

**Civil liability of physicians in Iran and Egypt, according to Iran's new Islamic Penal Code Act of 92**Zahra chanani <sup>1</sup>, Dr. Faysal Saeidi <sup>2</sup><sup>1</sup> Department of Law, Persian Gulf International Branch, Islamic Azad university, khorramshahr, iran<sup>2</sup> Department of Law, Ahvaz Branch, Islamic Azad University, Ahvaz, Iran

**Abstract:** Doctors civil liability civil liability law is one of the main issues discussed in the various countries and an important vote on it has been issued. In our country, before the diya Act of 1361, subject to the general rules of civil liability and civil liability of physicians are usually based on fault liability in civil liability law was decreed in 1339 was applicable in this case. Fortunately, the new Penal Code adopted by 92 former provisions amended and returned to the fault. The doctor when the patient's responsibility to compensate the damages to be proven to be his fault. This solution, in addition to coordination with the general rules of civil liability, with the best interest of patients and society is justified. According to Article 319 of the former Penal Code - passed in 1370 - if the patient's healing process or cause damage to his surgery was Treatment was forced to sign it. The old law, a doctor in case of obtaining exemptions from civil liability under the new law, if proven innocent and medical malpractice innocence even if the certificate is held.

[Zahra chanani, Faysal Saeidi. **Civil liability of physicians in Iran and Egypt, according to Iran's new Islamic Penal Code Act of 92.** *Nat Sci* 2015;13(11):90-97]. (ISSN: 1545-0740). <http://www.sciencepub.net/nature>. 13

**Key words:** civil liability -Mbnay doctor liability - civil liability Egypt's new Penal Code

**Introduction**

What is the difference between the contractual liability is compulsory in general, but because of the specific nature of the medical liability and harm to the patient be considered a crime, the nature of its civil (contractual or compulsory) will disappear and the subject of criminal laws. Under Article 3 of the Penal Code, Iranian penal law on all those who commit crimes in the territory of the rule is applied. Therefore, identification of the nature of the contract or enforcement of medical liability in respect of the governing law will be the difference.

Not talking about the civil liability of doctors in the Penal Code Article 495 provides, but "when the doctor who performs the treatment causes loss or injury, the sponsor money is ..." Of course, private litigant may petition the excess losses the money to see the documents, the legal references apply. Eligibility to claim for compensation in excess of the costs of the judicial authority Rsydgykndh According to the Penal Code in respect of costs in excess of the money he has not spoken. Forensic medical or judicial decision will be final. Also approved pursuant to Article 1 of the Law of Legal Medicine Organization in 1372 as one of the jobs of the coroner as a public institution with legal personality independent forensic opinion on the MB in the autopsy doing Amvrazmayshgahy and para ordered by judicial authorities.

It looks at the implications of compensation, punishment and public complementary to public rights and crime prevention and Tajari some practitioners of medicine, is essential. In the current Penal Code (subsequent) only to point out that if the harm to

patients, should be compensated by a doctor and pay compensation to those affected. This gap in the prevention of crime and control those who commit medical malpractice have been many, is. On the other hand, with regard to the penalties provided for in the medical system, major deterrent punishment is not in the proper sense, it seems to be capable and powerful law on the prevention of crime in there medical affairs, in this case that unfortunately have vacuum can be felt.

**A) Statement of problem research**

Civil liability and the liability of doctors in charge against damage and failure without malice and only imprudence and recklessness on the other hand to the sick and injured is unintentional on someone else comes in and responsibility for the against the injured party to compensation from the physician's action creates. In this case the doctor will be the guarantor of compensation to him. The question that arises here is to prove the harmfulness of action physician, fault or his fault, how will Budo Who is responsible? Is this person injured who have to prove fault or negligence medicine or doctor is required to prove the absence of their failure will be in the Penal Code of the Old Act 75 of proof rests with whom, and in the new Penal Code Act 92 that the rules of Medicine It also examines how the changes will be implemented? The author of this study is trying to investigate aspects related to civil liability for doctors to pay attention to the new Penal Code and the Civil Akhyrmysylyt legal developments in criminal law practitioners to review and then with the laws of civil liability for doctors Egypt has comparison Compare.

**B) the importance and necessity of research****C) review of the literature and history research**

Theses and articles have been written in this regard:

- Item ((Principles of civil liability of doctors looking at the new bill IPC)) by Seyyed Hossein Safai.
- Item ((Check the responsible physician based on the new Islamic Penal Code)) written by Seyyed Mohammad Mehdi acceptable Dorafshan and doctor Saeed Mohsen.
- Item ((civil liability of the doctor's rights and civil liability law in Europe)) By Mohammad Naeem race

**D) New aspects of research and innovation**

Legislator in the new penal code adopted in 92 of the doctor's responsibility to come up with innovations work. Way out in the new law, regardless of some form of writing that caused confusion, as well as the good doctor is expedient to provide injured patients, the doctor Ast.mslht It is absolutely in his medical practice properly and is not responsible for accuracy and patient interest in the possibility to provide medical proof of fault. Given the complexity and specialization of the physician responsible for the patient's medical proof that usually unaware of the medical technical issues, and it is not easy to predict the presumption of guilt and the presumption in favor of the patient's physician supply.

**E) The objectives of the study**

According to the immortal new Penal Code and comparative research of the subject, primary and secondary objectives of this study are:

The main objective: 1- civil liability based on the new Islamic Penal Code of Iran's doctor and matching it with the Egypt

Secondary objectives:

- 1- consent, and acquittal with regard to the new Penal Code
2. Reviewing the civil liability of the doctor on the basis of the new law

**F) Research questions**

1. What is the legal basis for civil liability for doctors?
- 2 Doctors civil liability law in Egypt today?
- 3-position medical innocence in the new Penal Code where it is?

**G) Hypotheses**

1. the responsibility of the Penal Code has been accepted as a fault can be proven otherwise.
2. Egyptian law is the responsibility of the physician guilt and responsibility that the commitment is not a commitment to results.
3. legislation on rules of medical hardship inflicted by getting exemptions from liability which are expressly mentioned in the Civil Code has been amended.

**The concept of civil liability of physicians and its variants in Iranian law.**

If you want a civil liability of physicians in Iran and Egypt consider it is necessary to first understand the definition of the concept of civil liability and civil responsibility to express our doctor.

**The definition of a civil liability of doctor****The concept of Responsibility:**

Responsibility for the fraudulent origin of the word in Arabic means the warranty, guarantee, commitment, be held accountable. Responsibility something with someone being mean to her neck Vhdh is the responsibility, the responsibility, commitment, and responsibility. According to the concept of responsibility, responsible derived from the Latin word (responsus) participle means the person who is the source of questions to ask him.

In legal terms, the responsibility of the legal obligation to meet the person who has caused harm, whether the harm caused by his own negligence or arising out of his activities

Term responsibility, a new word meant to censure or punishment and, finally, a practice that is tolerated and the person's right to practice or leave the ethical issues and Yakhrvj of orders and prohibitions of the law. In the former case moral responsibility and in the second case, legal liability.

**The concept of civil liability**

When there is that someone is bound to repair any damage that results is another. The civil liability when they realized that other person to be held accountable.capture him. In any case, that person is obliged to compensate other damages, civil liability or guarantee is against him. As well as civil liability is to compensate for the loss of, damage to another.There should be a causal loss.

**The definition of a civil liability of doctor**

In recognition of the concept of civil liability is to the concept of civil liability for doctors consider nature.

Medical liability is the responsibility of the judicial, legislative, legal and criminal cases against the doctor about any shortcomings and errors, both intentional and inadvertent disclosure of secrets in the treatment or therapy and patient medical information.

One of the major issues discussed in the present law, civil liability law and civil liability 1,339 doctors that civil law is silent about it, but it does have a provision in the Penal Code. Asvlambtmy doctor in comparative law civil liability theory is fault, the physician when the patient's responsibility to compensate the damages to which his fault is proven. This solution, in addition to coordination with the general rules of civil liability, with the best interest of patients and society is justified. However, in the Penal Code in 1375 Zahramsyvlyt pure and without fault of

the doctor, to follow the words of a group of scholars Shiite accepted that criticism seems, however, that the above mentioned rule by accepting bets exemptions from liability (avoiding liability) adjusted . The exemptions from liability study, the doctor does not exempt from liability completely, because the assumption is proved, he will be in charge of and responsible for compensation. Fortunately, the new Islamic Penal Code Act of 1392 and the departure of former rule Tqsyrra doctor has accepted responsibility, but it seems that the responsibility for this law is supposed fault, not the fault of proof, which means that the doctor responsible for the assumed unless he proves that no fault Brsd.thsyl exemptions from liability in the new law is expected to benefit from the shift time is due.

Doctors civil liability civil liability law is one of the main issues discussed in the various countries and an important vote on it has been issued. In our country, before the diya Act of 1361, subject to the general rules of civil liability and civil liability of physicians are usually based on fault liability in civil liability law was decreed in 1339 was applicable in this case. But diya Act 1361 and followed by several articles of the Penal Code in 1370 was devoted to this subject that the fault is not compatible with the responsibility of coordinating Furthermore, these materials are not sufficient in terms of the interpretation of a statistically can be seen. Fortunately, the new Penal Code adopted by 92 former provisions amended and returned to the fault Ast.pzyrsh theory is based on the idea that in principle fault on the responsibility of doctors is not an obligation to result Thdpzshk commitment by means of doctors to the contract or law owes in conformity with the patient's medical treatment and efforts and apply their skills to treat him, but the cure (cure) patient with him and not his commitment, so the doctor only when it can be proved responsible for knowing that his fault Brsd.vang-hy if medical liability, strict liability without fault, the doctor does not dare to touch and it's dangerous surgical treatment and progress of medical science and to the detriment of patients and society will be. However, on the basis of civil liability medical issues that can be discussed. What responsibility is to see your doctor first must understand the nature of the liability of doctors in the Iranian legal system.

#### **The nature of medical liability**

The purpose of civil liability and civil liability compensation is affected by two types of contract, contractual liability and liability arising from the breach of law divides Shvd.zrr if the reason for the losses is the responsibility of the contractor to the and if the breach of legal obligation that prohibits the injurious to others, it is the responsibility enforced.

We should see the doctor-patient relationship is a contractual relationship or not? And if the contract is what is needed to answer the question of which works on any of the above applied. Msla" contrary to the principle of solidarity in a contractual relationship unless it is stipulated in the contract.

So I explained the doctor in case of civil liability would be a civil offense and a civil offense according to Article 1 of the law of civil liability, including action resulting in losses or damages to another entry, and its cause is bound to compensate losses or fix the damage.

Article 59 of the law states: "Any surgery or with the consent of the person or the parents or guardians legitimate medical or legal representatives in conformity with the technical, scientific and public systems in the immediate consent will not be necessary for the doctor. "

Article 60 of the law refers to this: "If a physician before treatment or surgery of the patient or he is acquitted of serious physical harm or financial guarantee or disability, and in the permission FOURIE may sponsor physician is not. "

In Article 319, which reads: "If a physician qualified and expert Drmaljh though that person does it or order issued or her sick leave, though he cause loss of life or injury or damage to be liable for it. "

In addition, the article 320 of the legislative procedure in the event of a crime or damage, however, have the skills to ensure the materials 321 and 322 as Ast.bdnbal veterinarian and veterinarian assigned to expression says: "Whenever veterinarian and veterinarian although expertshall not be responsible for damage caused. "

The above condition Azzman innocence, but is modified with the new Islamic Penal Code and review previous material, we see that the rule of law and violate the doctor's fault liability is accepted.

By accepting the blame on the civil liability of medical theory, the law was based on the idea that doctors should be primarily a commitment and not the commitment to act pursuant to a contract or legal obligation to Ntyjh.yny doctor is obliged to treat the patient's medical conformity with and effort and skill to be used for her treatment but not cure the patient in his possession and handed her commitment.

So the doctor is guilty until he is proven guilty .chnanchh Article 495 of the new Penal Code, the legislator provides: "If the doctor gives treatment that causes loss or injury, unless the sponsor money in accordance with the action he

#### **The nature of the commitment of physicians**

View "obligation to result" in the case of contractual liability of physicians, lawyers popular among France, no. Followers of view, the idea that each party to a contract such as sales, are required to

fulfill their obligations, to fulfill its commitment to the medical treatment and the patient's recovery, is required. According to this view, because physicians are committed to achieving a result, in the absence of healing the sick, it is assumed that a doctor's error. In other words, failure to achieve results, is evidence of the fact that certain rules of the military doctor of medicine, violated and in this case the patient is not required to prove medical errors. The doctor who committed the fault of ignorant and treat sick leave is not considered to be a consensus liability. Even if you have taken.

Attributes coherentism to "committed by" the doctors believe that the responsibility for proving medical errors, lack of outcome is not enough. So if the patient did not complete recovery, medical, liability unless the patient, physician prove fault. For the physician commitment, and he tries commitment by all of our facilities to treat the condition. Many Arab experts, including Professor Bdalmyn favor, believe that physician commitment, dedication and doctors by paying attention to the effort, all the necessary facilities for the treatment to work, the lack of outcome under his responsibility is not.

Medical liability, the riddles of our time. Is a double-edged sword, if not skillfully applied, brings great harm. On the one hand, if the liability is subject to physician prove fault, prejudice and failure of the trade and the complexity of the investigation precluded that claim to succeed and reckless doctor and businessman profession can shelter in the obstacles, the responsibility of the escape and the feeling of safety. On the other hand, if necessary, guilt, denial, the desire to reduce the useful and necessary professional experience and medical knowledge and innovative loses power. The jurisprudence also, some scholars believe that if a doctor skilled in the treatment not to be considered a guarantee.

Considering the above, the lack of expert physicians permitted non-fault liability "commitment by the" medical liability is achieved. Unfortunately, the old penal code, abandoned the theory of "obligation to result" has been accepted and to escape the obligations of the strategy is intended to fool even the most basic principles of medical doctors have questioned and in his treatment, were heavy fault. You can obtain exemptions from the patient, the ethical obligations and civil liability arising from their harmful act, they flinch. Article 60 of the Islamic Penal Code says: "If a physician before treatment or surgery of the patient or he is acquitted, or financial sponsor of serious physical harm or disability and, in urgent cases, that permission is not possible, physician Sponsor is not ... "Of course, the adoption of such a law, the MPs that instead of lawyers, physicians and

pharmacists and their members, so not unexpected. However, the situation is very unfavorable and the patient's medical liability laws and the need to have, an obligation of physicians from potential damage Bry' are unaware that if their doctor, also does not meet the most basic medical principles and His condition will be worse than the past, the party will not damage the case closed. However, judges are not educated, who captured the crude rules and principles of justice and fair in their judgment. But this is not enough, because if the judge discretion to not text, it can not criticize him because the old law by obtaining doctor's acquittal of the innocent civil liability. That is why the doctors in our country Iran, of their civil responsibility insurance refused because the legislator, surprisingly, without a premium, doctor of a patient with just getting desperate and helpless innocence tab, insurance and responsibility After providing definitions of civil liability responsibility of a medical doctor familiar with our second chapter.

#### **Civil liability of medical**

In the case of medical responsibility, there are two views. The first position of the responsible physician based violence is another point of view, the theory maintains that the contractual obligation of result and obligation of means, from this point of view is derived.

So civil liability is twofold:

1-contractual liability

2. The non-contractual liability (compulsory) deal of medical liability

Once that person is in violation of its contractual obligations and the implementation of a contractual obligation resulting impairment loss is another view. So as a result of violation of the obligations of the contract is due to occur. Who have not kept their promise and thereby harm the ally must be able to cope with the damage that has caused. Customer fulfillment of contractual obligations is as follows:

(A) the existence of a contract valid and binding between the injured party and shall read: For example, the engagement contract and if the contract is not binding due to damage to disturb the candidate is, he should not justify the refusal of the fault of marriage prove to have been responsible for the creation, coercive.

(B) (existence of causality) causation must be established between the non-performance of contract and damages causality relationship is a relationship so that it can be said that damage incurred as a result of non-performance of the contract is due. Due to the nature of the obligation to prove the contractual liability contractual liability is very important. In general, there are two types of commitment in contractual liability is a commitment by and commitment to results.

The commitment by, due to be committed in the way of achieving results and cautious efforts and all authority and its resources in order to fulfill this obligation to apply. Such as an attorney or trustee obligations that it is committed to his property career. In contrast, the obligation of result, debt ratios are committed to achieving results.

To prove the contractual liability, whereas a commitment to results, the proof of the results is sufficient to fulfill the responsibility, except that no outcome is a result of natural disasters. However, in cases where the creditor has claimed that the result does not correspond with the original commitment, the burden of proof of the failure to comply with him. The commitment by the mere proof of the results were not sufficient to fulfill the responsibility and the creditor must prove that the contract is not normal behavior and the offender's guilt.

The existence of a valid contract and proof of causality, a condition for the non-contractual liability arising out of any contract commitment, contract means committing an error. Whether this is due to the intentional or caused by error. In any case, the fundamental element of responsibility for breach of contract, each party have agreed on a contractual relationship. In fact, contractual liability, the obligation to compensate for damages resulting from non-performance of the contract. But non-contractual civil liability or obligation arising from crime and tort damages caused by the illegal incident that occurred outside the contract. Proof of liability contract, every contract is different. In some contracts, spend the necessary caution and care, it is enough to violate it, cause it is the responsibility of the contractor. In some of the contracts, to achieve the desired result, the issue of contract and failure to achieve the desired result would be responsible. For example, a person who gives the architect to design a building project, or to run it, with a structural engineer, the contract. His expectations are that this is not the architect or engineer projects in tasks related to compliance with precision and care enough to make, but the implementation of adequate and away from any defects and technical objection, and the client is The contract also aware of the expectations of the other party, is obliged to carry out the contract. Proof of contractual responsibility, is not easily possible.

#### **Coercive and medical liability**

When the damaging action caused damage to another person by the legislator ordered to compensate the damage and the person is not existing contractual relationship, for example, the driver for with passers-by deal and speeding injury He out. In Iranian law, the loss of civil liability and causality. Loss in case that person directly to waste another property that is, in this steward wasted, but in causality, the person

directly steward waste of money, but also provide preliminary waste. The price to pay, whether intentionally or no intentionally wasted and whether the same or profit and if it is incomplete or defective, the defect guarantee that property prices in causality, unlike what is stated in loss, a fault condition creates liability, ie the action causing the damage must be incompetent. Now, according to the first article of the Civil Liability Act, passed in 1339, is based on the civil liability based on fault, as a general rule prejudicing the other must be the result of intentional or careless. According to the article "Anyone without a license or intentionally or as a result of carelessness to life or health or property or freedom or dignity or business reputation or to any other rights established by law for persons causing the damage and loss moral or material harm others responsible for damages resulting from its operation >> So, with the above-mentioned law, only civil liability based on fault, but some responsibilities, such as responsibility for the loss of other financial as an exception to the well as remains.

It seems if physicians to treat patients without the consent of the patient or if the patient does not go to the doctor to his own satisfaction, he is responsible for enforcement, but if the physician and patient, there is a contract, he contracted responsibility is. Of course, distinguish the responsibility of the contractor responsible for enforcement, it is sometimes hard. The problem, of course, on the nature of the legal relationship of obligation, but the most important distinction between the responsibility, at this point can be summarized in the responsibility of the contractor, proof read unfaithful case, is sufficient. While the liability enforcement, normally to be proved responsible, committed the fault.

Rafe civil liability of physicians in Iran and Egypt

As already mentioned, the social bases of contractual liability (medical error, loss and the causal relationship between medical error and log entry loss) physician is responsible and is obliged to compensate injured patients. The doctor responsible for the exemption from liability The Contractor shall prove the involvement of external causes and causal relations. The contractual relationship between physician and patient external causes can be divided into three groups:

1. force majeure
2. fault injured
3. The third party action

#### **Factors shall pay a civil liability of physicians in Iran**

First paragraph: force majeure

In civil law, there was no clear definition of force majeure, but there are rules in Articles 227 and 229,

which would exempt the properties that are specified. Under Article 227 of the Civil Code: "Violation of the obligation to pay compensation when the convict fails to prove that the lack of commitment by external cause that can not be related to him," and in Article 229 of the same law states that "if committed by an event that disposal outside of his authority fails to fulfill his obligation to pay compensation deal will not be condemned." The definition of force majeure has been said: "force majeure is unavoidable accident is attributable to the person concerned. Whenever an event of such obligations, or harm to others is totally impossible, to stop the implementation of commitment and that person will be exempt from responsibility." Natural disasters and coercive force majeure, such as floods and earthquakes unique and not storm any "foreign cause of the Parties" and could not be exempted from liability according to His will. The Article 17 trade and professional investigation of violations of police regulations ... "emergency" without a definition of the action is, the decline continued commitment to patient care and therefore civil liability listed. Search by laws and legal writings, force majeure have several characteristics:

A) foreign accident

The purpose of the reason is that foreign debt will be outside, so that the incident can not be attributed to intentional or his fault, the event is not attributable to commit. Article 227 of the Civil Code stipulates the characteristics of force majeure, and stipulates: "The violation of the obligation to pay compensation when the accused can prove that the lack of commitment by external cause that can not be related to him."

B) inevitable accident

Alien (foreign) due to non-fulfillment of the obligation, if he fails to meet the obligations of the Parties that the cause and the effect of neutralizing the high throw when able to prevent its effect and does not act, fault, act and responsible for the damage is committed against. Under Article 229 of the Civil Code "if committed by an event that disposal outside his authority is unable to meet its obligation to pay compensation deal will not be condemned."

The actual condition of force majeure and if the criteria at the time of implementation of the commitment, the occurrence of such an accident, it is impossible to implement, the damage would not be attributable to the person responsible.

C) the unpredictability accident

In civil law, unlike the two conditions mentioned in Articles 227 and 229 have the condition did not mention, and that is why it is said "such a condition is not stipulated in the Civil Code and shall not be conditioned to the conditions specified in the law He

added, "But what is the foremost indicator of force majeure and must be

### Conclusion

The human body and she will respect the principles of innocence requires that contact with the human body, for his recovery from illness and need to be carried out after obtaining his consent. Medical acts of physical and psychological integrity of the patient and any violation of the principles and norms of scientific and technical human and financial damage caused to the patient. The protection of public health requires legislative intervention in the doctor-patient relationship and think the doctor during surgery measures necessary to provide medical care and does not cause damage to the patient. Since the formation of human civilization, lawmakers regulations to organize and monitor the quality of physicians and patients considered responsible for them in compensation. Prediction of criminal and civil responsibilities of physicians indicate the importance of considering legislation.

In Iran, the simplest medical liability in the absence of scientific and technical standards and government regulations, disciplinary responsibility is anticipated that the Medical Council laws and Veterinary Council and nursing organization and organization psychology and counseling intended. Police in the investigation of violations of trade regulations and occupational medicine and related professions due to the intensity and frequency of medical errors and the number of disciplinary punishments more predictable. In some cases, the criminal responsibility for certain crimes intended and in Article 616 of the Penal Code provides for the general rule is, if through carelessness and negligence murder and lack of skill or due to non-compliance with the public systems for be committed to prison terms of one to three years if convicted. This study seeks to find and examine the fundamental principles of civil liability against the patient's physician.

After the victory of the Islamic Revolution in compliance with legal provisions for civil liability and compensation of the patient's physician victim of medical error, are fixed regardless of the actual harm to the patients' blood money and report "is expected. Diyat of the Penal Code as a kind of punishment have been introduced and these doubts that blood money is just punishment and compensation related to the victim. But lawyers at reasonable interpretation, blood money is considered as having a dual nature, meaning that the death penalty as a means to compensate the victim at the same time.

With regard to the issues and discuss issues of civil liability for doctors to discuss the results of research:

1. The nature of the civil liability of physicians in the legal systems of dialogue is discussed and various theories have been proposed. Iran has protested this is not strictly legislative opinions issued by the court because originally issued within the framework of criminal responsibility and the opportunity to comment on the issue yet. The nature of doctor of civil responsibility in compensation patients faced with this dilemma is that the physician's obligations to patients, whether or not there is a contract between physician and patient treatment is the same doctor, however, is committed to scientific and technical standards and regulations Public and patient's privacy and is, the damage is already under Diyat as Lump-sum compensation is provided for identifying the nature of medical liability is difficult. However emphatic that the legislator in paragraph 2 of Article 59 of the Penal Code to ensure patient satisfaction and is expected to justify the exercise of the medical condition of innocence in contract management, contract theory and reinforces the responsibility of the physician. Despite commitments made by the parties on the law and the power to block medical liability is not recognized from the contract.

2 -Msvvlyt doctor, have by patient proved that if any fault is responsible even if you have taken a Witness and the fact that it is the responsibility of the doctor's fault.

3. Although the violation of physical integrity of persons is prohibited and crime, according to the interest of public health legislation in paragraph 2 of Article 59 of the Penal Code to allow the patient to contract "any legitimate medical and surgical practice," concluded the doctor . As the absence of patient consent to treatment even though he is illegal, except in cases of emergency physicians are required to accept the offer patients and treat him.

4. If the patient is mature and wise and brave and capable with free will and conscious, personally signed the contract and, if the medicine is temporarily unable to resolve (anesthesia) Bhkm law of the necessity of saving the lives of his doctor and without obtaining the consent of the patient, his treatment begin. Patients who are incapable of providing their legal representatives signed a medical contract.

about the transaction, such as taxes have clear and specific and feasible and is legitimate.

6. The medical contract in principle not inconsistent with public order and good morals of society and the transaction is legitimate.

Medical agreement properties and the properties that despite some similarities with some of the traditional contracts in civil law, such as contract law, contract, lease, employment agreement, contract, but none of the contracts under completely encompasses the attributes and characteristics of the contract are not

doctors and, inevitably, be it private contract and is subject to Article 10 of the Civil Code.

7. The main subject of the obligation of a physician's treatment. Finally, the doctor must be watchful and do their best to apply the recovery and health. However, due to the involvement of elements and other factors that are not dominated by a doctor, the doctor may not be able to achieve the desired result. So the question that commitment in patient care, commitment or obligation by the results?was mentioned. In exceptional cases where there is no element of risk and uncertainty and the final results provided scientific and technical skills of doctors and standards are available, the physician commitment, commitment to results.

8. One of the obligations of physicians who practice legitimacy if he is treated as "technical and scientific standards and regulations state". This commitment, including customary legal and professional obligations resulting from medical responsibility.

9. After the conclusion of the contract, Physician to perform any medical procedure must respect the patient's will Bymarvqty Nmayd.zrvrt will respect free and conscious adherence to deploy alternative treatment is acceptable Bymarqdrbh Vlazmh this, informing the patient of the disease and how to treat and the consequences of it. Thus, the principle of respect

Along considered inevitable, is that it is unpredictable. Will be adequate only predicted the inevitability of the accident, could not prevent it provides. The Supreme Court in the case of the truck carrying the load, thus breaking the bridge was overturned said: "The language of violence and negligence in civil law matters that have been predicted in the field of Amin."

Therefore, if an accident is unavoidable, but when they arise

Will the patient, the physician's commitment towards return: informing the patient and obtaining his consent after informing him.

10. In all the legal systems of the world, the doctor refused to reveal the secrets of patients as a general rule been accepted. Physician commitment to refrain from disclosing the secrets of an implied term as well as legal and conventional wisdom associated with medical contract. Breach of the said crime is known. Astsnasa in some cases

## References

### A) Persian sources

1. mullahs, Mahmoud, Code of Criminal Procedure, Volume 1, Second Edition, Tehran, SID, 1367.

2. ARDABILI, Muhammad Ali, general criminal law, Volume 1, First Edition, Tehran, emission levels, 1379.
3. Instead Idris Ahmed, Aldyh between Alqvbh and Altvyz, (Translation A. Grace), Tehran, published by the Ministry of Culture and Islamic Guidance, 1372.
4. Aryanpour Kashani, Abbas, full English to Persian culture, f3, Tehran, Amir Kabir, Bita.
5. Azarnoush, Azartash contemporary culture Arabic, Persian, Third Edition, Tehran, Ney Publications, 1382.
6. Ismaili, M., force majeure, printing, Tehran, Soroush Publications, 1381.
7. country, Mohammed, Darcy criminal law, Volume 1, first edition, the study and compilation of Humanities (left), 1375.
8. diamond, Najad Ali, conflict of laws, Second Edition, Tehran, Center University Press, 1370.
9. Imam Sayed Hassan, civil rights, vol. 1, Third Edition, Tehran, Islamiyah, 1347.
10. \_\_\_\_\_ civil rights, vol. 2, the eighteenth edition, published Islamiyah, 1384.
11. \_\_\_\_\_, civil rights, vol. 4, the seventh edition, published Islamiyah, 1354.
12. Amiri behalf, A., rights, obligations, Volume 1, First Edition, Tehran, Tehran University Press, 1347.  
The physician authorized to disclose the secrets of patients Mybash
16. Aslani, HR, and place the blame on compulsory civil liability and contractual Journal Razavi University of Islamic Sciences, Nos. 15 and 16.
17. Bushehr, J., judicial procedures, Faculty of Law and Political Science College of Tehran University, No. 1, 1349.
18. Parsapour, A., et al., Informed consent, and the conditions and methods of its execution, diabetes and lipid Iran Journal, Special Issue: Ethics and History of Medicine, 1384.
19. sparse, Andre, Tort Law, article "responsibility contracts" (translation Iraj Babaei), Pzhsh Journal of Law and Politics, No 1.
20. Jfrytbar, Hassan, of Austin, physicians, promises civil liability of physicians, Faculty of Law and Political Science at Tehran University, was 41.
21. Joneidi, Laya, the obligation to give information on contracts, the Faculty of Law and Political Science at Tehran University, was 56.
22. \_\_\_\_\_ fault of the injured party, the Faculty of Law and Political Science at Tehran University, was 46.
23. True, Venus, informed consent (in treatment and research), Office of the humanities in medicine and medical ethics (unpublished text).
24. Darabpvr, Sohrab, the certificate of innocence for damages resulting from treatment or surgery, a defense against liability or trust responsibility in specialized medical care, legal research of the Faculty of Law and Political Sciences, Shahid Beheshti University, No. 41.
25. Rouhani, Fuad, killing the English law, legal collection, No. 47.
26. Rhyk, S., loss of profit, quarterly legal views, Nos. 19 and 20.
27. Al-Sharif, MM, liability arising from loss of profit, Journal Bar Association of Isfahan, newsletter's first year, 1381.
28. hunting, Rvshnly, critical review of Clause 2, Article 515 of the Law of Civil Procedure, (non-profit), the Faculty of Law and Political Science at Tehran University, No. 52.

#### B) Articles

13. E. Village, AR, responsibility or lack of medical liability, Journal of Islamic Studies, No. 64.
14. Ashtari, M., credit conditions no responsibility or limiting liability, Journal of Comparative Law Institute of Tehran University, No. 1, 1355.
15. Asghari, F. et al., Said medical errors, such as diabetes and lipid Iran, Special Issue: Ethics and History of Medicine, 1384.

11/2/2015