provides medical services based on prior agreementbetween the company and the doctor

3 - patient intervention that results curse damage to Bagheirmthal of the Malk negligence doctor treating a patient mentally unbalanced The cause harm to others or use the same machine physician treatment of another person patient In such cases, the doctor realized the responsibility towards third parties the right by damage

4 - refrain doctor for treatment of sick or save without



justification project if n omission doctor in this current contrary to the behavior of the doctor for attentive, if any, under the same circumstances as though what the doctor of freedom in the exercise of his profession because they restricted including imposed attic access his career from the duties and he would refrain abusein the use of the right

The second requirement

Most prominent differences between Msolah of the contractual and tort at the level of medical mis

In the following Snodz most important differences from which excellence between Mswolten of the Streptococcus and tort at the level of medical error

In terms of the extent of compensation

Ask your doctor about direct damage expected time of the conclusion of the contract if the responsibility that nodal doctor either if the damage resulted from fraud Aujtae particle, the doctor asks him, though this unexpected damage but if Shortened was the responsibility of the doctor, he asks for direct damage, whether anticipated or notexpected and predicted damage standard and objective criterion any person standard (usual doctor) if, under the same circumstances in which he found the doctor in charge (1)

2 - terms of the agreement on the exemption from liability

Ajosan agreed contractual party to the legal relationship on the exemption from liability Streptococcus may also tighten or loosen this responsibility but with the proviso that it may be released for fraud Aujto one particle parties (debtor) Amafima the terms of tort Fbolamkan agreed to tighten her but may be agreed to mitigate or exemptionthem and this agreement is null and void because the rules of public order

In terms of the applicable law

1 - was the damage that injured the patient resulting from misguide the doctor's obligation nodal van must apply the law of the State where there is a home contractors joint if united in the home and not be so, it must apply the law of the State in which the conclusion of the contract Alma and Jaddatfaq or show conditions AltaakedanContracting wanted the application of the law last However, if the damage to the patient was due to misguide the doctor's commitment in imposing the law in this case, you must apply the law of the country in which the act also signed

4 - in terms of obsolescence

Under civil law Alawata the compensation claim arising from contractual liability cannot hear the expiration (15) The compensation claim arising out of tort not hear after (3)

Phosphate from the history of Almdharr occurrence of

the damage and the person who caused you hear in all cases ago after 15 years on tort (3)

Tabaah legal human body

That a man outside the legal framework to deal Mo maximize the capacity and advancing to but would lead Pearls weaken the legal protection which must report to him and his body so it is important to know the truth status of the human body

In the scope of the legal deal to get to know the natural access to legal find out legal Tabaah him

The first requirement

The human body outside the circle of things

There were questions about the extent of entering the human body in the scope of dealing

Because it is observed in laws such as law French civil and Egyptian civil law may decide in its articles that come out by the Department of handling things that cannot be carrying the right eye due to Tabeitha which could not be accounted for by one it is possible to believe that the human body is something tangible and thus is Xiae of stuff but cannot agree with this opinion, because the human body and that he had an entity but for ICON Xia things that will be replaced with the law of families who paid jurisprudence to focus on the things in which intervention in dealing Walken human body out of this deal because he is not considered Xiae as the Roman law department stuff into two categories the first things within the scope of legal treatment and the second things beyond the scope of legal treatment of this deal because he is not considered Xiae interfere in the scope of legal treatment and the latter cannot be held legal agreements about it because it interfere in the scope of legal treatment as well as also the law of panels meantime ten who made the body of civil guarantor of the debts and obligations Avejos creditor killed debtor in the absence of agreement, or the inability of the debtor to repay his debts during the sixty days from the laws of modern Almasrh which stipulates exit the human body by the Department of legal treatment of Egyptian civil law, as Article 81 the Act provides (everything is out of handled by its nature or the rule of law to be a true object of financial rights and those things that just graduated to the rule of law that Aegis law to be subject to the rights of financial

The second requirement:

The human body outside the circle of money Calendar Agreed law scholars that may be handled by the things you should be money Mnicoma but they did not agree in Altobeiranh as there are several trends Mtabanih first go owners that the original is that the stuff that can be dealt with to be money either condition Calendar has Aggulwh either second opinion wentowners to the need that thing mirrors deal by money Taatqoma there ray third Creator direction



former where he went this opinion that the thing should be visible beneficiaries by the use of a personally did not mention the financial calendar, but Aktefwabzkr elements of financial thus be the difference configurable and based on what progress the news that policeman financial calendar are based on two foundations

1 - be a thing actually beneficiaries

2 - may be permitted for use in all the faces of use

Has raised questions about the applicability of the financial condition and the calendar on the rights and its members answer to this question has to be divided this answer as follows

1 - extent to which the human body Mala

Islamic jurisprudence denied financial described for the human body in addition to being Ikram God's creatures

In addition to that man could not sell money to Aimkh a man does not have the

Hawiyah fixed human religiously therefore be considered money to Ittefaq with this freedom

Extent to which members of the human body Mala

Members of the human body is not money in terms of this is what the collection attic scholars and is not permitted to respond behaviors related adjective Financial them only in breast milk Vjaz jurists even more scholars to there is a trend in jurisprudence Hambali in Sunni going to be regarded as the outskirts of the human body money for Alsahbha illustrated Elena whatscoop that scholars disagreed about because of prohibition, where some go to the penalty the human body is not money because the same situation, which ruled not be regarded as human wealth which is a tribute to not Wonsan therefore not be selling contained on the hair and bone and skin The majority of scholars that because of the ban due to the lack of utility not based on the sale of honors and division, and what is happening dismissal of members of the human body is less important use of style Lybia initiated and that thing to be money must be the beneficiaries by the fact that the permissible use of it legitimately and then have money are selling it to achieve racial Finance and legalization of Shara and Ajerimcn say What governs the disposition of things and explains the method of disposal of the legal rules do not fit with the nature of the deal the body of a man

Section III;

Increase the magnitude of an injured bodily injury resulting from mis-charge has aggravated physical injury to an injured as a result of mis responsible for multiple angles including

1 - increase the proportion of injured deficit

2 - the death of the injured resulting from the mis-charge

The first requirement

Increase the proportion of injured deficit

Demand Alaoltkadir compensation by the value of the damage the time of the final judgment which decides compensation This is the general rule, it is necessary that Aakhzbnzer account the increase in the severity of personal injury to an injured to the time of final judgment for compensation denied the case of increasing the percentage of deficit injured judge must take into account the extent of the increase in the deficit, which hit him injured as a result mis charge when determining the amount of compensation so that the plaintiff is really in the request to increase the amount of compensation by looking at lawsuits over whether his request as filed without filing a lawsuit new request an increase in compensation in this case is determined by the amount of compensation based on to the amount of the deficit either the period prior to the increase in the deficit being identified compensation commensurate with the amount of the deficit either the period following the increase of the proportion deficit injured Ataihdd based on the relative deficit after the increase and build on Matben Mmasbak the increase in the deficit, which hit injured in (40%) for one year from the time of the tort was later found became (60%) until a final judgment for compensation in this case is determining the compensation for the first year based on the rate of disability (40%) and the estimated compensation for the year but passed based on the rate of disability (40%) and the estimated compensation for the next two years to the time of final judgment for compensation based on the percentage of disability that are (60%)

The second requirement;

The death of the injured resulting from the official liability

If Matt injured later in his request for compensation by the lawsuit, the right to compensation is transmitted to his heirs as his successor, the year does not change rule in the event of the death of the injured earlier in the payment of action for compensation for material damage and literary This is what went mechanism French judiciary as the right compensation damage proud to heirs of the injured that the injured lifting lawsuit to claim compensation before his death and that there is an agreement between the injured gene responsible about the amount of compensation, if sentenced to compensation, this rule is revealing of the right to compensation and not Mnchae based on the foregoing, the death of the injured affect the estimated damage injury in multiple areas, including 1- injured that the testator compensation for the deprivation of life and Tjeela the official death due to mis-



2 -also entitled to compensation because of the physical pain that he suffered before his death, a condition that is either conscious if unconscious of where the accident occurred to the time of his death, has no right to compensation for the mother did not feel it

3-have a right to compensation for all the expenses of treatment

4-also has the right to compensation for loss of the death, such as wage

Section IV;

Types of damage and medical staff Dau

Compensation for Medical Mistake

This includes Section 2 requirement in demand first address the kinds of Aldharrataba in terms of its occurrence and the extent of compensation, as well as cases of selection responsibility of the doctor of the damage to the patient any non-publication of mis by a doctor the right to harm the patient either second requirement Vstdmn pillars of action for compensation for mis Medical as we shall see infollowing

The first requirement;

Medical kinds of damage

1 - direct damage and indirect

Damage is a direct result of the act Mistake, Kovah patient due to the negligence or mis doctor also considered a direct injury death patient due to disease moved him result of the negligence of the doctor in Atkhama reserves crisis and approved medical direct injury is a result of the act of mis and the structure and the mis which is the latest that damage Flatkon there is a relationshipcaused by mis-damage

2 - damage expected and unexpected

The damage is expected and is expected to lie within damage any future Masika future or what may happen ratio of Dharrghyr expected to arrive in the circle of the future, but did not go into account the work of the doctor to identify the circumstances in which it was Sha Nha that make it expects damage damage is expected because the person usual Aéml showthese circumstances only if not expect the doctor to act because the patient harm tort is contrary to public order

3 - Detective damage and the future and potential

Damage investigator that is be downright whether the event or the future of either damage before Vsesttia injured back by the debtor to achieve or to delay the total end of the consequent results halt worsening damage or patient at the end of death or healing stabilize the patient's condition and damage future depends appreciation on the order's future,The potential damage is damage which has not yet been located and shall be liable to doubt about whether he will fall in the future first and must wait until the draw because he is an investigator may damage is not

located

THE SECOND REQUIREMENT

Staff of action for compensation for medical mis 1 - Mistake

General portray civil liability (responsibility for the compensation of damage caused by the breach of the commitment decision in edema in charge) this responsibility may be sourced contract nodal has be law Mqsrstqubl position where tort differ but could Tbody the Alamo to hold colorless excellence for compensation in the event of non-the existence of an official with him, as well as different Msautin from each in terms of how compensation if that responsibility Streptococcus limited compensation for the damage expected either compensation in the tort includes the damage is expected and is not expected either in terms of the exemption or agreement on the reduction of responsible tortious, it is not possible exemption or reduction ofStreptococcus Lama liability in the tort is not possible to exempt or reduce the responsibility of the responsible person (1)

2 - Damage

The plaintiff compensation is injured located on his shoulder establish evidence of the validity of his claim Toavo corners where it was easy to prove the damage seen through the records of the investigation and inspection experience and the damage that you may suffer Palmdharr (the patient) as noted previously either material, literary or both together, where is the physical damageto infringe on the safety body Almarboasapth causing him material losses as well as damage may be physical in the inability of the patient to work and the consequent inability to work and loss of a source of income due to Azlm has caused hereditary material damage is also due to the death of the patient (deceased) in this case,the heirs prove that the testator was dependents on an ongoing basis and on a permanent basis and that the sole breadwinner and was enduring alive will continue in the agreement they achieved moral damage in the case of injury the patient or his inability to perform his job because of medical error and could be achieved as soon as compromising the integrity of the patient's body

CAUSAL RELATIONSHIP

For the rule of compensation is not enough merely an error doctor and the occurrence of damage to the patient but to be a direct causal relationship between the fault and damage the sense that the damage be Btejh error administrator can damage rid of this liability if it proves that the damage resulted because foreign to hurt the faithful However, if the patient Mo unitwhy Nchoaoualdharr in this case denies causation either if he had participated Ahto doctor in the events



of the damage, it leads to twitch awarded the doctor by error rate patient Almdharr as well as Tnffine responsibility doctor if Aldharrkd occurred due to an error

CONCLUSION:

Clear from the foregoing that the contract medical enjoys special importance differs in other contracts because it is on the human body, and the commitment of the doctor in the framework of the contract Medical is a commitment to make care for Aathakik result under this Contract shall physician providing Annaahalta Tqtadhahahalh and conditions of the patient and Maazl doctor Bhmaalaltazam albeit inadvertently realized his responsibility Streptococcus and though the there are cases realized the responsibility doctor tort These cases have Dhanaha in the second section of the first demand in the second part, also what distinguishes Alakdataba for Saúralacod is that the subject of the contract medical human body, the patient and that the human body it clear in a circle stuff that can be handled as well as outside the circle of money and Calendarf others and it was a mistake that non-sufficient unit to inflict damage

RESOURCES:

1. San Arabs' Son of perspective
2. Lexicon philosophical Balalfad the Arabic, French and English; d. Beautifully Crusaders
3. Vocabulary in a strange Koran, Abu al-Qasim Hussain son of Mohammad Isfahani
4. Differences in language, Abu Hilal military
5. Philosophy of mind, d. Abdul the Ezzedine Aldada Curtain
6. Mediator, d. Abdul Razak Ahmed Sanhoori
7. Idiosyncratic entrance year, d. Mustafa Zarqa
8. Tort administrator for Doctors in legislation, the lawyer Mahmoud Zaki sun
9. Moaqat in assets Sharia, Abu Ishaq Shati
10. Studies Alnevsahand the Muslims, Abdul Karim
11. Psychology, Luxury sane
12. In theology, d. Ahmed Mahmoud Sobhi
13. Altobeiran the will to Islamic jurisprudence, d. Muhammad Wahiduddin bracelet
14. Medical Liability, d. Mohammed Hassan Mansour
15. Alkhtoalmhenne and Alkhtoada part of medical liability, Ibrahim Ali Hammadi Hbosa of,
16. Controls the legality of medical experiments and their impact on civil liability, dwell son cores
17. The extent of compensation for damage in the body change the injured and property d. Ahmed Shawky Mohamed Abdel Rahman