

June 2014

“Good Samaritan” principles in the UAE: legal liabilities when administering first aid

Written by Rebecca Kelly.

The Good Samaritan principle means a range of different things around the world both in accordance with legislation and custom and practice. It is human nature to want to help another who needs medical assistance, but in today’s society, there is understandable concern that individuals who attempt to help another may be at risk of having a claim brought against them if that person suffers harm as a result of their intervention. The following article discusses whether a Good Samaritan principle is applied in the UAE, both from the perspective of rescuers and safety officers.

There is often confusion as to what the legal liability will be in the United Arab Emirates (**UAE**) when a person administers first aid, and what, if any, the legal consequences will be in the event the injured person dies as result of their injuries. In this legal update, we address the following three points, in accordance with UAE Law and Shariah Law:

- Is the concept of a Good Samaritan recognised within the UAE?
- Can a person who administers first aid be held legally accountable for any subsequent injuries, and or causing death in the event the injured person dies?
- What is the recommended approach for the delivery of first aid in the UAE?

Good Samaritan principle

While the origins of the Good Samaritan principle are based on a religious parable, over time it has developed to include rescuers and first aid officers administering first aid in the aftermath of an emergency. Various authorities around the world have established legal precedent where the law does not require a member of the public to act as would a Good Samaritan. However, if a person chooses to do so then, in most jurisdictions, the law offers protection to the Good Samaritan from civil compensation claims and/or criminal cases, except to the extent that their own acts caused damage beyond that which the injured would have suffered if the Good Samaritan had not intervened.

“There is, happily, in all men of goodwill, an urge to save those who are in peril”¹

Within the UAE, a question often asked in respect of this goodwill, is whether or not an individual will be held legally liable (and face imprisonment and/or civil responsibility for the payment of diya or arsh) for contributing to someone’s death or injuries if they have provided assistance to that injured person. So while it is human nature to want to help another who needs assistance, in today’s society, there is understandable concern that individuals who attempt to help another may be at risk of having a claim brought against them if that person suffers harm as a result of the intervention. Understanding how the UAE law treats individuals who offer first aid (either in their professional capacity or in rescue circumstances) is important.

UAE Law considerations

The UAE does not have a stand-alone Good Samaritan law, unlike other jurisdictions. Over the past few years, there have been news reports of a draft law under consideration, but as at the date of this article, no such law has been published. If a Good Samaritan law was to be enacted in the UAE, it would be the first of its kind in the GCC.

Typically, the key provision contained in Good Samaritan laws provides legal immunity for those individuals that administer first aid in a rescue situation, when they themselves acted in good faith and without remuneration. Of course, other considerations include the informed consent, parental rights and the right of the victim to refuse treatment. In the UAE, pursuant to articles 342 and 343 of the Penal Code (Federal Law No. (3) of 1987 as amended) (**Penal Code**), a person may be punished if they cause the death or injury of another person. In accordance with the Penal Code, causation can attach where the person *“refrained, at that moment, from helping the victim... in spite of the fact that he was capable of doing so”* or *“if the crime was committed as a result of the offender’s failure to perform the duties imposed on him in the performance of his function, profession or craft...”*

However, pursuant to article 52(3) of the Penal Code, no crime is committed where medical treatment is performed in accordance with generally accepted scientific principles and with the express or implied consent of the patient, or if medical interference is required in emergency cases. Therefore, no criminal liability will attach to an individual performing first aid in a rescuer situation, as long as the conditions of article 52 of the Penal Code are met.

Shariah Law considerations

Based upon a Fatwa authored by the Official Iftaa Centre, General Authority of Islamic Affairs & Endowments on First Aid Procedures in 2010 (**First Aid Fatwa**), first aid must be administered by all people in accordance with Shariah Law.

The Fatwa states (as translated): *“Islamic Shariah is based upon the five necessities, one of which concerns the preservation of one’s life and property. Therefore, the provision of first aid can be seen as both an Islamic duty and a humanitarian necessity, as the first-aid is administered to save people’s lives and relieve their pain. Any trained medical person, particularly in emergency situations, ‘do their best efforts’ to provide immediate relief, and this is supported by the general provisions of Shariah that call for co-operation, helping the needy and relieving inflicted people.”* Therefore, in accordance with the Fatwa, no criminal liability will attach to an individual, in respect of both Shariah law and UAE law when they perform first-aid. The opposite is true; those that do not assist when they witness a person suffering can be held criminally accountable.

Immunity from prosecution

“It is true that, while the common law imposes no duty to rescue, it does impose on the Good Samaritan the duty to act with due care once he has undertaken rescue operations. The rationale is that other would-be rescuers will rest on their oars in the expectation that effective aid is being rendered.”²

While the citation above is US judicial obiter dicta, it is similar to the UAE position. The UAE legislation and Shariah Law principles cited above should not be interpreted to suggest that a rescuer is expected to be competent to treat someone suffering from a heart attack, and that if they fail to do so, they will be held responsible in the event of the individual’s death. Rather, the rescuer should seek medical assistance for the victim as soon as possible in order to discharge their duty.

Safety officers

A first aider or safety officer should not be afraid to do their job for fear of legal repercussions. If a first aider witnesses an accident at work and fails to do anything to help, and the victim dies or is seriously injured, then they may find themselves falling foul of the Penal Code. However, where they administered first aid, within their competence, and then took the necessary steps to seek external expert medical assistance where required, criminal liability should not attach to that person should the first aid not be enough to save or treat the patient.

It is essential for companies with an in-house first aid capability to ensure that the persons are suitably trained and have the necessary equipment and resources at their disposal in case of an accident or incident. The UAE Federal Labour Law (Federal Law No. (8) of 1980 as amended) (**Labour Law**) and Ministry of Labour Decisions No. (32) and No. (37/2) of 1982 specify the minimum requirements for first aid supplies, but companies are free to (and arguably should) adopt a higher standard and can include additional supplies. By way of example, the Labour Law does not require companies to have a defibrillator, but if a company chooses to install one, then they must also ensure their staff is suitably trained to operate it.

The First Aid Fatwa outlines whether or not a nurse (and the same test will be applied for safety officers) will be held accountable for the death of a patient, if the patient dies after the safety officer has administered first-aid. In particular the First Aid Fatwa concludes: *“if a complaint is lodged after an incident, the judge investigating the whole situation will determine how properly the first aid officer performed their job.”*

Therefore, whilst we can seek guidance from the UAE Law and the Shariah Law, it will only ever be up to criminal court Judge to determine the level of accountability, and this decision will focus on whether the individual performed their job properly (or refused to perform their job), and provided adequate first aid in the circumstances.

Cultural sensitivities

Questions often arise as to whether there are religious or gender-based restrictions on who may provide first aid to whom. As the UAE Law does not address cultural issues that may arise when a rescuer or safety officer administers first aid, we can only take guidance from the First Aid Fatwa. The First Aid Fatwa deals with both questions (i) whether it is permissible in accordance with the Shariah Law for a non-Muslim to administer first aid to a Muslim, and (ii) also whether a male may administer first aid to a female. Both are answered in the affirmative, that is that anyone can administer first aid in situations where there is an emergency, and they will not be punished for doing so in circumstances where they are a different religion or different gender to the injured person.

In practice however, companies should ensure that where any employees have a particular objection in respect of who may administer medical treatment, that such information is clearly recorded in their file.

Recommended approach to first-aid

Provided persons act within their competencies and take reasonable and proportionate measures when an accident occurs, then the Good Samaritan should not fear adverse legal consequences in the UAE. If an emergency arises, and the first responder is not medically trained, then they are under a positive obligation to seek immediate medical assistance. No one should ignore another man's peril, as that will be against Shariah principles and UAE Law.

Further information

If you would like further information on any issue raised in this update please contact:

Rebecca Kelly, Partner
E: rebecca.kelly@clydeco.com

Clyde & Co LLP
PO Box 7001
Level 15, Rolex Tower
Sheikh Zayed Road
Dubai, United Arab Emirates

T: +971 4 384 4000
F: +971 4 384 4004

Clyde & Co accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary.

Clyde & Co LLP is a limited liability partnership registered in England and Wales. Regulated by the Solicitors Regulation Authority. QFC Branch licensed by the QFCA. Abdulaziz A. Al-Bosaily Law Office in association with Clyde & Co LLP is licensed in Riyadh – see www.albosailylawoffice.com for licence detail.

© Clyde & Co LLP 2014

¹ Baker v TE Hopkins & Son Ltd [1959] 1 W.L.R. 966

² Lacey v US (1951) 98 F.Supp. 219 at [200]