

Legal Civil Liability of the Forensic Medicine as a Judicial Expert from a Jurisprudential Perspective

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Abstract

This study dealt with the long-term liability of the forensic medicine expert as a judicial expert. This study clarifies the concept of civil liability for the judicial expert, the forensic medicine, for the implementation of it is expertise, through introducing the judicial expert to the forensic medicine, and what is the nature and types of this liability, then the study also addressed elements of the civil liability of the forensic medicine.

The study concluded that the civil liability of the expert is a tort liability, provided that the elements of this civil liability arising from the breach and the occurrence of damage, and the existence of causation where the strength of this liability is the damage resulting from the expert's evacuation of the obligations incumbent upon expert.

Keywords: Forensic Medicine, Legal Expert, Civil Liability, Contractual Liability, Tort Liability. Causation, Damages, Breach.

Introduction

This research deals with the issue of civil liability of the judicial expert, forensic medicine. It is known that many courts of different types and degrees seek help in many cases, whether criminal, civil, commercial or religious, the opinion of people of experience and know-how about certain issues that are difficult or prevented for the judge to decide on them spontaneously.

Forensic medicine knows the doctor who devotes all his time to the job and is not allowed to practice his profession abroad in order to go to study the technical cases and issues that are presented to him and to have ample time to see and follow up on new scientific research in the various branches of forensic medicine.

The judicial expert forensic medicine is considered an assistant to the judiciary to clarify and remove the ambiguity of some of the difficulties encountered by the judge during the exercise of his profession in adjudicating the disputes presented to him.

From this standpoint, the courts are seeking the help of forensic medicine to determine the cause of death for the victim, estimate the period of suspension for it, or indicate whether the injury that the victim received poses a threat to his life or not, or determine the mental and psychological state of the offender to ensure his eligibility for trial and punishment And many other things.

The civil liability of the expert means the positive and negative actions that commit during the practice that accommodates the issue stipulated in the legislation and laws, as civil liability is a person's breach of a spot on him and imposed on him to implement it either as a law or an obligation. It resulted in damage and this damage

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is matched by compensation and liability here means a personal obligation to compensate for the damage that he caused to the expert, either as a result of a breach of a legal rule or a breach of the obligation he owes.

Discussion

Forensic medicine³ is the specialist in treating and studying cases that are considered by lawmen from a medical point of view and in which an opinion has been expressed. He also knows that every person undertakes a technical examination or gives a professional opinion specialized in a judicial incident and thus includes a doctor, a weapons expert, a specialist in examining fingerprints, and a forensic photographer. And the investigation expert is every doctor who undertakes an examination of a judicial incident and issues an oral or written opinion, and he is not required to be a specialist, for example, a general practitioner⁸ who examines simple daily judicial medical facts and gives preliminary judicial medical reports. The internal diseases specialist who undertakes the examination and treatment of a poisoned, the dermatologist examines and treats an injured or infected venereal disease and links it to a time related to a sexual accident, and the surgeon who treats a person with a gunshot wound, acute instrument, or a traumatic wound caused by a traffic accident, and the radiologist gives him a radiological report on a fracture Updated with a specific mechanism³.

Forensic medicine⁸ in the capacity as a judicial expert when the judge resorts to the election in the event that a technical or medical scientific issue outside the jurisdiction of the judge is presented. A civil liability asks the forensic medicine in the capacity as an expert for every mistake he commits. Contractual liability and tort liability resulting from what the expert does to others in terms of the harm that commits against them.

Regarding the civil liability¹ of forensic medicine in the capacity of a judicial expert, many disputes have arisen between the jurists regarding the legal nature of the civil liability of forensic medicine. Is it a contractual liability or a tort liability?

And considering that forensic medicine, in the capacity of a judicial expert, does not enjoy any of his immunity, he is subject to civil liability provisions based on the legal rule. Any damages to others obliges the perpetrator to pay compensation⁴.

The civil liability¹ of the forensic medicine is proven as soon as its elements are available, but there is a variation in cases in which the responsibility of the forensic medicine is contractual and in which it is negligent in the work of the expert, so the work of the expert is subject to an oversight during the performance of the tasks assigned to him, and the lack of commitment to caution and prudence in his work exposes forensic medicine civil liability as a judicial expert.

Most of the legislation, judicial jurisprudence and jurisprudential opinions are unanimously agreed that forensic medicine is responsible for the capacity as a judicial expert. It is responsible for the damages that may occur during the exercise of the profession².

A debate arose in jurisprudence about the nature of the judicial expert's civil liability. There is an aspect of jurisprudence that considers the civil liability of the judicial expert to be a moral responsibility. That this point of view from a personal or subjective can only trigger his moral responsibility. In order to enable the expert to carry out his responsibility to the fullest and free from the influence of potential legal liability. Another aspect of jurisprudence in France is considered by the forensic medicine expert being subject to the responsibility of the judge if he issues his report with a final judgment⁵.

A dispute also arose over the nature of the forensic medicine expert civil liability, as he is a judicial expert about whether it was a contractual or tort liability.

The Tort Liability of Forensic Medicine as a Judicial Expert:

The liability of forensic medicine is considered one of the most important manifestations of civil liability at all. Social coexistence requires individuals to respect the controls on which this coexistence is based⁴, such

as respecting the rights of others and not violating their property or rights and any breach of this system unless the owner bears the consequences of this breach.

The legal civil liability of forensic medicine is proven as soon as the expert commits a professional mistake that harms the litigants, this responsibility is subject to the general rules of limitation.

For the establishment of the tort liability of forensic medicine, the three founding elements of the tort, breach, Damages and Causation, must present².

Breach: An error on the part of a forensic medicine expert considers every deficiency or breach thereof. The jurisprudential definitions that were given to the breaches have varied so that the idea of breach is not controlled in terms of limits, and one of the most famous definitions of breach is the definition of the jurist Baniol and the jurist Mancini, but the jurist SulaimanMorcos defined it based on the moral element, and the scholar Al-Sanhouri sees it as a deviation in the due behavior and he had the ability to distinguish so that he realizes that has deviated⁶.

The forms of the contemporary breach of the task and the responsibility of the forensic medicine expert in the delay in carrying out the mission and omission in its implementation or refusal to do it without justification, and the acceptance of the task despite his knowledge of his inability to accomplish it and his deviation from the ethical principles that must be met such as objectivity and integrity. As for the forms of the breach during the execution of the task, they may be legal or technical⁶.

As for the legal breach that arises as a result of the neglect of the legal principles and the obligations that the expert under the law regulating the experience, such as the failure of the forensic medicine expert to undertake the task himself, exceeding the limits of the task, or the delay in filing the report and receiving any fees from the litigants directly under any form. And the technical errors of the judicial expert, which makes during the exercise of the work and deviates from the established technical and scientific principles in relation to the specialization. As for the forms of breach after the implementation

of the task, such as failure to respect the principle of confrontation, attend sessions and discussion, lack of respect for confidentiality⁷.

The majority of jurisprudence is unanimous that the civil liability of the forensic medicine expert is fulfilled for all errors that make regardless of their seriousness. As long as the mistake committed by the forensic medicine expert is not committed by another expert with the same circumstances⁸.

Damage: damage is the second element in tort liability, so there is no negligence if no damage occurs to others, and the damage is of two types, material and moral. Material if the forensic medicine expert deviates from the behavior of the common man taking into account the circumstances of time and place and leads to injury to the injured in money or a diminution of rights, and it will be a moral act of awareness and will, and it will strike the affected person, not with money, but in emotion and feeling⁹.

In the field of compensation for the damage caused by the forensic medicine expert, the effort and expenses spent by the litigant, and the opportunities that were lost from him, represented in the loss of his right in whole or in part, according to events and circumstances, and the delay in deciding the case by changing its course in a way that harms him. It is stipulated that the damage be done personally, and that the damage be actuality and affect an acquired right¹⁰.

Causation: It is not sufficient for the tort liability of the forensic medicine expert to be a breach on the one hand and the damage on the other hand. The tort liability for the breaching act must not be realized until it is proven that that act is the direct cause of the damage. In the area of expertise, causation is established between the breach of forensic medicine expert and the damage caused to the plaintiff litigant in the liability lawsuit¹¹.

Although causation is an essential element in the realization of tort liability. However, in the report of the forensic medicine expert, the judge does not base judgment on it, to some extent the judge has the right to

recognise it or not recognise it¹⁰.

The Contractual Liability of Forensic Medicine as a Judicial Expert

The forensic medicine expert, usually appointed by the court regarding the understanding of facts of a technical or scientific nature concerning a dispute before it awaiting an urgent solution.

An opinion in French jurisprudence went to regard the responsibility of forensic medicine expert as a liability of a contractual nature, supporting their position that the appointed expert is a joint agent of the litigants. Accordingly, the responsibility of forensic medicine expert is a liability of a contractual nature. The DEMOGUE⁵ jurist went to support this trend, considering that the forensic medicine expert had contracted with the litigants as soon as accepted the mission. However, these trends have been criticized because the forensic medicine expert works under the supervision, direction and control of the judge and court, and he is not an attorney for the parties to the case¹¹.

Conclusion

Forensic medicine expert is every person who undertakes a technical examination or expresses a professional opinion on judicial cases, after reviewing the civil liability of the forensic medicine expert, whether it is a contractual liability or tort liability, it was found that the forensic medicine expert has the legal civil liability responsible based on tort liability. Forensic medicine expert has legal liability in the capacity as an expert for every breach commits by forensic medicine expert, as he finds himself a litigant defendant if the elements of tort liability, including a breach, damage, and causation for every damage caused by forensic medicine expert for the judicial experience.

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