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Criminal Liability in Medical Errors and Traffic Accidents: A Comparative Jurisprudential Study

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Abstract

This research aims to address the liability resulting from both medical errors and traffic accidents. It is organized into an introduction, three sections, and a conclusion. The introduction includes the significance of the research, objectives, and literature review. The first topic of this research is about traffic accidents. It includes an introduction and two sections. The introduction illustrates the considerations and drawbacks of finalizing the rulings on traffic accidents. The first section deals with "whoever keeps a regular maintenance for his car and then a sudden malfunction occurs resulting in the death of others". The second section discusses "If the driver was adhering to the law and someone suddenly jumped in front of his car and is hit by the car and died". The second topic is on medical errors, and it contains two sections: The concept of the medical error and the medical errors if they result in the death of the patient. Finally, the conclusion, findings are stated. Appendices of the research paper with sources and references are listed.

Keywords: *error - medical errors - traffic accidents – liability - guarantee.*

Introduction

Praise be to Allah, Lord of the Worlds, and the most pure prayers and peace be upon the Master of Messengers, and upon all his family and companions, as for what follows:

The issues of guarantee when a crime occurs are part of jurisprudence because they are linked directly to preserving life and money. Thus, I was keen in this research to address medical and traffic issues related, as such issues have an applied extension in some contemporary matters (1). Herein, I seek Allah's help with the hope to get His acceptance to be able to add something worthy. As far as the significance and purpose of the study concerned, the following sections shed more lights on the introductory part of this research.

Significance and objectives of the Research

Guarantee issues in medical and traffic are among the topics that scholars have paid attention to because of the provisions they contain that are similar to judicial precedents that can be measured and extracted. The importance of these issues lies in their connection to applied jurisprudence, which enhances an aspect of the faculty of jurisprudence, in addition to the cognitive aspect related to the collection of the same issues and rulings discussed. Therefore, these important aspects can be summarized as follows:

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1. It deals with realistic issues that are politicized in daily life, namely medical and traffic issues.

2. Contributing to set limits and controls for what is considered transgression that requires guarantee or does not.

3. Proving the richness of Islamic jurisprudence with deep, precise standards and universals that can be employed and invested in emerging calamities.

Literature Review

Despite the importance of this topic, the abundance of its applications, and its frequent mentioning in jurisprudential works, I have not found anyone who has singled it out from this angle concerned with financial guarantee with independent research that explores its depths, elaborates on its details, and explores its components. Rather, it appears incidentally within the folds of general jurisprudential theses or in a non-independent context. Moreover, it is hoped that this study will create a link between this hadith to the financial guarantee or waste of it.

Section One: Traffic Accidents, Introduction and Two Sections:

Introduction to Considerations and Drawbacks to Interpret Judgments on Traffic Accidents

In this era, there have been means of transportation that were not known to previous jurists - such as cars, for example - and by referring to the general rules of Sharia and its objectives and what the predecessors edited from the provisions of ancient means of transport and communication, the provisions related to traffic accidents can be edited.

Judgment in cases of these traffic accidents has considerations that affect the judgment. It varies, as well, according to their different views. For example, the situation of the driver, whether he was intentional, mistaken, or was at fault in the accident occurring, or because he is not good at driving. Jurists have differed regarding the criteria for intentionality, error, and quasi-intentionality, and what the rational person carries and what he does not bear. There is also jurists' different point of view in considering the action of each of the two sides against itself and the right of its owner, or regarding it as the right of its owner only.

The judgment is also affected by the extent of the transgression of each party regarding the incident, or the transgression of one of them without the other, and the consideration of the cause or directness of them, one of them, or another.

The judgment is also affected by jurists' different point of view in dividing manslaughter into error in intent and error in action, and the ruling on what happened as a result of error and murder by cause, according to those who advocate it. There are other considerations that influence the judgment on crimes related to ancient and modern means of transport and communication as well.

But before embarking on traffic accidents in which it is said that the dead person’s blood is wasted, we should note that there is a clear difference between what an animal causes damage and what a car causes damage:

The animal has a type of will, as it moves on its own and of its own volition sometimes. The animal's will may even be lost when the driver loses control over it in some circumstances. In that case, the jurists do not judge that the animal driver is liable as they did not consider liable for what the animal kicks with its leg while the rider is on it because he is unable to take precautions. As for the car, it is a machine in the driver's hand that he can move whenever he wants and how he wants, and stop it as well, and the car has no will.

It is true that the animal may be beyond the driver's will and control in some cases, but this does not mean that it has the slightest will that can influence the judgment. Based on this difference, we say: When the driver is required to guarantee, he guarantees what the car damages by its movement from the front, back, and sides, because all of the sides are the same for the driver, and the difference in direction has no effect here. Unlike the animal, which can not distinguish between its front and back.

In the following two sections, we present two statuses of these traffic accidents, because they are related to the topic of this research.

First Section: Whoever maintains his car and then a sudden malfunction occurs, resulting in the death of others.

The status of this issue is that the car was in good condition before driving, and the driver was taking good care of it, then a sudden malfunction occurred in one of its devices, such that the car went beyond the driver's ability to control, and it hit a person or overturned on someone because of that, and he died.

Judgment: This issue can be analyzed based on what we presented in the second section of the previous section, which is that if the animal is out of the rider's capacity, then he is not liable. This is due to the fact that what happened to the car after it left the driver's control due to an accident that occurred with one of its devices cannot be attributed to the driver. It is not said: The driver is directly responsible for the damage. The main thing that is said about it is that he caused the death because he was the one who drove the car in the first place, and since he is the cause, it is required to include infringement. If he takes good care of the car and drives it in a normal manner , adhering to traffic rules, he is not liable for non-trespassing.

I did not find among the later people who said that it was included. Rather, most contemporaries held that there is no liability on the driver, justifying that with the aforementioned that he is not directly attributed to the murder, and that including the perpetrator. He is mortgaged for his transgression, and the driver in this picture did not transgress or neglect.

This opinion can be supported and strengthened by taking into account what was reported by a number of scholars regarding the consensus that the owner of the animal or whoever has it in his possession is not responsible for its crime if it is unruly and uncontrolled and beyond his control. Therefore, he is not responsible for what it harms, and the car in this issue is the same, and Allah knows best.

Second Section: If the driver was adhering to the law and someone suddenly jumped in front of him and was hit by the car and died.

The status of this issue is that a person is driving a car on a public street, adhering to the speed limit, following the traffic lane according to the system, and being careful while driving according to the traffic rules, and a man suddenly jumps in front of him, and the car hits him despite the driver doing what he must of using the brakes, etc. and the injured person dies.

If we apply this status to what was aforementioned, which includes the rider, commander, or driver being liable for what the animal has stepped on , then the driver of the car will be liable for the blood of this dead person.

If we look at what the jurists have stated, namely that the direct person is a guarantor even if he does not transgress, and that it is not a condition for the direct person to be included in the liability for the presence of infringement , we also say that the driver is included.

However, the previous two principles can be discussed as follows:

- As for the analogy of including the driver here over the owner of the hand including what the animal took with its front, it is an analogy with a difference, because the owner of the hand on the animal is considered to be the one directly involved in the crime. Thus, the dead person in that case is not a trespasser because he is benefiting from the road prepared for him, unlike the victim here, "the one who jumped in front of the car," as he is considered to be the one who committed the crime. Directly to kill himself, the difference between the two images is in the percentage of directness.

- There is also a significant difference between an animal and a car, as the animal's driver can stop it and prevent it from stepping on what is in his hands, unlike what falls in front of a car rushing at its usual speed, which cannot be pushed back, and there is no transgression or negligence.

- As for what the jurists have stated, that the direct person is a guarantor even if he has not transgressed, and that it is not a condition for the direct person to be liable for the presence of infringement. Therefore, this is discussed in the same way as the previous discussion, since the direct link to the driver here is far-fetched, and therefore, it is most likely that the jumper was the one who started killing himself.

Therefore, I did not find in this issue any of the latecomers jurists who said that the driver is responsible for the one who suddenly jumps in front of him. In other words, if he adheres to the set speed, follows the lane, is careful in his driving, and does what he is required to do, such as using brakes and so on, he is liable for that action.

Explaining this as follows:

Direct action coercing a person into a situation where he has no choice is not considered real direct killing and destruction. Rather, the destruction is attributed to the coercer. This would be as if a man tied another and bound him, then threw him on another, and the person thrown at him died. In this case, there is no liability for the coerced victim because the killing is not directly attributed to him. Likewise, the failure to directly attribute the damage to the driver is applicable in our case. In such a situation, he has no choice or ability to protect the jumper from being hit by a car.

They also cited as evidence what the jurists have adopted in the jurisprudential rule which stipulates that "everything that cannot be avoided is not guaranteed". There is no doubt that the driver was unable to avoid the jumper in this situation that we have.

Second section: Medical Errors, which Contains Two Sections:

First Section: The concept of medical error

The term medical error is composed of two words: "error" and "medical". Below we present the meaning of each of the two words and out of them we present the overall combined meaning.

Linguistically, "error" means the opposite of what is correct, and it is also used to refer to what corresponds intentionality to. The origin of the word "error" indicates transgression and undertaking. The wrongdoer is the transgressor of what is right.

As for the Sharia, "mistake" is when a person performs an act without fully intending it when undertaking something other than that intended .

As for "medicine" linguistically, it refers to meanings including: magic, skill with something, skill in it, and treatment. What is meant in this study is the last two meanings.

In terminology: "Medicine" is a science by which the conditions of a person's body are known in terms of what is healthy and what is not, in order to preserve existing health and restore it in what is fleeting.

After explaining the previous detailed meaning of the two terms that make up the term "medical error," the general concept of this term will be mentioned. A medical error is

defined as a breach of a prior law not committed by a reasonable person who is found in the same circumstances as the perpetrator of the harm .

So, the definition of “medical error” is that the doctor deviates from normal and usual medical behavior and what the profession requires and breach of contractual obligation. This is the definition chosen because the cause of medical error is not limited to the breach, as it may also be committed by a prudent doctor. Based on the definitions of “medical error,” we found that this term is more specific and narrow than the concept of “including the doctor,” which the earlier jurists talked about in the chapter "guarantees" or the chapter "leasing", where this is limited to doctor committing a damage and does not include what the predecessors discuss about the patient’s death or damage to his organs due to the prudent doctor's treatment.

There is no dispute, according to the agreement of the imams, that the doctor is not a guarantor, since he is known to be skilled and has given the workmanship its due and his hand has not been harmed and he has not exceeded what he was authorized to do. Therefore, this doctor is not responsible for the damage to the organ or soul or the loss of the characteristic.

The agreement on this was also conveyed by Ibn al-Qayyim, where he said: (I said: There are five categories: One of them is a skilled doctor who gave the workmanship its due and his hand did not cause damage, so his action that is legally and medically authorized results in damage to an organ or soul or the loss of a characteristic, for this status, there is no guarantee, according to what agreed upon).

1- This is also indicated by verse 193 in Surah Al-Baqarah, where Allah says: "Fight against them ˹if they persecute you˺ until there is no more persecution, and ˹your˺ devotion will be to Allah ˹alone˺. If they stop ˹persecuting you˺, let there be no hostility except against the aggressors". A skilled doctor who has not committed any intentional medical error is neither an aggressor nor an oppressor, so there is no aggression against him (.

2- The evidence from the hadith is what was narrated by Abdullah bin Amr bin Al-Aas - may Allah be pleased with them both - that the Messenger of Allah - may God’s prayers and peace be upon him - said: (Whoever seeks medicine when he does not know of medicine, is liable). Its meaning is that if the doctor is knowledgeable in medicine and does not commit a medical error or fall short, then he is not liable.

Therefore, the focus of our discussion of the waste of medical error in the following section is not related to what the skilled doctor’s hand did not commit for two reasons:

First: This does not fall within the definition of the term “medical error” to which we referred in this section.

Second: It is agreed that the doctor should not be included in it, as previously mentioned.

However, if the doctor’s hand went wrong, or if he was not skilled, then this falls within the limits of the term “medical error,” which is what we will discuss in the following section.

Second section: medical errors resulting in patient's death.

Based on the above in the first section, “medical errors” that result in patient's death can be limited to three cases:

1. First case: The doctor is not clever, but rather he is an ignorant doctor.

2. Second case: The doctor is smart, but he made a mistake through transgression or negligence and destroyed a soul.

3. Third case: The doctor is skilled and gave the workmanship its due, but he made a mistake or misplaced his hand and destroyed a soul without transgression or negligence.

In the first and second cases - the doctor is liable, according to the agreement of the imams. Imam Al-Khattabi mentioned the consensus on that, saying:

I do not know of any disagreement regarding the healer, if he transgresses and damages the patient, he is liable. The one who uses knowledge or action that he does not know is a transgressor. Therefore, if his action causes damage, he is liable for paying the blood money and the retribution is waived from him, because he does not do so without the patient's permission.

They also demonstrated with the following Ayah (193), Surat Albaqarah:

1- "Fight against them ˹if they persecute you˺ until there is no more persecution, and ˹your˺ devotion will be to Allah ˹alone˺. If they stop ˹persecuting you˺, let there be no hostility except against the aggressors".

The significance:

Both the ignorant doctor and the transgressor or excessive doctor are unjust and transgressors, so they are required to be liable.

2- And when it was narrated by Abdullah bin Amr bin Al-Aas - may God be pleased with them both - that the Messenger of God - may God bless him and grant him peace - said: (Whoever seeks medicine when he does not know of medicine, is liable. This is the basis for including the ignorant seeker, and if the ignorant person is included, then it is more appropriate to include the transgressive or excessive doctor .Examples of these two cases include: a doctor cuts a fatal wound or dispenses a deadly medicine, either due to his lack of skill or his lack of diagnosis and negligence in doing so.

As for the third case - when the doctor is skilled and gives the workmanship its due, but he makes a mistake or his hand slips and he destroys a soul without transgression or negligence. The situation in this case is as follows: If the skilled doctor's hand had slipped and strayed, injuring or cutting an artery, this would have caused the patient's death, and there was no violation or negligence.

In such a case, scholars have differed on two opinions:

The first statement: This error is guaranteed and not wasted, and is borne by the rational doctor.This is what the majority of Hanafis, Shafi'is, and Hanbalis have agreed upon, and their argument can be listed as follows:

1. This is considered unlawful killing, just as if he committed a mistake, he is liable.

2. The crime of the doctor's hand is destruction, and destruction is not guaranteed by intentionality or error, so it is guaranteed as the destruction of money.

3. They inferred that if a doctor's mistake results in a death, it is the same as someone else's mistake, and there is no reason or evidence to differentiate between a doctor's crime and someone else's crime.

The second opinion states that "there is no guarantee in such a case, and this is the opinion of the Malikis , some Shafi'is , and some Hanbalis.

1- The evidence of these jurists in this regard is the saying of God Almighty: "Fight against them ˹if they persecute you˺ until there is no more persecution, and ˹your˺ devotion will be to Allah ˹alone˺. If they stop ˹persecuting you˺, let there be no hostility except against the aggressors" .The implication is that a doctor who is intelligent and not overly aggressive does not accept the description of injustice. It can be answered by saying that including someone who was killed by his hand does not constitute aggression, but rather it is like the killer paying blood money wrongly.

2- Among the evidence is the saying of the Messenger, may God bless him and grant him peace, "Whoever seeks medicine when he does not know of medicine, is

liable". The meaning of the hadith is that the wise person does not guarantee, and this includes what he did not commit a mistake.

It can be replied by not accepting this concept because the hadith focuses on including the ignorant without mentioning the prudent doctor, so if it included him. In other words, this concept includes neither excessive prudent nor intentional prudent doctor, and no one goes with this opinion.

The most likely opinion - God knows best - is the preponderance of the first opinion, which states that it includes the strength of what they inferred and its soundness over objection.

Conclusion

After editing the previous issues and addressing the words of the jurists about them,we can extract from this research a number of observations and results, the most prominent of which are the following:

- The need to pay attention to addressing realistic jurisprudential issues that are politicized in daily life, such as issues related to treatment and medical errors.
- The possibility of basing calamities in traffic affairs on what is stated in the legal texts regarding animal crimes and the damage that results from mounted, driven, or driven animals.
- The richness of the jurisprudential heritage in judicial applications, which necessitates the need to pay attention to the mechanism for treating it and how to consider it.
- The necessity of contributing to the creation of a jurist who can employ the legal text with its tools that will enable him to confront every new calamity.

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