

The Legal Framework for Safety in Land Transportation in United Arab Emirates

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Abstract—The World Health Organization (WHO) estimates that about 1.25 million lives are lost annually through road accidents. In the United Arab Emirates (UAE), road accidents claimed 725 lives, with an average of two deaths daily, while 6, 681 others suffered severe injuries between March 2016 and March 2017. According to the United Nations (UN), this situation not only threatens public health, but also undermines socio-economic development and attainment of the Millennium Development Goals. It is imperative that governments and land transporters give greater priority to road safety in the interest of passengers and the legitimacy of transporters themselves. This paper aims to motivate the adoption and implementation of an efficient road management system underpinned by a viable legal framework in the UAE. Employing qualitative and analytic research approaches, this paper contends that the UAE's Commercial Transactions Act of 1993 and the general provisions in its 17 Articles dwelling on land transportation do not suffice for the challenges of land transportation in the country. It is necessary to develop a specific and comprehensive law devoted solely to land transportation, comparable to legal regimes governing the air and maritime sectors. Such a law should clarify the rights and obligations of passengers and transporters.

1. INTRODUCTION

Despite efforts to enhance road safety, about 1.25 million people die annually from road accidents (World Health Organization (WHO) Global Status Report on Road Safety, 2015). In the United Arab Emirates (UAE), the Ministry of Interior reports that between March 2016 and March 2017, about 725 lives were lost through road accidents, with an average of two deaths daily, while 6, 681 passengers were injured in 4,788 serious road accidents (Dubai Metro, 2017).

Previously, transportation, specifically land transportation, did not raise any serious concerns since the means of transportation were few and simple, powered mainly by man and other animals. Moreover, accidents were not very severe and whenever one occurred, identifying its cause, including the transporter's liability, did not pose much difficulty. As societies advanced and new, more sophisticated means of

transportation emerged, accidents and the loss of human lives increased, drawing public attention (Abu al-Lail, 1980).

Presently, road accidents exert a toll of about 1-3 per cent on the Gross National Product (GNP), according to WHO (2016). Considering the significant impact of road accidents on national economies, a decline in their numbers could translate into reduced costs in terms of repairs, medical treatment, insurance, customer satisfaction and corporate image. Road transport management, therefore, aims to significantly reduce serious accidents (Łukasik and Szymanek, 2012). It is necessary for governments to ensure that road transporters incorporate safety into their general operational policy both for their own legitimacy and the interest of passengers (European Conference of Ministers of Transport, 2003).

The primary objective of this paper is to examine the legal framework for safety in land transportation in the UAE and to offer recommendations for improved passenger safety. Employing qualitative and analytic research approaches and drawing on academic journals, textbooks and online databases, the paper engages in an indepth analysis of land transportation contracts in the UAE. It makes reference to and provides a systematic exposition of relevant laws in Arab jurisdictions, in addition to those from the French jurisdiction, which has largely shaped legal developments in the Arab world. The paper argues particularly that the UAE Commercial Transactions Act of 1993 is incapable of grappling with key problems related to land transportation. For example, the notion of commitment to passenger safety and timeframe for the transporter's liability in transportation by train are not addressed specifically. This is unsurprising given that the Commercial Transactions Act was not originally meant for land transportation. A new law devoted specifically to land transportation is needed similar to what obtains in the air and maritime sectors. Section II of the paper provides a historical overview of contracts for land transportation, with emphasis on the UAE. Section III analyzes the concept of contract for land transportation Section IV examines the main features of

the land transportation contract, while Section V dwells on the respective obligations of the parties thereto. The final section concludes the article and makes proposals for a more effective legal framework for land transportation in the UAE.

2. HISTORICAL OVERVIEW OF CONTRACTS FOR LAND TRANSPORTATION IN THE UAE

In Arab jurisdictions, land transportation constitutes about 85 per cent of the overall transport sector, with sea and air transport respectively constituting only 10 and 5 per cent (Iqsaasi, 2010). Yet, the land transportation sector continues to suffer serious neglect and to incur the highest level of social cost in terms of accidents, congestion and environmental damage. This calls for increased efforts, especially in the development of appropriate legal frameworks.

With specific regard to the UAE, recent decades have witnessed a dramatic improvement in land transportation, with the government spending about USD8.17 billion in large projects that include a sophisticated network of roads, bridges, tunnels, airports and seaports, which now provide highly efficient services. This is a remarkable departure from the 1960s marked by primitive means of transportation and serious difficulties in moving from one place to another. Nonetheless, as observed above, a dedicated legal framework for land transportation in the country remains lacking.

All that said, the main element in the transport of persons is the transportation contract. This makes it pertinent to examine the meaning of this type of contract, its main features and the associated obligations of transporters and passengers.

3. CONCEPT OF CONTRACT FOR LAND TRANSPORTATION

The transportation contract underpins land transportation and its ability to facilitate the movement of people and goods from one location to another. Legislative provisions strive to define and organize the transportation contract through rules that seek to ensure the safety of passengers and protect them against any losses they may suffer in the course of transportation. In France, for example, the French Maritime Codification No. 400 was issued on June 18, 1966. Within Arab jurisdictions, the Egyptian legislature provided a special chapter for transportation contracts in the Egyptian Trade Statute as amended by Rule No. 18 of 1999. Similarly, the UAE legislature provided a special chapter for transportation contracts in the Commercial Transactions Act No. 18 of 1993. Some other Arab countries have also adopted separate laws to govern land transportation contracts, such as the Iraqi Transport Act No. 80 of 1983. These laws regulate the transport of persons and goods, based on the practical realities and peculiar circumstances of each country.

According to Article 34(1) of the French Maritime Codification of 1966, the contract for the transport of persons is “an agreement based on which a transporter commits to

carrying someone from one place to another” (Iqsaasi, 2010; Ali, 2011). Importantly, Article 272 of the UAE Commercial Transactions Act defines it as “an agreement for which a transporter undertakes, for a payment, to transport a person or an item through its own means of transportation from one place to another.” A review of legal provisions in other Arab countries shows that most of the trade laws also contain a definition of the transportation contract. These include Article 208 of the Egyptian Trade Act, Article 436 of the Kuwaiti Trade Act and Article 627 of the Tunisian Trade Act. It could be gleaned from these definitions that a transportation contract is an agreement in which a transporter undertakes to transport a passenger or goods to a specific destination for a specified sum called the fare.

Given its commercial nature, the transportation contract, as defined in Article 272 of the UAE Commercial Transactions Act, would seem to apply to all forms of transportation, including sea and air. It can be contended, however, that the definition in that Article actually relates to land transportation. This is because both the maritime and air transport sectors have their own individual legislation. Further, the provisions that follow the said Article 272 all concern land transportation.

Contracts for the transport of persons by land typically involve two parties, the transporter and the passenger. Also, they are usually consensual by conduct, comprising an offer and acceptance that do not necessarily require formality such as writing. In fact, these contracts can be proven through mere evidence of the fare paid, such as the travel ticket, regardless of its value. Thus, if a taxi pulls up on the road and a passenger boards it, this affirms the transporter’s commitment to transport the passenger to his destination, as well as the corresponding commitment of the passenger to pay the relevant fare. The transporter’s pulling up is a positive act amounting to an offer, which is accepted when the passenger boards the vehicle.

That land transportation contracts can be concluded in such a manner, without any formality, is recognised by Article 275 of the UAE Commercial Transactions Act, which affirms that paid transportation contracts, like agency contracts, can be concluded by conduct through the mere presence of an offer and acceptance. According to that Article, “when a passenger gets on board the means of transportation, it is considered an acceptance of the already issued offer by the transporter, unless the passenger’s intention was found not to be to enter into a transportation contract.” Likewise, Article 6 of the Iraqi Transport Act states that “when a passenger gets aboard the means of transportation he is performing the acceptance of the offer made by the transporter, unless it was found that the intention of the passenger was not to enter into the transportation contract.”

It is clear from the above that the transportation contract is consensual since it is concluded based on the consensus of both parties. The contract comes into being once the parties have agreed on the nature of the required service and the

corresponding fare, without the need for any formality (Iqsaasi, 2010). It can equally be said that the transportation contract involves a purpose and an obligation. The purpose is the safe transportation of the passenger to his destination and the obligation is the positive performance of a task, for example, the transportation of the passenger and the latter's payment of a fare.

4. KEY FEATURES OF THE TRANSPORTATION CONTRACT

Transportation contract is marked by a number of distinguishing features, which include the following.

4.1 The transporter's commitment to transport a passenger from one location to another

The fundamental purpose of the transportation contract is the movement of passengers from one place to an agreed destination; a task undertaken by the transporter (Qaasim, 2003). This undertaking is mentioned in the definitions of the transportation contract considered earlier.

4.2 The transporter as the person in charge of the transportation process

The transporter issues instructions regarding the transportation process and exercises control over passengers and their goods. Ostensibly referring to the passenger, Article 323 of the UAE Commercial Transactions Act states that, "...hence, he should observe the instructions issued by the transporter." This point is more clearly made in Article 9 of the Iraqi Transport Act, which provides that "the transporter undertakes to inform passengers about the transportation instructions." This is again mentioned in Article 18 of the same Act, which refers to "observing the transportation instructions that are published by the transporter." These provisions show that the transporter is responsible for the transportation process and undertakes to inform passengers about the related instructions, which the latter are obliged to observe.

4.3 The transportation contract rests on the transporter's professionalism and competence

The transportation contract presupposes the professionalism and competence of the transporter, including the suitability of the means of transportation for the purpose agreed upon. This is evident in Article 9 of the Iraqi Transport Act, which provides that the transporter commits to transporting the passenger and his goods to the specified destination through means of transportation reliable in all respects for such a purpose. The reference to reliable means of transportation in that provision requires the transporter to demonstrate professionalism. There is no express mention of professionalism and competence in the UAE Commercial Transactions Act. Notwithstanding, such a requirement could be read into that law because the transportation process can only be performed by a professional and competent party duly

authorized to engage in such an activity in accordance with the law.

4.4 The standard followed in executing the transporter's commitment

The content of the transportation contract is the standard applied in determining the transporter's commitment. Absent that, resort may be had to other legal provisions governing land transportation or other applicable custom. In this regard, Article 9 of the Iraqi Transport Act provides that the transporter commits to carrying the passenger and his goods to the agreed destination by means suitable in all aspects for this purpose "in line with the agreement."

5. OBLIGATIONS OF THE PARTIES TO THE CONTRACT

The transportation contract is a bilateral one in that it imposes mutual obligations on both the transporter and the passenger. Each party gives something in return for the benefit enjoyed (Fayed, 2010). The following outlines the main obligations of the transporter.

5.1 Commitment to passenger safety

This is the most fundamental obligation imposed by the transportation contract. It obliges the transporter to carry the passenger to the agreed destination safely. If an accident occurs during the transportation process, which causes harm to the passenger, such as a fire and the malfunctioning of the fire extinguisher in the vehicle, or collision with another vehicle, the transporter is liable to compensate the passenger (Abaineh, 2015; Marks, 1971). This is provided in Article 334 of the UAE Commercial Transactions Act according to which the transporter guarantees the safety of the passenger during the performance of the transportation contract. This commitment is linked to a purpose, which is to transport the passenger and his goods to the agreed destination safely. It is not simply an obligation limited to the exercise of precaution by the transporter (Marks, 1971).

Moreover, while passenger safety is the paramount obligation in the transportation contract, this does not undermine other obligations imposed on the transporter therein. The transporter bears liability for all other obligations arising from the contract. The significance of the transporter's liability for passenger safety can be seen in terms of its direct relation to human lives, which are a priority under state laws (Al-Miqdaadi, 1997).

It should be noted that, in addition to the obligation to transport the passenger safely to his destination, the transporter is also committed to carrying the passenger's goods, which are items that a passenger may bring along with him in his journey, be they the ones handed over to the transporter or those kept under his own custody, such as handbags (Qaasim, 2003). The transporter cannot shirk this responsibility and request an independent contract for this

purpose. As provided in Article 333 of the UAE Commercial Transactions Act, “the transporter commits to carrying the passenger and his goods to the specified destination.” Moreover, the definition of the transportation contract in Article 272 of that Act shows that this contract extends to the transport of goods by land. This can be inferred from the phrase, “...transport a person or an item...”, as used in that provision.

Worthy of note, is that despite the above elaboration of the transporter’s commitment to passenger safety, this notion, its meaning and implications are not addressed directly in the UAE Commercial Transactions Act. This is a serious omission in the law considering the primacy of this obligation in land transportation contracts. Further, there is no clarity on the timeframe for this obligation, especially in transportation by train. It is also unclear whether periods of temporary disruption in the transportation process due to defect in the means of transportation should constitute the overall performance of the transportation contract, thus rendering the transporter liable for harm caused to the passenger during such periods.

5.2 Obligation to provide a place in the agreed class

Transporters usually provide different classes for their passengers ranging from first, second to third class. First class enjoys more privileges and, correspondingly, incurs a higher fare than the other classes. In such cases, the transporter is bound by the transportation contract to provide the passenger a seat in the agreed class and the related privileges (Al-Miqdaadi, 1997). A passenger cannot be compelled to travel in a class lower than the one stated in his travel ticket. As Article 331 of the UAE Commercial Transactions Act provides, “the transporter must provide the passenger a place in the agreed class, and the passenger may request a refund of the balance, if he is compelled to travel in a lower class than the one stated in his ticket.” The passenger may also repudiate the contract due to the transporter’s breach of its terms and request for compensation.

5.3 Executing the transportation process and arriving at the agreed destination at the specified time

The transporter is liable to perform the transportation contract and to arrive at the passenger’s destination at the agreed time. The transporter’s obligation is not confined to transporting the passenger safely to his destination. It extends to ensuring that the passenger arrives at that destination at the specified time. This obligation is contained in Article 333 of the UAE Commercial Transactions Act, which states that “the transporter commits to carrying passengers and their goods to the agreed destination at the specified time, and if the time was not specified, then at the ordinary time it takes for a transporter to perform the carriage under the same circumstances.” If the transporter arrives late thereby causing loss to the passenger by, for example, preventing him from delivering his goods at the specified time, the transporter

would be liable to compensate him (Al-Miqdaadi, 1997), unless it proves the intervention of *force majeure*.

Even in situations of *force majeure*, the transporter must still make every reasonable effort to minimize delay and possibly find alternative means of transportation, otherwise it would be liable to compensate the passenger for any loss he may suffer during the waiting time (Shafeeq, 1955). The passenger cannot be made to bear the consequences of the transporter’s breach of its obligation to take measures necessary to avoid such incidents and perform the contract as agreed. This is especially given that this obligation is related to the attainment of a result (Al-Miqdaadi, 1997).

Coinciding with the above obligations are the passenger’s own obligations, as detailed below.

5.4 Payment of a fare

One of the key characteristics of contracts for the transport of persons is that they are commercial and compensational in nature. It is commercial because the transporter earns a specified fare in exchange for its commitment to provide the transportation service. In other words, the transporter undertakes the positive performance of a task in return for which the passenger makes a payment. Thus, this contract is never a gratuitous one. A passenger, who boards a taxi cannot expect that it is for free. There must be a mutual exchange of consideration between the parties. According to Article 323 of the UAE Commercial Transactions Act, the passenger must pay the agreed fare at the time stated in the contract or other rules governing land transportation or according to custom.

The passenger may only be discharged from this obligation in situations of *force majeure*, which render execution of the transportation process impossible or dangerous. This is affirmed in Article 324 of the UAE Commercial Transactions Act. The definition of the transportation contract in Article 272 of that Act, it would be recalled, also refers to the payment of a fare. The passenger’s obligation to pay a fare is understandable as it makes no sense to provide commercial transportation on a gratuitous basis. Indeed, the payment of a fare is a testament of the commercial nature of the contract.

In some jurisdictions, the passenger usually gets a card containing information about the fare, the place of departure, as well as destination. An example is the card system called “Touch and Go” provided by the Malaysian Railway. In the UAE, the Dubai Road and Transport Committee operates a similar card system called “Null.” Whoever possesses these cards may travel with those railway operators conveniently because the cards provide users with all necessary information, including the fare from one destination to another. According to Article 230 of the UAE Commercial Transactions Act, “the ticket may be given up before the transportation is performed, as long as it was not issued under the passenger’s name or given to him upon some special consideration.”

Normally, such a ticket is not personal since it is given to whoever requests for it and the bearer may give it up for something in return or nothing at all. Nevertheless, despite the general transferability of the ticket, a passenger is not allowed to give it up where it has been issued based on personal considerations as in cases of discounted tickets issued to students or military personnel (Ali, 2011).

5.5 Following the transporter's instructions

The passenger must comply with the transporter's instructions. He must also abstain from any untoward conduct likely to threaten his own safety or that of other passengers. He must, for example, not project his hand or head out of the vehicle, not tamper with electric switches or smoke inside the vehicle. Such conduct may warrant his removal from the vehicle by the transporter (Abaineh, 2015). This point is reflected in Article 232 of the UAE Commercial Transactions Act, which contains the phrase, "... hence the followers of the instructions issued by the carrier relating to transport." The passenger must, therefore, respect the transporter's instructions and refrain from any unruly behavior during the transportation process so as not to cause risk of harm to himself and other passengers.

6. CONCLUSION

The transportation contract is of particular importance in the transport of persons by land. It is binding on the transporter and the passenger as are the associated obligations. The transporter's obligations are to transport the passenger and his goods safely to his destination in the agreed class and at the specified time. In return, the passenger must pay the agreed fare and abide by the transporter's instructions.

Finally, while the UAE has recorded impressive improvements in its land transportation system, there remains a need to reform the current legal framework.

The Commercial Transactions Act and the general provisions in the 17 Articles dwelling on land transportation are inadequate. An independent and comprehensive law dealing specifically with land transportation is desirable. Such a law should clarify the respective obligations of the parties to the transportation contract and address other key issues raised by the transportation process. This would make for a more efficient land transportation system, ensure that parties to the transportation contract are better aware of their rights and obligations and, in particular, guarantee better protection for passengers. Given the vital role played by land transportation in the UAE, the need for legal transformation cannot be overemphasized. In embarking on such a reform, the UAE may look up to other Arab jurisdictions, particularly Iraq for useful guidance.

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