

A contribution to the concept of contract in medical relationships

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21/01/2015



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Introduction

- Focus on interaction of notion that appears in one specific sector
 - What sector will I study ?
 - Medical relationship
 - Why interaction of notion ? ← two legal systems
 - Public system (public hospitals)
 - Private system (private hospitals)
 - Which notion will I focus on ?
 - Contract: a meeting of two wills that create a binding legal relationship

- Structure :
 - I. Qualification in the discourse of legal actors
 - II. Coordination of the qualification

I. Qualification in the discourse of legal actors

- 4th mars 2002 Act related to patients rights
- Structure:

A. Qualification before the 2002 Act

B. Qualification since the 2002 Act

A. The qualification before the 2002 Act

- 1. Analysis
 - Civil courts
 - Cour de cassation, 20/05/1936, *Mercier* “a **real contract is formed** between a doctor and his client”

- Administrative courts :
 - Conseil d'État, 30/03/1984 : “those **admitted** to the services of public hospitals and hospices are **not placed in a contractual situation**”.
 - Government commissioner said it is a “statutory/regulatory situation”
 - → medical relationship is a statute = a situation entirely governed by regulation
 - How do patient enter into such a statutory situation ?
 - It's the effect of the decision of admittance (“*those admitted*”)

- 2. Synthesis : different and contradictory qualification !
 - **Contract vs statute**
 - Why such differences ? Because they courts have different conceptions of the notion of contract:
 - Civil courts focuses on the procedure
 - “a real contract *is formed*”
 - Administrative court focuses on the rules of this relationship which mostly come from statutory law
 - “those admitted to the services of public hospitals (...) are not *placed in a contractual situation*”

- **Contract *vs* decision**

- Why such differences ?

- Civil courts:

- They look at the consent of both parties,
- But, they do not really try to distinguish those consents

- Administrative courts:

- They look only at the consent of the public healthcare provider, which they implicitly qualified as decision
- But, they forget the consent of the patient, maybe because it's an insignificant private persons !

- Is it a problem ?
 - It wouldn't be if the rules governing the medical relationship weren't supposed to be the same.
 - But this is not the case since a 2002 Act. Where is the coherence ?
 - A coordinator is needed ! And for now it's not a stable one

B. The qualification since the 2002 Act

- 2 main ideas in the 2002 Act :
 - This act unify the material rules
 - It doesn't unify the jurisdiction

- Qualification in the Act
 - Analysis :
 - No qualification in the act it self
 - Various and contradictory qualification in the preparatory work :
 - Preparatory work in the ministry = statute
 - Preparatory work in the Parliament = contract
 - Synthesis : contradictory answers

- Qualification in case law ?
 - Analysis
 - Civil courts
 - No explicit change of the qualification of the medical relationship it self. Only the nature of the civil liability has changed.
 - Administrative courts : no explicit change either
 - Synthesis :
 - Contradictory qualifications still exist. Is it a problem ?
 - Yes, from a theoretical point of view.
 - Yes, from a practical point of view since these differences might reintroduce legal difference.

Conclusion of the first part

- Why those differences of qualification ?
 - Two conceptions of contract
 - Administrative court don't want to see the consent of the patient and rather insist on the decision.
- Those difference are not acceptable → another approach is necessary.

II. Coordination of the qualification

A. The concept of legal act

B. Applying this concept to the medical relationship

A. The concept of legal act

- The legal act it self
 - Criterion : a manifested (*i*) will (*ii*) that creates (*iii*) legal norms (*iv*)
 - Property : his effect are voidables in two cases:
 - If the will of the author was mistaken,
 - If the author acted without any competence.

- Legal act and other concepts : decision /contract / statute
 - Legal act is usefull when considering the process that leads to the creation of rules and legal relationships.
 - It's a more broader notion thant decision, which is only used in public law
 - Contract and statute are usefull when considering the relationship itself. They can be combined, since they only qualify one peculiar rule and not a whole relationship

B. Applying this concept to medical relationship

- A concept that allows one system of thought
 - Medical relationships are created by a legal act
 - Medical relationships are both contractual and statutory situations :
 - Parties can negotiate on some points, even in public structure (choosing the medical unit and the treatment when choice is offered, paying for someone else)
 - Parties have to compel to statutory provision

- A concept that give a better understanding of the medical relationship
 - Every consent of the patient or healthcare provider can be analyzed with this concept, without needing necessarily to look for the consent of another party.