

The legal value of the forensic doctor's report on the criminal sentence (analytical study)

Dr. Halgord Azizkhan Ahmad¹, Dr. Dilman Azad Hassan²

¹Competence of the philosophy of criminal law Akre University for Applied Sciences, ²Forensic Medicine at the Faculty of Medicine Erbil Medical University

DOI: <https://doi.org/10.31918/twejer.2584ELI.06>

Published:2/11/2025

Abstract

The forensic doctor's report is an essential instrument in the criminal justice system because it offers precise scientific information that contributes to the formation of just judicial decisions. Nevertheless, it must be handled with caution to ensure that it is not relied on in its entirety without taking into account other evidence that is available. When it comes to providing scientific evidence that might have an impact on judicial judgments, the report of the forensic doctor is an essential piece of legal evidence that is used in the courts. In most cases, the report of the forensic doctor will contain information regarding the cause of death, an analysis of injuries, an evaluation of the degree of incapacity, and other medical estimates that will assist the court in comprehending the facts and making choices. Such reports are regarded official papers that help to the attainment of justice and the preservation of the integrity of society. The forensic doctor is required to be unbiased and independent, as well as to comply to the standards of medical ethics and the laws that govern the local legal system.

Keyword: *forensic doctor's report, Forensic Medicine, forensic medicine, scientific evidence, forensic evidence*

The legal value of the forensic doctor's report on the criminal sentence (analytical study)

Dr. Halgord Azizkhan Ahmad¹, Dr. Dilman Azad Hassan²

¹Competence of the philosophy of criminal law Akre University for Applied Sciences

Halgord.azizkhan@auas.edu.krd

² Forensic Medicine at the Faculty of Medicine Erbil Medical University

dilmanazad@gmail.com

Introduction

It is the ability of the Forensic Medicine report to provide scientific evidence that is both reliable and objective that contributes to the understanding of the medical facts associated with accidents and crimes. The advancement of medical sciences and specialties as a result of scientific development has contributed to the enhancement of the capability to combat criminal behavior and provide the necessary evidence in the field of criminal proof. The forensic doctor plays an important role in the judicial system because it assists the judiciary and interested parties in comprehending and interpreting medical evidence in crimes and complex legal issues, as well as in the detection of criminal activity. Providing the concerned authorities with the required and correct answers and aid in exposing the crime and getting to the truth is a crucial issue that needs the use of forensic experts. Proving them and identifying the perpetrator in suspected fatalities is a critical matter that requires the use of forensic experts. A forensic report is an essential piece of legal evidence that may be used in the judicial system as a means of delivering scientific evidence that has an impact on the choices that come from the courts. The specifics of the cause of death, an examination of injuries, the degree of impairment, and other medical estimations are often included in a forensic report. These contain information that might be helpful to the court in comprehending the facts and making judgments based on them. The responsibility of the forensic doctor in providing accurate and reliable reports, as he must be impartial and independent and adhere to the standards of medical ethics and local judicial laws, the forensic doctor has a great responsibility to provide reliable reports that contribute to achieving justice and maintaining the safety of society because they are considered official documents.

First: the importance of research

the study in the Forensic Medicine report plays a vital role in providing the necessary evidence to make the right legal decisions, and provide justice to the individuals concerned, and helps in identifying important medical behaviors and patterns, which can open new horizons for investigation and analysis, scientific research is used as scientific testimony presented in court, which enhances the credibility of the forensic medical report.

Second: the research problem

the main problem in this study is about the nature of the forensic report and its place among other evidentiary evidence, assessing the value of forensic medical reports in the judiciary and the extent of their impact on court decisions, and the legal challenges that may face the use of forensic medical reports in courts.

Third: research questions

There are a set of questions on this topic, namely:

- 1-What is the legal value of the Forensic Medicine report in the courts.
- 2 - is it considered strong evidence or are there reservations about it.
- 3-the extent of the impact of the report on the decisions of the court Can it be decisive in some cases.
- 4 - How is the credibility of the forensic medical report assessed.
- 5-the impact of modern technologies on Forensic Medicine reports It is answered in this research.

Fourth: the scope of the research

the scope of the research revolves around the analysis of the acceptance of forensic medical reports and a study of the cases in which forensic medical reports were accepted as evidence and their impact on judicial decisions, a study of the legal challenges that may face the use of forensic medical reports and a statement of the doctor's responsibility, intentional and unintentional.

Fifth: research methodology

the approach followed in this study is the analytical approach to the analysis of legal texts, in addition to the applied approach on court decisions and legislation related to the reports of the forensic doctor and the statement of their legal value.

Sixth: research structure

in order to cover the subject of all aspects after the introduction, we have divided this study into two researchers, namely: we devoted the first research to what is the report of the forensic doctor.

By dividing it into two requirements

The first requirement is the concept of the forensic doctor's report, and the second requirement is the scope of the forensic doctor's report.

The second is the implications of the forensic doctor's report.

By dividing it into two requirements, we have allocated the first requirement: the legal value of the forensic doctor's report. And in the second require responsibility is a forensic doctor.

First topic: What is the forensic doctor's report Forensic

A forensic medicine report is a report that is prepared by forensic medicine experts (forensic doctors), and it contains a medical scientific analysis of cases that require specialized medical expertise in criminal matters. Forensic medicine reports are utilized in courts and criminal investigations to clarify medical facts and medical recommendations related to the case. As a result, we have divided this research into two requirements, and we have assigned the first requirement the concept of forensic medicine.

The first requirement The concept of the forensic doctor's

It is a report. Forensic Studies in Medicine In order to further understand the rationale behind this criterion, we have separated it into two portions[1]. A definition of the forensic doctor's report is included in the first part. This report is intended to aid in the clarification of medical facts and to provide the required suggestions in order to arrive at the appropriate conclusions[2]. As a result of their ability to explain medical facts and make suggestions that are required, reports play a vital part in the system of criminal justice. According to the second section, which examines the position of the report from the forensic doctor among the evidence that was submitted in the criminal case, the report was presented.

The first section Definition of the forensic doctor's report The medical report is an official written by a specialist doctor who has examined the case of what has been proven related to that case and is issued upon request . The report includes the signature of the medical examiner and his official certificate, which gives the report an official and legal character[3]. The definition of a forensic medical report is an explanation and explanation written by the doctor's technical expertise, which is carried out by the expert at the request of the judiciary or his representative related to the causes of an accident, indicating its circumstances and

consequences . By definition, it turns out that the person who prepares the report is a doctor, and it may be a forensic doctor or a specialist such as a specialist in general surgery, fracture surgery or burns[4].Etc. A forensic doctor is a specialist related to the examination of victims who are subjected to assaults, which are considered crimes, whether (misdemeanor or felony), and expressing the medical scientific opinion of the tasks assigned to them within the framework of judicial expertise, whether on the living or the dead . After a thorough detection and analysis of medical evidence and information related to a particular legal case, the report aims to provide an accurate scientific and medical understanding of the medical aspects related to the case, the date and time of the incident or case are determined, which helps determine the time period around the event, how the incident or case occurred is described in precise details, including the situations and individuals involved, injuries or damage suffered by the affected person are documented, including visible and hidden injuries, the forensic doctor analyzes the injuries and health status of the individuals involved in a medical report . The forensic medical expertise enjoyed by forensic doctors is among the most prominent types of expertise, due to the important role they play in criminal investigations, interest in this expertise is increasing nowadays, as a result of scientific and technical progress in various aspects of life, including crime[5].

Section II The position of the forensic doctor's report among the criminal evidence

The establishment of evidence that a person has committed a certain crime that requires retribution represents a burden on the investigative, prosecutorial and judicial authorities based on legally prescribed evidence, and the forensic report is one of these evidence with medical expertise .the medical report has a role in scientific evidence that helps the court to build its conviction on the establishment of facts based on medical expertise on the incident in question of criminal proceedings[6].

The report of the forensic doctor is one of the criminal evidence provided for in Article (213) of the code of Criminal Procedure, by providing medical expertise to assist the judiciary in detecting crimes, through the detection and diagnosis of cases that require his precise competence, in addition to as an expert in some medical matters, as it is considered an important part of the judicial system (expert reports), and is considered criminal evidence, as it is prepared by a forensic doctor or medical expert who has experience in analyzing medical cases related to crime or accidents, this report aims to clarify the circumstances and medical results of the incident or case in question, and is used as evidence in legal investigation procedures .Which

is stipulated in Article (3) of the Iraqi forensic medicine law by providing medical, technical and scientific expertise to the investigative and judicial authorities[7] .

The forensic doctor is also subject to the provisions of the experts law before the judiciary No. 163 of 1964. Therefore, the report of the forensic doctor is considered an official editor because it is issued by a public official or assigned to a public service within the limits of his competence, which is stipulated by the legislator in the Iraqi evidence Law No. 107 of 1979, and in Article(288) of the Iraqi Penal Code[8]. Expertise is a means of proof aimed at identifying unknown facts, and it is considered mandatory for the court to take it as evidence in the facts of the case, because it shows facts related to the exact medical specialty, where it answers the questions posed by the forensic doctor[9] . Therefore, under modern principles, the court has a wide freedom of criminal evidence, as it should mainly seek the truth in order to get to it by legitimate means and procedures, therefore, it has the right to use experts, including a forensic doctor, to supplement the necessary information that it may lack to assess a particular issue and build its conviction [10].

The Iraqi legislator, did not give the report of the forensic doctor in the Criminal Procedure Code in force more power than other evidence, but left the court the discretion to assess what constitutes its conviction among the evidence presented, including the report of the forensic doctor, who is considered an expert in Forensic Medicine, in Iraqi legal texts, the report of the forensic doctor was not given legal priority over other evidence in cases of crimes, but it can have an effective effect in building the conviction of the court, especially in rape crimes that need accuracy and careful medical analysis, which may make the report of the forensic doctor the most important and urgent in considering the case[11].

The second requirement Scope of the forensic doctor's report

A forensic medical report can cover several aspects depending on the type of case and the criminal or medical investigation being conducted, describing the physical examination of the deceased or the crimes of beating, wounding and rape, and conducting medical analyzes, such as blood analysis, X-rays or any other related analyzes, including injuries, apparent signs and any natural transformations. Therefore, we have divided this requirement into two sections, the first section is devoted to the report of the forensic doctor in medical anatomy. As for the second section, the report of the forensic doctor on crimes of assault on a human being.

The first section The forensic doctor's report on medical anatomy

A medical autopsy or post-mortem examination is an evolutionary medical procedure that includes an advanced analysis of the corpse to determine the cause of death and its method, and to assess the cause of death, whether as a result of another disease or injury. This procedure is performed by a forensic doctor specializing in pathology and anatomy, as it contributes to the detection of crimes and determining responsibilities in cases of criminal death, and also provides a deep understanding of the medical causes of death at autopsy, is also a crucial tool in cases of death of unknown causes [12]. The forensic medical report at the autopsy ("it is considered an official document of the criminal case and the judge relies on it to issue the judicial verdict, since it is not just an artistic opinion and it must be written in a clear and explicit language indicating the intended meaning and avoiding vague terms, provided that the report includes the facts, evidence and conclusions reached by the doctor") [13].

The report of the forensic doctor in the medical autopsy helps the court to determine the cause of death, the means used to commit the crime and the time that has passed since the death, they are criminal evidences in addition to assessing the effects and injuries on the body if any. It is also possible through the autopsy to determine the causal relationship between injury and death, so we are facing two cases of natural death as a result of an expected or unexpected cause, whether criminal or as a result of intentional murder, which is confirmed by the forensic doctor [14]:

First: Natural death: the human personality begins with birth and ends with death [15], it was not previously of any importance to the medical report, but after science has reached the statement of the cause of death, it became necessary to have a medical report issued by the doctor to prove the cause of death, because of the legal consequences for his family and the demise of this personality [16]. Doctors at the hospital may be asked to conduct an autopsy to identify additional information about a particular disease or cause of death, as clinical death alone is not enough, but you need an autopsy to find out the real cause, that a person's death is natural and not the result of a criminal offense or intentional murder [17].

Second: intentional homicide: death may be the result of a criminal act, so the forensic doctor has a major role in determining the causes and circumstances of death, where the medical report has a role in indicating the cause of death in intentional and unintentional crimes, the criminal acts that cause death are considered murder and to remove the mystery and the curtain of the crime, the forensic doctor indicates the causes of death [18]. Anatomy is one of the most important topics of forensic medicine, especially in cases of intentional homicide,

where its vital role lies in fixing the crime .the doctor helps the court determine the cause of death, how the crime was committed, and when the death occurred. through the autopsy, it is possible to identify the effects of damage to each criminal instrument used in the crime, which helps the court convict or acquit the accused[19]. Premeditated murders may be murder by beating using a hard machine or using a sharp machine or using a firearm that leads to the crime of premeditated murder and the injury is apparent, but in some premeditated crimes they cannot be inferred by clinical detection and cannot be known only through autopsy, as in the case of giving a toxic substance to the victim, murder by suffocation or killing a newborn child[20]. Even after the burial of the deceased, in case of suspicion of premeditated murder, the judge orders to open the grave, conduct an autopsy by a forensic doctor and submit a medical report to indicate the cause of death[21]. As for whether the crime of intentional murder is by giving toxic substances, the report of the forensic doctor is among the criminal evidentiary evidence, in order to use modern scientific laboratory equipment, from conclusive evidence to detect toxic substances and their types through chemical analyzes, unlike other evidentiary evidence such as testimony and confession because they may be vague and ambiguous facts can be manipulated, the forensic report extracted from modern scientific results is certainty, not probable and inexplicable[22].

Section II The report of the forensic doctor on the crimes of human abuse

The report of the forensic doctor on crimes of assault on a human being is an important part of the criminal investigation and includes several of the basic elements that the report can cover in cases of assault on a human being, namely:

First: The Crimes of beating, wounding, harming and giving harmful substances

A blow is "any pressure that falls on the tissues of the body without leading to tearing them, even if the pressure does not result in effects such as bruising or redness of the skin or resulting in illness or disability"[24]. As for the wounds, they are tears in the skin, tissues, muscles and bones, and they are considered external, and there are internal wounds in the internal tissues, and there are types of wounds such as (acute, puncture, fragmentary or traumatic, cutting and fiery wounds)[25] .Determining the type and percentage of disability of the victim in beating and wounding crimes is considered vital in the field of Forensic Medicine, as the type of injury and the degree of disability and this percentage is a scientific and technical issue on which the adaptation of the crime and the competent judicial authority depends, as there are multiple forms due to the fact that beating and wounding crimes come in various forms, and according

to the severity of the damage, the degree of disability changes the adaptation of the crime from misdemeanors in Article(413) to felonies in Article (412) of the Iraqi Penal Code[25]. The crime of beating may also lead to the crime of abortion of a pregnant woman, and its punishment has been made imprisonment in Article (419) Iraqi penalties[26].

Second: sexual crimes

Sexual crimes are considered one of the most serious types of crimes because they affect reputation and honor, and the crime of rape is an affair with a female without her consent, or even with her consent if she is a minor(young age) for lack of full awareness and will, which is stipulated by the Iraqi legislator in articles (393-397)[27]. In his judgment, the judge relies on the medical report, which proves whether the rape crime occurred or not, because the tearing of the hymen is ancient or modern, as well as the presence of signs, the forensic doctor is the judicial authority that the judge relies on for criminal proof, and the female may resort to revenge on one of the people or try to inflict the crime on a person[28]. The forensic medical report is the one that proves the occurrence of the crime or not, in addition, it is considered one of the conclusive evidentiary evidence through clinical and laboratory signs and examinations, especially in the case of signs of physical violence, which is considered to be the use of force to commit the crime[29].

Third: proof of descen

In ancient times, the proof of descent was based on legitimate evidence and witnesses to prove marriage, but after scientific developments, especially in the field of genetic fingerprinting(D.N.A) it has become one of the criminal evidentiary evidence that a judge can rely on to find out the parentage of a child, especially when a person denies or in the case of fabricating the parentage of one of the people, modern and scientific analyzes were relied on by the French judiciary at the Paris court of Appeal on 16/12/1976, that the second husband is the real father after the medical report in the analysis of the genetic fingerprint [30]. What is meant by the medical report in the genetic fingerprint is an analysis that shows us the genetic traits, whether for negation or proof, and it is considered one of the modern scientific methods and not legitimate, scientific development has become a big role in this field and help eliminate the knowledge of the truth.

The first requirement

The legal value of the forensic doctor's report

The forensic doctor's report is considered one of the evidentiary evidence that can be relied on in courts to establish facts related to the state of health or the cause of death. These reports are used to provide accurate details about how the accident occurred, the nature of the injuries, the cause of death, and the time of its occurrence. Therefore, we have divided this requirement into two sections, the first is the authority of the forensic doctor's report, and the second section is the authority of the court in evaluating the forensic doctor's report.

The first section The authority of the forensic doctor's report

The forensic doctor's report is considered among the evidence that has increased in value in the field of Criminal Evidence, due to its accuracy and conclusiveness of the results it provides in the case of biological, chemical and genetic fingerprinting examinations, such as blood stains or the presence of tissue and hair protection under the nails of the victim or at the scene of the accident or on his body or the clothes of the victim, as it is considered one of the most important physical and scientific evidence in detecting crimes of murder and violence in proving the innocence or conviction of the accused[31].

The evidence of Criminal Evidence is no longer an absolute authority for the judge in the face of the enormous scientific development in technical matters that requires specialists in the field of Forensic Medicine, unlike other purely classical evidence, which can be far from the truth, the judge relies on certain evidence[32]. The French legislator has taken this trend that the genetic fingerprint is considered as an independent evidence in criminal evidence regarding investigations and criminal proceedings, and in Jordan, a report issued by chemical and biological laboratories in the analysis of blood stains or sperm, tissues and genetic fingerprint is considered authoritative in the evidence without the help of the testimony of its organizers[33]. One of the most famous cases in the world in which the genetic fingerprint was used was the case of US President (Bill Clinton and his Secretary Monica Lewinsky), when a semen sample was taken from Monica's dress, it turned out to belong to (Bill Clinton) and he subsequently confessed to the court[34]. The report of the forensic doctor has become an essential role in the litigation process, based on it as evidence by diagnosing and determining the type of violence and abuse that occur to the victims, determining the cause of death and injuries, their type and the criminal instrument used in the crime, detecting sexual assaults on women and children and studying the material traces left by the perpetrators at the crime scene, analyzing and attributing them to the real perpetrator, thereby revealing the curtain and mystery about the crime and identifying the facts that lead the judge to conviction and uncovering the

perpetrators of the crime[35]. We believe that the authenticity of the forensic doctor's report is considered one of the strong evidentiary evidence, especially in cases related to injuries[36], deaths and rape crimes on women and children, in addition to the scientific development in chemical and biological analyzes in the analysis of blood stains, tissues and genetic fingerprint accurately and scientifically detailed and easy to view and understand in the courts, which leads to judicial certainty and detection of the perpetrators of crimes, the old classical evidence has become the subject of consideration the forensic doctor became one of the strong evidentiary evidence[37].

Section II The power of the court to assess the report of the forensic doctor

The authority of the court in assessing the report of the forensic doctor depends on several factors and legal principles that differ from one country to another according to different legislations in general, the judge has broad powers in assessing the evidence before him in Criminal Evidence, where the court takes the medical report or reject it according to the nature of the criminal system in force, the French judiciary has taken self-conviction[38]. As for the Iraqi legislator, he did not have a stable position on the report of the forensic doctor, as it is subject to the principle of freedom of evidence, this principle allows the judge to use any means of proof he deems appropriate, even if it is scientific, according to Article (213) of the Iraqi code of Criminal Procedure[39].

The legislator worked to equate forensic medical evidence and scientific evidence in general with the rest of the evidence, such as testimonies and confessions, in terms of legal value, this trend reflects the application of the principle of non-gradation of the evidential force of evidence, where all evidence is subject to the judge's personal assessment, the judge ultimately has complete freedom to accept evidence that reassures his conscience and rely on it, or reject it if he finds its illegality or non-disclosure of the truth[40]. Although the Iraqi legislator has equated the various evidentiary evidence, this does not exclude that the report of the forensic doctor has a special importance in the strength of evidence, this is clearly manifested in crimes against morality and public morals, especially in cases of rape and sodomy, because the report of the forensic doctor is the evidence of innocence or conviction on which the judge relies[41]. Which needs accuracy and careful medical analysis, which may make the coroner's report the most important and urgent in the consideration of the case, especially in rape crimes[42]. The forensic medical report is not just a medical technical

opinion, but includes facts, the correct scientific conclusion and an official document submitted by the forensic doctor to the judicial authorities as scientific evidence of a particular fact[43].

The forensic doctor's report is considered as evidence to the court, such as biological traces such as fingerprints, hair, blood, urine, sperm, genes (DNA) present at the crime scene, on the victim's body or clothes, or on the accused, and when analyzed and matched, it is considered as evidence to the court and the judge because it helps to reveal the truth, as biological evidence, Microbiology, Genetics and DNA analysis are used as strong proof of innocence or guilt[44].

Unlike other evidentiary evidence such as testimony and confession, because they may be vague and ambiguous, facts can be manipulated, a forensic report extracted from modern scientific results is certain, not probable and not interpretable, so it is considered evidence relied on by the judge to issue a verdict in the case, whether guilty or innocent[45]. We believe that the authority of the court over the report of the forensic doctor has become an imperative on purely technical and scientific issues, based on the criteria of logic and science in light of scientific developments in the fields of modern medical, biological and laboratory analyses, where it has become a prominent and effective role in clarifying some complex issues that require the intervention of Forensic Medicine in some crimes to indicate the truth of the matter such as opening the grave, murders in terms of their nature, cause and date of occurrence, crimes of beating, wounding, disability, as well as in crimes of sexual assault and rape[46]. Therefore, the report of the forensic doctor is considered one of the strong evidentiary evidence that the judge relies on in resolving cases that rely on this report to issue the appropriate verdict in the case before him.

The second requirement Responsibility of the forensic doctor

The forensic doctor bears great and multiple responsibilities, because his role is vital in the judicial system and in the achievement of justice, the forensic doctor must provide accurate, objective and unbiased reports, based on available medical and scientific evidence, and be familiar with the criminal and civil laws and procedures governing his work, and comply with them. Therefore, we have divided this requirement into two sections, the first we allocated the criminal liability to the forensic doctor, and the second section the tort liability to the forensic doctor.

The first section Criminal liability of a forensic doctor

The criminal responsibility of a forensic doctor involves if he commits some crimes in his profession, which must be characterized by integrity and honesty required by his profession by

virtue of his work as a doctor and recording the truth in writing his report in order to protect the public interest, and it follows from his violation of regulations, instructions and laws if he commits some crimes with the task assigned to him and stipulated in the Penal Code, such as the crime of bribery, forgery, disclosure of secrets and perjury[47]. Criminal responsibility is a person's capacity to bear criminal punishment, that is, his obligation to bear the legal consequences of punishment or precautionary measure, and this responsibility is considered to be the product of the meeting of the elements of the crime[48]. The study of criminal responsibility is limited to two cases: the first is the capacity of the perpetrator to bear the criminal penalty, and the second is the attribution of the criminal behavior to the perpetrator, whether it is an act or an omission, and thus we are in front of two rules, namely the rules of eligibility and the rules of attribution[49]. The criminal liability of a forensic doctor as an expert and specialist in technical and scientific matters in the field of his medical specialty is achieved in the case of writing a medical report and supports facts that he knows are not true, and as such, the forensic doctor is responsible for the results of his criminal act, and his work requires adherence to the rules and ethical controls stipulated by regulations and laws[50]. There is no doubt that the report of the forensic doctor is considered an official document that the judiciary relies on as evidence of proof, and changing the truth in it with the intention of cheating is considered a crime of forgery in an official editor and is punishable by law by imprisonment for a term not exceeding fifteen years[51]. by causing harm to society or a person factual, contrary to the truth, with the intention of submitting it to judicial or administrative authorities, and it was consequential The damage is on him[52].

If the forensic doctor gives a certificate as a courtesy to identify a disability, injury, pregnancy, illness or death and knows that it is incorrect, he shall be punished by imprisonment for a period not exceeding two years[53]. Also, the crime of bribery in the case of requesting or accepting a gift, a privilege, a promise to perform a job, abstention or violation of the duties of public office is punishable by imprisonment for a term not exceeding ten years[54], as well as in the case of subsequent bribery by imprisonment for a term not exceeding seven years [55]. Also, if the forensic doctor discloses secrets related to his profession to a person or entity informally, she is punished for the crime of disclosing professional secrets by imprisonment for a period not exceeding two years[56].

We believe that these crimes are considered intentional crimes, where there is criminal intent based on the element of knowledge and will, in the direction of the doctor's will to the

act constituting the crime, knowing that it is a violation, and it is considered a crime, despite this, he proceeds with the commission of this crime, the element of Will is free and conscious will, so he is criminally liable and punished by law. It is worth noting that the forensic doctor is exempt from punishment if he initiates to inform the authorities before the crime is discovered or investigated.

Section II Tort liability of the forensic doctor

Tort liability of a forensic doctor refers to the legal liability that can arise when a forensic doctor performs his work in ways that cause damage to the persons involved, and is based on the principle of wrongful liability for a malicious act (negligence)[57], the elements of tort liability of a forensic doctor include the following: error (wrongful act): there must be an error or omission in the performance by a forensic doctor of his professional duties, this can include negligence, non-compliance with professional standards, making errors in forensic reports or certificates [58]. Damage: there must be actual damage caused by this mistake, the damage can be material, or moral, such as psychological damage[59]. Causal relationship: there must be a direct causal relationship between the error of the forensic doctor and the damage caused to the injured person. If these three elements are proved, the injured person can claim compensation for the damage caused to him as a result of the malicious act of the forensic doctor. The tort liability of a forensic doctor is an important part of the legal system because it ensures that forensic doctors adhere to high standards of professionalism and integrity in their work[60].

Therefore, we define the tort liability of a forensic doctor as (failure of the forensic doctor to perform the obligations required by his work, and violation of the duties of caution and caution imposed by law by virtue of his work). The forensic doctor is obliged to exercise the necessary vigilance and care required when practicing his work, and that vigilance should be in accordance with the established principles of Forensic Science, except in exceptional circumstances, and there are two directions to look at the criterion of error (personal criterion and objective criterion):

The subjective criterion is concerned with the internal conditions of the doctor, such as his personal abilities, degree of vigilance and education, and his health the subjective criterion in assessing the criminal medical error is based on comparing the behavior of the

accused doctor with the behaviors he used to take in the same circumstances that surrounded him [61]. The objective criterion is based on comparing the doctor's behavior with the behavior expected from an ordinary doctor in the same circumstances, this criterion takes into account the external circumstances that surrounded the doctor at the time of the error, and the objective criterion is based on comparing the behavior of the accused doctor with the behavior of another doctor, middle, of the same level and degree of specialization[62].

By comparing the two criteria, we find that the most appropriate and valid criterion for assessing medical error is the personal criterion that conforms to the spirit, principles and objectives of the criminal law.

Conclusion

At the end of this study, we have come to some facts that we will briefly describe through our conclusions and recommendations, which are as follows.

First: conclusions:

1-the report of a forensic doctor is an official editor written by a specialized forensic doctor, this document summarizes the medical results and analyzes in an understandable way for the judiciary and interested parties, and plays an important role in directing Justice and highlighting the medical aspects of the case and is considered evidence of Criminal Evidence.

2-the report of the forensic doctor is an important part of the criminal justice system, through the scientific technical expertise he provides for the purpose of preparing criminal evidence, in assisting the judiciary at all stages of the criminal case, so that the judge can use it as evidence to guide his conviction towards making the correct judgments that contribute to achieving justice.

3-the report of the forensic doctor and his role in criminal proof is considered one of the most important modern medical sciences that are relied on in the field of criminal proof, to use the expertise of the forensic doctor who clarifies the ambiguity and provides a conclusive scientific opinion based on proven scientific grounds due to his prominent and effective role in clarifying complex technical issues that the judge may not be able to fully understand.

Second: Recommendations:

1-it is important that the competent authorities hold training courses at the local and international level for police officers, investigators and judges on how to deal with the forensic report and how to extract evidence in the crimes to be proved. these courses will help enhance

their understanding of forensic medical reports and analyze them correctly, enabling them to make the most of this evidence in achieving justice.

2-the laws and regulations related to forensic medicine should be reviewed and updated to ensure their compatibility with modern scientific and technological developments. these legislations should include clear provisions on the legal value of forensic medical reports and how to use them in courts.

3-the necessary financial and technical resources should be provided to support forensic medicine centers and enable them to perform their tasks efficiently, this includes securing modern equipment and advanced technology to provide accurate and reliable reports, encouraging and supporting scientific research in the field of Forensic Medicine to develop new methods and techniques that contribute to improving the quality of evidence submitted to the judiciary.

List of Reference

- 1.Ibrahim Ali Hammadi Al-halbousi, professional error and ordinary error in the framework of medical responsibility, Halabi human rights publications, Beirut, 2007, p.74.
- 2.Ahmed hankawi and Ali Saleh, Forensic Medicine, heritage University College - Department of law, Iraq, NO year, P. 3.
- 3.Osama Ahmed Abdelaziz, experience in criminal law and its importance in evidence, master's thesis Faculty of law and political science, Abdelhamid Ben Badis University Mostaganem, Algeria, 2020-2021, P.36.
- 4.Amir Farag Youssef, the doctor's mistake in criminal and civil terms, Alexandria, modern university office, Alexandria, 2007, p. 9.
- 5.Baaziz Ahmed, Forensic Medicine and its role in criminal evidence, master's thesis in the specialty of Medical Law, University of Tlemcen, Algeria, 2010-2011, pp. 10 et seq.
- 6.Bogalem Karima, the role of Forensic Medicine in proving the murder, a research published in the Journal of jurisprudence, Vol.14, No. 30, 2022, P. 517.
- 7.Dr. Ibrahim Sadiq al-Jundi, Forensic Medicine in criminal investigations, NAIF University Publishing House, 2006, pp. 8 et seq.
- 8.Dr. Ahmed Fathi Sorour, mediator in Criminal Procedure Law, Dar Al-Nahda Al-Arabiya, Cairo, 2012, pp. 56 et seq.
- 9.Dr. Amal bint Ibrahim bin Abdullah Al-dabbasi, false medical report, jurisprudence study, King Fahd National Library, Riyadh, 2016, P.36.

10. Dr. Amal bint Ibrahim bin Abdullah Al-dabbasi, the false medical report, Center for research distinction in contemporary jurisprudence, Saudi Arabia, 2015, P. 39.
11. Dr. Hosni Mahmoud abdeldaim, the genetic fingerprint and the extent of its authenticity in the proof, University thought House, Alexandria, 2009, p. 564.
12. Dr. Shaaban Mahmoud Mohammed Al-Hawary, evidence of Criminal Evidence, House of thought and law for publishing and distribution, Mansoura (Egypt), 2013, p.116.
13. Dr. Dia Abdullah Abboud al-Jaber, and Ahmed Abdul-Zahra Hassan al-humaidani, the role of the Forensic Anatomical report in the criminal case, a research published in the Journal of the message of rights, the third issue, the eleventh year, 2019, P.11.
14. Abar Omar, the responsibility of the forensic doctor in positive law, master's thesis Faculty of law and political science, liabas University, Sidi Bel Abbas, 2018, P.47.
15. Dr. Abdul Fattah Khader, crime and its general provisions in contemporary trends and Islamic jurisprudence, Institute of management Press, Kuwait, 1985, p.245.
16. Dr. Aqil Aziz Odeh, adaptation of the use of poison in the murder, a research published in the Journal of Dhi Qar University, Vol.11, No. 2, 2016, p. 78.
17. Dr. Ali Awad Hussein, expertise in criminal and civil subjects, University thought House, Alexandria, 2007, pp. 7 and later.
18. Dr. Omar Abdulmajid Musabeh, the role of blood stains in the detection and proof of crimes with nanotechnology, a research published in the Arab Journal for Security Studies and training, Vol., (30), No. 16, Saudi Arabia, 2016, pp. 47 et seq.
19. Dr. Kazem al-makdadi, Forensic Medicine and criminal investigation, Arab Academy in Denmark, 2008, p.31.
20. Dr. Mohammed Ismail Ibrahim, Authentic doctor's report of proof in criminal justice, a research published in the Journal of investigator al-Hilli for legal and Political Sciences, first issue, eighth year, 2016, p.578.
21. Dr. Mohammed Hussein al-Hamdani and Dilshad Abdulrahman Al-breifkani, the idea of attribution in the Penal Code, a research published in Al-Rafidain Journal of Law, University of Mosul, Vol.12, No. 46, 2010, p. 338.
22. Dr. Mohammed Hammad Merhej al-Hiti, the supposed error of criminal responsibility, Vol. 1, House of culture, Amman, 2005, p. 7.
23. Dr. Muhammad Muhammad Abu Zaid, the role of biological progress in proving descent, a research published in the Journal of Law, year 20, No. 1, Kuwait, 1996, 281 et seq.

- 24.Dr. Mahmoud Suleiman Moussa, criminal liability in the Arab legislation and the French and Italian laws, Maarif establishment in Alexandria, 2010, p. 9.
- 25.Dr. Wasfi Muhammad Ali, brief in Forensic Medicine, Vol. 2, legal library, Baghdad, 1976, p.25.
- 26.Dr.Hassan Ali Shahrour, forensic medicine principles and rights, Al-Nargis library, Najaf, No year, P. 17.
- 27.Dr.Sultan Al-Shawi, the origins of criminal investigation, al-Arshad press, Baghdad, 1975, P.172.
- 28.Daoud Hammoud Shantaf, Forensic Medicine and its importance in criminal evidence, Al-Sabah library, Baghdad , 2012, pp. 118 and later.
- 29.Daoud Hammoud Shantaf, Forensic Medicine and its importance in criminal evidence, Al-Sabah library, Iraq-Baghdad, pp. 117 et seq., 2012.
- 30.Dallal Warda, Forensic Medicine and its role in proving violent crimes in Algerian legislation, research published in the Journal of law and Society, Vol. (8), No. 2, 2020, P. 27.
- 31.Abdelkader Ben tishe, the personal error of the doctor at the General Hospital, New University House, Alexandria, 2011, P.55.
- 32.Farah Nasif Jassim and Dr. Alla Nasser Hussein, the role of the forensic medical report in the investigation phase and the collection of evidence in the criminal case, a research published in the Journal of the Iraqi university, issue (61 P.1), p. 66.
- 33.Mahmoud Naguib Hosny, explanation of the Penal Code, special section, Arab renaissance House, Alexandria, 1988, p.434.
- 34.Mounira El-beshkaoui, Forensic Medicine and its role in proving Crime, Master's thesis, Faculty of Law, University of Algiers(1), 2014-2015, pp. 120 et seq.
- 35.Mira Walid, determining the time of death and its impact on rights in light of medical developments, a research published in the Journal of the research professor of legal and Political Studies, Vol.6, No. 2, 2021, P. 1341.
- 36.Iraqi Penal Code No. 111 of 1969 as amended in force.
- 37.Iraqi code of Criminal Procedure No. 23 of 1971.
- 38.Jordanian code of Criminal Procedure No. 9 of 1961.
- 39.Iraqi Forensic Medicine Law No. 37 of 2013.
- 40.The French penal code of 1994.
- 41.Iraqi Civil Law No. 40 of 1951.

42. Daoud Hammoud Shantaf, previous source, pp. 118 and later.
43. Dr. Aziz Akil Odeh, previous source, P. 78.
44. Article (161), paragraph (1) of the Jordanian code of Criminal Procedure No. 9 of 1961.
45. Farah Nasif Jassim and Dr. Alla Nasser Hussein, the role of the forensic medical report in the investigation phase and the collection of evidence in the criminal case, a research published in the Journal of the Iraqi university, issue (61 P.1), p. 66.
46. Dr. Shaaban Mahmoud Mohammed Al-Hawari, previous source, P. 116.
47. Osama Ahmed Abdelaziz, experience in criminal law and its importance in evidence, master's thesis Faculty of law and political science, Abdelhamid Ben Badis University Mostaganem, Algeria, 2020-2021, P.36.
48. Dr. Abdul Fattah Khader, crime and its general provisions in contemporary trends and Islamic jurisprudence, Institute of management Press, Kuwait, 1985, p.245. And Dr. Mohammed Hammad Merhej al-Hiti, the supposed error of criminal responsibility, Vol. 1, House of culture, Amman, 2005, p. 7. And Dr. Mahmoud Suleiman Moussa, criminal liability in the Arab legislation and the French and Italian laws, Maarif establishment in Alexandria, 2010, p. 9.
49. Dr. Mohammed Hussein al-Hamdani and Dilshad Abdulrahman Al-breifkani, the idea of attribution in the Penal Code, a research published in Al-Rafidain Journal of Law, University of Mosul, Vol.12, No. 46, 2010, p. 338.
50. Article (288) of the Iraqi Penal Code.
51. Article (289) of the Iraqi Penal Code. In the same context: the material and material forgery provided for in Article(287) of the Penal Code.
52. Dr. Amal bint Ibrahim bin Abdullah Al-dabbasi, the false medical report, Center for research distinction in contemporary jurisprudence, Saudi Arabia, 2015, P. 39.
53. Article (297) paragraph (2) of the Iraqi Penal Code.
54. Article (307) paragraph (1) of the Iraqi Penal Code.
55. Article (307) paragraph (2) subsequent bribery of the Iraqi Penal Code.
56. Article (437) of the Iraqi Penal Code.
57. The Iraqi Penal Code stipulates on the images of unintentional error in Article (35) by saying: (the crime is unintentional if the criminal result occurs due to the fault of the perpetrator,

whether this mistake is negligence, carelessness, inattention, lack of precaution or non-observance of laws, regulations and orders.

58. Amir Farag Youssef, the doctor's mistake in criminal and civil terms, Alexandria, modern university office, Alexandria, 2007, p. 9.

59. Abdelkader Ben tishe, the personal error of the doctor at the General Hospital, New University House, Alexandria, 2011, P.55.

60. Ibrahim Ali Hammadi Al-halbousi, professional error and ordinary error in the framework of medical responsibility, Halabi human rights publications, Beirut, 2007, p.74.

61. Abar Omar, the responsibility of the forensic doctor in positive law, master's thesis Faculty of law and political science, liabas University, Sidi Bel Abbas, 2018, P.47.

62. Same Reference , P48.