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Deciding on the absentees and satisfying them from the point of view of Iranian jurisprudence and civil law and Islamic law

Abstract

Medicine and treatment is one of the most sensitive issues being addressed today. Aspects of guaranteeing the doctor's responsibility have been mentioned in the previous articles. So far, we have concluded that the doctor is not a guarantor in what he does unless he has obtained the consent and innocence of the patient or his parents. Another argument here is about the patient's own position. What is the legislator's opinion about the patient's absence? What are patient rights? How far is patient satisfaction? What role do parents play in this regard? In case of conflict between the opinion of the doctor and the parents, which one will be preferable? The following is a review and explanation of these issues.

Keywords: *Competence - Islamic jurisprudence and law of Iran - Absentees - Civil law of Iran - Legal competence.*

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Introduction

Competence in the word means merit, merit and worthiness. In Iranian civil law, there is no definition of competence and stone, so the law is silent in this regard. But competence can be defined as competence means that a person has the necessary legal characteristics and conditions to exercise and exercise individual rights and freedoms and to seize property and financial rights. In another definition, competence includes "the competence of a person to have the right and to bear the obligation and to use the rights that have been acquired by law" (Jafari Langroudi, 2006: 97). It also means the competence of a person to have and exercise rights and duties (Safaei, 1384: 178) Competence in civil law is divided into two types: A) The ability to enjoy: This type of ability, which is also called the ability to have rights, begins with the birth of a person alive and ends with his death. Article 956 of the Civil Code also refers to this matter. B) Eligibility to resign or perform or legal capacity: Article 958 of the Civil Code has been subject to this type of capacity. "Every human being will enjoy civil rights, but no one can exercise his rights unless he has the legal capacity to do so." According to the civil law, although a person acquires the necessary talent and competence to have civil rights as soon as he is born, he can apply and enforce the rights he has only if he has the legal capacity to do so. . Among the above two types of competence, what is the subject of discussion and is related to it from the point of view of stone jurists, is the latter (the ability to exercise the right or enforce the right) and not the ability to have the right (Emami, 1989, vol. 1: 204). The concept of stone and seclusion Stone literally means to forbid something. The intellect is also called "stone" because it prevents man from committing an action that is not worth doing (Ibn Faris, 1404, J 2: 138). Stone in the term of jurists means to forbid a person from taking possession of their financial affairs (Tusi, 1387, vol. 2: 281; Hali, 1420, vol. 2: 507). In legal terms, stone also means incompetence to resign, and a person is prohibited by law from being able to manage his affairs independently and without any other interference, and to perform legal acts in person. This prohibition is called stoning and the person who is prohibited from carrying out these seizures is called a stoner. Stone objects The most important causes of stone that have been included in the words of the jurists are: pettiness, madness, slavery (which is not relevant at the moment), foolishness, scales (bankruptcy) and the patient overlooking death (Najafi, 1404, J 26: 4) . The jurists have considered the three causes of smallness, madness and stupidity, because the scope of the stone is wide in them and in addition to confiscation of property, it also includes financial obligations and obligations, the stone is general and other causes that are only definite and limited possessions. They forbid it and call it a special stone (Hali, 1414, J 14: 184; Ibn Qadameh, J 4: 508). In Article 1207 of the Civil Code, only minors, immature persons and the insane are included in the category of marginalized persons. However, according to a well-known custom and custom regarding stone, Imami jurists have listed six causes (minor, insanity, insanity, scales, disease, and stupidity) under the causes and causes of stone. The stone effect of each of these six objects is different. For example, before reaching the age of puberty and intellectual

development, the child is deprived of possession of his property - except for what is excluded, such as a will (Najafi, 1404, J 26: 4). However, the possessions that increase his wealth, such as the possession of permissibility and the resurrection of the dead, are not forbidden. Majnoon, like a minor, is forbidden from seizing his property and his seizures are void (Mousavi-Khomeini, Bita, J 2: 14-13). The ruling on the ruling of the minor and insane stone is verse 282 of Surah Al-Baqarah (and the ablution is even if the marriage is annulled ...) and the hadiths and the consensus of the jurists in this regard. The scope of idiot's confinement (idiot is someone who spends his property in irrational ways (Zuhili, 1409, J 5: 438) is wide and based on jurisprudential arguments (including verse 27 of Surah Isra, verse 282 of Baqara and verses 5 And 6 Surah An-Nisa ') and numerous hadiths cover all financial possessions (Maraghi, 1418, J 2: 386). A bankrupt (that is, a person whose amount of money is less than the due debt of the due period) is considered insolvent under certain conditions. For example: the time for paying the debt has come, the debt is not long-term and it is present, the person is unable to pay his debts and the creditors ask the judge to issue a stone sentence. The stone of the poor is proved only through the ruling and ruling of the ruler (Hali, 1408, J 2: 87). .. cannot be (Tusi, 1387, J 2: 368). Sick stone As it turned out, one of the causes of stone is disease. But it is bound to be the kind of disease that leads to death. In this case, man can not seize more than a third of his property, in such a way that he gives it to another for free before his death, as if he were giving a gift (Sistani, 1417, J 2: 346). It should be noted, however, that this is a difference in Shiite jurisprudence, and many patients do not consider death to be absent. Criterion of patient's absence There is a difference of opinion among the jurists as to what kind of disease causes stone and what kind of disease is a disease that leads to death (what is the criterion of absence?): A disease that is medically dangerous According to some jurists, any dangerous disease that is likely to cause death is considered to be fatal (Ibn Rushd, Bita, J 2: 327) diseases such as AIDS that people with anxiety And the horrors are permanent, they can be included in these diseases. Such jurists who have accepted this definition believe that in order to recognize these diseases, one should leave the field of jurisprudence and leave their identification to physicians and physicians who They have expertise and experience in this field. The disease in which death occurs Some other jurists call any disease that a person dies while suffering from it overlooking death (Allama Hali, 1413, vol. 2, p. 529). Those who have chosen this definition believe that whether or not the disease is dangerous does not interfere with the validity of this title, because the narrations, which are the most important reason for proving the rulings related to the patient's stone, attribute the dying disease to diseases. They do not have dangerous meanings, and on the other hand, the general narrations such as "The sick are incapacitated except for one third of the property", include diseases that doctors do not consider deadly and deadly (Ameli (Shahid Sani), 1416, J 6: 315) . Thus, if a person suffers from a disease that doctors agree on the possibility of controlling and treating, but despite this patient due to not treating or losing life expectancy or weakness of physical strength or other reasons can not cope with the disease. And for this reason he loses his life, his illness is referred to as the disease overlooking death. A disease that is traditionally fatal This means that any disease that is mystically deadly is considered a disease that leads to death, although the patient continues to live for a long time and does not die immediately after contracting it. Hazrat Alamut, Atah, and the manner of Zalq, and that is the rest of the days, but most of them are Zalq) (Najafi, 1412, J 9: 283). Those who have chosen this definition have made objections to the previous definitions; They have said: First; The news has no such meaning. Secondly; This definition also applies to cases in which death occurs due to something other than an illness, such as a car accident. Thirdly; If the criterion in the disease leading to death is its dangerousness, then it is necessary to identify diseases that have such a description and often put the patient at risk of death, so it is necessary to consult two doctors. We will be just and expert, and even according to some jurists, in the opinion of a just doctor or two unjust doctors, it is not possible to act even if there is a strong suspicion as to their truth (Karki, 1411, J 11: 97). The legislator's silence regarding the patient's stone Although the civil law of our country is derived from Imami jurisprudence and is influenced by the famous opinions of jurists, but the legislator did not consider the disease related to death as a cause of stone and in addition to Article 1207, only minor, lack of growth and insanity are the cause of stone. Seizure of property introduced. Is it possible to mention the absence of the patient's stone as a cause of conciseness and ambiguity in the matter and claim that the civil law is silent about the effect or not of the death-related disease in the absence and prohibition of occupying silent property and take action to eliminate it? Or, basically, should it be said that since the legislator was in the position of expressing the causes of the stoning but did not mention the name of the disease related to death, can it be understood that the law sought to remove the dying patient from the number of inmates? The jurists disagree about the sick stone, as most of the early jurists (Sheikh Mofid, 1413: 671; Seyyed Morteza, 1412: 224; Ibn Idris, 1410, vol. 3: 200; Ibn Braj, 1406, vol. 1: 420) They make no distinction between the financial seizures of a sick and healthy person in terms of how these seizures influence; On the other hand, Sheikh Tusi and most of the later jurists (Allamahli, 1413, vol. 2: 531; Ameli, 1416, vol. They considered the permission of the heir necessary. In the

meantime, some contemporary jurists have joined the group of opponents of the stone and while strengthening this theory, have considered the promise not to infiltrate the patient's bodies over death more than a third weak (Khoei, 1412, J 2: 229; Mousavi Khomeini, B. ¬ta, J 2:22). It remains to be seen which of these two views the legislator's silence can be applied. In other words, can it be claimed that the legislator, despite accepting the opinion of the jurists who have considered the sick stone as certain, has refused to mention the deadly disease as one of the causes of the stone? Or should it be admitted that not mentioning the legislator meant confirming the theory of the patient not being stoned? It seems more logical to consider this silence of the legislator as confirming the unpopular opinion and opposing the sick stone because the legislator is aware of the disagreement of the jurists and accepts the argument of the opponents of mentioning the disease as a cause of stone. Refused. Autonomy has Greek roots and is equivalent to Autos = self and Nomo's = rule and means self-government. All laws of medical ethics emphasize the importance of maintaining the authority of the physician (autonomy) of the patient. Full autonomy requires that the physician provide sufficient information for the patient to make an informed choice and that the physician respect the patient's treatment decisions, But how much information should be provided to the patient by the physician to know that the patient's consent is conscious is different in different situations. The American General Practitioners 'Association defines patients' rights to information and awareness as follows: "Patients have the right to be informed of their condition and the treatment available. The amount of information that should be given to each patient will vary depending on factors such as the nature of the complication, the complexity of the treatment, the risks associated with surgical treatments, and the patient's wishes ”(GMC, 1999). In practice, there may be many problems in obtaining informed consent from the patient, for example, the patient's decision-making capacity is impaired or eliminated, in which case the physician consults with the patient's family to make the appropriate decision and consent to them. Receives. What is meant by the family in obtaining consent is different in the laws of different countries. One of the issues that can be considered in autonomy is paying attention to patients' beliefs, which poses problems for religious minorities in different countries. Even in countries where the majority of people are Muslims, a doctor must observe religious principles to establish a proper relationship with the patient. . One of the aspects of autonomy and maintaining the patient's freedoms in personal beliefs is to maintain sincere communication between the doctor and the patient, to pay attention to the principles of usefulness and the principle of non-harm.

Autopsy:

An autopsy or post-mortem examination is an operation that is sometimes performed on corpses for a variety of reasons. An autopsy requires consent, which is sometimes obtained from the person (before death) or close relatives (after death). Obtaining consent for an autopsy is out of the question because it is not out of the question or the person consents to the autopsy before death and there is no problem here, although there is no discussion of consent before the person dies. The person is not currently alive. Consent is obtained from persons who are legally authorized to give consent. Patients' rights The patient, as a member of society who has lost part of his health, can have a series of special rights in addition to the general rights that all people have over the people he deals with. These rights can be viewed from several perspectives: from the perspective of their peers, including close and distant relatives of others who interact with the patient in some way; From the perspective of the treating physician and his human and medical duties and other factors that are influential in this regard; From the perspective of the governing community and the responsibilities of the government towards patients in public health; In terms of his special rights, sometimes referred to as the "Universal Charter of the Sick"; And that in terms of the necessary protection rights, both materially and spiritually. Material and physical factors such as medicine, medical facilities, etc. Spiritually, such as strengthening the patient's spirits or giving him hope, or encouraging him to pray (Mohammad Taghi Rahbar, International Congress of Medical Law). In our case, patient rights mean receiving services that the patient is entitled to during his or her illness, which can be said to include: the right to choose and decide whether to accept treatment or informed consent, the right to object, the right to receive and Careful and ... is (Noghani and Sardari, 1997: 107). The right to refuse treatment has been recognized as one of the basic rights of patients in many European countries. This right is a consensus for patients who are legally qualified, and there is no violation of this right. However, in the case of incompetent patients, their prior opinion should be taken into account in a will prepared or approved by their legal representative. However, the opinion of the treating physician can sometimes be the discoverer of the patient. However, the acceptance of this right takes precedence in Anglo-Saxon and Scandinavian countries such as Germany, Spain, and France, and more than in other Catholic countries such as Portugal. The Parliament of the Council of Europe addressed this issue in two recommendations in 1976 and 1999, as well as in a convention in 1997, and EU member states have adopted provisions in their national law. . In the judicial procedure of some countries, such as England and Germany, comments have been made in this regard (Madani, 12: 1392). Obtaining patient satisfaction The issue of consent along with awareness has a special place in the law, and physicians who have not provided sufficient

information to the patient or have exceeded the patient's consent in the treatment of his disease may be prosecuted for negligence or violation of patient rights, otherwise moral and legal duty. The physician is to obtain the patient's consent, in other words, giving consent for the treatment of the disease is one of the methods of the patient's rights (Moharrari, 1991: 41). As an important principle of group life, human beings should be entitled to the title of human society when the rights of individuals are respected. Take (Health (Policy, 2010: pp. 12-25) Patients 'right to make decisions is respected in all ethical and legal statements, the WMA statement on Patients' Rights states: "... the patient has the right to have the information needed to make a decision. The patient must know clearly what the purpose of each test or treatment is, what the results are ...". As emphasized in WHO guidelines, sufficient time should be given to deciding whether to give consent to the patient (Larijani, 2004: 27). Hippocrates's greatest contribution to medicine was his belief in the moral principles embodied in his famous oath. It can also be seen in medicine in the collection of Hammurabi laws (Qadyani and Farboud Manesh, 2005: 42-43). The patient's rights are the duties that the medical team has towards him and are called the set of privileges and abilities or special licenses that the law grants to the patient. These rights and privileges must be respected by hospitals and patients. There is a consensus on the importance of obtaining consent in human rights instruments and on the international code of ethics and human rights instruments on the need for medical researchers to obtain informed and informed consent from research participants before testing. The consent rule has been present in all versions of the Helsinki Declaration since its adoption in 1964. Version 200 states: In conducting any research on individuals, all subjects should be fully aware of the objectives, methods, sources of funding, any possible changes in benefits, benefits, and potential risks of the research, and its potential problems. The subject should have the right to refuse to participate in the research or to refuse to consent to participate in the experiment at any time. After ensuring that the participant is fully informed, the physician should obtain his or her informed and free consent, preferably in writing. If it is possible to obtain written consent otherwise, the written consent must be documented and in the presence of a witness. The law is also enshrined in the International Covenant on Civil and Political Rights. "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, especially without his or her informed consent," he said. Therefore, according to Article 5 of the Convention, any intervention in the field of health is possible only after obtaining the informed and free consent of the participant, and this is merely an emphasis on an international law that aims to ensure respect for freedom of action and rights of individuals Decide on participation in research. So he forced no one to participate in medical research and experiments; Rather, individuals must make their own conscious and free choices. This law explicitly emphasizes the independence of patients and denies the patriarchal strategies by which patients' demands are ignored (Plummer Aurora, 2008: 189-188). The right to read the consent form The physician is obliged to provide the necessary information about diagnostic and treatment measures in a clear, precise, and accurate manner to the patient or his companions and express its effects and aspects in general, and mention the appropriate treatment methods by mentioning the benefits and risks. Each to present in full. In other words, the basis of the consent form is more than a diagnostic or therapeutic action and emphasizes more on content, which means that the physician, while providing the necessary information about therapeutic and diagnostic measures, allows the patient to use his judgment. And decide to sign the consent form. In this regard, the explanation should be understandable and should be provided along with the personal recommendations of the doctor. In such cases, the patient or his companions will be allowed to apply freely and without feeling pressured. In an emergency, any treatment that is necessary to save the patient must be done, unless we know the patient is opposed to these treatment or diagnostic measures and will not accept it. This form of permission is morally acceptable unless the patient cannot understand medical and diagnostic issues and is unable to recognize the benefits and harms of the treatment options offered to him or her. In such a situation, it is better to be close to the patient and know exactly what the patient's opinion and desires are. If the patient has already chosen someone, then that person should be used; otherwise, close people and relatives are often used to obtain consent. However, the physician must be legally aware of who is deciding on behalf of the patient so that there is no legal problem for him or her later. In addition, the physician must ensure that the decisions made by the patient's companions are in accordance with the patient's wishes as well as the patient's interests. If the physician feels that these decisions are against the patient's wishes, he or she can refer the matter to the hospital's medical ethics committee and ask for their help. In addition, the physician must include in the permit form the removal of an incomplete limb or any other tissue. If the patient is dying and no action can be taken for his survival, his relatives can be allowed to donate the patient's organs for transplantation. Of course, this can be implemented in the framework of custom and law in any country (Zali, 2008: 61-60). Obtaining the patient's informed consent Just as overcoming the conditions required of a physician to absolve himself of criminal responsibility is acquiring innocence and obtaining the consent of the patient or his legal guardians. All physicians provide the patient with a consent form to sign before surgery, and this is common in the medical community.

However, it seems that just signing this consent form is not enough to cancel the guarantee and the acquittal and consent that the legislator wants is something more than this. Therefore, it is said that the consent and innocence that is taken from the patient or his parents should be conscious. Conscious consent refers to the satisfaction that is obtained by providing a specific set of information about the type of treatment or test and its consequences to the patient. The first case occurred in 1960, in which a woman's stomach was perforated during an examination. The woman had received general consent to undergo preoperative examinations. The court concluded that this consent was not admissible. Because the patient's consent was not conscious and he was not given information about the consequences and other methods of treatment (Fiesta, 1998: 114). Needless to say, consent is legal when it comes to a qualified patient who has been given complete information. It is the responsibility of the doctor to obtain the consent of the doctor who is to operate, so usually in hospitals, each surgery has a special form in which the possible complications and risks of each surgery are mentioned. As to who should consent to the action; It is clear that every wise and mature human being who should be acted upon decides and consents. Therefore, merely signing the consent form by the patient without having the necessary information and knowledge in the field of surgery does not guarantee his rights. For a valid consent form, the conditions are as follows: 1. Satisfaction must be free. That is, the patient voluntarily and voluntarily declares his / her consent to surgical and medical operations (Jafari Langroudi, 1348: 10).

Therefore, consent that is obtained under the influence of reluctance, coercion, deception, trickery, etc., will not have any legal effect on it. Significant examples of coercion can be found in the relationship between physician and patient. For example, it is stated that "the patient is being treated in a dental clinic and his jaw is broken due to tooth extraction. He had previously signed a consent form depriving him of his right to a dentist's error, complications, and complaints. "After examining the case, the court declared that such a form is illegal and has no value and validity, and stressed that medical personnel are not allowed to force patients to sign such forms and they will not be absolved of responsibility." (Fiesta, 1377: 125). The meaning of reluctance here is the pressure that is exerted on the patient from the outside, that is, reluctance is an irresistible force and force that affects the person and forces him to do something, such as signing a consent form. In other words, the will is at the disposal of the reluctant person. Physician deception in tricking the patient is another area of invalidity and lack of influence of the patient's consent. The jurists are also of the same opinion in the field of deception, trickery and deception and its consequences, and state: The work of the patient gives hope to a type of treatment that is not good in him and convinces him that this type of treatment is useful and beneficial, he has committed pride and deception of the patient. As a result, the interest of the society and the general public requires that the physician be the guarantor and compensate for the deception that caused the loss and damage (Abbasi, 1389: 267). 2- Satisfaction must be conscious. This means that the patient has consciously expressed his consent after providing a series of specific information about the type of treatment or test and its consequences. As a result, satisfaction due to lack of intention and reluctance and with incomplete information will not be credited. Therefore, the patient's physician is obliged to provide the patient with the necessary information and knowledge about the disease and its consequences before the operation, and then proceed to obtain the patient's consent. And if the doctor does not perform this task, it may lead to the responsibility of the doctor (Ghaderi and Maleki, 1392: 134). Of course, it should not be left out that there are many factors influencing the information that the doctor gives to the patient. Including: A- The power of understanding and competence of the patient in deciding on the issue B- The patient's interest in obtaining relevant information C- The importance of how the treating physician acts D. Risks and consequences that may result from surgery. E) The possible effects that may be placed on the patient. Of course, it is also natural for the physician to set boundaries between actions that are intended to benefit the patient's health and those that are not intended to benefit the patient's health, and to make informed decisions based on the patient's specific situation. Therefore, regarding how to achieve conscious consent, it should be said that if we consider the criterion to the maximum, it means expressing all the information and knowledge related to the operation and that this information is fully understood by the patient; It is almost impossible to study this. If we consider the criterion as minimum awareness, it means that we are satisfied with a simple form of consent by the patient. In this case, too, conscious consent becomes so simple that there is a fear of ignoring the moral and legal aspects of the issue. Given the advances in patients' rights and the legal protections that have been provided to this group, today the patient not only has the right to be allowed to see, examine and touch, but also has the right to know and be aware that several There is a treatment, choose whichever one deems most appropriate, and this is based on informed consent. Therefore, informing the patient by the treating physician is a legal duty. Physicians should provide the patient with the necessary information and knowledge in a fluent and fluent language that is understandable to the patient, and should refrain from expressing specialized language that patients do not have the power to understand (Abbasi, 2010, vol. 2: 259-). 258). 3. The satisfier must be mature and sane, in other words, legally qualified. Therefore, minor and insane consent has no

legal value. In explaining this part, it should be said that as we have mentioned in the previous articles, self-efficacy is divided into two types of eulogy (which begins with a person's live birth and ends with his death) and eligibility for resignation. The kind of competence that we are looking at is the ability to resign, and it means that a person has the ability to exercise his or her rights and entitlements. Article 958 of the Civil Code stipulates the right to resign and states: "Every human being enjoys civil rights, but no one can exercise and exercise his rights unless he has the right to resign or the right to exercise the right to do so." . Therefore, according to Article 211 AH. Civil legal capacity is achieved when the person is mature, sane and mature. Different legal systems differ on the age of puberty or the legal age from which a person can make his or her own decisions. Some countries set the age of 18 as the criterion for practice and others the age of 21 as the criterion, but in most countries the age of 16 is the determining age for the person. According to paragraph 1 of Article 8 of the Family Reform Law adopted in 1969, "the consent of a 16-year-old minor to any surgery or medical or dental treatment which, if he / she does not consent, will result in injury to him / her as long as he / she is of legal age." Has reached definitive"And it is effective, and where the person is a minor, according to this clause, the consent of his guardian is not necessary." In South Australia, a person over the age of 16 can consent to medical treatment. If the child agrees to a doctor's treatment and the doctor believes that the child is able to understand the "nature, consequences and risks" of this treatment, and this treatment is completely beneficial to the child's health and at least one other doctor in writing Express your support for this theory, that child can be treated (Abbasi, 1389, J 2: 247). In the Iranian legal system, according to the opinions of jurists, the age of puberty for boys is 15 lunar years and for girls is 9 full lunar years. Hence, Note 1 of Article 1210 of the Civil Code states: "The age of puberty for a boy is fifteen full lunar years and for a girl nine full lunar years." In addition to insane minors who are also incarcerated, their consent to treatment has no legal value. And in such cases (if the person is a minor or insane), the treating physician must obtain the consent of the guardian or guardian or guardian of the minor or insane (Marshall, 2002: 37). Complementing these two conditions (ie maturity and intellect) is growth. Rashid is someone who can manage their finances. And the opposite of Rashid is the idiot who does not have such an ability. And every small and insane person is called an immature person. Therefore, in order to obtain the conscious and free consent of such persons, the consent of their guardian or guardian must be obtained. 4- Consent must be expressed before surgery and medical or at the same time. Therefore, the satisfaction expressed after the action will not have any effect and can only be one of the causes and aspects of reducing or stopping the execution of the sentence (Abbasi, 1389: 242). Of course, it is worth mentioning here that such a condition will not have an effect in urgent cases when there is not much opportunity for informed consent and understanding of the relevant information to the patient. And if the physician has performed his medical duties and medical systems and has not committed any mistake, his guarantee and responsibility will be revoked. Provisions of Article 497 of the Penal Code. Also refers to this. Therefore, doctors are legally obliged to treat patients. And one of the rights of patients in this field is to be aware of how to provide services and the side effects of medical procedures that lead to amputation or death of the patient. In addition, treating physicians are required to complete the consent and innocence form by explaining the conditions and possible complications. Therefore, it is said that in this path (acquiring innocence) there must be the following conditions: 1- The need to observe the technical and scientific standards of government systems during medical procedures. 2- Full awareness of the patient or his parents about the full course of the disease, the type of anesthesia surgery, and the complications of treatment measures. 3- Definitive indication of surgery as the main method of patient treatment. 4 - Do not use specialized medical terms in a form that is beyond the patient's understanding. 5- Failure to set a special condition and obligation for the patient to sign the consent and innocence form. 6- Intimidation and bribery should not be used for the patient to sign the form. 7- Maturity, awareness, and authority in the signatory. Of course, in emergencies where the doctor has acted in accordance with scientific and technical standards, there is no need to obtain innocence and the doctor will be allowed to treat (Kazemian, International Congress of Medical Law, Volume I: pp. 192-191).

Obtain consent in special cases:

As stated so far, every person who reaches the age of 18 has the legal capacity to manage his affairs and the surgical operations will be obtained from the patient himself, but in this regard to obtain the patient's consent. Exceptions are made in which in these cases the consent of the parents and legal guardians or the patient's spouse will be obtained or in emergency cases without consent will be treated, which are:

1- Obtaining the consent of parents or legal guardians regarding children and minors (minors), the mentally ill (free), and the elderly.

2- Obtaining the consent of the spouse.

3- Obtaining consent in emergency cases.

We examine each of the above:

Obtaining the consent of the patient's parents and legal guardians Obtaining consent before starting any medical, surgical, or medical treatment on the patient, which has taken an important form and is in fact related to the life and change in the patient's current condition, obtaining consent Is from the patient or his parents. Satisfaction in treatment is considered in

the field of medical law in terms of its consequences and consequences. Satisfaction with treatment indicates the fact that the patient, because for a very short period of time, the patient gives his body to the doctor and therapist, therefore, must be informed of this consciously and with free will. Have. Such an issue is due to the relationship between the doctor and the patient and the patient's sense of trust in the doctor, and on the other hand, it is one of the causes of falling medical responsibility towards the patient. Obviously, this theory has a wide range and meaning and is not limited to the field of patient satisfaction, but also in cases where the patient is in a state of plant life or has not reached the age of maturity, with the consent of his legal parents, this is important. Is realized. In fact, patient satisfaction is one of the principles of medical ethics and the physician is obliged to participate in making any decision with the patient, any treatment without the patient's consent is considered a violation of his rights and can be proposed in court. Even routine examinations of patients must be done with their consent, and treatment without the patient's consent can be considered a criminal offense or insult. In this regard, upon the patient's arrival at the hospital, various permits are obtained from him and his companions. As mentioned; The most basic right of patients is to give informed consent to accept a method of treatment, which is the direct responsibility of the treating physician and cannot be transferred to another, and the hospital admission is responsible for the written record of this consent when the patient is referred directly. The legal age for obtaining a consent is 18 years, which in most medical ethics books, the legal maturity is 18 years. The question is, if the patient is under legal age, from whom can legal consent be obtained? In response, it should be said; If the patient has reached the legal age of 18, the patient himself / herself will be obtained otherwise from the patient 's legal representatives. Of course, according to the holy Shari'a of Islam, the meaning of guardian is, in order of priority, father, paternal grandfather, ruler of Shari'a, and in certain circumstances, relatives of him. Therefore, in order to achieve this important thing, the satisfier must have the legal capacity to give consent, in other words, the satisfier must be wise and mature, and in the case of idiots and minors, his guardian or guardian must be satisfied. Except in urgent and urgent cases where consent is not required to avoid wasting time. Satisfactory person means the patient himself and not another person such as the father or husband (except in the case of closing the fallopian tube). If the patient is not qualified to consent, the guardian or guardian or trustee or legal representative can consent. The legislator in paragraph "T" of Article 158 of the Penal Code has specified to the parents and guardians or their legal representatives. The intention of the legislature of the legal guardians and representatives is clear, but the word guardians creates problems. Because the concept of supervisor is broad and it must be specified exactly who the supervisor means. Perhaps one of the guardians can be considered the ruler, if the patient does not have a guardian or guardian, the ruling of the ruler is obligatory as the guardian of the non-guardians. The ruling ruling on performing surgery for a patient who does not have a guardian is different from allowing the ruling physician to perform treatment in the general sense. According to the theory of the Legal Department of the Judiciary, the legal representatives in the case of surgical and medical operations, mentioned in paragraph 2 of Article 59 of the Penal Code. Approved in 1370 are: "1. Father, 2. paternal grandfather, 3. Guardian, 4. ۵ ،. "A lawyer with financial authority, 6. A minor mother with whom she has custody and provision of living expenses for a minor." Article 1183 BC Declared: "In all matters related to property and financial rights, the trustee is the legal representative." Also according to articles 1188, 1194 and 1188 BC. Which states: "After the death of another paternal grandfather, each father can appoint a guardian for his children under his guardianship to take care of them after his death and to manage their property." . And Article 1194 BC. It also states: "The father of ecstasy and the guardian appointed by one of them is called the special guardian of the child." Also Article 1235 BC. It has been decreed: "The custody of the person against the property and the representation of his law in all matters related to his property and financial rights are with the guardian." According to this theory, the above six persons can be the legal representatives of the sick person: the patient's spouse, children and relatives, if they do not have the position of legal representative, do not have the right to give permission for surgery and acquittal of the treating physician. Thus, minors, the inexperienced, the elderly who are unable to manage their own affairs, or those who are unconscious or forgetful, lack the power of purity And their condition has no legal value and validity, and the doctor must obtain the consent and acquittal of the patient's guardian (father or paternal grandfather), the patient's guardian or guardian, or the patient's legal representatives before treating such patients. Except in urgent cases where obtaining consent is not necessary. The following is how to obtain the consent of these persons: A- Getting consent in children For the treatment of children (except in urgent cases where the child's life is in danger and consent is not required), parental consent is required. If the child's parents are separated and divorced, the consent of the parent responsible for the child's custody is important, but both will usually be discussed. If access to a parent is not possible and immediate treatment is needed, a search for parental consent prior to treatment will be performed and recorded. If there is a risk of death or in cases where treatment is important and the family refuses to do so, one can appeal to the courts for consent in the field of child welfare law. For school children or

sports teams, a degree of parental consent to medical treatment is obtained in advance, and this form indicates parental consent to the treatment of minor injuries that are often expected. So in the case of serious injuries, the consent of the parents is a condition. B- Getting satisfaction in the retarded and mentally ill Contrary to popular belief, patients' consent must be obtained before any treatment. In the case of the mentally retarded, it is only in severe cases of mental retardation that a guardian will legally decide for them. Similar to the above, in mental patients, a medical team will be selected to make a decision only if the mental illness is confirmed and the patient has difficulty making decisions. Mentally ill people who are completely kept in the same place, if they are able to understand the nature of the treatment method, their consent will be taken and in case of lack of understanding and decision-making power according to paragraph "t" of Article 158 of But their guardian must be satisfied.

C) The elderly

In the case of elderly patients who refuse to consent, an attempt may be made to persuade the patient to consent, but it should be borne in mind that it is the right of people to refuse to consent. If there is a possibility of severe harm to the patient by refusing treatment and consent is not given without a reasonable reason, after confirmation of the person's mental illness, according to local law, a request can be sent to a court with established guardianship Cured. In other cases, the rules of emergency intervention can be helpful, but the courts are the guardians of the release of individuals and the court intervenes only in appropriate cases and after a person refuses treatment, forces him to accept treatment. It is necessary to mention the points that are stated at the end of this paragraph: Sometimes the patient is wise and mature, but the fear of expressing the possible dangers of treatment may make him worse or, despite the risk of death, completely discontinue treatment. In the above and similar cases, the patient can be acquitted. And if access to the patient's guardian is not possible, the religious judge or the legitimate prosecutor decides in his place. Or people who have taken sedatives and are satisfied may later claim that they were not qualified to give consent to prevent the problem. And record them all. If the patient is completely drunk, the consent of the guardian is sought, and if the situation is an emergency, the doctor and staff decide. Also, people who have taken psychedelics or are intoxicated may have a degree of consciousness that does not qualify for informed consent. However, if the unconsciousness is not significant and the health personnel feel that the patient is able to understand the nature of the treatment and its side effects, the patient's consent may or may not be considered. To avoid any problems and unnecessary claims of such patients, it is better to make sure that the patient understands the nature and side effects of treatment and accept them all in a note before accepting the patient's consent. Obtaining the consent of the patient's spouse Sometimes a person's satisfaction alone is not enough, and this is related to the factors that affect the life of a man and a woman together. Such as tubal ligation - abortion therapy and infertility treatment or hysterectomy in which the consent of the wife (patient) and her husband is required. In this regard, it should first be said that when it comes to spouse satisfaction in medical operations, two types of questions arise. First, is the husband's consent necessary for the woman's surgery and medical procedures? And second, whether the wife's consent to her husband's actions is also effective. In the United States and in Camenola's law in general, no one needs the consent of a spouse. Some doctors respect their opinion and refuse to perform the operation if their spouse is not satisfied. However, some doctors also perform surgery. Regarding the consent of the wife, a decision has been issued by the Paris misdemeanor court, according to which the husband does not need the permission of the wife to treat her. According to it, "a woman goes to the doctor for treatment and the doctor, after examining her, with the help of one of her colleagues, tells her that the mucous membrane in the uterus has been destroyed and that surgery is needed. The wife agrees to do so without her husband's permission. The day after the surgery, the husband finds out and two days later the patient dies. As a result, the husband complains to the doctor and claims compensation. The court, after examining the matter, issues a ruling stating that the woman does not need her husband's permission during the surgery and that the doctor consents to the patient before the operation, which is effective in the operation, and especially that the doctor The woman was not aware that she was married; "Therefore, the doctor will be absolved of responsibility." However, this is also the case in our current legal system, and couples enjoy freedom and authority within the prescribed and legal limits; But it seems to be more appropriate if we go into detail on this issue. In this way, those surgeries and medical operations that are effective in married life, this freedom and authority must inevitably be limited, and in addition to the consent of the person being operated, the consent of his spouse must also be obtained. For example, in an operation such as an abortion, this operation must naturally be performed with the consent of the husband. Or reciprocally, in the case of a couple vasectomy, which prevents their reproduction, considering that reciprocal rights are conceived for men and women in this way, it seems that the consent of both parties is necessary (Abbasi, 2010, vol. 2: 254-253). Therefore it must be said; Spousal consent is not usually required for any person, but it is a surefire way to obtain a spouse's consent on how to act on one's ability to have children. In fact, all treatment measures that affect marriage rights require the consent of the spouse and include the following: • Abortion • Hysterectomy • Sterilization • Transgender •

Amputation • link. Obtain consent in case of emergency A real emergency is when immediate action is needed to maintain the patient's life or health, the patient is unable to seek counseling, and the patient has not previously given any care instructions. Therefore, in emergency cases, obtaining consent is not necessary, but since the definition of being an emergency covers a wide range and may lead to misinterpretation, it is better to consider a series of cases. If the patient is not conscious and there is not enough time to inform his parents, it is better to inform the judicial authorities and get permission for it. If there is no time to inform the judicial authorities, make an appointment with three doctorsSet up and explain emergencies and then start treatment. If the number of physicians present in the medical center is less than three, the physician can prepare the minutes of the above meeting in the presence of other personnel and medical or nursing staff. In very urgent cases where there is no opportunity for anything, the doctor is obliged to treat and save the patient's life without obtaining consent.

The following three conditions are sufficient for an emergency situation:

1- There is a serious danger to the patient's life and body, and if it is not treated and treated soon, there is a possibility of death or serious injury.

2- The patient or the injured person is not able to give permission, that is, he is in a coma or anesthesia, and he cannot give permission and he does not have access to his relatives, and he has not previously provided any instructions for caring.

3- All physicians should take measures to eliminate the patient's physical risks.

In this regard, paragraph "c" of Article 158 of the Islamic Penal Code of 1392 stipulates: Technical and scientific standards and government systems should be done. "In urgent cases, consent will not be necessary." Also, Article 497 of the Islamic Penal Code of 1392 stipulates: "In urgent cases where acquittal is not possible and the doctor treats the patient in accordance with the regulations to save the patient, no one is responsible for the loss or damage." Regarding emergencies, Article 1 of the Executive Regulations of the Penal Code stipulates refusing to help the injured and eliminating life-threatening injuries, approved in 1975: "If immediate action is not taken, it will result in life-threatening or amputating limbs or incurable or incurable complications."

Article 2 of this regulation includes medical emergencies (emergency) including the following:

1- Poisoning;
2- Burns;
3- Childbirth;
4- Injuries caused by accidents and vehicle accidents;
5- Stroke and heart attack;
6- Coma;
7- Severe respiratory disorders and suffocation;
8- Convulsions;
9- Dangerous infectious diseases such as meningitis;
10- Diseases of infants who need blood transfusion;
11. Other matters which are included in the definition of Article One. According to this last paragraph, it is known that the examples of medical emergencies are not limited to these cases, and the mention of these cases has been allegorical. It should be added that in non-emergency cases, in case of personal dissatisfaction, obtaining the consent and innocence of the patient's guardian is necessary.

Concluding a treatment contract A treatment contract is an oral or written contract

under which a physician or treatment center agrees with a patient to diagnose or treat a disease for a specified period of time or for a specified fee (Mohaghegh Damad, 1389: 125). The treatment contract has three characteristics: First; This contract is one of the necessary contracts. Because the subject of this contract is to protect the life of the patient and the protection of human life and health is so important that none of the patient and the doctor (or medical institution) cannot reach the desired result and where the continuation of the contract is to their detriment. Continue the treatment of the soldier and terminate the contract. Second; That the treatment contract is one of the exchange contracts, that is, from the contracts that each of the two parties receives from the other property or obligation in return for the property or obligation that he makes to the other. Third; It is better to consider it as a formal contract so that the legislator is required to consider formalities to prevent disputes and abuse of the rights of the parties or to comply with the obligations agreed in the contract. A treatment contract is a two-way relationship between a doctor and a patient, and such contracts are based on Article 10 of the Civil Code, which stipulates: "Otherwise it is effective." And since one of the necessary conditions of the contract is that the unilateral will cannot terminate it, so it is necessary that this contract be concluded with the informed consent of the patient and based on the information he receives from the doctor or medical staff. Because following this contract, the patient must provide his physical integrity to the physician, and therefore it is necessary that the patient also play a role in concluding the contract and deciding on treatment (Langroudi and Asadinejad, 2013: 16). By concluding a treatment contract, the patient obtains permission from the physician, and this permission means the consent of the person who is qualified to do so (qualified and grown) and also because there is the necessary will for a legal action. Is, so if the action is involuntary, it will be legally ineffective (Jafari Langroudi, 1989: 24). Therefore, it became clear that the patient should be informed about the medical work and the steps of the work should be clear to him; So that the patient can consciously and freely sign the contract

and submit himself to the doctor or medical staff. The question that arises here is whether this principle (the principle of patient decision-making) has a specific scope or whether this principle must be observed at all times. In response, it should be said that this principle also includes exceptions that limit the scope of authority and decision-making by the patient. Sometimes the patient voluntarily relinquishes this authority and gives it to a doctor or a relative, and so on. This is probably because the issue is complex and the patient trusts the doctor in all respects (his diagnosis and judgment). And therefore asks him to make whatever decision he deems appropriate and whatever action he deems necessary. Sometimes the doctor deprives the patient of this decision-making privilege at his own discretion. For example, the doctor recognizes that if the information is revealed to the patient and the patient knows the truth, it will lead to further harm to him. Or it may be a case of medical emergencies where the patient is in a position to make a decision. Obviously, if the patient's entourage is not available, the doctor himself will decide on the necessary measures. Sometimes the patient may be forced to make a decision. The details of these cases are given below: A. The uselessness of treatment This happens when the patient is in the final stages of the disease. In this case, giving information to the patient and getting his informed consent is not useful. This is also the case in many developing societies, and doctors believe that giving this information not only does not help the patient, but also frustrates him and makes the remaining days of his life unbearable for him and his limbs. The family also asks the doctor not to say anything about the time of the patient's death. The question here is whether or not we should exclude this case (patients in whom treatment is futile) from the realm of decision-making; Is it necessary to give the necessary information to the patient to make a decision? Some people believe that a doctor does not have the right to avoid treatment in any case, even if he believes that it does not bring useful results. Others see medical interventions as practical, taking into account patients' values and quality of life, and that of their legal guardians. Of course, these debates are still unresolved in medical ethics circles and the final decision maker varies according to different conditions and cases between physician and patient (Pourabheri Langroudi, 2013: 28-27). B- Medical emergencies Medical emergencies, in other words, "emergencies" can occur in two cases. Or the doctor accidentally comes across a patient who is not conscious enough. For example, a doctor should be present at the scene of the accident. The next case is that the doctor has already studied the patient's consent to perform a certain medical operation. But during the surgery, a situation arose that was not anticipated. It is as if the doctor discovers that the real cause of the disease is something other than what he has already diagnosed and needs another or more extensive treatment, and in this case the doctor finds it necessary to change the agreed action. Yimar is in immediate danger (Shoja Pourian, 1389: 251). At The first case in which a physician accidentally encounters an emergency should be said to be accepted as a principle of law and medicine, in which physicians can perform surgeries without the patient's consent, when the patient is unable to express Do not do your request. Now, if the patient has decided to commit suicide and the doctor accidentally hits him and saves him; What will be the doctor's responsibility if the person protests after the doctor intervenes and recovers? Is mere urgency enough for the doctor to intervene and not need to pay attention to the patient's will? Now, the patient has taken such an action with full maturity, intellect and vigilance, and the patient's will cannot be ignored, contrary to the principle of the rule of will. Medical emergencies can be assumed to be exceptions to the patient's decision-making principle if a normal human being consents to such treatment. Therefore, if physicians have a valid reason that the patient, if he had the capacity, still refused the treatment, they should refuse to provide emergency treatment without obtaining consent (Larijani, 1383: 17). So medical practice is necessary and urgent. It is not enough to create an emergency and the doctor cannot perform the medical operation regardless of the patient's will. That is, the will of the mature, wise, and alert patient, which is explicitly stated, must be observed. In the second case (where the doctor diagnosed the cause of the disease something else during the operation or the patient had another problem), it can be said that the doctor cannot act on his new diagnosis without consulting the patient. What is certain is that the doctor needs the patient's consent for any action, and therefore inevitably stops the surgery and takes the necessary medical measures when the patient decides. C- Compulsory cases In some cases, physicians are forced to do things that do not require the patient to make decisions and consent to medical procedures in order to protect the health and rights of individuals in the community. In criminal law, coercion is recognized as one of the reasons for relieving responsibility, and in that person, despite his inner desire, he takes action, which in generalizing to medical cases, the question is whether the patient has to accept medical intervention. Is it possible or the doctor is forced to take actions without making a decision and consent of the patient? Since in medical decisions and actions, the physician is obliged to consult the patient, if we raise the issue of coercion, we must imagine that the physician does not have free will, and this seems unlikely, and therefore it seems The argument will be the need for a better naming convention for this case. Because "necessity" is an excuse according to which committing some forbidden things is allowed (Jafari Langroudi, 1989: 416). There are exceptions to this principle of decision-making, such as vaccinating children against diseases such as polio, measles,

and diphtheria, and examining syphilis and examining couples for premarital thalassemia.

Conflict between patient or parent's opinion with physician

Conflict between the patient's opinion and the patient's parents In many societies

the role of parents is accepted as a natural role and they are generally considered to have full authority in making decisions for the child. There is room for debate when there is a conflict between the wishes of the parents and the child, especially when the child is at an age when he understands about himself and his wishes but has not yet reached the legal age for consent. It is stated in the book Al-Arwa Al-Wathqi that medical treatment is not subject to the permission of the parents or the father, because such a condition is contrary to the principle of self-control, which according to the rule of priority is the principle of property control (Mohaghegh Damad, 2004: 234).). Another jurist claims that when people are in control of their property, they will be in control of their souls in the first way. That is, no one has the right to deprive them of their individual freedom and to interfere in their affairs without their consent, and because they have control over their souls, they can choose someone as their guardian (Hairi, 1424: 181). Conflict between the physician and the patient's parents First of all, it should be noted that when we use the word "sick" here, we mean a person who has reached a legal age, who is not incapacitated and is considered a mature human being (explanation of his competence in the previous articles). This conflict may arise in two ways. Sometimes there is disagreement between the parents and the patient, and sometimes between the parents and the doctor (assuming the patient agrees to the operation by the doctor). According to the protocol, age groups can be divided into three categories: 1- Under 7 years old: Children under 7 years old because they are considered minors and in other words they are outcasts; Therefore, they cannot make independent decisions regarding medicine and treatment because they do not have enough knowledge about their situation. Therefore, the parents' opinion is important in this regard, and their parents decide on treatment and surgery for their children. 2-7 to 12 years: Children in this age range are considered as minor discriminators. For this reason, in the category of treatment, both the opinion of the parents and the opinion of the child are considered here. Of course, in the end, what is more important and priority is the opinion of the parents. 3- 12 to 18 years: At this age, the opinion of parents is also important; But the priority is with the children. After birth, the child enjoys all natural human rights from infancy as a member of human society. Some believe that the child can decide for himself. But what is understood from the rights of most countries, especially our country, is that the parents (father) decide and consent for the child. If we believe that parents make decisions for the child, if there is a conflict between the opinion of the patient's parents and the doctor, it seems that the opinion of the doctor should prevail, because the philosophy of the province is that someone who is aware of matters should decide for the person. In the treatment of the disease, the physician is a competent person in decision-making, and it is the physician who knows the body language better than anyone, so it seems more logical to treat the disease in the event of a conflict between the parents and the physician. , Have a provincial doctor. (Larijani, 1383: 40). It should also be added that the current practice in the hospital environment is that if parents are concerned about children and inmates who need medical treatment; If they are not satisfied, they are first referred to the help and counseling units. And if they still refuse to consent to the treatment, you can ask the court for this and get the verdict from the court. In this way, if the parents refuse to consent to the surgery or treatment of the children, the court ruling will replace their province. The treatment of the patient and the child should be beneficial to him. That is, at least do not harm them. Now the debate here is what is the benefit? And who better to recognize the patient's benefit? Is the doctor's opinion more preferable here or the parents? This needs to be investigated and refined. With a little care we find out that when a person is sick he goes to the doctor. The doctor also treats him according to what he has learned and medical knowledge in this field. It is sometimes known with a little research into the cause of the disease. Sometimes this problem may be diagnosed in the first place and therefore other tests and preparations are needed in this field. In our case, the ruling of the issue seems to be that the treating physician knows the best interests of the patient better than the parents. A doctor is someone who has studied in this field for many years and despite the parents who often look at issues in this field emotionally; The doctor is not like that and makes logical and scientific decisions. You can go even one step further and say that the doctor knows the patient's expediency better than the patient himself. Of course, here we mean expediency in terms of medicine and treatment measures. Parents' definitions of their patient's benefit and benefit are often different. Consider this example to clarify the issue. Suppose a child's clavicle is broken. The child is taken to the hospital. The doctor determines after the examination that the child should undergo surgery. That is, the doctor determines the benefit of the patient in such a way that the child recovers in case of surgery. In the same case, if the parents do not agree with the doctor (that the patient should undergo surgery); And this opposition may have its own reasons. For example, because one of their relatives had recently fainted during surgery and as a result had a complication and died, from They are afraid of anesthesia and think that the same thing may happen to their child (while doctors are fully aware of the patient's mental and physical condition). Or, because their neighborhood fracture performs

the fracture operation well, so the parents' opinion is that instead of enduring the complications of anesthesia, etc., we refer to the fracture ward and treat it in this way. Processing. You will notice that the benefits can be very different from the point of view of the parties (parents and doctor). In any case, the physician must evaluate the wishes and desires of the parents for what is best for the child, and the physician and the medical staff must be sure that their evaluation of the patient's best wishes is really more accurate than his own evaluation. (Mahvan, 1373: 15- 1). Resolve the conflict between the parents and the doctor The argument here is that there is a conflict between the physician and the patient's guardian or legal guardians, when the physician deems it necessary in medical and surgical procedures, but the guardian or legal guardians for various reasons such as incapacity. Financial and ignorance are not satisfied. Now the question is, can a specialist doctor, aware that his actions do not have a severely corrupt consequence for the patient, be able to act directly? Because the call of conscience and the reality of the matter and urgency require an honest doctor to act, but despite the need for permission from parents or legal guardians according to the legal provisions, this issue faces legal challenges. Urgency literally means helplessness and helplessness. In the term personal state, it is said that there is inevitability between two matters, one of which is committing a crime (Golduzian, 1389: 258 to 261). ***Or the legal guardian has given this permission directly to the doctor based on the necessity of medical treatment for the patient according to Article 497 of the Penal Code. Now the question is whether it is possible to take a criterion from these materials and say that the urgency of the detainee is considered a right for the permission of his parents to fall? There are two views on this issue:***

A) Proponents of the fall of the permit The reasons for this group are:

1- Al-Hakim Wali Al-Mutnana ':

The Shari'a has entered various places and has forced some people who have inappropriate objections to take action. But here, too, the abstainer (guardian) who does not respect the interests of the marginalized must be forced upon the entry of the ruler (Shams, 1391: 39).

2- Harmless rule: with the title that the guardian or legal guardian cannot use the right of guardianship as an excuse to harm another (absentee). Where there is a conflict between the doctor and the parents or legal guardians, the right of guardianship will be revoked due to harm to the detainees because they do not have the right to harm the child or detainees and therefore their guardianship has a protective aspect and cannot harm the mother To justify against them.

3- Reason: According to common sense and according to the rule of jurisprudence (literally ruling to the intellect, ruling to the Shari'a and literally ruling to the Sharia, ruling to the intellect) Expert intellect is stronger and stronger in terms of providing the philosophy of the province. As the late Muzaffar stated, the rule of jurisprudential reason consists of one major and two logical minorities, and here there is both a logical minority and a jurisprudential and intellectual minority. But in the discussion of compulsory guardianship, we have only a logical minor. It should be noted that in this matter, in support of the above-mentioned argument, it should be stated that if a subject is haram or forbidden, but according to the rational rule (the necessities of exposing the prohibitions), in support of the said rule, the ruler can rule The rationalist approach considers the opinion of the specialist physician to be the ruling and necessary guardian of the province (Mohaqeq Damad, ibid .: 18). B) Proponents of non-compliance The reasons for this group are as follows:

1- Freedom and respect for individuals: Man is inherently free and the privacy of the guardian must be respected and the legislator must observe this important matter in various places and as long as it is not against social interests, respect for human freedom must be observed. . Proponents of respect for freedom have even gone so far as to accept "euthanasia" (Tafazli, 2009: 128). In the field of private law, respect for the decision of individuals and non-invasion of privacy has received considerable attention, and it is argued that a physician or any other person cannot invade privacy under any circumstances. Therefore, there can be no excuse for the doctor to enter and interfere in the privacy of individuals, and in the opinion of this group, individuals, guardians or legal guardians have control over their property and body, and this cannot be It disrupted respect with no title.

2- Rule of action: Under this rule, the proponents of this theory state that the doctor is not allowed to enter the privacy, and the guardian or legal guardians can decide, not other people, but the legal guardian or guardian acts to the detriment of the (absentee) and no There is no responsibility for any person (Zeraat, 1390: 128), and if there is a responsibility in this regard, according to the rule of action, the final effects will be on the guardian or their legal guardians.

3- Harmless rule: According to this rule, no one has the right to harm another, and in this discussion, the doctor has no right to interfere in another body without permission under any title (Shams, ibid .: 28). Although the physician recognizes in his or her expertise that there is a danger to the incarcerated, this cannot be a pretext for harming the incarcerated because it determines the ultimate material and spiritual benefits of each person, so the material benefits of the operation may be Approve the surgery but its spiritual interests are at odds with it. Ultimately, the final decision rests with the individual, the guardian or the legal guardians, and the physician has no right to harm. As mentioned, both views have proponents who believe in the basics and explain their theory and put forward

certain principles. However, what seems to be important in this regard is the distinction between urgent surgery and non-urgent surgery, thus explaining that urgent surgery is performed without the permission of the guardian or legal guardian, given the importance of time and necessity. ¬girê. But non-urgent surgeries must always be performed with the permission and consent of parents or legal guardians. With regard to the permission of the guardian or legal guardians, the required medical measures or surgeries should be distinguished between two categories of measures. The first category is necessary and urgent measures and the second category is measures that are necessary but not urgent. Necessary measures should be taken in the next few months, otherwise they will cause irreparable damage. Regarding the first category, permission is not required and the doctor acts according to his diagnosis and according to Article 497 of the Islamic Penal Code adopted in 1392 in cases where acquittal is not possible. The doctor should treat the patient in accordance with the regulations, no one is responsible for the loss or damage. In fact, it can be deduced from this article that permission is not required in urgent cases, and we can even refer to the rule of urgency, which does not need to be used if there is a theoretical conflict between the parents or guardians and the doctor. We make the performance of medical procedures conditional on obtaining permission, but the doctor himself will perform the necessary medical measures and will not be a guarantor by observing the necessary conditions and regulations. Regarding the second category, it can be said that although the medical measures do not seem urgent and necessary at the moment, but in the next period, they will become necessary and urgent in nature, according to the spirit of the law and the referendum, permission will be obtained from the courts. The specialist doctor should take the necessary medical measures. In fact, one of the conditions that the legislator has to address Responsibility for any legal treatment or surgery is necessary, acquittal of the patient or his guardian or guardian, which is referred to in Article 495 of the Islamic Penal Code adopted in 1392. According to the second part of Article 495, if it is not possible to obtain acquittal from the patient himself due to being absent or immature, etc., acquittal is obtained from the patient's guardian. In cases where the patient's guardian is not available, the head of the judiciary Relevant prosecutors will acquit the doctor. Therefore, in urgent and emergency cases where it is not possible to access the guardian or guardian, etc., the doctor will take the necessary medical measures without obtaining consent, so obtaining consent is only permissible. It is a doctor's operation and there is no other effect on it, and therefore, if he does not observe the technical standards, etc., and causes injury or death, he is criminally liable. (Abbasi, 1379: 98) However, it may seem that when there is a conflict between the opinion of the parents or the legal guardians and the doctor, the criterion of Article 497 of the Penal Code can be used. Approved in 1392, he considered it as an emergency and obtained permission from the judicial authorities to take the necessary measures without wasting time. In the case of marriage, we also have that the guardian of the girl, if she does not give permission without permission and they need to get married, the law of marriage allows it without the permission of the guardian. The rule of urgency is more obvious in the discussion of this dissertation. In this regard, it is better first; Form a commission and a council of several qualified physicians to decide on his or her treatment; Secondly; One of the members of the commission who helps to provide the necessary explanations to the parents about the consequences of not taking medical measures and so on. And the anesthesiologist with the necessary explanations to relieve the parents from worry.

Fundamentals of civil liability of parents and legal guardians

The basis of civil liability of parents and guardians in the care of children and orphans

In the early societies, the people lived as a tribe and all the people followed the orders of the chief of the tribe and also in the family all the people were under the authority of the parents and if the children were harmed by the parents, it was possible to file a lawsuit against them. And the parents had absolute immunity from their children. This immunity is accepted in Iranian and British law. (Safaei, 2006: 13) According to Article 1178 of the Civil Code, "Parents are obliged to take appropriate measures to educate their children as appropriate ..." Has limited it to discipline. Liability for injuries to the child, due to the trauma of society, makes it necessary for society to support children. Therefore, if the child is harmed due to the unusual behavior of the parents, the parents will undoubtedly have civil liability. According to Article 7 of the Civil Liability Law, liability for the child's parents is based on fault; Of course, a fault that needs to be proven. The Iranian legislature has made the responsibility of the child's guardians conditional on the fault in the custody or care of the child, and if the plaintiff proves this fault, the claim for responsibility will be accepted. And it is clear that according to the rules of Iranian civil liability, the guardian of the child will also be absolved of responsibility by proving that the claimant is against it. However, contrary to Iranian law, Article 4, paragraph 4, of the French Civil Code of 1970 states: "Everyone is not only liable for the damage he has caused to another by his act; "It is also liable for damages resulting from the actions of those for whom it is liable." This responsibility is well understood. Because if a child harms another, it is because he has not been well educated or his care has been neglected (Hosseini nejad, 1998: 51). Liability is therefore very clear in French law. This is because the goal is to place the burden of compensating for the

damage caused by children or trainees and those who have these people under their control and custody. Because the prerequisite for the childhood or internship of these people is the presence of a guardian for them. This assumption of fault can have many benefits. Among other things, it encourages the authorities to take the necessary measures to prevent these incidents. As a result, an important step should be taken to prevent these accidents and damages. And this is almost similar to the employer's ability to prevent accidents by its employees. On the other hand, given that parents and employers have a greater ability to compensate the injured party, and certainly this ability is more than the direct cause of the loss, it is safer and a better guarantee to compensate the injured party and to avoid the injured party. It is not necessary to prove the guilt of parents or employers from this ability to compensate (Jordan, 2007: 112). The basis of civil liability of parents and guardians for children and the deprived Parents have responsibilities to their children, some of which are specified in the law, and some of which are inferred from custom. Therefore, the law governs their relationship and their duties do not have a contractual origin, and therefore they have civil liability in case of violation of their children's rights under civil liability, if there are other conditions. Therefore, in recent legislation, the title of abused children has been added, which may lead to "deprivation of the right of custody and guardianship of unqualified parents." In case of emergency, it should be said that on the one hand, the person is in need of measures, for example, the patient was brought to the hospital by accident and it is an emergency, and measures should be taken immediately, even without consent and permission. Therefore, according to Article 152 of the Penal Code. There is no doubt that there is no need for liability based on fault. As mentioned; Parents have responsibilities to their children that are subject to civil liability if they are violated and there are other conditions. The special personality and relationships of parents and children cause it to be governed by rules such as customary necessity, fairness, rulings, and moral values. According to the rule of Estiman, although parents and guardians are responsible for managing the affairs of children or detainees, on the other hand, according to Article 631 BC. The guardian or trustee is considered the trustee of the property. In the case of Amin, there is also this rule that they should not be guarantors as long as they have not violated (Maraghi, 1417: 482-481; Mousavi Bojnourdi, 1379: 187, Mohaghegh Damad 1379: 102). The legislature has remained silent on guaranteeing the enforcement of liability for parental misconduct. But from a judicial point of view, can a judge make a decision in this regard in the position of interpreting and enforcing the law, respecting the parents? One of the duties of a judge is to exercise the right to interpret the law. On the other hand, in this regard, moral rules must be observed. Therefore, as stated in Article 4 of the Civil Liability Law: "The court can reduce the following cases ... if the occurrence of damages is due to negligence, which cannot be traditionally ignored ...". Therefore, most of the faulty behaviors of parents are without malice and are caused by negligence and carelessness, and also by using concepts such as kindness, etc., in many cases, the responsibility of parents can be reduced. Therefore, it seems that the law alone cannot guarantee the protection of the privacy of the child against the parents, because much attention has been paid to the dignity of the family. Regarding the question of whether their actions are a crime if the parents do not consent to the treatment measures? It must be saidIf the parents or legal guardians of children or inmates are not allowed to undergo medical treatment and in this regard the children or inmates are harmed, it can be said that this act is a crime or according to all the articles of the Child and Adolescent Protection Law approved in 2002, this action Child abuse is any act, whether act or omission, that harms the child's health, in fact, if the parents or guardians provide the grounds for child abuse with their work, they are guilty. They have both civil and criminal responsibility, because according to According to the articles of the Civil Liability Law, if medical treatment is necessary and the parents or legal guardians do not allow the actions to be taken and cause harm, they are liable. Article 1184- Whenever the child guardian of the child is not qualified to manage the property of the defendant or commits a pity on his property at the request of the relatives of the child or at the request of the public prosecutor after proving his incompetence or betrayal of the property against the public prosecutor The ruling court annexes a trustee. Therefore, it can be said that according to Article 1184 of the Civil Code, a guardian can be forcibly removed under certain conditions. And liability lawsuits can be filed against them.

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