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The Impact of the Doctor's Purpose in Determining the Degree of Liability for the Result of his Action

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Abstract

This study examines the relationship between the medical liability and the intents (maqāṣid) of Sharīʿah. It shows how the degree of liability varies according to the presence of the elements of the general intent. Liability increases when all elements of the intent are present and reduces upon the absence of some of them. It may also be removed altogether in the case of a special legal intent as in a medical surgery, allowed by the Lawgiver, taking into account the intent of preserving a life. The study also explains the conditions for the legitimacy of medical action. It concludes that the doctor is not liable for the results of his action as long as he is committed to the conditions of legality, and does his work properly, but he, however is held accountable for the result of his act, if he is negligent, or he pretended to be a doctor or committed a grave error, or if he has an illegal intent different from the patient's treatment.

Keywords: Medical Liability, Treatment Intent, Medical Error, Medical Ethics, Compliance with Medical Guidelines.

أثر مقاصد الطبيب في تحديد درجات المسؤولية عن نتائج أفعاله

ملخص البحث

تتناول هذه الدراسة علاقة المسؤولية الطبية بالمقاصد الشرعية، وتُبين كيف أن درجات المسؤولية تتعدد تبعًا لتوافر عناصر القصد العام؛ فتكون المسؤولية مغلظة في حالة توافر جميع عناصر القصد، وتكون مخففة في حالة انتفاء بعض تلك العناصر، وقد ترتفع كليًا في حالة وجود القصد الشرعي الخاص، كما في أعمال الجراحة الطبية التي أباحها الشارع مراعاة لمقصد حفظ النفس. كما بَيَّن البحث شروط مشروعية العمل الطبي، وتوصل إلى أن الطبيب لا يُسأل عن نتائج أفعاله ما دام ملتزمًا بشروط المشروعية، وقائمًا بعمله على الوجه الصحيح، ولكنه يُسأل عن نتيجة فعله إذا كان مقصرًا، أو متطببًا جاهلًا، أو مرتكبا خطأ فاحشا خارجا عن قواعد الطب، أو إذا تخلف القصد الخاص، وهو علاج المريض، وأصبح الطبيب يقصد غرضًا غير مشروع.

كلمات مفتاحية: المسؤولية الطبية، قصد العلاج، خطأ الطبيب، أخلاقيات مهنة الطب، مراعاة الأصول الطبية.

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Contents

1. Introduction

Praise be to Allah, Lord of All the Worlds, and may peace and blessings be upon our Prophet Muhammad and upon his Family and Companions.

This study shows that the degree of medical liability varies in *fiqh* (Islamic jurisprudence), depending on the presence of the elements of general intent or some of them. Hence, liability becomes big when all elements of the general intent are present, and these are: willfulness, knowledge, and disobedience, while the liability reduces in the absence of some of these elements, and may be fully disclaimed if there is a special intent permitted or obligated by the Lawgiver.

The study aims to explain the impact of the doctor's intent or error in determining the degree of liability for the result of his action. There are elements that reduce the degree of liability but do not disclaim it, and there are elements that disclaim it, eliminate the guilt, and make the action permissible or obligatory. Liability is mitigated upon the absence of an element of the general intent. The reason for the disclaimer is using a right that is given by the Lawgiver, or performing a duty that the Lawgiver commanded, if the special intent

is to achieve the interest for which the action was permitted.

1.1 Research Problem

If a surgical action is allowed by the Lawgiver for the intent of preserving a life, is the liability of the doctor, who made an incision on the patient's body, disclaimed because his specific intent was to treat the patient and try to save his life? And if the specific intent of causing this incision was not to achieve this intent, but rather for a prohibited reason, such as aborting a fetus resulted from illegal relationship, would the doctor bear full criminal liability in such case? What are the conditions for the legality of medical action? What is the degree of liability incurred by the doctor, if he fails to comply with one of these conditions? In order to answer these questions and other relevant ones, to clarify the provisions of medical liability and to verify them in accordance with the principles of Islamic *Sharīʿah*, the two researchers considered writing on this topic to serve both *Sharīʿah* and medical science.

1.2 The Significance of the Study

The study shows that a set of rules and conditions must be taken into account when conducting a medical action in order to ensure that the doctor does not deviate from the specific intent for which his action is permitted. Hence, the possession of a medical practice license, obtaining patient's or guardian's consent on a given medical action, the intent to treat, compliance with medical guidelines and avoiding breach of medical guidelines and ethics are all required.

The study also shows that the general rule in Islamic *fiqh* (jurisprudence) is that the doctor is not held liable for his medical action, as long as he adheres to the guidelines of legitimate medical practice, but if one guideline is failed, the doctor is then held accountable for the result of his action since the action is forbidden in the absence of one or more of these guidelines. The doctor is held liable for the result if he was negligent, or a quack "a fraudulent or ignorant pretender to medical skill", or had committed a medical error, or if he had a different intent than treating. If a doctor kills a person to relieve his pain or if he amputates an organ of a person's body to be exempted from service in the army, or if he aborts a pregnant woman without a legal *fatwā* (legal opinion), then such actions entail criminal liability due to the violation of the principles of legality.

1.3 Literature Review

The two researchers found that there are many previous studies on medical errors, but they are scattered in the form of sub-ruling, and not researched based on *uṣūl al-fiqh* (the Principles of Islamic jurisprudence); so it was necessary to link the rulings to legal sources (*takhrīj al-furūʿ 'ala al-uṣūl*) and to link them to the intents of Islamic legislation (*maqāṣid al-Sharīʿah*) which are related to the intent of the person responsible for a specific action, or to his mistake in that action.

Among the studies related to the liability of doctors for medical errors:

1. A research titled "Doctors' Errors between *fiqh* 'Islamic jurisprudence' and Law," by Dr. Muḥammad Shalash is published in the *Journal of Al-Quds Open University for Research and Studies*, Palestine, (issue 9, February 2007: 315-362). However, this study did not address the relationship between medical liability and the legal intents. Rather, it was limited to explaining the jurisprudential ruling regarding medical errors that were mentioned in some legal texts.
2. A Master thesis titled *Medical Errors and their Impacts in Islamic Sharīʿah "Islamic Law*," is written by Muṣṭafā Al-Kouni, An-Najah National University, Nablus, Palestine, 2009. This study did not link the medical error to the intents of Islamic legislation, but rather explained the concept of medical error and its jurisprudential implications without *Takhrīj al-Furū' 'alā al-Uṣūl* (linking practical legal decisions to governing legal sources and *maqāṣid al-Sharīʿah*).
3. A research titled "Criminal Liability of Doctors for Errors: A Comparative Fiqhi Study," by Dr. Māzen Sabbāḥ and Prof. Nāel Yaḥyā is published in the *Journal of the Islamic University for Islamic Studies*, Gaza, Palestine, (vol. 20, no. 2, June 2012: 99-143). However, this study did not examine the elements of intent that must be fulfilled before criminal liability falls on the doctor, nor did it address *uṣūl al-fiqh* aspect related to the specific

intent permitted by the Lawgiver taking into consideration the five essential intents.

1.4 Research Methodology

The researchers used the descriptive approach in addition to the deductive and analytical approaches. The study adhered to the rules of documentation and the terms for publishing scientific researches.

1.5 Research Outlines

The research starts by explaining the meaning of intent (*maqṣad*) and its types: specific intent and general intent and explains the position of medical acts between general and specific intent. The researchers also address the specific intent as a reason for removing liability for medical results. Furthermore, the researchers discuss liability resulting from medical errors when one of the elements of general intent is absent. Finally, the research concludes with the research's most significant findings and recommendations.

2. *Meaning of Intents "Maqasid"*

Intents "*Maqāṣid*" linguistically is the plural of intent "*Maqṣad*", and the word "*Qaṣd*" means: doing something straightforwardly (Ibn Manẓūr, 1414 A. H., section of "*Qaṣada*", 3/345; Ibn Fāris, 1979, section of "*Qaṣada*", 5/95); and "*Qaṣd*" in something is the opposite of extravagance, i.e. rationality, fairness, and refraining from injustice (al-Fayūmī, 1403 A. H., section of "*Qaṣada*", 2/504; al-Zamakhsharī, 1998, section of "*Qaṣada*", 2/81).

As for the meaning of *Sharīʿah* intents "*Maqāṣid*" terminologically, al-Ghazālī referred to it in the context of talking about eliminating harms and bringing benefits, saying: "We mean by interest (*maṣlaḥah*): preservation of the intents of *Sharīʿah*, and the intents of *Sharīʿah* for the creation are five: preservation of religion, life, intellect, offspring, and wealth" (al-Ghazālī, 1413 A. H., 174).

Al-ʿIzz bin ʿAbd al-Salām also explained the meaning of intents, saying: "Most of the intents of the Qur'an are related to enjoining of attaining interests and their causes, and forbidding of attaining evils and their causes" (Al-ʿIzz bin `Abd al-Salam, n. d., 1/8.).

Al-Shāṭibī referred to the meaning of intents of the Lawgiver, saying: "The Lawgiver intended by the legislation to establish the interests of the worldly life and the hereafter in a manner that does not disturb any system in whole or in part, whether these interests were among necessities, needs, or improvements." (Al-Shāṭibī, n. d., 2/29).

As for Ibn ʿĀshūr, he defined intents as: "The meanings and insights observed by the Lawgiver in all or most cases of legislation, so that their observation is not limited to a specific type of *Sharīʿah* laws." (Ibn ʿĀshūr, 2001, 251).

ʿAllāl al-Fāsī also defined it by saying: "What is meant by the intents of *Sharīʿah*: the aims of it, and the secrets that the Lawgiver has put in each of its rulings" (Al-Fāsī, 1993, 3).

Contemporary researchers have followed such an approach and defined intents with similar definitions. The researchers chose the definition of al-Raysuni: "The aims that the *Sharīʿah* has been established to achieve for the interest of the servants" (Al-Raysūnī, 1992, 7).

3. The Types of Maqasid

The intents that are considered have two sections: "The first refers to the intent of the Lawgiver, and the second refers to the intent of the legally competent person" (Al-Shāṭibī, n. d., 2/3); and the intents of the legally competent people always aim toward two things (Al-Ashqar, 1990, 109):

First, general intent, which is a strong willingness to perform the action, so it's an attribute of the heart that is bound by two things: knowledge and action; knowledge comes first because it's the origin, and action follows because it's a result and branch of it (Al-Qarāfī, 1404 A. H., 10; Al-Ghazālī, 1413 A. H., 4/558).

Second, specific intent, which aims to achieve a specific goal by the action, wherein the effect of knowledge and action extends to facts that are not in themselves from the substance of the action.

In the field of criminal sanctions, the jurists expressed the general intent of the perpetrator by the term "deliberate disobedience", which is the intent of the doer towards committing or refraining with his knowledge of the prohibition, so he deliberately commits a forbidden action or neglects an obligation knowing that the Lawgiver prohibits or obliges this action (Zaydān, 1413 A. H., 5/338).

The intent that entails criminal liability includes three elements: willfulness, knowledge, and disobedience, and the absence of any of these elements affects the criminal liability. For example, the existence of unintentionality negates the element of willfulness, and therefore affects criminal liability, so the act comes out of the circle of intentional crimes to the circle of unintentional acts. Likewise, the presence of ignorance negates the element of knowledge, and thus may affect criminal liability by mitigating punishment (Al-Ramlī, 1414 A. H., 7/249; Abū Zahrah, 1984, 143).

As for the concept of specific intent, it was used by jurists to remove the description of crime from the action and remove the liability of the doer when he performs a duty obligated by the Lawgiver or uses a right granted to him by the Lawgiver.

4. The Position of Medical Work between General and Specific Intents

The position of medical work between general and specific intents is demonstrated through the following points:

First, Islamic law permits medical work because the specific intent of it is saving the interest of the body, so the incision or cutting performed by the doctor on the patient's body is not considered forbidden, because the specific intent of it is healing the patient and relieving his pain (Ibn Farḥūn, 1958, 2/335; Al-Shirbīnī, 1994, 4/202). So the correct basis for removing the liability of the doctor is the specific intent, and this will be explained in the second section of this research.

Second, the factors of mitigating the liability of the doctor are considered in case of absence of one element of the general intent, such as cases of error, ignorance, and negligence that will be explained later in this research.

Third, full liability rests with the doctor upon the existence of all elements of deliberate disobedience, and this is achieved in cases of intentional abuse, which are rare cases, where intentional abuse occurs in the context of medical practices, either out of intentional crime, or out of perverse justifications, such as killing patients who have complicated medical conditions with the pretext of relieving them of pain and the like. This is considered intentional killing and aggression, and its punishment is *Qiṣāṣ* (retributive justice), so the doctor shall be punished with the penalty of intentional crime and bear full criminal liability, if he kills a person to relieve his pain, cuts a person's organ in order for him to get an exemption from military service, or aborts a pregnant woman without a legal *fatwā*. The same is applicable for every case where the intent of treatment is missed and the elements of deliberate disobedience are completed, whereby the doctor is held liable according to his intent, and he is punished for his intentional crime (Al-Khurshī, 1968, 7/29; Al-Bahūtī, 1984, 5/520).

5. Specific Intent as a Reason for Removing Liability for Medical Results

The concept of specific intent is used to remove the description of crime from the action and remove the liability of the doer when there is no reason for criminalization, where the action becomes legitimate due to the existence of a specific intent that the Lawgiver permits or obligates, provided that the action is committed only in the existence of the specific intent that fulfills the interest for which the action was permitted. But if the specific intent is missed and the forbidden action is committed for another intent, then it is a crime (Ibn al-Qayyim, 1991, 3/135).

The cases of specific intent that makes the action legitimate and removes the liability of the doer are multiple, and they are either due to performing a duty or using a right granted by the Lawgiver to the doer, and among these cases is the right of treatment, which is work that conforms to the rules established in medical science, and the specific intent of it is healing the patient.

Learning medicine in Islamic society is a legal duty and a collective obligation (Ibn Al-Humām, 1997, 5/352; Al-Shirbīnī, 1994, 4/202), and this entails

permitting all necessary actions to perform the duty of treatment, and the lack of liability of the doctor for the results of his work, because "the duty does not adhere to the condition of healing" (Ibn Nujaym, 1419 A. H., 1/289), and the doctor's work is a commitment to provide care, not to achieve a goal.

Therefore, Islamic law permits medical practices because the specific intent of them is saving the body, healing the patient, and relieving his pain. So, the specific intent is the basis for removing the liability of the doctor (Ibn Farḥūn, 1958, 2/335. Al-Shirbīnī, 1994, 4/202).

The medical profession relates to a necessary intent of Islamic legislation, which is the intent of preservation of life, as medical work aims for the preservation of the interest of the patient and achieving the intent of preserving people's lives and souls.

Since the medical profession often requires physical work on the body of patients, the specific intent is extremely important in legitimizing incision, cut, or other work performed by the doctor, as the Lawgiver knows that the medical or surgical work, even if it touches the body, the special intent of it is saving the patient's life, as it does not threaten his interest of saving his soul, but rather it preserves this interest (Al-Shāfiʿī, 1983, 6/185; Al-Mardāwī, 1957, 6/75), and as long as there is no assault on the patient's right, there is no reason for criminalization and the action is considered legitimate.

The rulings of the jurists, in their explanation of removing the liability for the results of medical action, have converged. The Hanafis see that liability is removed when the approval of the patient or his guardian meets with social necessity, whereupon the result of the medical action occurred in a permitted action, and at the same time the intent was to achieve the patient's interest and preserve people's lives and souls. This requires removing the liability of the doctor so that the fear of liability does not cause him not to undertake the required medical action, and this will lead to great harm in society (Al-Kasānī, 1986, 17/39).

The Malikis see that the reason for removing liability is the permission of the ruler as well as the patient. The ruler's permission allows the doctor to practice medicine, and the patient's permission permits the doctor to do whatever he deems helpful for treatment. (Al-Ḥaṭṭāb, 1992, 6/321).

The reason for removing liability for the results of medical action for the Shafi`is and Hanbalis is that the doctor does his work with the patient's permission and intends to treat him and not to harm him. If these two conditions are met, the doctor's action is permissible, and his liability is negated, provided that the taken action was in accordance with what the people of medicine say (Al-Ramlī, 141A. H., 8/35; Ibn Qudāmah, 1388 A. H., 12/58).

Ibn al-Qayyim stated that the skilled doctor, if he observes the rights of work and does not commit a violation, is not liable for the damage that results from his action which is permitted by the Lawgiver and agreed by the patient (Ibn al-Qayyim, 1415 A. H., 4/124). This means that liability for the results of the medical action is removed only when it is carried out within a range of rules and conditions that ensure that the doctor does not deviate from the specific intent for which his action is permitted (Al-Dasūqī, 1964, 4/355; Ibn Rushd, 1408 A. H., 2/418).

The following is a description of the most important conditions for removing liability for medical results:

1. General permission, which means permission of the ruler for the doctor to practice the medical profession, which is known today as medical license. The Islamic law requires the practitioner of the medical profession to be one who has skills, knowledge, and insight in his profession, and the origin of this is the saying of the Messenger of Allah (peace be upon him): *"Whoever practices medicine when he has not been known previously as a practitioner, he shall be liable [for any harm done]"* (Ibn Mājah, *hadith* no. 3466, and Al-Albānī said that it's a good *hadith*). So, the *hadith* confirms the liability of the physician who practices this profession without prior knowledge and know-how that qualifies him to practice this dangerous work perfectly.

The skilled doctor is the one who gives the profession its right and exerts his utmost effort and does not commit any negligence, remissness, or carelessness; and the opposite of it is the ignorant doctor, whom the *hadith* expressed by the word "*tatabbaba*" [practiced medicine with no prior

knowledge], because the form "*tafāʿala*" indicates pretending of something and practicing it with difficulty and inconvenience while he is not among the people who have knowledge of it. So, "*ʿālim*" [scholar] differs from "*mutaʿālim*" [wiseacre] and "*ṭabīb*" [doctor] differs from "*mutaṭabbīb*" [fake doctor]. The *hadith* also indicates reliance on the custom in determining whether the doctor has knowledge and skills or not (Ibn Qudāmah, 1388 A. H., 8/117; Ibn al-Qayyim, 1415 A. H., 4/124), as it was mentioned in the *hadith* "when he has not been known previously as a practitioner", which is known today as academic degree and practicing license.

The jurists have indicated the necessity of banning the ignorant doctor and included this ruling under the rule "Tolerating personal harm for preventing public harm" (Ibn Nujaym, 1419 A. H., 1/87). So, the ignorant doctor must tolerate the personal harm caused to him by banning him from practicing the profession in order to prevent the public harm that leads to killing of many people.

2. Personal permission, so that medical intervention be based on the permission of the patient or his guardian, with the exception of emergencies where there is no enough time to take permission, such as wars, disasters, accidents, and other serious situations that threaten the life of the patient and may lead to death or damage of one of his organs, as well as diseases that require urgent surgical intervention, such as appendicitis if it reaches the degree of fear of its rupture, in addition to situations required to be handled for the public interest, such as epidemic diseases that are feared to spread (Al-Shalash, 2007, 340).

3. Compliance with the behavioral and ethical principles of the medical relationship: This condition relates to the moral aspects of the medical relationship because the relationship between the doctor and the patient must be based on ethical principles that include honesty, loyalty, advice, covering private parts, keeping secrets, and other ethical rulings established by texts and evidence of *Sharīʿah*, where liability shall result for any damage caused by violating them. The ultimate objective of the medical profession is cooperation for the interest of the patient, not rivalry, and if the doctor is confused, he should consult the one who is better or more skilled than him, or refer the patient to another doctor (Al-Kawnī, 2009, 51).

4. Following the scientific and practical principles of the medical profession by performing medical work in accordance with the rules followed by the people working in the medical profession: Al-Shafi`i indicated the necessity of following the principles of the medical profession, stating that liability is removed for the doctor who did what other doctors do which is beneficial for the patient according to the people who have knowledge in this field, while he who does what contradicts with the principles of the medical profession, shall be held responsible (Al-Shāfiʿī, 1983, 6/172). It is not sufficient for the doctor to have knowledge of the principles of his profession from the theoretical scientific side only, rather he must be skilled in his work from the practical applied side and do everything he can without any negligence, carelessness, or violation of any of the principles of the profession theoretically or practically (Al-Ḥaṭṭāb, 1992, 8/539; Ibn Qudāmah, 1388, A. H. 8/117).

5. The intent to treat, as the specific intent of the medical action must be treating the patient and caring of his interest, and the doctor must not intend another intent because this indicates bad faith and entails liability. The general rule in Islamic jurisprudence is that the doctor is not liable for the results of his action which he practices on the patient as long as he adheres to the conditions of legality, otherwise, he will be held liable for them; because the work then becomes forbidden due to the absence of the reason for removing the liability, so practicing medical work in Islam has its goal which the *Sharīʿah* has permitted, and therefore it is necessary to target whoever can achieve this goal, which is treating the patient and caring of his interest.

The concept of specific intent that the doctor or the surgeon aims from practicing his job is necessary to explain removing the criminal liability of him (Al-Khurshī, 1968, 7/29; Al-Nawawī, 1985, 9/146), since the concept of disobedience is absent due to the existence of a specific intent and therefore he is not liable for the results that he did not intend, because he did not intentionally commit a prohibited action, so his act is considered permissible as long as he adheres to the conditions of legality.

6. Liability Resulting from Medical Errors When One of the Elements of General Intent is Absent

The general intent in the crime is only achieved when all its elements, i. e. disobedience, willfulness, and knowledge are fulfilled. The intentional crime must involve that the legally competent person, intentionally, commits the prohibited action while knowing that he commits something prohibited. But if the crime lacks one of those elements, it becomes an unintended crime, as in cases of unintentionality as a defect of the element of willfulness, or ignorance as a defect of the element of knowledge, and then the degree of liability is mitigated according to the effect.

The error is "an action or saying made by a person unintentionally" (Al-Bukhārī, 1307 A. H., 4/1500), and the Islamic *Sharīʿah* made the liability of the committer of unintentional error mitigated because disobedience was not established in his heart but rather he committed it by mistake, so the unintentional error is a matter of negligence, lack of accuracy and caution, so the punishment of it depends on the amount of negligence and lack of accuracy that led to it.

The general rule is that the error is valid as an excuse for removing the rights of Allah Almighty, but it is not considered an excuse for removing the rights of the servants, so a person is not considered a perpetrator of a crime in terms of his relation with Allah Almighty as long as he did not intend it (Abū Zahrah, 1984, 148).

As for the rights of the people, the committer of an unintentional error is obliged to pay the value of what he has damaged (Al-Shāṭibī, 2/263), and he is obliged to pay the blood money in cases of unintentional killing or cutting off an organ of the body, because the blood money is a financial compensation for the harm that the victim or his heirs suffered from, and the committer of unintentional error is not punished with retribution because he is not a criminal in terms of intent, but the Lawgiver has obliged him to pay the blood money in order to induce people to be always careful and cautious, and to compensate the victim or his heirs.

The standard of unintentional error and its basis in the Islamic law is the absence of the element of willfulness, and this may be in the form of negligence, carelessness, lack of caution or other forms of leaving out the confirmation and precaution.

As for the element of knowledge, it is negated either because of ignorance of the origin of the rule or the information or because of a mistake in diagnosing the case that the rule applies to, where the mind of the doer is occupied with a kind of perception that does not match the reality, so it is a kind of illusion that causes him to perceive something in a way that contradicts its reality (Al-Bukhārī, 1307 A. H., 4/1450; Abū Zahrah, 1984, 487).

The general rule is that it is not permissible to consider ignorance whenever a person is obliged to know this rule or information of which he is ignorant. But the error in which the element of knowledge is absent, is included in the concept of unintentional error, so there shall be pardon regarding the rights of Allah Almighty and compensation regarding the rights of the people.

Therefore, jurists considered the mistake as a type of unintentional error, and they called it error in performance or in view (Al-Zaylaʿī, 1964, 6/101; Al-Nawawī, 1985, 9/123). Accordingly, the medical error can be divided into two types:

First, error in performance, such as slipping of the hand of the doctor during examination or surgery that leads to harming the patient, or making an incision or cut for treatment that leads to damage of the entire body (Abū Zahrah, 1984, p. 496). It should be noted that the ruling of this type of medical error is associated with the ruling of the errors of other professions, and it is not limited to the medical work. So, the medical error of this type is associated in ruling with the errors that may be committed by people of any other profession, such as the blacksmith from whom a piece of iron falls on someone else and harms him, or the driver who accidentally hits someone with his car and harms him; and the ruling of this type is the same of unintentional crimes where there shall be no guilt on the doer but he shall be obliged to compensate for what he has damaged.

Second, error in estimation, which is considered to be of the substance type of the medical action, as if the doctor estimates that treating the disease requires cutting of an organ, and then it turns out that the disease could have been treated with a medication other than

cutting, or if he misdiagnoses a disease or misprescribes a drug thinking that it will cure the patient, and then it turns out that the disease is not what he has diagnosed and the medicine is not what he has prescribed, which has led to delaying of the recovery and consequently damage of an organ.

In this type of error, the medical norms are arbitrated to determine whether the wrong estimate is an acceptable error for which the doctor shall not be held liable, or is it an outrageous error for which he shall be held liable. If it turns out that the error falls within the considered limits, because this diagnosis or treatment is mostly conjectural, the doctor shall not be held liable for his error in this type of estimation. But if it turns out that this error is unacceptable in the medical norms, such as misdiagnosing a disease and not doing a test which is required according to the norms of the profession, this is considered an outrageous error that is not acceptable by the principles of medical science, because it happened due to negligence that could have been avoided. So, if he does not make the effort required by knowledge and religion, then he shall bear a specific liability for this patient and a general liability for his action, and he must be banned if he continues neglecting and committing outrageous errors (Al-Dasūqī, 1964, 4/355; Ibn Rushd, 1408 A. H., 2/418).

The doctor in his profession is like how the jurist is in his judgment, if he exerts his utmost effort and then commits mistake in his estimation, he is not held liable. But if he neglects and does not exert his utmost effort, he is liable for the error that led to this result, and this is what the jurists call as an outrageous error that occurs due to negligence and could have been avoided.

Hence, the medical error, that entails liability, is the error that occurs as a result of doctor's violation of his duties and non-compliance with the technical rules and failure to provide adequate care in treating the patient. This error is not acceptable by the medical norms because it is considered a deviation from the professional medical practice and what it requires of vigilance and insight, and it is considered a negligence of the doctor in adhering to the patient's interest (Shalash, 2007, 330).

The effect resulting from medical error is the liability, and it's associated with violating the conditions of the legality of medical work, and if the doctor violates one of them, he shall be liable for the harm he has inflicted to the patient (Al-Kasānī, 1986, 9/448; Al-Shāfiʿī, 1983, 6/172).

But if the doctor adheres to observing these conditions, and then his work results in harm inflicted to the patient, he is not held liable because healing is only in the hands of Allah Almighty, and the work of the doctor is a commitment to provide the utmost care.

7. Conclusion

The most significant results and recommendations can be summarized as follows:

1. The study shows the relationship between medical liability and legal intents (*maqāṣid al-Sharīʿah*), whereas the provisions of medical liability are closely related to the five essential intents: the protection of religion, life, wealth, progeny and intellect.
2. One of the conditions for the legality of the medical action is that the doctor's specific intent is treating the patient. For example, the doctor is not asked about the result of the surgery that the Lawgiver allowed in the intent of preservation of life; while the doctor is asked about the result of his action, if it is proven that he intended an intent that contradicts the five essential intents.
3. The Islamic *Sharīʿah* permits medical actions, because their particular intent is preservation of life, so the act of wounds or cuts practiced by the doctor on the patient's body is not considered forbidden, but it is permissible or even a must, because the particular intent of it is to heal the patient and relieve his pain.
4. The doctor bears full liability upon the presence of the element of willful intent to disobey. This happens in cases of intentional assault, which are rare cases, as in the case of doctor's killing of a person to end his pain, amputating an organ of a person so that the army exempt him from military service, or aborting a pregnant woman without a legal *fatwā*, and the same is applicable in every case where the intent of treatment is not the intent, and the elements of the intent of disobedience are present.

5. The doctor in his profession is like the jurist in his diligence. If he had exerted the maximum of effort but erred in his estimation, then he is not liable for the error. While if he neglects and does not exert the maximum effort, then he is liable for the mistake that led to this result.
6. The medical error standard and its basis in Islamic *Sharīʿah* is the absence of the intent element, and this may be in the form of negligence, recklessness, lack of caution or other forms of neglecting the verification and precaution.
7. The researchers recommend doctors and therapists to fear Allah Almighty in their medical actions, so that their commitment to the provisions of Islamic *Sharīʿah* is based on their religious belief and obedience to Allah SWT.

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