THE LEGAL BASIS OF A PHYSICIAN'S CONTRACTUAL RESPONSIBILITY FOR OTHERS' ACTIONS

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ABSTRACT

The absence of an explicit provision in the legislation that establishes the general rule regarding contractual liability for the action of others does not prevent the recognition of this rule, so the debtor in a contractual obligation is required to implement his mistakes into effect (under the contract). Hence, the debtor should be asked about all the damages resulting from the mistakes of his assistants who carry out his obligation. It is incorrect to say that the absence of a contracting doctor's mistake leads to his lack of responsibility and that the creditor—the contracting patient or the injured person—can return in his claim of negligence on others—the medical assistants—who have caused harm by their mistake. The creditor contracts with the debtor, giving him his confidence in the implementation of the obligations arising from this contract, and undoubtedly this liability achieves effective protection for the creditor.

Keywords: Contractual Responsibility, Legislations, Obligations, Physician Liability, Hospitals.

INTRODUCTION

Some recent legislation, including German, Polish, Swiss, and several Arab legislations contain provisions related to contractual responsibility for others' actions, as it came too categorically and explicitly state the general principle of that responsibility (Wafa Ahmed Helmy, 1984). Almost unanimity exists on this contractual responsibility in jurisprudence (Al-Sanhouri; Dr. Hassan, 1989). However, the absence of an explicit provision in the legislation that establishes the general rule regarding contractual liability for the action of others does not prevent the recognition of this rule, so the debtor in a contractual obligation is required to implement his two mistakes into effect (under the contract) (Savatier, 1951).

It suffices for this responsibility to occur for a breach of the obligation arising from the contract attributed to any of these persons, and if no personal error was attributed to the debtor himself, and there is no consequence after that, then why is it that the person who commits error is used by the person who used it permanently. And whether he performs this work as a donation or is he getting paid for that is also not clears (Al-Sanhouri; Dr. Hassan, 1989).

For example, the attending physician resort to taking assistance of another fellow physician to complete the treatment that he started on his patient, even if that was without treating the physician's obligation to pay a fee to his colleague out of courtesy.

The practical importance of this responsibility is justified by several contemporary economic and financial necessities. With the tremendous development that has occurred in the field of industry and trade and the emergence of mega economic projects, it has become

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necessary for the debtor to turn to others to seek assistance from them to implement the contractual obligations that he cannot implement alone, so we see that different stages which a particular work goes through requires that, in light of contemporary economic structures, multiple groups of individuals contribute in one way or another to its completion; this results in the division of labor to the furthest limits (Al-Sanhouri; Dr. Hassan, 1989).

An example of this is the emergence of large medical facilities such as specialized hospitals that contain various medical departments and medical personnel qualified in all specialties, and therefore it becomes imperative for the doctor to seek the assistance of that medical personnel to accomplish the specialized task entrusted to him, represented in caring for the sick and curing the disease or condition. For the debtor, it should not affect the interests of the creditor who expects execution of the contractual responsibility in the agreed manner.

Hence, it is necessitated that the debtor - the attending physician or the hospital - be asked about all the damages resulting from the mistakes of the assistants he uses in carrying out his obligation. It is incorrect to say that the absence of a contracting doctor's mistake leads to his lack of responsibility and that the creditor - the contracting patient or the injured person - can return in his claim of negligence on others - the medical assistants - who have caused harm by their mistake (Renaud, 1923). The creditor contracts with the debtor, giving him his confidence in the implementation of the obligations arising from this contract, and undoubtedly this liability achieves effective protection for the creditor (Al-Sanhouri; Dr. Hassan, 1989).

Likewise, the contractual responsibility for others' actions avoids an unfair distinction between small projects. For example, the medical clinic - where it is easy to prove the personal error of the physician and the large projects (e.g., hospitals) where the owners are thus far from being proven. About liability.

It should be noted, however, that economic and practical necessities, despite their importance, are insufficient by themselves to create a general rule regarding contractual responsibility for the action of others. Rather, there must be support in the law to determine this rule (Abbas Hassan Al-Sarraf).

From here the problem of the legal basis for contractual responsibility for the action of others appears, and accordingly, we will discuss, in this chapter, the legal basis for this responsibility through three discussions as follows:

1. The legal basis for medical responsibility for the act of others in legislation.
2. The legal basis for medical responsibility for the act of wrongdoing in the judiciary.
3. The legal basis for medical responsibility for the act of others in jurisprudence.

The Legal Basis for Medical Responsibility for the Act of Others in the Legislation

The doctrinal responsibility for others' actions is considered a reality, established by various laws, whether those that included a general text from them or those that did not contain such a text, but rather their set of separate applications were published (Hassan, 2006).

This topic is dealt with through two requirements. In the first, we present the legislation that included a general explicit and direct provision for contractual responsibility for the actions of others.

In the second, we turn to the legislation that dealt with contractual responsibility for the indirect action of others.

Legislation that included an explicit text establishing the general principle in creedal responsibility for the action of others

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Some recent legislations have incorporated provisions on contractual responsibility for the actions of others, which categorically and explicitly establish the general principle of that responsibility, and among the legislations that took precedence in the report include the Polish law and the German general principle, Article 101: The German Law, Article 101 and the General Principles of the year 1901: 241, and Italian law, Article 1228, civil, and some Arab legislation also stipulated similar texts, including Sudanese Law No. 200 civilians, Moroccan law No. 233 civilians, and Tunisian law Article 245 civil.

German Civil Law

The German legal system has expressly recognized the doctrine of doctrinal responsibility for the actions of another individual. According to Article 278 of the German Civil Code of 1901, "*the debtor is responsible for the mistakes of his deputy legally, as well as for the mistakes of those who use him in the execution of what he is obligated to do in the manner to which he has committed himself*."

A clear distinction is made under German law between indirect liability and direct or indirect contractual liability. It is stated in Article (278) that the debtor is liable for the mistakes of his agents.

As for the liability of subordinate persons when the harmful act occurs outside the contractual framework, Art. (278) is not applied, but Art. (831 CE) of the same law is applied (Maamoun, 1984). Art. 831 CE has been outlined in the second chapter of this study.

Accordingly, if the doctor was asked alone about every mistake made by him, and likewise the nurse, then the doctor - based on the above - is asked about the action of something else in every case in which this mistake is made due to his fault.

Swiss law

Article101 of the Swiss Civil Code, 1911 explicitly stipulates the debtor's contractual liability for the mistakes of the persons employed by the debtor in carrying out his obligations arising from the contract. For his obligations, and in the text of this article: "*The person who legally authorizes the assistants - whether these assistants live with him or with his workers - the task of implementing the obligation or exercising a right derived from this obligation, is responsible towards the other party for the harm they cause during the work*".

We note that the old codification of obligations issued in 1881 referred for the first time to this principle, as it spoke of contractual responsibility for others' actions as a responsibility distinct from the negligence of responsibility for the actions of others. We also note that the general principle of contractual responsibility for the action of others did not appear in any legislation before the Swiss legislation was stipulated in the codification of obligations. Before that, only indications from some jurists for some cases appeared, and a draft appeared for the first time in 1871. Provision for this responsibility as a general principle was drafted by Huuzige and the parliament adopted this bill that led to Article 101 of the current civil law.

Moreover, the new law did not address the liability of a legal person for the actions of others, unlike Law 1881 (Article 115) of the old law of obligations, but this did not prevent the application of this responsibility to legal persons, as they are treated in the Swiss law (Maamoun, 1984). Accordingly, if a specialist doctor or a treating physician seeks the help of people from the profession to assist them in performing his main work in treating the patient, then the mistake committed by one of the assistants is considered as a mistake (Article 101), and then the doctor will apply them (Article 55) Swiss obligations, not to monitor or direct

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the specialist to the assistant. The same principle applies to the responsibility of the hospital as a legal person and the commitment of the latter to complete the care or treatment required for the patient, so the hospital is also considered a contractual responsibility for the actions of other assistants working for it, such as assistants from doctors and nursing staff (Saad, 2007).

Polish Law

Polish civil legislation explicitly states in Article No. 241 contractual liability for the actions of others, as it made the act or omission issued by the assistants tantamount to an act or omission issued by the debtor himself.

Arab legislation

Many Arab legislations explicitly stipulate the general principle of contractual responsibility for the actions of others. They include the following laws:

Sudanese law

Article-No. 200 of the Sudanese Civil Code stipulates that:

1. The debtor shall be responsible for the error committed by the persons he employs in carrying out his contractual obligation.
2. It is not permissible for the debtor to stipulate that he is not responsible for the fraud or the gross error that these persons make in carrying out his obligation.

The Law of the People's Democratic Republic of Yemen

The civil law in the People's Democratic Republic of Yemen in Article 667, explicitly states the following: “The debtor is also asked about the mistake of his legal representative, as well as about the mistake of the persons he uses in the implementation of his commitment even if they are not subordinate to him. Personally, whenever a mistake was made by them during the performance of their job, in connection with it, because of it, or offensive to it."

Legislation that dealt with contractual responsibility for the action of others indirectly

French Legislation

The French civil legislation did not include a text establishing the general principle of contractual responsibility for the action of others, and this resulted in confusion and confusion between contractual responsibility for the action of another and the negligent responsibility for the act of self-immorality (1384) from the French civil group that stipulates the debtor's liability for the harm caused by the servant or the subordinate, without considering the difference between the two types of contractual and default liability in this regard, so whether they have the harmful act done by one of the contracting assistants in breach of an existing contract or the damage as arose from the subordinate verb, in both cases Article (1384) applies.

As a result of this ambiguity, the jurisprudence called for the non-application of Article (1384) in the department of contractual relations, in addition to the default responsibility for the act of change that is subject to the text of Article (1384) of the French Civil Code, then there is a doctrinal responsibility for the act of nonconformity that should govern the act of immorality.

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It is highlighted that this Article (1384 M. F) - amended to Article (1242) of the new French Civil Code –is the subject of our research in Chapter two of this study. If the French legislation did not include a general text on contractual responsibility for the actions of others that defines its cases, then it included separate texts that determined that responsibility in certain cases, which are the texts of articles (1245, 1735, 1797, 1953, 1994, French 1782/99 commercial). Despite the previous texts, no text explicitly states this principle of contractual responsibility for the action of others. The prevailing trend of jurisprudence in France shows that a debtor is contractually responsible for those who use them in the implementation of his commitment.

We find in the French legislation, some scattered texts mentioned in the civil law and the commercial law, but the question that presents itself is: Is there besides these scattered texts a comprehensive general text that establishes the debtor's nodal responsibility for an act? (Hassan, 2006).

Notably, the framers of these previous laws referred to the rules of Roman law from which they quoted rulings, and on this basis, they fixed the responsibility of road or river transport operators for the actions of those who used them in the implementation of their obligations, as per Article (1953) of the French Civil Code amended by the law on 24thDec. 1973: "*The hoteliers or inns are responsible for the damage or theft that occurs to the customer's luggage, whether the theft or damage is from the actions of their employees or their followers, or if it is the result of the actions of those who frequent the hotel or the khan*." Article (1782 CE) also stipulated that for road or river transport operators, the trustees of road or river transport are subject to their responsibility for damage or damage to the transported baggage, similar to rules established for hoteliers. It is noticed that we are facing in these two texts a case of contractual responsibility for the actions of the followers (preposes) which do not raise any doubt or controversy about their nature (Hassan, 2006).

Article (1797 CE) contains another provision of the contractual responsibility of the contractor for the action of others, which stipulates the responsibility of the contractor for the actions of those who use them in contracting works, except that this text is only an application of what is stipulated in the liability of the responsibility of Article (1384). In contrast to this, Al-Sanhuri believed that we are here facing a contractual responsibility for the actions of others, and the reality is that we are here facing negligent responsibility in some cases and in front of a contractual responsibility in other cases, so the liability is negligent if the injured person is a foreign liability who has nothing to do with the contract. The act of change when the harm he caused resulted from failure to implement the obligations that the contracting contract places on the original contractor (Razzaq et al., 1952).

Article (1994 AD) evolved in a broader field and application, as its text requires an agent to be held accountable for the actions of those who replaced him in the implementation of agency work, and if this text was included in the provisions of the agency contract, then the agency contract includes various types of the legal works, there is an agency for sale, an agency for rent, etc. (Hassan, 2006).

It can be concluded from the foregoing that French law deals with this type of liability in many separate texts. However, an explicit provision establishes a general principle regarding the debtor's nodal responsibility for the action of others could not be found, since the French legislation does not contain Article 1384 in this matter. Old article 1242 of the new law with regard to negligent liability for the actions of others, and the fact that this text suffices it is an unacceptable solution, as practical necessities require that the debtor be held accountable for a contractual obligation for the actions of his subordinates and assistants and the actions of his subordinates and his assistants and who replaced him in the implementation

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of what he owes. Reviewing the scattered texts above, we find that they are (exceptional) texts.

Its application is limited to what is mentioned in it, and consequently, the nodal responsibility for the action of others in other cases is excluded (Badawi, 1943). In an opposite direction, one aspect of jurisprudence sees that contractual responsibility for the actions of others finds its basis in Article (1147 AD), which exonerates the debtor if there is a *force majeure* that prevented him from implementing the obligation. If the debtor seeks help from others in carrying out his commitment, then his action is like force majeure, but that is only if the other person is a foreigner from the debtor, and not a person chosen by the debtor, or appointed by the law to replace him.

A part of the French jurisprudence raised this question, in terms of whether a private hospital, as it owes a contractual obligation to treatment, could invoke the confrontation of patients without the help of doctors and assistants who did not implement this obligation for them to get an exemption from the obligation (Renaud, 1923).

Evidently, Article (1147 CE) is applied in general to the subject of this research, according to which the debtor is obligated to compensate the damage and loss resulting from the breach of his commitment or delay in his performance, and in all cases, he is asked if it is not proven that the failure to implement it is due to external circumstances.

Accordingly, the inclusion of the debtor physician, other doctors, and assistants from the medical staff in the implementation of their contractual obligation towards the patient is not considered a cause foreign to the doctor's will. According to this provision, the contracting physician is asked about all the persons who have been assisted by them in the implementation of his contractual commitment, represented by the treatment of the patient, the creditor, and this is what distinguishes this legal liability article 12. (The New French).

Egyptian legislation

Article 217/2 of the Egyptian civil legislation stipulates that: "The debtor may stipulate that he should not be responsible for the fraud or gross error that occurs by persons who employ them in carrying out his obligation." In his commentary on the provisions of this article, Al-Sanhouri stated that:

On the other hand, it is implicitly deduced from this text, because it is permissible to agree to exempt the debtor from liability for the error that occurs from the persons he employs in carrying out his commitment, meaning that the debtor is asked, according to the origin, about the mistake of these people" (Razzaq et al., 1952).

We note, by referring to the text of the previous article, that this text establishes the general principle of the debtor's liability for the error of those who replace him or who seek assistance from them in the implementation of his contractual obligation, otherwise it would not be said that exemption from liability is possible since it is not justified to be liable for the liability of the debtor to not be liable. Carry out his commitment unless he is responsible for that (Saad, 2007; Heshmat, 1954).

For establishing nodal responsibility of the treating physician for the action of others, two conditions must be met.

That the physician's assistants are those who are called in this regard to others, and that they are assigned by law or agreement. The assistants in their implementation of the treatment contract are considered representatives of the treating physician, so he is asked about his mistakes or the mistakes of his assistants in implementing this.

The assistants must be from doctors and nurses. They are entrusted with the implementation of this contract by the treating physician, and this is known as the medical

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work authorization, and if they are not assigned to do so, their interference in breaching the implementation of the contract may fulfill the doctor's personal responsibility (Saad, 2007).

Jordanian legislation

Article (798 A.D. Jordanian) states the following:

1. The contractor may assign the execution of all or part of the work to another contractor if no condition in the contract prevents it, or if the nature of the work does not require him to do it himself.
2. The responsibility of the contractor shall remain valid before the employer.

Text of Article (798 A.D. Jordanian) establishes that it came closer in its content in dealing with this responsibility, in the case of the contractor - the debtor - to someone else to replace him in the implementation of his contractual obligations that he undertook in confronting the contractor - the creditor - all or some of them. By extrapolating these articles from the Jordanian law, we found that they did not directly address a comprehensive and explicit text stipulating the liability of the debtor for the actions of others who use them to implement.

The Legal Basis for Medical Liability for the Wrongful Act in the Judiciary

The legal basis for medical liability for the actions of others in the French judiciary

The French Court of Cassation did not acknowledge the existence of a general rule regarding doctrinal responsibility for the act of others until the end of 1960. The French judiciary till 1960 was not settled on unified solutions in this regard: "*While some rulings tended to recognize the existence of this responsibility as a general principle*". We found that others denied their existence, contenting themselves with applying Article (1384/5) of the old French civil code before amending it to Article 1242. Regarding the liability of the follower for the unlawful actions of his subordinate, in the field of contractual liability and tort, without examining whether it was a dispute concerns the nodal or default responsibility of the follower for the actions of his subordinate. We noted that the old text of Article (1384/5 M. F), 1242 new, does not apply to contractual liability, as aforementioned. A part of jurisprudence believes that: "In this direction, it is blamed for its neglect of the relationship existing between the injured creditor and the debtor responsible for the actions of the persons who used them in carrying out his obligations arising from this relationship. Because of this, the text of Article (1384 / 5. MF) regarding the liability of the follower for unlawful actions of his subordinate, in a field that is completely outside the scope of its application, is unacceptable, even if the harm that befalls the creditor is caused by the action of one of the debtor's subordinates is unacceptable (Al-Sanhouri; Dr. Hassan, 1989). In the initial era of medical activity, the Civil Department of the Court of Cassation, in a judgment dated May 20, 1936, laid down an important principle in which it decided: "*There is a real contract between the patient and the doctor, and that this contract does not place the obligation on the doctor. By healing the patient - it is at least by exerting the necessary care for the patient, and breaching this contractual obligation, even if it was involuntary, entails the fulfillment of the responsibility of the physician, and that this responsibility is contractual*".

The meaning of this ruling is that if the patient suffers damage resulting from the action of the doctor entrusted with him to carry out his commitment before the patient, then this doctor is responsible according to the rules of contractual responsibility for the actions of

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others (Alaa El-Din Khamis). Likewise, the French Court of Cassation's judiciary confirmed that the debtor's contractual responsibility for the action of others is not limited only to the case if the other is a subordinate working under the debtor's supervision and direction, but extends to include without specifying any person who was used by the debtor in the execution of his contractual obligations: The modalism of others actions is not subject to the existence of a subordinate relationship between the debtor and the person to whom this debtor has been entrusted with the implementation of his obligations towards the creditor. It may be related to an assistant hired by the debtor, but who enjoys the independent exercise of his business (auxiliaire indépendant), i.e., he is not subject to the debtor's supervision and guidance, as is the case with the anesthesiologist who uses the surgeon to anesthetize the patient before surgery and resuscitate him subsequently (Abdel-Rahman, 1985). The matter may relate to a substitute replaced by the debtor in carrying out his commitment or part of it, as is the case for the alternative physician who is entrusted by the treating physician to carry out his obligations or part of them during the latter's absence or busyness. In this case, also, the debtor's liability for the substitute's action cannot be subject to the provisions of the principal's liability for the wrongful actions of his subordinate. Based on the aforementioned considerations, the French Court of Cassation intervened to set the record straight and issued an important judgment on October 18, 1960, and the facts of the dispute regarding this ruling are summarized in the following: He gave this patient a serum that resulted in paralysis. In response, the patient filed a lawsuit against the surgeon who had contracted with him requesting a ruling to compensate him for the damages he had suffered based on Article (1147 AD), which obliges the debtor to pay compensation to the debtor. For failure to comply with his commitment or delay in it, provided that this is not due to a foreign cause that cannot be attributed to him. When the dispute was presented to the Paris Court of Appeal, it ruled the surgeon's responsibility for the anesthesiologist's mistake but based its assessment of this responsibility on Article (5/1384) of the Civil Code on the liability of the person responsible for the negligent actions of his subordinate. The surgeon did not accept the previous ruling of the Court of Appeal, so he appealed it to the Court of Cassation, which appeared to it that the surgeon's claim that there is a contractual relationship between the anesthetist and the patient is unfounded. The latter (the patient) did not have any role in choosing the anesthesiologist, and that the anesthesiologist, while he works in his field of specialization independently, cannot be considered dependent on the surgeon.

Accordingly, the court upheld the judgment of the Paris Court of Appeal but modified the legal basis upon which this judgment was delivered, as it had excluded the application of the aforementioned Article (1384/5) and explicitly adopted the principle of contractual responsibility for the action of a non-doctor to establish the responsibility of the surgeon for anesthesia. The rationale for this ruling is a justification for that: "*The surgeon, who was the subject of the patient's trust, is obligated according to the contract that he binds to this person to provide him with conscious and attentive care according to the scientific principles, and he is thus asked about mistakes. Those committed by the doctor who entrusted him with anesthetizing the patient and who replaced him outside the scope of this patient's consent to implement an integral part of his obligations*".

After this ruling, the provisions that prove the adoption of this principle by the French Court of Cassation in many different areas of the forms of nodal responsibility for the action of others came to pass, and we mention the ruling that states: "*The doctor inquires of the patient about the mistakes made by the nurse he employs during surgery or during the patient's treatment by the physician assistant*".

The above analysis shows that the principle of contractual responsibility for others' actions in the French judiciary has become a recognized principle, whether the person who is

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used by the debtor in carrying out his obligations is subordinate to him or auxiliary or substitutes in the implementation of this.

The legal basis for medical liability for the actions of others in the Egyptian judiciary

The judgments of the Egyptian Court of Cassation referred to an application to the responsibility of the doctor for the actions of others is subject to the provisions of Article (174 AD) of the Civil Code, which in turn deals with the provisions of the responsibility of the follower for the actions of his subordinate (Saad, 2007).

It is highlighted that the current article does not explore the framework of contractual responsibility for the action of others in this section of the study, but we refer to it in the second chapter of it when discussing medical responsibility for the actions of others in the default framework.

We noted that what applies to the Egyptian judiciary in this regard applies to its counterpart in most Arab countries that have followed suit, including the Jordanian, the Syrian, the Kuwaiti, and others.

The exception to the foregoing is the responsibility of the doctor for a doctor like him, and many rulings have been ruled on this responsibility. Contractual, it does not require that the surgeon be asked about a mistake made by one of his physicians' assistants that affects the patient unless he had chosen this assistant to help him in the process or let him intervene in it while he can prevent him from this intervention.

The surgeon is responsible if he chooses the anesthesiologist and entrusts him with the process of anesthetizing the patient, and this implies that he included the anesthesiologist in carrying out his medical commitment to the patient by exerting the necessary care and diligence until the patient is completely cured (Alaa El-Din Khamis).

The Legal Basis for Medical Responsibility for Doing Others in the Jurisprudence

The issue of contractual responsibility for the actions of others raised a dispute in the French and Egyptian jurisprudence, as some deny the existence of this responsibility completely (Rodiere & Ya-till, 1952), while the majority of jurisprudence tends to acknowledge the existence of a general rule regarding the doctrinal responsibility for the action of others, even if the dispute arises regarding the legal basis for this responsibility (Al-Sanhouri; Dr. Hassan, 1989). While the majority of jurisprudence tends to acknowledge the existence of a general rule regarding the doctrinal responsibility for the action of others, even if the dispute arises regarding the legal basis for this responsibility (Al-Sanhouri, Abdel-Moneim, 1992). A part of jurisprudence justifies the importance of this responsibility in practical terms with contemporary economic necessities: "*With the tremendous development that has occurred in the field of industry and trade and the emergence of mega-economic projects, it has become necessary for the debtor to turn to third parties to seek the help of them in the implementation of his contractual obligations that he is no longer able to implement*". We even see that the different stages through which a specific work goes through requires the entry - in light of contemporary economic structures - of multiple groups of individuals who contribute in one way or another to its completion, which has led to reaching the division of specific work to the farthest limits (Maamoun, 1984).

For illustration, the presence of large hospitals and specialized medical sectors make it necessary for the treating physician to take the assistance of the assistants from various medical cadres such as an anesthesiologist, and the rest of the assistants from the nursing staff, to implement the conditions of the patients' contract between the patients and their

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patients. However, this expansion of the debtor treating physician should not affect the interests of the creditor (patient) who expects the treating physician to fulfill his obligation to treat him according to the agreed manner.

The issue of determining the legal basis for this responsibility is one of the most important issues in which the dispute raged between the jurists and their opinions differed (Wafa Ahmed Helmy, 1984). This study also showed the multiplicity of theories in this regard, as the single theory permeates more than one opinion, and each theory tries to prove its validity, and every direction seeks to prove its opinion (Yaqoub, 2016). In this regard, many jurisprudential theories are available. Some of them, especially those related to this topic of our study, through several demands are discussed below:

The first requirement: *the theory of assumed error*, the theory of liability in a second requirement, the theory of implicit guarantee in a third requirement, and finally, the theory of legal guarantee in a fourth requirement. Then we will turn to express our opinion on the most appropriate theory for the topic of this research.

Presumed error theory

This theory is based on the debtor's presumed error in choosing an assistant or the substitute, on the basis that he did not take into account the accuracy in choosing them, and therefore the debtor committed a mistake based on which he is asked about the creditor (Stefani, 1948). A part of jurisprudence tried to justify the debtor's perpetual liability when he did not implement the obligation as a result of the actions of the assistants, by saying that the subject of the debtor's commitment is not limited to their personal activity. Rather, it extends to the result of this activity.

Result: As long as the result is not achieved, this means that the debtor does not commit to full filing his obligation. This theory was based on an aspect of German jurisprudence. Based on the fact that the debtor did not promise the creditor to present his personal activity, but rather promised him a specific result, and said that the debtor is absolutely responsible for the assistants, as long as the final result agreed upon by the contracting parties is not achieved.

Different jurists criticized the above theory. Some of them believed that the assumption of error must be based on a legal article that approves it because it is not permissible for the debtor to get rid of liability if no error is proven on his part in choosing his substitute or assistant in the implementation of his contractual obligation. Likewise, as the object of the debtor's obligation is not always focused on achieving a result, it may be the object of his obligation to exert care, so how is his responsibility in this case (Maamoun, 1984). In our case, the doctor does not undertake in the contract to cure the patient, rather he undertakes to exert his care. For the patient to be cured, he is obligated to provide care without achieving any tangible result. If he seeks help in his work with an assistant and then the assistant commits a mistake in his work, he is contractually responsible for the actions of his assistant, and the same rule applies to the surgeon who may help the anesthesiologist - if he causes the latter - not in the death of the patient. The contractual responsibility for the action of others is also based on the idea of the error that occurs, accordingly, this responsibility presupposes the occurrence of a mistake from this change, because if the doctor's personal responsibility for the mistake is based on the error, then the fault must also be based on other assistants and substitutes, because it is not sustainable based on responsibility to change simply by changing the person who performs it, and accordingly, if a mistake is a necessary condition for contractual responsibility, then this necessity imposes

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itself whether the doctor undertakes the implementation of the obligation entrusted to him himself or uses someone else to implement the same (Alaa El-Din Khamis).

Assumption theory

This theory, in turn, is considered to be of German origin (Hassan, 2006). The proponents of this theory established the debtor's responsibility based on the benefit he derives for himself from the assistant's work, which in turn requires the debtor to bear the consequences of the mistakes that the helper commits in carrying out his contractual commitment without being based on error. This is what a large part of French jurisprudence has argued, by establishing that debtor who benefits from the activity of his assistant must bear the consequences of this activity, based on the principle of fines for the sheep, so it is not fair in a thing for the owner of the thing to reap its fruit, and to monopolize the benefit and benefit it generates, and leave to others. People should take risks, so it is more important to bear those risks. This theory has been criticized by several jurists, as the foundations on which it is based are insufficient to justify the general principle of contractual responsibility for the action of others (Maamoun, 1984). A treating physician may be forced to assign other assistants and substitutes to provide treatment to the patient, thereby benefiting from work in order to fulfill the obligation of that responsibility. Resultantly, the damages resulting from the practice of medical activity, whether the perpetrator of this act was at fault or not, must be compensated in all cases (Saad, 2007).

Implicit collateral theory

This theory is also considered to be German in origin, though it was warmly welcomed by the French jurists (Hassan, 2006). This theory is based on the premise that the debtor, who uses persons in carrying out his contractual obligation, is obligated by implication to compensate the harm caused by others' actions (Abdel Salam, 1995). Some proponents of this theory state that first of all, no one should assume that we think that it is necessary to search in each case separately to search for the true intention of the guarantee that is to be imposed on the debtor if the debtor has assumed this implicit guarantee.

Can the existence of this guarantee in every contract be considered, in general, absolute? Is it possible to assume that the debtor has agreed to bear this guarantee when contracting in which it is possible to resort to others to implement it?
The answer is in the affirmative due to the following reasons:

1. It is not easy in our modern economy to agree to a contract in which the debtor is not implicitly guarantor of the actions of others, and without a doubt, this guarantee appears to contradict the debtor's interests. That the debtor is absolved of responsibility, in the cases in which failure to implement it is due to the action of one of his followers?
2. It is not reasonable that the creditor wanted to bear the burden of proving the debtor's error in selection and control, because the proof is extremely difficult.
3. In addition to that, economic considerations require that the debtor be responsible for the actions of his subordinates, and if these economic considerations cannot leave legal bases, they can nonetheless be a basis for creating a legal basis (Wafa Ahmed Helmy, 1984).
4. This theory has been criticized by the jurists, as it is based on pure imagination and assumes the nonexistence of a will (Maamoun, 1984).

How is it true that the debtor who uses the assistant's desires in matters contrary to his interest, so that he bears responsibility for the work of the assistants for the benefit of the other contractor - the creditor? Besides, the debtor is responsible for the actions of those

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assistants whom he assigned to implement his commitment, whether he wanted this guarantee or not (Hassan, 2006). In respect of the medical activity, a trend in jurisprudence has gone to say that this theory (the implicit guarantee) is the closest correct theory to achieving a balance between the parties to the contractual relationship, as this theory leads to protecting the patient because it is the weakest party in the medical relationship as a commitment to safety and consideration of the treatment of the patient (Alaa El-Din Khamis).

Legal guarantee theory

There is no text establishing this guarantee as a general principle (Abbas Hassan Al-Sarraf). However, some believe that the principle on which this theory is based in the law itself, and this principle imposes the guarantee, the guarantee of the actions of others, and places them on the debtor. As the legislation placed such a guarantee for considerations of justice and the achievement of the public interest, justice considerations dictate that most of the debtors' helpers - assistants and substitutes - are usually insolvent who are unable to meet the compensation amounts that are adjudicated on them, as only the creditor and debtor remain in the legal field, and of course, they can only bear responsibility for the actions of the debtor himself must bear the faults of his subordinates. Also, the element of choice and control in proving the debtor's error is difficult to prove, especially in large projects (Abbas Hassan Al-Sarraf). This theory, like its predecessors, was not without criticism, for this theory is not distinguished - as its supporters claim - by general and comprehensiveness, as it is suitable as a basis for all cases of ideological responsibility for the action of others.

And if the idea of a legal guarantee appears to be a clear basis for liability for the act of change in some cases, then that authority fades in other cases to allow for other legal ideas to be the basis for those cases, in order to lay an acceptable and sound basis for contractual liability for a wrong act, relying on a single legal idea to determine that basis (Wafa Ahmed Helmy, 1984).

The idea of legal insurance in medical activity has found popularity in the field of medical liability and is based on the concept that medical activity entails imprecise application and art full of fears about its consequences. This is because the practitioner of the medical activity cannot cure and recover completely, and therefore, the idea of risk or responsibility must be researched. Without error, when we say "*medical responsibility*," we mean the effects that fall on the one who made the mistake, meaning in another sense (Monzein, 1973). Compensation or the legal way by which a lawsuit for compensation can be instituted for the injured.

Based on that, in the medical field, there are many technical dangers of some activities, especially those related to harming the human body and health, and the development of these dangers entrenches in our souls with regard to its effect: the one who caused any danger to others must compensate in case of harm to others. On this basis, liability resulting from the error is an idea that is not completely objective, and for this, the idea of legal insurance for the medical activity must be implemented, and this idea achieves several advantages, including that the safety of doctors and patients is guaranteed (Saad, 2007).

CONCLUSION

By reviewing the jurisprudential theories on which the doctrinal responsibility for the action of others is based, we see that the legal guarantee theory is the most appropriate theory for medical activity. This aims to achieve a balance between the parties to the contractual

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relationship. This is evident because the nodal medical relationship is based on a contract between two parties: the contracting physician and the patient.

The patient is the weakest party in this contractual relationship and because the doctor's commitment is based on ensuring the patient's safety in the first place. In order to achieve balance and justice between the patient's interest and the doctors 'interest, the nodal responsibility of the physician's doctors over their assistants and non-doctors is based on the premise of the doctor being the chief of his assistants. Whoever accepts to be the head of his assistants from among the various medical cadres is obligated to cover the mistakes of his subordinates, and he is not permitted to take the actions of those people whom he brought with him in the implementation of his commitment as a cover in order to be stripped of the implementation of his commitment to the sick, by saying: Their mistake was the reason for failure to implement or the defective implementation of the obligation imposed on him, as it is incorrect to say that they are a foreign cause that he had no control over, and it breaks causation between error and damage, because ,i.e., the debtor, is the one who resorted to them and included them in the implementation of his obligation towards the creditor, and thus they are part of the contractual project between him and the sick Then, they are obligated to fulfill the obligation that falls on the debtor.

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