



Liabilities of Medical Practitioners Under Islamic Law and Nigerian Law: A Comparative Study

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Received: 10.05.2026 | Accepted: 10.06.2026 | Published: 19.06.2026

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DOI: [10.5281/zenodo.20756992](https://doi.org/10.5281/zenodo.20756992)

Abstract

Original Research Article

Medical practice entails profound ethical and legal responsibilities due to its direct impact on human life and dignity. In recent decades, the rise in medical negligence cases in Nigeria has intensified scrutiny of the legal frameworks governing medical liability. This article undertakes a comprehensive comparative analysis of the liabilities of medical practitioners under Islamic law and Nigerian law. It examines the conceptual foundations, sources of liability, evidentiary standards, and remedies available under both systems. The study reveals that while both legal regimes share the common objective of safeguarding human life and ensuring accountability, they differ significantly in doctrinal structure, procedural mechanisms, and philosophical orientation. The article concludes by advocating for a harmonised medico-legal framework that integrates the ethical strengths of Islamic law with the institutional robustness of Nigerian law.

Keywords: Medical Liability, Medical Practitioners, Medical Negligence, Islamic Law, Nigerian Law.

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1.0 INTRODUCTION

Medical liability represents a critical component of healthcare regulation, aimed at balancing professional autonomy with patient protection. In Nigeria, the increasing awareness of patients' rights, coupled with the expansion of healthcare services, has led to a rise in litigation concerning medical negligence.¹ at the same time; Islamic law applicable in several Northern Nigerian states provides a well-developed framework for addressing harm, professional responsibility, and

compensation.

Historically, Islamic jurisprudence addressed medical liability within broader doctrines of harm (Darar), compensation (Daman), and criminal accountability (Qisas and Diya).² Nigerian law, by contrast, derive its principles from English common law, statutory enactments, and judicial precedents.³

This article examines the intersection of these two systems, analysing how each medical liability is, and exploring the implications for a plural legal system in a



country such as Nigeria.

2.0 CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Medical Liability and Negligence

Medical liability refers to the legal responsibility imposed on healthcare providers for harm caused through acts or omissions that fall below the accepted standard of care.⁴ In Nigerian law, negligence is established where a duty of care exists, and that duty is breached, and damage results.⁵

Islamic law similarly recognises liability where harm arises from negligence (Tafrit), transgression (Ta'addi), or incompetence.⁶ However, the Islamic approach integrates legal responsibility with moral and religious accountability.

2.2 Theoretical Foundations

The theoretical basis of liability in Islamic law is grounded in the principle of Mas'uliyah (Accountability) and the legal maxim:

“Al-darar yuzal” (Harm must be removed).⁷

This reflects the overarching objective of Shari'ah (Maqasid al-shari'ah) in preserving life (Hifz al-nafs).

In contrast, Nigerian law is rooted in the neighbour principle articulated in *Donoghue v Stevenson*,⁸ which imposes a duty to avoid acts or omissions likely to harm others.

3.0 MEDICAL LIABILITIES UNDER ISLAMIC LAW

3.1 Nature and Classification of Liability

Islamic law classifies liability into:

- a. Civil liability (Daman) i.e. Compensation for harm

- b. Criminal liability (Qisas and Diya) i.e. Punishment or compensation for bodily injury or death
- c. Ethical liability (Amanah) i.e. Moral responsibility before God

A medical practitioner who causes harm through negligence is liable to compensate the patient, even in the absence of malicious intent.⁹

3.2 Role of Intention and Negligence

Intention (Niyyah) plays a central role in determining liability. Where harm occurs unintentionally during lawful treatment, liability may be limited to compensation rather than punishment.¹⁰

However, where negligence is established such as lack of skill or failure to exercise due care, the practitioner bears responsibility. Classical jurists such as Ibn Qudamah emphasised that an unqualified physician is liable for any harm caused.¹¹

3.3 Consent and Professional Competence

Consent is a fundamental requirement in Islamic medical ethics. Treatment without valid consent may constitute unlawful interference with bodily integrity.¹²

Additionally, only qualified practitioners are permitted to practice medicine. The Prophet (Peace be upon him) is reported to have said:

*“Whoever practices medicine without being known for it is liable.”*¹³

This establishes a clear basis for professional accountability.

4.0 MEDICAL LIABILITIES UNDER NIGERIAN LAW

4.1 Legal Framework

Medical liability in Nigeria is governed by:

- a. The Medical and Dental Practitioners Act¹⁴
- b. The law of torts (negligence)
- c. Criminal statutes (Criminal Code and Penal Code)
- d. Professional regulations of the MDCN

4.2 Elements of Medical Negligence

To establish liability, a claimant must prove:

- a. Duty of care
- b. Breach of duty
- c. Causation
- d. Damage¹⁵

The standard of care is determined using the Bolam test, which assesses whether the practitioner acted in accordance with a responsible body of medical opinion.¹⁶

However, the following key differences exist:

<u>Islamic Law</u>	<u>Nigerian Law</u>
Emphasis on intention (Niyyah)	Emphasis on standard of care
Fixed compensation (Diya)	Discretionary damages
Moral and religious accountability	Secular legal accountability
Reliance on juristic principles	Reliance on judicial precedent

Despite these differences, both systems converge on the principle that negligence attracts liability and victims must be compensated.

6.0 CHALLENGES AND IMPLICATIONS

Major challenges include:

- a. Weak enforcement of medical regulations
- b. Limited patient awareness

4.3 Judicial Approach

Nigerian courts have addressed medical negligence in cases such as:

- a. Ojo v Gharoro¹⁷
- b. Okonkwo v MDPDT¹⁸

These cases emphasise the importance of informed consent, professional competence, and adherence to accepted standards.

5.0 COMPARATIVE ANALYSIS

Both Islamic law and Nigerian law aim to:

- a. Protect human life
- b. Ensure professional accountability
- c. Provide remedies for victims

- c. Delay in judicial processes
- d. Lack of integration between Islamic and statutory frameworks

These challenges undermine effective medical accountability in Nigeria.

7.0 FINDINGS

The study reveals that:

- a. Both systems recognise medical negligence and impose liability

- b. Islamic law provides a morally grounded framework
- c. Nigerian law offers procedural clarity and institutional enforcement
- d. Harmonisation is both feasible and necessary as both systems complement one another.

Nigerian law differ in structure and methodology, they share a common commitment to justice and the preservation of life. A harmonised approach drawing from both systems offers the most effective framework for regulating medical practice in Nigeria.

8.0 CONTRIBUTIONS TO KNOWLEDGE

This article contributes to scholarship by:

- a. Providing a structured comparative analysis
- b. Bridging Islamic jurisprudence and Nigerian medico-legal practice
- c. Proposing a harmonisation framework
- d. Expanding discourse on medical liability in plural legal systems

9.0 AREAS FOR FURTHER RESEARCH

Future research may explore the following areas:

- a. Medical liability in telemedicine
- b. Islamic bioethics and modern healthcare
- c. Empirical analysis of malpractice cases in Nigeria
- d. Role of artificial intelligence in medical decision-making

10. CONCLUSION

Medical liability remains essential for ensuring accountability and protecting patient rights. While Islamic law and

ENDNOTES

1. I Okonkwo, (2018) *Tort Law in Nigeria*, Spectrum p. 88.
2. Ibn Qudāmah, *Al-Mughnī* (Dar al-Fikr) vol 4.
3. B.O Nwabueze, (2010). *Nigerian Legal System*, Sweet & Maxwell
4. P Giliker, (2021) *Tort Law* OUP p. 31.
5. Donoghue v Stevenson [1932] AC 562.
6. Al-Kāsānī, *Badā'i' al-Ṣanā'i'* vol 7.
7. Ibn Nujaym, *Al-Ashbāh wa al-Nazā'ir* p. 85.
8. Donoghue v Stevenson [1932] AC 562.
9. Al-Qardawi, *Fiqh of Medicine* p. 77.
10. Ibid.
11. Ibn Qudāmah op-cit at (n 2).
12. Al-Zuhayli, *Islamic Jurisprudence* vol 5.
13. Sunan Ibn Mājah, Hadith 3466.
14. Medical and Dental Practitioners Act Cap M8 LFN 2004.
15. Okonkwo, op-cit at (n 1).
16. Bolam v Friern Hospital Management Committee [1957] 1 WLR 582.
17. Ojo v Gharoro (2006) 10 NWLR (Pt 987) 173.
18. Okonkwo v MDPDT (1999) 6 NWLR (Pt 607) 471.