Administrative Liability for Surgical Errors: A Comparative Study Between Jordanian, Egyptian and French Laws

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Abstract

The administrative liability for surgical errors is based mainly on the basis of error. Given that the administration practices its activities through a group of employees (doctors in the field of study in question), the Jordanian, Egyptian and French judiciary is accustomed to distinguishing within the framework of the rules of administrative liability of personal fault and service fault.This study dealt with "the administrative liability for surgical errors: A comparative study between Jordanian, Egyptian and French law". The study lies in three topics. The first dealt with the "concept of medical operations" and their controls in Jordan, Egypt and France, in terms of the definition of surgical operations, and the rulings on the stages of medical examination and anesthesia, as well as the “concept of medical error and its types” in the Jordanian, Egyptian and French jurisprudence and judiciary.The second topic of the study tackled the personal fault and service fault within the scope of administrative liability for surgical errors in Jordan, Egypt and France. This topic included "the position of the French jurisprudence and judiciary regarding differentiation between personal fault and service fault", as well as "the position of the Jordanian and Egyptian jurisprudence and judiciary of differentiating personal fault and service fault."Finally, in the third topic we presented the provisions of the administrative liability for the surgical errors in Jordan, Egypt and France. It explains "the element of error in the administrative liability", "the element of damage in the administrative liability for the surgical errors" and "the causal relationship between the error and the damage in administrative liability for the surgical errors". The study concluded with a number of results and recommendations. The most prominent of these results is that medical errors are many and developed as the medical science progresses, although the majority of errors result from diagnosis, treatment or performing operations.Among the most prominent recommendations are: Legislative rules relating to medical liability are set and taught in its civil, criminal and administrative aspects in medical colleges as a compulsory course, so that doctors realize the legal aspect of liability for their profession. This limits the manifestations of negligence in this aspect.

Keywords: Administrative Responsibility, Erroneous Medical Operations, Egyptian law, Jordanian law, French law.

1. Introduction

The life of man and the safety of his body are one of the most important and sacred issues that have been dealt with by religious and man-made laws throughout the different ages in human history. As a result, any physical abuse of the life of man or injury to his body has been forbidden and criminalized. Moreover, God made it easy for humans and guided him to medicine, so medicine appeared since ancient times.

The medical profession has gone through different stages, like the development of human thought. In the first place it was based on superstitions mixed with imagination, where the cause of disease in their view was that the devil resides in their bodies and therefore the priest was the one who had the right to practice medicine. The matter developed until Heracratus, who lived in the fourth century BC, and refuted this idea. Then the ancient Egyptians astonished the world with their amazing way of embalming their dead, as they had a great degree of knowledge of surgery and the origins of medicine.

The medical profession is a humane and ethical profession that is based mainly on science. It requires those who practice it to be familiar with it, trained sufficiently and respect the human personality in all circumstances. To confirm this, every medical work bears witness to the absolute interest of the patient, in

our belief that health care for the patient is one of his basic rights that the society must work to fulfill towards all its members.

As a result of this progress and expansion in all fields, the liability that the doctor bears increased, and this coincided with the increase in awareness among individuals. Thus, there is an increase in the number of lawsuits filed against the doctors to claim compensation for the damages they incurred as a result of their m errors while practicing the profession.

The administrative liability arising from the surgical errors is considered a form of medical liability, but it is of a special nature, because the medical profession is directly related to human life and the safety of his body. It is also related to the extent of progress that everyone seeks for the convenience of all human beings. This is what left the judiciary in a state of confusion to balance two things:

First: To protect patients away from doctors' errors and to ensure the provision of the necessary medical care.
Second: To provide the necessary protection for doctors so that they can perform the operations in an atmosphere of confidence and reassurance.

2. Research importance

The topic of study has been chosen for two reasons:
First: The increase in the number of errors committed by doctors in the diagnosis or treatment and a fortiori during medical operations, and the resulting serious consequences that may reach the point of death. The lack or scarcity of accountability for errors claimed by patients is due to several reasons. Large numbers of individuals are not convinced to hold doctors accountable, while others attribute this to the small amount of money judged when compensating the damage. The researcher believes that the reason behind this is the absence of the general legal culture of many individuals due to their socio-economic and cultural conditions.

Second: The study of the administrative medical liability has a double benefit for both doctors and patients. It enables physicians to bet acquainted with the legal issues related to their professional work, and makes patients capable to learn about their rights and how to claim them. In both cases, the clarification of medical administrative liability for their professional errors will be an incentive for physicians to exert effort and care, and this will benefit patients

3. Research objectives

A- Faced with the increase in the number of errors committed by doctors and the serious consequences of that, it was necessary to address the provisions of medical administrative liability, the availability of its elements and the extent to which there is a causal relationship between the medical error and the damage that befallen the patient. This will compensate the patient and the injured people as a result of this error, taking into account the circumstances surrounding each event separately.
B - The medical treatment contract is a contract of a special nature, and therefore the legislation that clarifies this must be issued.
C- Explaining the deficiencies in the legislation so that we can put it before the legislator in order to intervene with the appropriate amendment.

4. Research problem

The main problem of the study is to determine the provisions of the administrative liability arising from the surgical errors, and the sub-questions arising from that, namely:
A – What is the concept of the medical operations?
B – What are the provisions for the examination and anesthesia phases?
C – The concept of medical work and medical error?
D – What is the difference between the personal fault and service fault within the scope of the administrative liability for the surgical errors?
E – What are the elements of the administrative liability for the surgical errors?

5. Research Methodology

The study is nothing but a modest attempt to research the extent of the administrative liability for surgical errors, by following an analytical approach to opinions, rulings and rules that concern this liability. It also tries to develop a consistent legal theory so that we can reach a solution to the issues raised by that r liability. Judicial applications will be used because of its a significant impact on shedding a clear light on this liability, and the use of the logical analytical method requires bringing into view its meaning and truth through the legal and judicial application.

6. Research plan

The research plan will be divided into three sections as follow:

First topic: The concept of the medical operations and its regulations
Second topic: The personal fault and service fault within the scope of the administrative liability for the surgical errors in Jordan, Egypt and France
Third topic: The provisions of the administrative liability for surgical errors in Jordan, Egypt and France.

First topic
The concept of the medical operations and its regulations
The medical profession is considered a mission that aims to preserve the human's physical and psychological health, alleviate his pain and raise his general health level. Therefore, medicine is considered a profession of honor and humanity. According to the medical ethics law, the doctor's message revolves around the human body, which has its inviolability and the human life, which has its immunity. The most important duty of the doctor is to achieve his mission in preserving the human's physical and psychological health, both preventively and curatively, alleviating his pain and raising the level of general health[(1)].
In light of the foregoing, this topic requires consider to the following:
First theme: The element of medical operations
Second theme: The element of medical error and its types

First theme
The element of medical surgeries
Surgery is one of the medical specialties that relies on the manual procedures and technical medicines applied to patients for the purpose of treating or verifying the presence of tissue damage that may occur as a result of some diseases or injury[(2)], aiming to improve the functional performance or appearance of the organ. In some cases, the purpose may be religious. The surgical intervention can be called a surgical procedure, operation or simply surgery. Therefore, surgery is a medical technique based on the medical intervention to treat infected tissues. As a general rule, any procedure in which previous wounds or injuries occur is considered a surgical procedure[(3)].

Based on the above, we will deal with this requirement by studying in two sections as follows:
Section one: Definition of surgical procedures
Section two: Stages of medical examination and anesthesia

Section one
Definition of surgical procedures
The doctor does not resort to surgical intervention except in the cases where other treatment methods fail, except for some cases that are primarily treated surgically, as in the case of appendicitis, for example[(4)(5)].

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(1) Sherif Raafat Muhammad Hammad, Rulings and Regulations for Surgical Operations: A Comparative Study, Dar Al-Nahda Al-Arabiya, 2018, p. 9.
(2) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, Dar Al-Nahda Al-Arabiya, 2019, p. 37.
(3) Ahmed Mohamed Sobhi, Administrative Liability for Damage to Public Medical Facilities: A Comparative Study, Modern University House, 2005, p. 94.
(4) See: Jaber Mahjoub Ali, Civil Liability in Surgical Practice, PhD Thesis, Dijon University, France, 1986, pg. 42, Mahmoud Abdel Muti Khayal, Civil and Administrative Liability for Medical Work, Dar Al-Iman Press, Cairo, 2016 , p. 41.
(5) See: Hamad Fakhri Azzam, General Shari'a Controls for Medical Works, Mutah Journal for Research and Studies, Mutah University, Jordan, Vol. 20, Issue 9, p. 10.

One side[1] of jurisprudence defines the surgical operations idiomatically as “a profession which considers the conditions of the outward appearance of the human body in terms of dispersed and specific locations and what is required of treatment, with the aim to return the organ to its natural state”.

However, this definition deals with the apparent operations of the human body only, although most of the surgical operations are located inside the human body. Thus, this definition is marked with shortcomings[2]. However, the medical encyclopedia[3]defined the surgical operations as “a surgical procedure intended to repair a physical disability, atresia, snagging or defect with the intention of emptying pus or other pathological fluid, or to remove a diseased or abnormal organ”.

This definition is criticized because it restricted surgical operations to specific body sites and gave a list of these operations, which is not exhaustive[4] .

Another opinion[5]saw the surgical operations as the "treatment of the patient using surgical instruments". This definition is the most correct from the researcher’s point of view because it clarified the means used in the surgical operations, and he did not limit the surgical operations to their place or confine them to the visible places only. Moreover, it clarified the benefit of using surgical instruments, which is to perform surgical operations with the intention of treating the patient.

Hence, it is clear from the above that surgical operations are one of the medical specialties that depend on the manual procedures and technical tools applied to patients for the purpose of treating or verifying the existence of a state of damage that may occur as a result of some diseases or an injury. The surgical procedure aims to improve the functionality or the outward appearance of the organ[6]. In some cases the purpose may be religious, and the surgical intervention may be called a surgical procedure. These surgeries may be performed on humans or animals[7], and the person performing the surgery is called a surgeon and may also be described as a medical practitioner.

Section two

Stages of medical examination and anesthesia

One of the important things that the doctor must know is the methods of the medical examination so that he can help in examining the patient, and take his role in applying the best medical process correctly[8] .

There is no doubt that the medical examination has an important purpose, which is to obtain accurate knowledge of a set of signs and phenomena that help the surgeon diagnose the disease . If the surgeon wants to know the type of the disease and determine its size and severity, then a medical examination is necessary in order to be guided by the detection of these signs and evidence[9].

Hence, the surgeon’s undertaking of medical-surgical treatment without conducting a medical examination leads to a great evil that may lead to damage to the patient’s body and may lead to his death. Thwarting this

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(1) Muhammad Muhammad al-Shanqiti, Rulings on Medical Surgery and its Implications in Islamic Jurisprudence, Al-Siddiq Library, Taif, Saudi Arabia, pp. 22-26.

(2) Ihab Yousry Anwar, The Doctor’s Civil and Criminal Liability, PhD Thesis, Faculty of Law, Cairo University, 1994, p. 51.

(3) Modern Medical Encyclopedia, by a group of Egyptian doctors, article (Surgical Operation), part 5, pg. 982.

(4) Ahmed Mohamed Sobhi, Administrative Liability for Damage to Public Medical Facilities: A Comparative Study, *Op. Cit.*, p. 95.

(5) Raafat Muhammad Hammad, Rulings on Surgical Operations: A Comparative Study between Islamic Jurisprudence and Positive Law, Dar Al-Nahda Al-Arabiya, 1994 edition, pp. 10 and 11.

(6) Ahmed Abdel Karim Al-Sarayrah, Insurance from Civil Liability resulting from Medical Errors: A Comparative Study, Dar Wael Amman, Jordan, 2012, p. 106, and Jalal Muhammad Ibrahim, Legal Liability of Medical Facilities: A Comparative Study, without Publisher, 2007, p. 73.

(7) Badr Jassim Muhammad al-Yaqoub, Injury to the Human Body for Treatment, Ph.D. Thesis, Faculty of Law, Ain Shams University, 2002, p. 25, Sherif Raafat Muhammad Hammad, Rules and Regulations of Surgical Operations: A Comparative Study, *Op. Cit.*, p. 14.

(8) Rabie El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, *Op. Cit.*, p. 39.

(9) Jaber Mahjoub Ali, Civil Liability in Surgical Practice, *Op. Cit.*, p. 48, Mahmoud Abdel Muti Khayal, Civil and administrative liability for medical work, *Op. Cit.*, p. 47.

corruption is the second objective of the purposes of the Islamic law, which is self-preservation, which is required of the legislator to achieve[1].

First: The meaning of the medical examination: Before discussing the meaning of the medical examination, the meaning of medical work in general must be clarified first, then the definition of the medical examination, as follows:

1. Definition of medical work

I will discuss here the concept of medical work in the light of the views of legal jurisprudence, then the position of the French and Egyptian judiciary on the definition of medical work.

A - The concept of medical work in the light of the Jordanian, Egyptian and French legal opinions: Some jurisprudents defined medical work as "work that agrees in its quality and conduct with the established rules in the science of medicine and tends to cure the patient[2] ".

While other jurisprudents expanded the concept of the medical work to include all its stages: examination, diagnosis and treatment. To them, it is "every activity that relates to the human body, and is consistent in its nature and quality with the practical principles and accepted rules in theory and practice in the medical science. Moreover, it is carried out by the legally authorized person, with the intent of examining the patient, diagnosing and treating the patient in order to achieve recovery, alleviate or reduce the pain of the disease, or prevent disease. Another aim is to preserve the health of individuals or achieve a social interest, provided that obtaining the consent of the patient[3].

Therefore, the attending physician should, before performing the surgical operations, do the necessary examination required by the patient's condition in order to avoid the side effects that may occur due to the surgical intervention. Thus, he must do the comprehensive examination that the patient's condition calls for and the nature of the upcoming surgery requires[4]. The examination is not limited to the parts or organ that will be the subject of the operation, but to the general condition of the patient and the extent of the side effects that may result from the surgical intervention. This is of course within the limits of what is permitted by the surgeon's specialization and his medical level, and what is expected of a vigilant physician at the same level. The surgeon must seek the assistance of those who are more experienced and more specialized in other medical fields, in the event that he is unable to be certain of the patient's condition[5].

B- The position of the Jordanian, French and Egyptian legislators on the definition of the medical work: The French legislator developed the concept of the medical work through what was stated in the French Law No. 35 of 1892, which clarified the meaning of the medical work and limited it to the treatment stage only. However, when the Public Health Law was issued, in December 24, 1945, and its amendments in 1953. It stipulated in the Article 372 that medical work includes the two stages of examination and diagnosis[6].

As for the Jordanian and Egyptian legislators[7], the expanded the concept of the medical work to include the two stages of diagnosis and treatment, and the French legislator added the aforementioned public health law[1].

([1]) Muhammad Muhammad al-Shanqiti, Rulings on Medical Surgery and its Implications in Islamic Jurisprudence, *Op. Cit.*, p. 29.

([2]) Osama Abdullah Qaid, The Criminal Liability of Physicians: A Comparative Study, Dar Al-Nahda Al-Arabiya, 2010, p. 55.

([3]) Wajih Muhammad Al-Khayal, The Criminal Liability of the Doctor in the Saudi System, Dar Al-Manara, Jeddah, 2009, p. 11.

([4]) Faisal Ayed Khalaf Al Shura, Medical Error in the Jordanian Civil Law, Master's Thesis, Faculty of Law, Middle East University, 2015, p. 14, and Sherif Raafat Muhammad Hammad, Rulings and Regulations for Surgical Operations: A Comparative Study, *Op. Cit.*, p. 16.

([5]) See: René SAVATIER et J.M. AUBY, Traité de droit médical, Paris, 1959, p.295.

Also see: Raafat Muhammad Hammad, Rulings on Surgical Operations: A Comparative Study between Islamic Jurisprudence and Positive Law, *Op. Cit.*, p. 27.

([6]) See: Laurent DELPART, Guide pratique du droit médical et du droit de la sécurité sociale, Chiron, Paris, 2004, p.47

([7]) Badr Jassim Muhammad Al-Yaqoub, Harassment of the Human Body for Treatment, *Op. Cit.*, pg. 39, Hamad Fakhri Azzam, General Shari'a Guidelines for Medical Works, *Op. Cit.*, p. 12.

This was implicitly extracted from the context of the special chapter on the conditions for practicing medical work. The first article of Law No. 415 of 1954[2] regarding the practice of the medical profession stipulates that “No one may give medical advice, do home medical examination, perform a surgical operation, attend delivery, prescribe medicines, treat a patient, take a sample from the samples determined by a decision of the Minister of Public Health from the body of human patients for practical medical diagnosis by any means, or prescribe eyeglasses. Generally, practicing the profession of medicine in any capacity whatsoever is prohibited unless the person is an Egyptian, or from a country whose laws allow Egyptians to practice the medical profession in it, and his name was registered in the Register of Human Physicians, without prejudice to the special provisions regulating the profession of obstetrics".

It is understood from the previous text that the concept of the medical work includes diagnosis, normal and surgical treatment, medication needed for treatment, analyzes and other medical work.

C- The position of the Jordanian, French and Egyptian judiciary on the definition of medical work:

By reviewing the rulings of the French judiciary, we find that medical work includes medical analyzes and bacteriological examinations, as the French Court of Cassation decided to punish those who practice the medical profession illegally if they do so without a license to conduct Medical examinations, analyzes, diagnosis or treatment of diseases stipulated in Article 3372 of the Public Health Law[3].

As for the Jordanian[4] and Egyptian[5] judiciary, the concept of the medical work has been expanded to include the rulings that were issued and defined medical work as the aspects of diagnosis, treatment, performing surgeries and prescribing medication.

2. Definition of medical examination

One side of the jurisprudence defined medical examination as “the beginning of the medical work carried out by the doctor, as he starts the physical examination"[6].

This definition was based on the physical examination only, apart from all types of medical examination, because medical examination is either primary, clinical or complementary[7].

Primary examination: It means "what the doctor listens to from the patient about the symptoms he complains of in order to reach the necessary information that contributes to helping him diagnose and determine the patient's disease condition"[8].

Clinical examination: It means “the examination conducted by the doctor to the patient through his observation and senses. He may also use simple equipment for examination such as the stethoscopes, but without using modern and approved methods of diagnosis such as x-rays and laboratory tests[1] ".

([1]) Amir Faraj Youssef, Intentional and Unintentional Doctor Error, Modern University Office, 2010, p. 128 and 129, Sherif Raafat Muhammad Hammad, Rulings and Controls for Surgical Operations: A Comparative Study, *Op. Cit.*, p. 17.

([2]) Al-Waqa’a Al-Masryah, July 22, 1954, No. 58 bis.

([3]) As stated in the decision of the French Court of Cassation:

« le fait par une personne non diplômée de recevoir des malades et de se livrer sur eux à des pratiques d'imposition des mains, de magnétisme ou de suggestion, comportant l'émission d'un prétendu fluide, sous l'inspiration d'es mystérieux, constitue la participation habituelle et par direction suivie au traitement des maladies, caractéristique du délit d'exercice illégal de la médecine.” cream. 20 juin 1929, D.P. 1929, I, 91, cite par: Bénédicte Lavaud-Legendre, « Charlatanisme et droit pénal », les tribunes de la santé, N° 20, 2008/3, p.72.

([4]) Jordanian Court of Cassation Decision No. 426/2013, dated 23/4/2013, a five-member panel, Al-Qastas Legal Center publications.

([5]) Cassation 20/2/1968, Collection of Judgments of the Egyptian Court of Cassation, No. 19, No. 46, p. 254.

([6]) Osama Abdullah Qayed, The Criminal Liability of Doctors: A Comparative Study, *Op. Cit.*, p. 61.

([7]) Raafat Muhammad Hammad, Rulings on Surgical Operations: A Comparative Study between Islamic Jurisprudence and Positive Law, *Op. Cit.*, p. 13 and beyond.

([8]) Sayed Muhammad Ateeq, The Doctor’s Liability: A Comparative Study, Dar Al-Nahda Al-Arabiya, 2015, p. 27.

Further steps of are used, including the observation of the patient's actions such as coughing, dyspnea, the physical examination that includes the sensory organs. The doctor feels important areas of the patient's body, such the heart pulse, lymph nodes ... etc., the functional examination by moving the limbs and examining the range of movement of the joints, for example. Then he uses complementary screening tools such as stethoscopes or blood pressure monitors[2].

The clinical examination is important as it determines the tests required to diagnose the disease. Therefore, the diagnosis is reached as soon as possible, which speeds up treatment and reduces expenses[3] .

Complementary examination: The doctor resorts to this type of examination in the event that it is not possible, through the previous means, to know the correct diagnosis of the disease. He performs more in-depth examinations to know the patient's condition definitely. Here, the doctor resorts to advanced modern machines such as radiology and medical endoscopes of all kinds, as well the various medical analyzes[4] .

Second: The provisions of surgical anesthesia: Surgical anesthesia is considered one of the most important practical victories in the field of medicine, as it has contributed to the progress in the medical field to a large extent[5] .

Anesthesia "is the condition that results from the use of a drug that nullifies the sense and feeling". The need for anesthesia has arisen in order to get rid of the excruciating pain that the patient feels during the surgical operations[6] .

The doctor must take all the necessary precautions required by medical profession[7]. It is worth noting that the anesthesia stage is a dangerous stage, and the error, whether by the surgeon or the anesthetist, in the amount of the dose or in the wrong site leads to serious complications that may end in the death of the patient[8] .

1. Definition of Anesthesia

Idiomatically narcotic means "every substance that enters the body of an organism and works to disrupt one or more of its functions." This is the definition of the World Health Organization's expert committee in 1969. As for the term anesthetic, it is specific to specific substances that activate the central nervous system in a general way, or locally to disrupt the feeling or sensation[9].

Then the researcher can clarify the meaning of anesthesia by saying

Anesthesia "is not feeling pain as a result of the entering of an anesthetic medical substance, where anesthesia allows the surgical operation to be performed by losing sensation and pain".

([1]) Ihab Yousry Anwar, The Doctor's Civil and Criminal Liability, *Op. Cit.*, pg. 59, and see also: Article R4127-33 CSP : « Le médecin doit toujours élaborer son diagnostic avec le plus grand soin, en y consacrant le temps nécessaire, en s'aidant dans toute la mesure du lie possible des méthodes scientifiques les mieux a adaptées' ety, , de concours appropriés ».

([2]) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, *Op. Cit.*, p. 45.

([3]) Sayed Muhammad Ateeq, The Doctor's Liability: A Comparative Study, *Op. Cit.*, p. 29.

([4]) Muhammad Qaoud, Healing by Surgery, House of Science for Millions, 2017, p. 15 and beyond.

([5]) See: Faisal Ayed Khalaf Al-Shura, Medical Error in the Jordanian Civil Law, *Op. Cit.*, p. 42, Muhammad Muhammad Al-Shanqiti, provisions of medical surgery and its implications in Islamic jurisprudence, *Op. Cit.*, p. 37.

([6]) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, *Op. Cit.*, pg. 49.

([7]) Sherif Raafat Muhammad Hammad, Rulings and Regulations for Surgical Operations: A Comparative Study, *Op. Cit.*, p. 20.

([8]) Faisal Ayed Khalaf Al Shura, Medical Error in the Jordanian Civil Law, *Op. Cit.*, p. 43.

([9]) Mustafa Nashr, The Reality of Drug Abuse and the Role of the Family in Prevention and Elimination, Yarmouk University, Irbid, Jordan, 2004, 2004.

It is noted that anesthesia makes all forms of surgical interventions possible. It is an auxiliary means in the field of surgery and not a therapeutic means, as it serves in: [1]

1. Avoiding the feeling pain on the part of the patient, and thus the surgeon saves a greater effort so as not to cause more pain to the patient.
2. Relaxing the muscles facilitates the work of the surgeon.

2. Types of anesthesia

There are many types of anesthesia according to the type of surgeries and the sites in which they are performed. They can be divided according to medical principles into several types as follows:

First type: general anesthesia: It means "that type of anesthesia that completely loses you sensation and puts you in a deep sleep. It is about giving the patient a hypnotic substance[2] by intravenous injection in order to sleep and lose his sense of what is going on around him and he does not feel any pain during the surgical intervention. It is composed of three elements: The hypnotic substance[3], the sedative substance[4] and the muscle relaxant substance[5], in which the patient moves from the state of unconsciousness or unconscious state and is used in heart and liver surgeries and others.

Second type: partial anesthesia: In this type the location on which the surgery will be performed is anesthetized. It may be partial anesthesia by injection into the spine or by local opening by spraying on the surface of the location where the surgery is to be performed. In both cases the patient is fully awake and not unconscious as in the first case.

Second theme
The concept of medical error and its types

The Jordanian legislator did not define medical error in general, whether in the civil law or laws related to health and the medical profession[6].

The legislator also did not define the medical error in both France[7] and Egypt[8] and left it to the judiciary and jurisprudence to define it, but they agreed that it was a breach of the professional duties. Accordingly a disciplinary penalty was set for these errors exclusively in Egypt and France[9], and the standard is to take the necessary precautions towards the patient and the necessity of achieving a result in certain cases such as medical tests and radiology, taking into account the scientific principles in this regard.

In view of the foregoing, we will study this requirement through the following two sections:
Section one: Definition of medical error
Section two: Types of medical error

([1]) See: Louis Melennec et Gérard Memeteau, Traité de droit médical, Tome 6, Paris, Edition Maloine, 1982, p.83.
([2]) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, *Op. Cit.*, p. 52.
([3]) Jalal Muhammad Ibrahim, Legal Liability for Medical Facilities: A Comparative Study, *Op. Cit.*, p. 83.
([4]) Osama Abdullah Qayed, The Criminal Liability of Doctors: A Comparative Study, *Op. Cit.*, 67.
([5]) Raafat Muhammad Hammad, Rulings on Surgical Operations: A Comparative Study between Islamic Jurisprudence and Positive Law, *Op. Cit.*, p. 31.
([6]) Faisal Ayed Khalaf Al Shura, Medical Error in the Jordanian Civil Law, *Op. Cit.*, p. 12.
([7]) In that: Selon la codification de la déontologie médicale en France promulguée par le décret-loi n° 1000 du 6/9/1995 et modifiée par plusieurs amendements jusqu'en 2007, il n'y avait pas de définition précise de la.faute dismé cipe
According to the codification of medical ethics in France promulgated by Decree-Law No. 1000 of 6/9/1995 and amended by several amendments until 2007, there was no specific definition of a medical disciplinary error. .
([8]) In Egypt, the situation is not different from what is the case in France with regard to not limiting disciplinary errors to a specific law and determining a specific penalty for each error, as the principle of the illegality of disciplinary errors has become one of the recognized principles in most countries of the world.
([9]) See: René SAVATIER et J.M. AUBY, Traité de droit medical, Paris, 1959, p.301.

Section one
Definition of medical error

First: The concept of medical error in Jordanian, Egyptian and French legal jurisprudence

Medical error is defined by the majority of jurisprudence as "the error that is pertinent to the medical and technical principles of the profession," but this definition was derived by jurisprudence from the professional error in general(1).

Another side of jurisprudence defined it as "the failure of the doctor or surgeon to fulfill the special obligations imposed on him by the medical profession, i.e. the established scientific principles in conducting a medical examination(2)".

A third view of jurisprudence considers it as "a physician's breach of his duty to exercise care consistent with the established principles of the profession in medical science" (3), as it was said as "a subjective deficiency, a breach of the profession's requirements, and a lack of conformity with the scientific principles)(4) ".

A final aspect of jurisprudence defined medical error as "the obscene error that is not approved by the principles of medicine and by the knowledgeable specialists in the field(5)".
The obligation that falls on the doctor or surgeon in principle is to exercise the due diligence. The essence of this obligation is to make sincere and vigilant efforts that are consistent with the established practical principles that are consistent with the existing conditions with the aim of healing the patient and improving his health condition. Any breach of this obligation constitutes a medical error and questions the liability of the doctor(6). Moreover, the doctor who performs the treatment is hold liable for every negligence on his part if it does not occur from the doctor or surgeon in the same professional career and in the same circumstances(7).

Second: The concept of the medical error in the Jordanian(8), Egyptian and French judiciary

The Jordanian Court of Cassation ruled that the doctor was liable for the negligence and inattention, because he did not take into account the disease that the victim was suffering from(9) .
The Egyptian Court of Cassation ruled on clarifying the criterion for the liability of a doctor or surgeon, saying: "The doctor (the surgeon) is asked for every medical shortcoming that does not occur on the part of a doctor (surgeon) who is attentive in his professional level and found in the same external circumstances that surrounded the responsible doctor (surgeon) ……. (10) " .

Furthermore, the Egyptian Court of Cassation also ruled, in its definition of medical error, that "it is a breach of a legal duty that does not reach the status of the criminal punishment because whoever commits a criminal error that includes a (civil error) (11) and the effect of that appears that if it is decided (conviction), the judgment is an evidence of the occurrence of the damaging act. However, the verdict of innocence due to

(1) Mahmoud Abdel Muti Khayal, Civil and Administrative Liability for Medical Work, *Op. Cit.*, p. 50.
(2) Abdel Hamid Al Shawarby, The Liability of Doctors, Pharmacists and Hospitals, Mansha'at Al Maaref in Alexandria, 2000, p. 75.
(3) Munther Al-Fadl, Medical Liability, Al-Ahliyya Amman University Library, Jordan, 1993, p. 13.
(4) Khaled Ali Jaber, The Civil Liability of the Medical Team between Islamic Sharia and Jordanian Law, Master's Thesis, Faculty of Law, Middle East University, Jordan, 2013, p. 50.
(5) See: Louis Melennec et Gérard Memeteau, Traité de droit médical, Tome 6, Paris, Edition Maloine, 1982, p.94.
(6) Raafat Muhammad Hammad, Rulings on Surgical Operations: A Comparative Study between Islamic Jurisprudence and Positive Law, *Op. Cit.*, p. 34.
(7) Osama Abdullah Qaid, The Criminal Liability of Doctors: A Comparative Study, *Op. Cit.*, 69.
(8) The Jordanian legislator referred to the forms of medical error in the Penal Code in Article 343, which were represented in negligence, recklessness, and non-observance of laws and regulations.
(9) Cassation of Rights, No. 626 of 2006, dated 5/6/2006, Adalah Publications.
(10) Raafat Muhammad Hammad, Rulings on Surgical Operations: A Comparative Study between Islamic Jurisprudence and Positive Law, *Op. Cit.*, p. 35.
(11) Ahmed Mohamed Sobhi, Administrative Liability for Damage to Public Medical Facilities: A Comparative Study, *Op. Cit.*, p. 104.

the absence of a criminal error, the civil error should not be available because it involves gross negligence, for example.

The French judiciary in many rulings did not differentiate between an ordinary error and a technical error, and decided that the doctor is asked about his technical errors, even if these errors are not serious[1] .
The French Court of X confirmed the liability of the doctor as soon as he made an error, even a slight professional error[2] .

Section two

Types of medical error
The surgeon's error may be normal or it may be a professional error. This is explained below.

First: The concept of surgeon's normal error
The error that comes from the surgeon is just like the error that is committed by those in other professions. This is represented in material work that is contrary to the duty of caution and care that all people must take into account in their dealings. Examples are when the surgeon performs a surgical operation while he is in a state of drunkenness[3], or he neglects to anesthetize the patient before the operation, or his hand is disabled and cannot be used normally[4] or he fails to observe the rules of the system[5][6] .

The Court of Cassation ruled that "the error in the diagnosis led to an error in the treatment and the permanent disability of the child. As a result, the hospital and its owner are obligated to compensate for the damage inflicted on the girl[7] ".

The Court of Cassation also ruled that: "The surgeon's liability is not, in principle, to achieve the goal of the patient's recovery, but rather he is obligated to exert sincere care for the sake of this recovery.

The essence of the surgeon's duty to exercise care is dependent on what an attentive average surgeon, from among colleagues, presents with knowledge and understanding of the circumstances surrounding him during the practice of his work, taking into account the traditions of the profession and the established scientific principles, regardless of the issues on which the people of the profession differed in order to open the door to *Ijtihad* (independent reasoning) in them. Therefore, the deviation of the surgeon from performing this duty is considered an error that entails his liability for the injury that befalls the patient who misses the opportunity for treatment, as long as this error is in a cause-and-effect relationship" [8].

Second: The concept of professional error of the surgeon (technical error)

([1]) And in another decision it was stated that magnetic therapy is considered an illegal practice of medicine, because the practitioner who performs it normally takes the status of a healer:
« tout traitement par magnétisme constitue un exercice illégal de la médecine, car son auteur prend ainsi part d'une manière habituelle au traitement des maladies », C.A. Douai 22 fév. 1951, Gaz. Pal. 1951, I, 268. cité par le site web: http://www.pseudo-sciences.org.
([2]) See: Legendre, « Charlatanisme et droit pénal », les tribunes de la santé, N° 20, 2008/3, p.80.
([3]) Ahmed Abdel Karim Al-Sarayrah, Insurance from civil liability resulting from medical errors: A comparative study, *Op. Cit.*, p. 91.
([4]) Mahmoud Abdel Muti Khayal, Civil and Administrative Liability for Medical Work, *Op. Cit.*, pg. 53.
([5]) Muhammad Muhammad al-Shanqiti, Rulings on Medical Surgery and its Consequences in Islamic Jurisprudence, *Op. Cit.*, p. 41.
([6]) And if he takes into account that the matter sometimes leads to the distinction between ordinary error and professional error, for example, the failure to order the transfer of the patient to the hospital in a timely manner, some considered it a normal error, while the order to transfer to the hospital inevitably requires an assessment of the patient's medical condition and the dangers facing him if he remained outside the hospital. Also, leaving a piece of gauze or an instrument in the patient's body during the surgery, as it may come to mind that it is a normal error, but the speed required by some surgeries may make it a professional error. See: Sherif Raafat Muhammad Hammad, Rulings and Controls for Surgical Operations. Comparison", *Op. Cit.*, p. 23.
([7]) Jordanian Court of Cassation, No. 1246/90, dated 12/5/1991, Adalah Publications.
([8]) Osama Abdullah Qayed, The Criminal Liability of Doctors: A Comparative Study", *Op. Cit.*, 71.

Part of the jurisprudence defined the technical professional error as "the error that is related to the technical principles of the doctor or surgeon's profession. That is, it occurs by the doctor or surgeon in violation of the technical rules of the medical profession[1]. An example of this professional medical error is the surgeon's error in diagnosing a specific disease[2] .

Other jurisprudents defined it as "the error in estimating the appropriateness of the treatment without another for the patient's condition, or giving the patient an anesthetic dose that exceeds what is necessary[3] ".

All the errors committed by the doctor or surgeon during the medical intervention, such as the error in diagnosis, treatment, surgery or anesthesia are also considered a professional errors.

Given the accuracy of the distinction between the two types of ordinary and technical error and the lack of a strong justification in addition to the development of the thought of liability and the tendency to provide greater protection for the injured person, the Jordanian[4], Egyptian[5] and French[6] jurisprudence and judiciary have abandoned the idea of differentiating between technical error and ordinary error. Since the surgeon or other men need protection from technical errors, it is necessary to consider the surgeon liable for his professional errors equally as his liability for his ordinary error, so he is liable for this, even for his minor error[7] .

Therefore, the surgeon became liable for his error, regardless of its type, whether technical or non-technical, serious or simple. This was confirmed by the French Court of Cassation in its ruling issued on October 30, 1963 regarding an incident in which the attending physician erred in treating a patient. The court decided that "merely an error on the part of the doctor leads to liability without the need to stipulate that this error has been proven unforgivable or that it has reached a certain degree of gravity" [8] .

In this sense, the Egyptian Court of Cassation ruled that "the doctor is questioned about a technical error about a (grave error) due to blatant ignorance and negligence, and that violating technical principles provides liability when the damage occurs, regardless of the degree of the severity of the error[9]".

Second topic

Personal fault and service fault within the scope of the administrative liability for the surgical errors in Jordan, Egypt and France

The public employee "the doctor who works in a public medical facility" shall bear the errors committed by his person (personal fault) unless these errors are attributed to the facility in which he works (service fault). The injured person is entitled to compensation from the physician's private funds in cases of personal error committed by the physician. This is in contrast to the cases of service fault in which the injured person is entitled to compensation from the administration[10]. The Jordanian, Egyptian and French jurisprudence and judiciary have enumerated the criteria that clarify what is a personal fault[11] .

([1]) Raafat Muhammad Hammad, Rulings on Surgical Operations: A Comparative Study between Islamic Jurisprudence and Positive Law, *Op. Cit.*, p. 38.

([2]) Ahmed Mohamed Sobhi, Administrative Liability for Damage to Public Medical Facilities: A Comparative Study, *Op. Cit.*, p. 110.

([3]) Ahmed Abdel Karim Al-Sarayrah, Insurance from civil liability resulting from medical errors: A comparative study, *Op. Cit.*, pg. 97.

([4]) Faisal Ayed Khalaf Al Shura, Medical Error in the Jordanian Civil Law, *Op. Cit.*, p. 27.

([5]) Abdel Hamid Al Shawarbi, Liability of Doctors, Pharmacists and Hospitals, *Op. Cit.*, p. 96.

([6]) See: Laurent DELPART, Guide pratique du droit médical et du droit de la sécurité sociale, Chiron, Paris, 2004, p.56.

([7]) Sherif Raafat Muhammad Hammad, Rulings and Controls for Surgical Operations: A Comparative Study, *Op. Cit.*, p. 28.

([8]) Mahmoud Abdel Muti Khayal, Civil and Administrative Liability for Medical Work, *Op. Cit.*, pg. 57.

([9]) Ahmed Mohamed Sobhi, Administrative Liability for Damage to Public Medical Facilities: A Comparative Study, V, p. 113.

([10]) Hatem Gabr, The Theory of Elbow Error, A Paired Study in Egyptian and French Laws, Ph.D. Thesis, Faculty of Law, Cairo University, 1968, p. 37, Rabea El-Sayed Abdel Qader Eid, Administrative Liability and Judicial Oversight on Medical Errors: A comparative study, *Op. Cit.*, p. 131.

([11]) Among the cases of personal error in the Egyptian system are the following:

The principle is that the administrative authorities carry out their work within the scope of legality and subject all their actions to the law because the principle of legality is the basic guarantee for individuals and the protection of their rights and freedom. The administration carries out this activity through its employees, who are human beings not infallible in the interpretation and application of the law, which often leads to the omission of legality. This threatens the rights and freedom of the individuals. In order to protect these rights it was necessary to assign a penalty for violating the law by the administrative authorities(1).

In this field, the French Council of State made a distinction between the personal fault of the doctor and the service fault of the institution, and this distinction is considered one of the mainstays for establishing the liability of the administration party for the actions of its employees if it is a legal person who conducts his actions through the employees belonging to this legal person(2). Therefore, the administration party bears the liability of the errors resulting from these behaviors.

This is what both the Jordanian judiciary(3) and the Egyptian Council of State agreed with in its rulings. As a result, the employee bears the liability for his personal error, and thus bears compensation for the damages that befell others, and the administration party bears this compensation in the event that the facility is r liable for this error. In order to know who is liable for the error that marred the work of the administration, we must differentiate between a personal fault and service fault in two themes as follows(4):

First theme: The position of jurisprudence and the French judiciary
Second theme: The tendencies of the Jordanian and Egyptian of jurisprudence and judiciary

First theme
The position of jurisprudence and French judiciary

There have been many opinions and criteria endeavored to reach a distinction between personal fault and service fault. However, there was no comprehensive and exhaustive standard for this distinction, given that this distinction is one of the main features of the rules governing the liability of the administration to distinguish it from civil liability(5).

1- If the error is attributed to the employee (the doctor, for example), it is permissible to sue him personally for his error and to demand compensation from his own property.
2- If it turns out that the employee did not work for the public interest and was motivated by personal factors or his error was serious, then it is considered a personal error and he will be liable for compensation from his own property.
3- If the worker performs a damaging act linked to a personal nature that exposes the person with his weakness, whims and lack of foresight, then it is considered a personal error and he will be liable for compensation from his own property..
4- If it turns out that the employee did not work for the public interest and was motivated by personal factors or his error was so serious that it reached the point of committing a crime that falls under the law, see: Rabea El-Sayed Abdel Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A comparative study, *Op. Cit.*, pp. 132 and 133.
- Among the cases of personal error in the French system are the following:
1- Intentional errors made by the public servant or the general physician.
2- Serious mistakes committed by the public servant or the general physician.
3- The employee's breach of the public duties imposed on the general public, including the employee or the doctor, see: Dr. Mahmoud Sami Gamal Al-Din, Administrative Responsibility in the Medical Field in the Egyptian and French System, *Op. Cit.*, p. 114.
(1) See: Muhammad Maher Abu Al-Enein, Compensation for the Actions of Public Authorities, Book One, The National Center for Legal Publications, 2013, p. 318, Ramzy Taha Al-Shaer, Summary in the Compensation District, University Book, Ain Shams University, Cairo 2010, p. 121, Rabie Anwar Fath Al-Bab, Compensation Court, Dar Al-Nahda Al-Arabiya, 2015, p. 19 and beyond.
(2) Sami Hamid Sultan, The Theory of Personal Error in the Field of Administrative Liability, Dar Al-Nahda Al-Masrya, 1988, p. 114.
(3) Ahmed Adnan Jaber Al-Shammari, The Administration's Liability for its Material Works: A comparative study between the Jordanian and Kuwaiti laws, Master's thesis, Faculty of Law, Middle East University, 2014, p. 17 and beyond.
(4) Hamdi Mohamed Omar, Administrative Liability, New University House in Alexandria, 2012, p. 174.
(5) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, *Op. Cit.*, pg. 149.

The French Council of State has allowed the individuals to sue the administration party and to claim compensation from the individuals who have been injured as a result of the employee's personal error, even if this is temporary to protect individuals from the employee's insolvency. The administration has the right to recourse against this employee who committed the error for compensation[1] .

Considering the doctor as one of the employees in a public hospital (a public facility) and in order to determine his personal liability and the facility liability in which he works, it was necessary to address this distinction.

Generally, it can be said that the personal fault "is separated from the administrative work," and that the service fault "is the one that is not separated from the administrative work". However, some factors may interfere to affect this adaptation and determine its type, such as the order of the president, physical abuse and criminal offenses. These factors may lead to the consideration of a personal fault as service fault and vice versa[2]. To clarify this, we will address the different criteria that were said in the distinction between personal fault and service fault in two sections as follows:

Section one: The tendencies of French jurisprudence
Section two: The tendencies of the French judiciary

Section one
The tendencies of French jurisprudence
(The jurisprudential criterion for distinguishing between a personal fault and a service fault)

The jurisprudential and judicial criterion for distinguishing between the two types of error: The French jurisprudence, followed by Egyptian jurisprudence, worked hard to introduce criteria that helped differentiate between the two types of error[3]. The French and Egyptian judiciary used these criteria that jurisprudence brought up to solve the cases presented to the judiciary.

First: Criterion of intentional error

This criterion is considered one of the oldest criteria that jurisprudence stated. It is based on investigating the employee's behavior and objectives to make sure whether the employee intended to damage individuals or not. At the head of this juristic trend was the jurist (Lafrier), who defined personal fault as "the behavior that uncovers the human being, his weakness, whims, and lack of insight[4], unlike the service fault "which is issued by the management man, with a personal nature". Therefore, the personal fault is the one that shows the personality of the employee and is proven against him in the event that his bad intention is proven.

However, this criterion was objected to by some jurisprudents[5] because it does not include a serious error, whatever its degree, when it occurred out of good faith. Moreover, this contradicts what has been customarily done by the judiciary, as well as lack of discipline and limitation[6].

Second: The separate error criterion

This criterion stipulates that if it is possible to separate the error from the job, materially and morally, it is considered a personal error. This criterion was decided by Brigadier General (Horyo) [7] who added that if the error and negligence related to the job in an inseparable connection, it was a service fault.

He gave an example of the personal error committed by an administrative employee who defamed a person and removed his name from the voters' list[1] .

([1]) Ramzy Taha Al Shaer, The State's Liability for its Non-Contractual Acts, Dar Al-Tayseer, Cairo, 2005, p. 325.
([2]) Raafat Muhammad Fouda, Lessons in the Judiciary of Administrative Liability, Dar Al-Nahda Al-Arabiya, 1999, p. 149.
([3]) Fathi Fikri, The State's Liability for its Non-Contractual Acts, Dar Al-Nahda Al-Arabiya, 2003, p. 230.
([4]) See: "La Ferrière". Traité de Juridiction administrative, 2ème Vol.
([5]) Suleiman Al-Tamawi, Lessons in Compensation Judgment and Methods of Appealing Judgments, Dar Al-Fikr Al-Arabi in Alexandria, 1997, pp. 302 and 303.
([6]) See: "M. Paillet", La responsabilité administrative, D. 1996, p120.
([7]) See: "H. Renault", L'évolution de l'acte medical, RDS S, 1999, p 107.

This criterion is also disadvantaged by its exclusion of serious errors committed by the employee simply because these errors are related to the duties of the job[2] .

Third: Criterion of gross error

A third opinion, adopted by the jurist (Jiz), tended to consider the personal error committed by the employee whenever it is serious. That is by explaining the facts that justify his behavior or his understanding of the provisions of the law[3]so that he exceeds the limits of his powers and reaches the point of arbitrariness, such as ordering the demolition of a building without a legal basis.

This criterion considered the seriousness of the employee's error as evidence of personal fault, even if in good faith. This contradicts what has been customarily done by the administrative judiciary of considering some gross errors is regarded as a service fault when this is inseparable from the job[4] .

Fourth: Criterion of purpose

This criterion, as the Dean (Doge) says, is based on the purpose that the employee tended to achieve. Therefore, he sees that if the employee intends by his behavior to achieve one of the purposes that the administration party is concerned with achieving, such as maintaining security, it is considered a service fault. On the other hand, if his behavior is intended to achieve his own purposes that are not related to the job, this error is a personal fault and it entails his own liability. According to this criterion, there is no consideration for the degree of gravity; rather the purpose of his behavior is personal or related to the purposes of the administration party[5] .

This criterion is flawed by the fact that it negates every effect of the gravity of the serious error, although the serious error that is made through negligence and lack of foresight is in no way less than the personal error resulting from the employee's behavior and it is not intended to be the public facility service. Therefore, the French judiciary did not consider this criterion entirely[6].

Fifth: Criterion of commitment breach

Doc Rassi established a distinction between the personal fault and service fault on the basis of the nature of the obligation that the employee breached. If the obligation is one of the general obligations of the employees, then the breaching it is considered a personal fault, but if the obligation is related to the job, then its breach is considered a service fault[7].

The French judiciary relied on this tendency in some of its rulings and decided that the error of the president that is confined to the failure to monitor his subordinates is a breach of job obligations[8] .

Section two
Tendencies of the French judiciary

Jurisprudential criteria contributed to facilitating the task of the judiciary in identifying how to distinguish between personal fault and service fault, although it did not set a demarcation line between them. Therefore,

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([1]) Sami Hamid Sultan, The Theory of Personal Error in the Field of Administrative Liability, *Op. Cit.*, p. 120.
([2]) See: "G. Vedal et P. DevLolve", Droit administratif, ed. PUF, 1992, p 37.
([3]) Hamdi Ali Omar, Liability without fault of public medical facilities: A comparative study, PhD thesis, Faculty of Law, Zagazig University, 1979, p. 52, Rabea Anwar Fath al-Bab, Compensation Court, *Op. Cit.*, p. 26.
([4]) Hatem Gabr, The Theory of Ankle Error, An Associated Study in Egyptian and French Laws, *Op. Cit.*, p. 41, Muhammad Maher Abu Al-Enein, Compensation for the Actions of Public Authorities, *Op. Cit.*, p. 337.
([5]) Raafat Muhammad Fouda, Lessons in the Judiciary of Administrative Liability, *Op. Cit.*, p. 153.
([6]) See: P. Côt", La responsabilité civile des fonctionnaires public Paris, 1922. 4- "P.L. Frier", Précis de droit administratif, ed. Montchrestien, Paris, 2ème ed. 2003, p94.
([7]) Hamdi Ali Omar, Liability without fault of public medical facilities: A comparative study, *Op. Cit.*, p. 61, Ramzi Taha al-Shaer, summary in the Compensation District, *Op. Cit.*, p. 127
([8]) See: - Droit administrative général, T 1, ed 15, Montchrestien 2001, p 52.

the French judiciary did not set an abstract criterion, but rather used all these criteria to solve the cases presented to it based on its wide discretionary authority which enabled it to use the politics he sees[1].

It is clear from a study of the rulings of the French judiciary that they differentiate between two types of behavior:

1. Behaviors outside the scope of the job
2. Behaviors within the scope of the job

The French judiciary considered that the personal fault is available every time it is outside the scope of the job. On the contrary, the service fault is every error within the scope of the job, provided that personal liability is of a grave nature[2] .

1. The French Council of State differentiated between personal fault and service fault based on the extent to which the error was separated or not from the job. If the employee goes out for a walk in his car and injures one of the individuals, he is alone liable for his personal error, without considering the degree of the gravity of the error, intentional or unintentional[3] .

If the employee commits an error while performing his job, it is considered a personal error if the relationship between him and the job is no longer valid. For example, the unjustified assault by the police on individuals despite the individuals not resisting the arrest warrant or their attempt to escape. The French judiciary has developed this and decided that both the employee and administration are jointly liable for these errors[4] .

2. The French judiciary also differentiated between simple errors committed with bona fide and those tainted mala fide or with a certain degree of gravity. It also decided that the service fault is the one that is committed by the employee in good faith and a slight degree of seriousness within the framework of the job. But if the errors were made tainted with bad faith or with a certain degree of gravity, this is considered a personal error. It also considered the criminal crimes committed by a person as a personal fault as long as these crimes are accompanied in bad faith (intentional crimes) [5] .

Second theme
Tendencies of Jordanian and Egyptian jurisprudence and judiciary

The tendency of the Jordanian[6] and Egyptian jurisprudence is that it is not possible to rely on one criterion in the definition of both personal fault and service fault of what the French jurisprudence had previously said. It believed that these criteria are no more than clarifications of the cases of personal error that the administrative judiciary has considered[7].

Part of the jurisprudence[8] tended to define personal fault "as the error committed by the employee outside the scope of the administrative position or the error he commits within the scope of the job and tainted by bad faith".

Another side of the jurisprudence[1] inclined to define personal fault as "the error committed by the employee outside the scope of the administrative position and tainted with bad faith or a high degree of gravity".

([1]) Fathi Fikri, The State's Liability for its Non-Contractual Actions, *Op. Cit.*, p. 236.
([2]) Sami Hamed Sultan, The Theory of Personal Error in the Field of Administrative Liability, *Op. Cit.*, p. 123.
([3]) Ramzi Taha Al Shaer, Summary in the Judiciary of Compensation, *Op. Cit.*, p. 129.
([4]) Rabea Anwar Fath al-Bab, Compensation Court, *Op. Cit.*, p. 29.
([5]) Muhammad Anas Jaafar, Compensation in Administrative Liability, *Op. Cit.*, p. 59.
([6]) Ghazi Fawzan Dhaif Allah Al-Adwan, the damage resulting from management error and compensation for it: A comparative study between Jordan and Egypt, Master's thesis, Faculty of Law, Middle East University, 2013, p. 16.
([7]) Raafat Muhammad Fouda, Lessons in the Judiciary of Administrative Liability, *Op. Cit.*, p. 155.
([8]) Zuhair Qadwa, Al-Wajeez in the Administrative Judiciary, Wael Publishing House, Amman, 2011, p. 215.

In view of the close convergence between the Jordanian and Egyptian legal systems, we chose to study the personal fault service in both systems through the following two sections:

Section one: Cases of personal fault in the Jordanian and Egyptian jurisprudence and judiciary
Section two: Cases of service fault in the Jordanian and Egyptian jurisprudence and judiciary

Section one

Cases of personal fault in the Jordanian and Egyptian jurisprudence and judiciary
There are three cases of personal fault in the Jordanian and Egyptian jurisprudence and judiciary:

First case: The error that is not related to the job:

It is the error that is not related to the duties of the job in all cases, even if it is not serious and done in good faith. Examples include the actions by the employee that are far from the field of the job, the deeds done while he is enjoying his leave or after the end of the time specified for official work, or the brutal assault of the police on the individuals[2] .

The Jordanian High Court of Justice adopted the criterion of error separate from the job, however, it was not clear from its rulings whether it is the error committed by the employee outside the scope of the job in bad faith or the error was gross[3] .

Where the Jordanian High Court of Justice ruled that "it is permissible to sue any person in his personal capacity as well as his job in case of injury for compensation for material or moral damage resulting from a job-associated error committed by the administrative man[4] .
Moreover, the Jordanian Court of Cassation adopted, in some of its rulings of its distinction between a personal fault and service fault, the criterion of error that is dissociable from the job[5] .

Second case: Intentional error

One of the forms of personal fault is when the employee commits the error associated with bad faith, such as acting with the intention of causing injury to some individuals[6]. This bad faith is to make what is done by the employee a personal fault. This also includes the criminal offenses he commits when these crimes are accompanied by bad faith[7] .

The Jordanian Court of Cassation has also adopted, in some of its rulings, to distinguish between a personal error and an accompanying error, the error criterion for the purpose of committing the act[8] .

Third case: Gross error
This form is considered a case of personal error when the error is of a certain degree of gravity, even without bad faith[9]. Gross error can be divided into two forms: Grave material error and grave legal error [10][1] .

([1]) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control over Medical Errors: A Comparative Study, *Op. Cit.*, p. 163.
([2]) See Ghazi Fawzan Dhaif Allah Al-Adwan, the damage resulting from management error and compensation for it: A comparative study between Jordan and Egypt, *Op. Cit.*, p. 17, Sami Hamid Sultan, the theory of personal error in the field of administrative liability, *Op. Cit.*, p. 124.
([3]) Ali Khattar Shantawi, The Public Administration's Liability for its Damaging Acts, Dar Wael for Publishing and Distribution, Amman, 2008, p. 167..
([4]) Supreme Justice, Decision No. 101/1993, Journal of the Bar Association 1995, p. 180
([5]) Cassation 85 / 359, Bar Association Journal 1986, p. 1015.
([6]) This was confirmed by the Jordanian High Court of Justice in its decision No. 146/1994, Journal of the Bar Association 1995, p. 160.
([7]) See: Fahd Abdul Karim Abu Al Othaim, Administrative Judiciary between Theory and Practice, House of Culture for Publishing and Distribution, Amman, 2005, p. 78, Muhammad Anas Jaafar, Compensation in Administrative Liability, *Op. Cit.* p. 62.
([8]) Tamazight Rights 304/73, Journal of the Bar, 1973, p. 1614.
([9]) Fathi Fikri, The State's Liability for its Non-Contractual Actions, *Op. Cit.*, p. 242.
([10]) Zuhair Qadwa, Al-Wajeez in the Administrative Judiciary, *Op. Cit.*, p. 221.

The Jordanian Court of Justice adopted the criterion of a serious error in its ruling that "the governor's use of his powers stipulated in that law constitutes a grave error because it was done in violation of the law[2] ".

Section two

Cases of service fault in the Jordanian and Egyptian jurisprudence and judiciary

The cases of service fault in the Jordanian and Egyptian jurisprudence and judiciary are represented in three forms:

First form: Facility poor service performance: This means all positive actions wrongly carried out by the facility, whether these are material or legal actions [3][4].

Examples of this form of service fault are many and do not fall under an inventory either in the Jordanian judiciary[5] or the Egyptian Council of State.

An example is if a person is injured as a result of using damaged materials inside the facility[6] .

Second form: Facility failure in service performance: [7] This form is represented by the administration refraining from doing an action that it should have done legally, as the law often obliges the administration to take a specific decision or take an action if certain conditions specified by the law are met. If the administration abstains from taking this decision or carrying out this act, resulting in a damage, the administration shall compensate for this damage[8] .

Therefore, exercising jurisdiction is not a privilege but a duty. The examples of this service fault are numerous in the judiciary of the Egyptian Council of State, including the failure of the administration to carry out the necessary actions to protect the individuals from epidemics[9] .

Third form: Facility delay of service performance[10] .
The delay of the administration in carrying out its work more than the reasonable time dictated by the nature of this work is considered a service fault that entails the liability for the administration if one of the individuals is injured[11].

This form of service fault does not mean that the law has set a specific date for the administration to carry out its work so that the administration did not perform during this date, because this means that the administration has refrained from carrying out its work, which falls within the second form related to the failure of the facility to perform the service. Rather what is meant in this form is that the law did not restrict the administration to a specific date, but delaying it beyond a reasonable limit in the performance of its work may cause injury to the individuals, which requires compensation[12] .

In fact, deciding the liability of the state in the event of the delay of the facility in performing the service entrusted to it limits the discretionary authority of the administration. Therefore, it may be asked in case of its delay in performing the service assigned to it if it is not obligated to perform it on a specific date, in

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([1]) The French and Egyptian judiciary stressed the actions attributed to the employee when the errors were serious, for example: the doctor vaccinating individuals with corrupted serum or clearly exceeding his powers without a legal basis. General, op. cit., p. 340.
([2]) Supreme Court, Decision No. 91/1995, Journal of the Bar Association 1996, p. 164.
([3]) Rabea Anwar Fath al-Bab, Compensation Court, *Op. Cit.*, p. 32.
([4]) Ali Khattar Shantawi, The Public Administration's Liability for its Damaging Actions, *Op. Cit.*, p. 178.
([5]) Ali Khattar Shantawi, The Public Administration's Liability for its Damaging Actions, *Op. Cit.*, p. 198.
([6]) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, *Op. Cit.*, p. 165
([7]) Ghazi Fawzan Dhaif Allah Al-Adwan, the damage resulting from management error and compensation for it: A comparative study between Jordan and Egypt, *Op. Cit.*, p. 31.
([8]) Muhammad Anas Jaafar, Compensation in Administrative Liability, *Op. Cit.*, p. 63.
([9]) Hamdi Muhammad Omar, Administrative Liability, *Op. Cit.*, p. 184.
([10]) Zuhair Qadwa, Al-Wajeez in the Administrative Judiciary, *Op. Cit.*, p. 241 .
([11]) Ramzy Taha Al Shaer, Summary in the Judiciary of Compensation, *Op. Cit.*, p. 130.
([12]) Raafat Muhammad Fouda, Lessons in the Judiciary of Administrative Liability, *Op. Cit.*, p. 158.

addition to its liability in case of its delay in performing a service that is obligatory to perform at a specific time.

The Egyptian Council of State took this form as it decided the liability of the administration for its delay in performing the service without reasonable justification for this delay, including the ruling of the French Council of State of the liability for the delay in notifying the competent administrative authority(1) .

The possibility of combining personal fault and service fault in the field of administrative liability for medical errors: If the principle of the distinction between personal fault and service fault has been established, the employee is asked to pay compensation from his own property in case of personal fault, while the administration is obligated to pay compensation in case of service fault. This is true unless the issue of the nature of the relationship between each of the two errors is raised(2) .

The Jordanian, Egyptian and French judiciary went through two stages here:

First stage: The separation stage between the personal fault and service fault:

At first, the Administrative Judiciary Council proceeded on the principle that it is not permissible to combine a personal error with a service error. The source of the error that injures the individual is either the employee, so he alone is liable for the compensation estimated by the ordinary judiciary, or the facility, so the administration bears compensation determined by the Council of State(3) .

These reasons were various as follows:
A - The wrong act cannot have two natures at the same time. If it was done in bad faith, it is considered a personal error, and if it was done in good faith, it is considered a service error.

B - The error is either serious and is considered a personal error that the employee is asked for compensation, or it is a simple error that the administration is asked for compensation. This means that meaning that the error cannot be characterized by gravity and simplicity at the same time.

But the French jurisprudence rejected the principle of the inadmissibility of combining the two types of error since the beginning of the twentieth century. It decided that the distinction between a personal error and service error was aimed at distributing jurisdiction between administrative courts and ordinary courts, and it is useful only in determining the liability of the employee or the administrative body(4) .

Second stage: The stage of combining the personal fault and service fault

The French Council of State decided to adopt the principle of combining the personal error and service error. That is, the liability of the administration and that of the employee may be combined on the basis of the possibility of the two errors may occur jointly, where the damage can be the result of two errors at the same time: the error of the employee and the error of the facility.

The judgment of the French Council of State issued in the case of Anguet is the first application of the principle of combining personal error and service error(5) .

If the service fault combined with the personal fault to cause the damage, the administration shall be asked for compensation for the fault it committed(6).

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(1) Raafat Muhammad Fouda, Lessons in the Judiciary of Administrative Liability, *Op. Cit.*, p. 160.
(2) Sami Hamid Sultan, The Theory of Personal Error in the Field of Administrative Liability, *Op. Cit.*, p. 131.
(3) See: Muhammad Rashid Falah Al-Azmi, General Employee Error and Management Error and Their Consequences in Jordanian and Kuwaiti Laws, Master's Thesis, Faculty of Law, Middle East University, 2010, p. 61, Hamdi Muhammad Omar, Administrative Liability, op. cit., p. 186.
(4) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, *Op. Cit.*, p. 171.
(5) Rabea Anwar Fath al-Bab, Compensation Court, *Op. Cit.*, p. 37.
(6) Muhammad Maher Abu Al-Enein, Compensation for the Actions of Public Authorities, *Op. Cit.*, p. 349.

The Jordanian[1] and Egyptian[2] judiciary also adopted the principle of the permissibility of combining the personal fault and service fault, which was also decided by the Jordanian High Court of Justice[3] as well as the Egyptian Council of State[4] .

However, it should be noted that although it is permissible to combine the two liabilities of both the employee and administration, it is not permissible to combine the two compensations in any way. That is, the injured person has one compensation for the damage he sustained even if there are several liable for it[5] .

Third topic
Provisions of administrative liability for surgical errors in Jordan, Egypt and France

The principle of the administrative liability for its actions has become one of the recognized principles at the present time due to the expansion of its activities. A lot of aspects of this liability have been governed by this principle. There are also a development and intervention in this liability. The role of the administrative liability has evolved until it became even independent of civil liability due to its expansion[6].

The tremendous scientific progress in life in general and in the medical field in particular has led to many problems related to the liability of the public medical facilities and arising from the use of these advanced modern methods in medicine. This necessitates issuing regulations under the general law governing the work of the public facilities, including public hospitals[7] .

In the face of these risks, the French legislator intervened [8] and stipulated that the administration should be held accountable for the damages that befall the beneficiaries of the services of public medical facilities and compensate those injured by that. The Jordanian and Egyptian legislators adopted this regulation.

Thus, the administrative liability has become one of the admitted principles at the present time as a result of the expansion of the state intervention. Accordingly, the liability of administration for the error, whether in France or Egypt, has become a natural matter. Logic requires that everyone who commits an error, whether by himself or through his legal representatives, is obligated to repair the damage caused by this error.

Undoubtedly, surgery has provided humanity with a lot of benefits, but it involves a lot of risks. Thus, it is not permissible to decide on a surgery except after deep thinking, especially the surgeries in dangerous locations such as the heart, kidneys and organ transplantation. Generally, it is often resorted to surgery to save a person in case of the surgery is indispensible[9] .

According to the rules established in Jordanian[10], Egyptian[11]and French[12]law, the surgeon is held accountable for ignoring the rules of surgery established by the experts of the profession. He shall not neglect cleaning and dressing the wound lest he leave the rest of gauze or foreign body (scalpel, surgical

(1) Ali Khattar Shantawi, The Public Administration's Liability for its Damaging Actions, *Op. Cit.*, p. 201.
(2) Ramzy Taha Al Shaer, Summary in the Compensation District, *Op. Cit.*, p. 135.
(3) Judgment of the Supreme Court of Justice issued on October 29, 1997, Bar Association Journal 1998, p. 785.
(4) Judgment of the Egyptian Supreme Administrative Court in Appeal No. 2634 of 34 BC, session 24/2/1990, Modern Judicial Encyclopedia of Supreme Administrative Court rulings, Part V, p. 22.
(5) Ramzy Taha Al Shaer, Summary in the Compensation District, *Op. Cit.*, p. 135.
(6) Esmat Muhammad Al-Sheikh, Administrative and Criminal Liability in the Medical Field, Dar Al-Nahda Al-Arabiya, 2014, p. 127.
(7) Suleiman Al-Tamawi, Lessons in Compensation Judgment and Methods of Appealing Judgments, *Op. Cit.*, p. 340.
(8) Hamdi Muhammad Omar, Administrative Liability, *Op. Cit.*, pg. 248.
(9) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, New University House, Alexandria, 2021, p. 114.
(10) Ahmed Abdel Karim Al-Sarayrah, Insurance from Civil Liability resulting from Medical Errors: A Comparative Study, *Op. Cit.*, p. 108.
(11) Esmat Muhammad Al-Sheikh, Administrative and Criminal Liability in the Medical Field, *Op. Cit.*, p. 129.
(12) See: "M. Paillet", La responsabilité administrative, D. 1996.p 117.

scissors, surgical needle..). This may lead to the death of the patient or to poisoning that might end his life[1] .

In light of the foregoing, it becomes clear that there are three principles of the medical liability, each of which shall be addressed in a separate them as follows:

First theme: The principle of the error in the administrative liability for surgical errors
Second theme: The principle of damage in the administrative liability for surgical errors
Third them: The causal relationship in the administrative liability for the surgical errors

First theme

The element of error in the administrative liability for the surgical errors

There is no doubt that every surgical operation goes through three stages: The preparation for the operation, performing the operation, and observation. Here, the researcher will review the liability for errors in the three stages in the Jordanian, Egyptian and French legal systems.

First stage: The preparation stage

Before performing the surgery, the doctor should do a comprehensive examination as required by the patient's condition and the nature of the surgery.

In this regard, the Jordanian Court of Cassation ruled that the medical practitioner was liable for the error in diagnosis, which led to a permanent disability for the sick child[2] .

The Egyptian judiciary also decided the liability of the doctor at this stage, so the Court of Cassation held that "the surgeon is liable for every failure in his medical conduct for the initial diagnosis through the physical or supplementary examination, which is not done by a surgeon who is vigilant in his professional level[3] ".

The French judiciary gave examples of the errors committed by the surgeon at this stage, namely, the failure to conduct a pre-operative examination[4], and the delay in performing the surgical operation[5] .

Second stage: Performing the operation

The judiciary in the three Jordanian, Egyptian and French legal systems declared the surgeon's liability for the errors he made while performing the surgery.
In this regard, the Jordanian Court of Cassation ruled that "the doctor is liable if he violates the technical and scientific rules during the surgery, and then his liability is for leaving a piece of cloth in the patient's stomach during the operation[6] ".

Moreover, the Egyptian Court of Cassation also ruled "the liability of the ophthalmologist for not observing the medical principles of a patient who was complaining of a pathological condition in his eyes. It was a case of cataracts in each of them (double cataracts), and that this case required surgical treatment to extract the two affected lenses, and the doctor unnecessarily performed the operation in both eyes"[7].
On the other hand, the Egyptian Supreme Administrative Court ruled that "the surgeon is liable for forgetting a towel in a patient's stomach while he was performing a surgical operation on her[8] ".

([1]) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, *Op. Cit.*, p. 115.
([2]) Jordanian Cassation, No. 1246/90, dated 12/5/1991, Adalah Publications.
([3]) Judgment of the Egyptian Court of Cassation, session 6/26/1969, Appeal No. 111 of 35 BC, Collection of Judgments of the Court of Cassation, No. 20, No. 166, p. 1075.
([4]) See: "M. Paillet", La responsabilité administrative, D. 1996.p 120.
([5]) See: lbib, p . 121.
([6]) Jordanian Cassation No. 1018/96, dated October 3, 1996, Publications of Al-Qastas Legal Center.
([7]) Judgment of the Egyptian Court of Cassation, Session 11/2/1973, Appeal No. 1566 of 42 BC, Collection of Judgments of the Court of Cassation, No. 24, No. 140, p. 180.
([8]) Judgment of the Supreme Administrative Court, session 12/12/1992, Appeal No. 1568 of 34 BC, No. 27, p. 274.

The French judiciary has presented examples of the errors committed by the surgeon at this stage, namely, performing the surgery with inappropriate technique[1], forgetting a foreign body in the patient's body[2]and recklessness in carrying out the surgical procedure[3] .

Third stage: Post-operation observation

In the three Jordanian, Egyptian and French legal systems, the judiciary also decided the liability of the surgeon for the errors he committed after performing the surgical operation in the stage of observation, which is not less important than the previous stages.

In this regard, the Jordanian Court of Cassation ruled that "the doctor's choice of the method of treatment after the operation, without the other, does not constitute a medical error as long as this method is correct[4] ".

The Egyptian judiciary decided a long time ago that doctors and surgeons were liable for neglecting the duty of post-operation observation. The Giza Court of First Instance ruled that "the surgeon is liable for his error and negligence of the post-operation observation of a patient after extracting a stone from the bladder[5] "....

Furthermore, the French judiciary also decided the liability of the surgeon at this stage. It decided that this stage cannot be separated from the stage of the operation, which is a subsequent and complementary stage to it. Also, it is one of the stages that is very necessary in order to make the maximum effort for the success of the operation[6][7] .

Second theme

The element of injury in the administrative liability for surgical errors

Damage is an essential element of administrative liability. The rule is that where there is no damage, there is no liability. If it is conceivable that liability will arise without error, then it is not possible for liability to arise without damage, that is, it is not possible for a liability to arise for an act that does not result in a damage, even if it was an erroneous act[8].

First: Conditions for damage necessitating administrative liability

The administrative judiciary stipulates several conditions in the damage attributed to public medical facilities so that appropriate compensation can be made. These conditions are...

First condition: The damage is verified and confirmed: One of the agreed upon principles is that the damage necessitating compensation should be real damage. That is, the occurrence of the damage must be proven and confirmed, and the judge' experience always allows to assess this confirmed nature of the damage[9] .

He stipulated that the occurrence of the damage does not mean that this damage is immediate, but it could be in the future as long as its occurrence is confirmed[10] .

([1]) See: "H. Renault", L'évolution de l'acte médical, RDS S, 1999, p 151.
([2]) See: lbib, p . 151.
([3]) See: lbib, p . 152.
([4]) Jordanian Cassation No. 1018/2009, dated 16/5/2010, Publications of Al-Qastas Legal Center.
([5]) Judgment of the Giza Court of First Instance on 01/26/1935, Law Journal, Year 15, No. 6, No. 216, pg. 471.
([6]) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, *Op. Cit.*, p. 118 and 119.
([7]) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, *Op. Cit.*, p. 120.
([8]) Mahmoud Atef Al-Banna, Mediator in the Administrative Judiciary, Dar Al-Nahda Al-Arabiya, Cairo, 1999, p. 595.
([9]) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, *Op. Cit.*, p. 123.
([10]) Judgment of the Supreme Administrative Court, Session 29/12/2001, Appeal No. 1457 of 44 BC, Collection of Judgments of the Supreme Administrative Court, 2001-2002, pg. 457.

This means that the potential damage conflicts with the request for compensation[1] .

Second condition: The damage was inflicted on a legitimate right: In order to accept compensation for the damage, it must have occurred on a legitimate right. That is, the damage must have violated a position for which the law determines a kind of protection[2] .
If the right or interest is illegal, it is unjustified for the party party to obtain compensation[3] .

Second: Types of compensable damage

The common practice of the jurisprudence and judiciary to divide damages into material and moral ones, so material damage is "a breach of an interest of financial value", while moral damage "is the injury that affects a person in a non-financial interest[4] ".

In the medical field in general and in the field of surgical operations in particular, it is clear to us that the damages that befall the person are of three types:

1. Actual damages: they are damages of a purely financial nature. In other words, they are direct financial damages, which can be easily estimated[5] .
2. Physical damages: It is the injury that affects a person in the integrity of his body or his life, such as physical or organic pain. These injuries often occur and are repeated within the scope of the medical liability in cases of the errors committed during the surgical interventions[6].
3. Vindictive damages: Moral damage in general is non-monetary damage, which affects a person in feeling and feeling[7], and examples of such damage in the medical field are damage caused by the death of a person as a result of surgical intervention[8] .
The Jordanian[9], Egyptian[10] and French[11] judiciary agree on compensation for all actual and vindictive damages.

Third theme
Causal relationship in the administrative liability for the surgical errors

The legal nature of medical liability raises many problems in the field of application in the judicial arenas due to the necessity of having a direct causal relationship between the error and the damage. It is not sufficient to ascertain the liability of the doctor that there be an error from him and damage to the patient, rather there must be a causal relationship that makes the first a cause for the second and a reason for its occurrence[12]. This is what the courts did not neglect and searched for this relationship[13].

([1]) Mahmoud Atef Al-Banna, mediator in the administrative judiciary, *Op. Cit.*, pg. 601.
([2]) Mahmoud Atef Al-Banna, mediator in the administrative judiciary, op. cit., p. 602.
([3]) Judgment of the Administrative Court, Case No. 81 of 1 BC, set of principles decided by the Administrative Court, First Year, p. 402.
([4]) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, *Op. Cit.*, p. 262.
([5]) Ghazi Fawzan Dhaif Allah Al-Adwan, the damage resulting from management error and compensation for it: A comparative study between Jordan and Egypt, *Op. Cit.*, p. 69.
([6]) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, *Op. Cit.*, p. 267.
([7]) Samir Abd al-Sami' al-Awden, The Liability of the Surgeon, the Anesthesiologist, and their Criminal, Civil and Administrative Assistants, *Op. Cit.*, p. 183.
([8]) Ali Khattar Shantawi, The Public Administration's Liability for its Damaging Actions, *Op. Cit.*, pg. 248.
([9]) Ghazi Fawzan Dhaif Allah Al-Adwan, the damage resulting from management error and compensation for it: A comparative study between Jordan and Egypt, *Op. Cit.*, p. 70.
([10]) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, op. cit., p. 268.
([11]) See: Droit administrative général, T 1, ed 15, Montchrestien 2001.p.178.
([12]) Esmat Muhammad Al-Sheikh, Administrative and Criminal Liability in the Medical Field, *Op. Cit.*, p. 135.
([13]) Samir Abd al-Sami' al-Awden, The Liability of the Surgeon, the Anesthesiologist, and their Criminal, Civil and Administrative Assistants, *Op. Cit.*, p. 183.

The law stipulates that in order to achieve administrative liability in the medical field resulting from performing wrong medical operations, the damage should not be caused by a foreign cause such as a sudden accident, force majeure, or an error from the injured person or others. Consequently, medical liability is not established by the presence of the two elements of injury and error only, but rather the causal relationship between the two must be present(1).

Therefore, it is necessary to search for the nature of the medical liability, whether it is a legal or contractual relationship. The judiciary in France has stated that whether the medical liability is of a contractual or tortious nature, the doctor is not considered responsible unless there is a causal relationship between the error and the damage(2).

In Egypt, the judiciary established that the doctor's error is due to the failure to exercise the required care. The frame of reference is that: What an attentive average surgeon, from among his colleagues, presents with knowledge and understanding of the circumstances surrounding him during the practice of his work, taking into account the traditions of the profession and the established scientific principles(3).

And that the assessment of the causal review between error and damage is an objective matter in which the trial judge is not subject to the supervision of the Supreme Court, and theories have been said on this subject, but the adaptation of facts must be subject to the supervision of the Supreme Court in deducing the availability or non-availability of a causal link. Therefore, there shall be a necessity of explicitly stipulating the availability of this link so that there is no room for appealing the ruling, and the trial judge shall resort to an expert in the technical field(4) .

In fact, deciding the causal relationship of in the field of medical liability is difficult, as the disease may develop, and the strength of a person's endurance to the complications of the disease is a matter surrounded by divine secrets. Moreover, the most knowledgeable doctors of may feel confused in front of these developments, and the accompanying complications without being able to explain the factors that affected the course of the disease or result of treatment(5). Sometimes the patient's condition is so serious that it is sufficient to cause death Furthermore, the anatomy may reveal sufficient physical defects that the doctor was unaware of at the time he started the treatment. Also, successive attending doctors may be impossible for them to know the one who did the error among them(6) .

The factors that affect the course of the disease and the results of treatment are numerous. Faced with this situation, the court was confused and tended to be strict in determining the causal relationship in particular, and that the art of medicine has not yet reached the point of perfection, and therefore the doctor cannot guarantee a cure(7).

Conclusion

The study dealt with the issue of the "Administrative liability for surgical errors: A comparative study between Jordanian, Egyptian and French law". The administrative liability for surgical errors is based mainly on the basis of error. Given that the administration exercises its activities through a group of doctors, the Jordanian, Egyptian and French judiciary have become accustomed to distinguishing within the framework of the rules of administrative liability between personal fault and service fault. Then the nature of medical operations and their controls in Jordan, Egypt and France were dealt with. The present study reached the following findings:

1. That a person has infallibility and the sanctity of injuring him or causing him injry.

(1) Ramadan Abu Al-Saud, Liability of Doctors and Surgeons, *Op. Cit.*, p. 78.
(2) Hassan Zaki Al-Ibrashi, The Liablility of Physicians and Surgeons in Egyptian and Comparative Legislation, *Op. Cit.*, p. 178.
(3) Esmat Muhammad Al-Sheikh, Administrative and Criminal Liability in the Medical Field, op. cit., p. 135.
(4) Ramadan Abu Al-Saud, The Liability of Physicians and Surgeons, op. cit., p. 79.
(5) Rabea El-Sayed Abdel-Qader Eid, Administrative Liability and Judicial Control of Medical Errors: A Comparative Study, *Op. Cit.*, p. 214.
(6) See: René SAVATIER et J.M. AUBY, Traité de droit médical, Paris, 1959, p.312.
(7) Mahmoud Sami Gamal El-Din, Administrative Liability in the Medical Field in the Egyptian and French System, *Op. Cit.*, p. 278.

2. The medical work is performed by a specialized person in order to cure the patient according to the medical principles and the established knowledge in the science of medicine. The basic principle in medical work is to treat the patient and cure him of the disease, reduce his severity, or merely relieve his pain. Medical work is considered a practical art because it progresses and develops as the science progresses. Being a science, medicine is characterized by difficulty and shortcoming.
3. The medical work is required to be legitimate and for the doctor to obtain a license to carry out the task and to follow the established scientific principles in the science of medicine. It also necessitates that the doctor's intervention be directed to treatment, his intervention be based on the consent of the patient and the doctor's commitment to inform the patient of the dangers of treatment and surgical intervention.
4. The medical error is every violation of the doctor of the medical rules and principles stipulated by the accepted science in theory and practice at the time of carrying out the medical work, and the resulting breach of the duties of caution, and the resulting injury to the patient.
5. Medical errors are also many and developed with the development of science and science and medicine, although the majority of errors result from diagnosis, treatment or performing operations.
6. The doctor is held accountable for his error of any kind, whether it is a technical, ordinary, serious or minor. The doctor does not enjoy any exception except in the case of necessity and force majeure.
7. The criterion for this liability is the standard of the average physician if he is attended in such apparent circumstances of the attending physician.
8. The criterion of medical error is an objective that is taken from the usual behavior of the ordinary person as a criterion by which the behavior of the perpetrator of the damaging act is measured, taking into account the external circumstances that surrounded him.
9. Medical injury is the injury that befalls the patient in his body, money, feelings or emotions as a result of the doctor's error. The injury may be actual related to money or body, or vindictive that affects the person in his feeling, dignity or honor.
10. The elements of medical damage are a breach of the patient's legitimate interest, and that the damage is sure to occur, has actually occurred, or will inevitably occur in the future. Compensation for potential injury is not permissible unless it actually occurred. As for missing the opportunity, it is compensated for.
11. The causal relationship is based between error and damage, and the assessment of the causation link and its availability or non-availability are among the substantive issues that are decided by the trial court as long as its conclusion is justified and based on what is proven in the papers.
12. If there is no causal relationship between the error and the damage due to force majeure, the sudden accident and the patient's error, the doctor's liability shall be nullified.
13. The reparative compensation for the damage is estimated at the time of pronouncement of the judgment so that the injured person can repair the damage incurred by him, and the compensation is estimated by the amount of the damage and not the degree of the error.
14. The judge may rule compensation in full or in the form of a salary income for a known period or for lifetime at the time of the pronouncement of the judgment.

Given these results, this study recommends the following recommendations to our Jordanian legislator:
1. The necessity of respecting the will of the patient or his family, and it is not permissible to perform any surgical procedure without a written and informed consent of the patient or his family, after informing him of the reality of his condition.
2. Prohibition of medical experiments on humans except with a written and informed consent based on not introducing fraud or deception on the patient and respecting his human self.
3. Setting the legislative rules for medical liability and teaching it in its civil, criminal and administrative aspects in medical colleges as a compulsory course, so that doctors realize the legal aspect of the liability for their profession, thus limit the manifestations of negligence and negligence in this aspect.
4. The necessity of submitting all disputes related to public health facilities to the administrative judiciary, so that they are subject to the rules of the administrative liability that differs in their rules and elements from the rules of tort liability.
5. A behavioral guide must be developed that includes what has been settled by the union judiciary and the administrative or ordinary judiciary, and shows the actions that are considered disciplinary errors. Examples of these actions are: not seeking the assistance of an anesthesiologist when performing a surgical operation requires that, changing his scientific reality (for example, a consultant who is a general practitioner), not using a consultant in diagnosing the patient's condition or his treatment at the time it is supposed to, and his failure to comply with what is stipulated in the regulation with regard to advertising and publication in newspapers, etc.
6. In view of the tremendous progress made by the science of medicine, the breadth of its cases, the ramifications of its branches, the emergence of specializations, and the accompanying developments in

devices, tools, and other various medical materials, which became part of the doctor's work and art, and which increased the risks of practicing a profession.
7. Establishing special rules for all aspects of the medical liability to define the boundaries of the obligations between the two parties to the medical relationship and their rights (the patient and the doctor) and those who work within the medical profession, including nurses, technicians, assistants and others.

References

First: Arabic references (general and specialized)

1. Abu Al-Saud, Ramadan, *The Liability of Physicians and Surgeons*, The National Center for Legal Publications, 2005.
2. Abul-Enein, Muhammad Maher, *Compensation for the Actions of Public Authorities*, Book One, The National Center for Legal Publications, 2013.
3. Al-Adwan, Ghazi Fawzan Dhaifallah, The damage resulting from management error and compensation for it: A comparative study between Jordan and Egypt, Master's thesis, Faculty of Law, Middle East University, 2013.
4. Al-Awden, Samir Abdel Samie, *Liability of the Surgeon, Anesthesiologist and Their Assistants Criminal, Civil and Administrative*, Mansha'at Al Maaref, Alexandria, 2012.
5. Al-Banna, Mahmoud Atef, Mediator in the Administrative Judiciary, Dar Al-Nahda Al-Arabiya, Cairo, 1999.
6. Al-Fadl, Munther, *Medical Liability*, Al-Ahliyya Amman University Library, Jordan, 1993.
7. Ali, Jaber Mahjoub, Civil Liability in Surgical Practice, PhD Thesis, University of Dijon, France, 1986.
8. Al-Ibrashi, Hassan Zaki, *The Liability of Physicians and Surgeons in Egyptian and Comparative Legislation*, Egyptian Universities Publishing House, 2012.
9. Al-Khayal, Wajih Muhammad, *The Criminal Liability of the Doctor in the Saudi System*, Dar Al-Manara, Jeddah, 2009.
10. Al-Sarayrah, Ahmed Abdel Karim, *Insurance from Civil Liability resulting from Medical Errors: A Comparative Study*, Dar Wael Amman, Jordan, 2012.
11. Al-Shaer, Ramzy Taha, *Summary in the Compensation District*, University Book, Ain Shams University, Cairo, 2010.
12. Al-Shaer, Ramzy Taha, *The State's Liability for its Non-Contractual Acts*, Dar Al-Tayseer, Cairo, 2005.
13. Al-Shammari, Ahmed Adnan Jaber, The Administration's Liability for its Material Works, A Comparative Study between Jordanian and Kuwaiti Laws, Master's Thesis, Faculty of Law, Middle East University, 2014.
14. Al-Shanqiti, Muhammad Muhammad, *Rulings of Medical Surgery and its Consequences in Islamic Jurisprudence*, Al-Siddiq Library, Taif, Saudi Arabia.
15. Al-Shawarby, Abdel Hamid, *The Liability of Doctors, Pharmacists and Hospitals*, Knowledge Foundation in Alexandria, 2000.
16. Al-Sheikh, Esmat Muhammad, *Administrative and Criminal Liability in the Medical Field*, Dar Al-Nahda Al-Arabiya, 2014.
17. Al-Shura, Faisal Ayed Khalaf , Medical Error in the Jordanian Civil Law, Master's Thesis, Faculty of Law, Middle East University, 2015.
18. Al-Tamawi, Suleiman, *Lessons in Compensation Judgment and Methods of Appealing Judgments*, Arab Thought House in Alexandria, 1997.
19. Al-Yacoub, Badr Jassim Muhammad, Injury to the Human Body for Treatment, PhD Thesis, Faculty of Law, Ain Shams University, 2002.
20. Anwar, Ihab Yousry, The Doctor's Civil and Criminal Liability, Ph.D. Thesis, Faculty of Law, Cairo University, 1994.
21. Ateeq, Sayed Muhammad, *The Liability of the Doctor: A Comparative Study*, Dar Al-Nahda Al-Arabiya, 2015.
22. Azzam, Hamad Fakhri, General Shariah Controls for Medical Works, *Mutah Journal for Research and Studies*, Mutah University, Jordan, Volume 20, Issue IX.
23. Eid, Rabie El-Sayed Abdel-Qader, *Administrative Liability and Judicial Control of Medical Errors: A Comparative Study*, Dar Al-Nahda Al-Arabiya, 2019.
24. Fath Al-Bab, Rabie Anwar, *Compensation Court*, Arab Renaissance House, 2015.
25. Fikri, Fathi, *The State's Liability for its Non-Contractual Actions*, Dar Al-Nahda Al-Arabiya, 2003.
26. Fouda, Raafat Muhammad, *Lessons in the Judiciary of Administrative Liability*, Dar Al-Nahda Al-Arabiya, 1999.

27. Gabr, Hatem , The Theory of Elbow Error, A Paired Study in Egyptian and French Laws, PhD Thesis, Faculty of Law, Cairo University, 1968.
28. Gamal El-Din, Mahmoud Sami, *Administrative Liability in the Medical Field in the Egyptian and French System*, New University House, Alexandria, 2021.
29. Hammad, Raafat Muhammad, *Rulings on Surgical Operations: A Comparative Study between Islamic Jurisprudence and Positive Law*, Dar Al-Nahda Al-Arabiya, 1994 edition.
30. Hammad, Sherif Raafat Muhammad, *Rulings and Regulations for Surgical Operations: A Comparative Study*, Dar Al-Nahda Al-Arabiya, 2018.
31. Ibrahim, Jalal Muhammad, *Legal Liability for Medical Facilities: A Comparative Study"*, without a publisher, 2007.
32. Jaafar, Muhammad Anas, *Compensation in Administrative Liability*, Dar Al-Nahda Al-Arabiya, 1997.
33. Jaber, Khaled Ali, The Civil Liability of the Medical Team between Islamic Sharia and Jordanian Law, Master's Thesis, Faculty of Law, Middle East University, Jordan, 2013.
34. Khayal, Mahmoud Abdel Muti, *Civil and Administrative Liability for Medical Work*, Dar Al-Iman for Printing, Cairo, 2016.
35. Nashr, Mustafa, *The Reality of Drug Abuse and the Role of the Family in Prevention and Elimination*, Yarmouk University, Irbid, Jordan, 2004, 2004.
36. Omar, Hamdi Ali, The No-Fault Liability of Public Medical Facilities: A Comparative Study, PhD thesis, Faculty of Law, Zagazig University, 1979.
37. Omar, Hamdi Mohamed, *Administrative Liability*, New University House in Alexandria, 2012.
38. Osama Abdullah Qaid, *The Criminal Liability of Doctors*: *A Comparative Study*, Dar Al-Nahda Al-Arabiya, 2010.
39. Qadwa, Zuhair, *Al-Wajeez in the Administrative Judiciary*, Wael Publishing House, Amman, 2011.
40. Shantawi, Ali Khattar, *The Public Administration's Liability for its Damaging Actions*, Wael House for Publishing and Distribution, Amman, 2008.
41. Sobhi, Ahmed Mohamed, *Administrative Liability for Damage to Public Medical Facilities: A Comparative Study*, Modern University House, 2005.
42. Sultan, Sami Hamid , *The Theory of Personal Error in the Field of Administrative Liability*, Dar Al-Nahda Al-Masrya, 1988.
43. Youssef, Amir Farag, *Intentional and Unintentional Doctor Error*, Modern University Office, 2010.

Second: French references

44. "G. Vedal et P. *DevLolve", Droit administratif*, éd. PUF, 1992.
45. "H. Renault", *L'évolution de l'acte médical*, RDS S, 1999
46. "M. Paillet", *La responsabilité administrative*, D. 1996.
47. "René Chapus", *Droit administratif général*, vol. Tomes I et II, Paris, Montchrestien, t. I. 1990.
48. C.A. Douai 22 fév. 1951, Gaz. Pal. 1951, I, 268. cité par le site web : http://www.pseudo-sciences.org.
49. Crim. 20 juin 1929, D.P. 1929, I, 91, cite par: Bénédicte -Lavaud-Legendre, « Charlatanisme et droit pénal », *les tribunes de la santé*, N° 20, 2008/3, p.72.
50. *Droit administrative général*, T 1, ed 15, Montchrestien 2001.
51. La Ferrière". Traité de Juridiction administrative, 2ème Vol. 1.
52. Laurent DELPART, *Guide pratique du droit médical et du droit de la sécurité sociale*, Chiron, Paris, 2004, p.47
53. Louis Melennec et Gérard Memeteau, *Traité de droit médical*, Tome 6, Paris, Edition Maloine, 1982, P.83.
54. P. Côt", *La responsabilité civile des fonctionnaires*, public Paris, 1922. 4- "P.L. Frier", Précis de droit administratif, éd. Montchrestien, Paris, 2ème éd. 2003.
55. René SAVATIER et J.M. AUBY, *Traité de droit médical*, Paris, 1959, p.295.