

## Free Transportation and the Related Liability in United Arab Emirates

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### ABSTRACT

*The transport of persons for a fare creates a contract that obliges a transporter to transport passengers to their agreed destinations safely. Where a passenger suffers harm during transportation, the transporter would be assumed to have breached this obligation. Therefore, it would be contractually liable to compensate that passenger, unless intervention by an external cause is proven. This article dwells on a different type of transportation. It examines cases where a passenger is transported without the payment of a fare to the transporter. The article focuses primarily on free transportation, as an example of such contracts, but also examines other cases such as secret transportation, curious transportation, driving school contracts and staying aboard a vehicle after the expiration of a transportation contract. The problem posed to both the law and the courts is whether these types of transportation also create contracts, the breach of which would render transporters contractually liable. This article seeks to determine the type of liability faced by such transporters where passengers are harmed during transportation, or its disruption, including the timeframe for such liability. Based on the analysis of legal opinions, relevant legislation and case law, it can be surmised that, in these cases, the transporter may be subject to either tortious liability or presumed liability rules, and, very rarely, to contractual liability rules.*

*Keywords: Free transporter; tortious; contractual; presumed; liability*

### INTRODUCTON

The transport of persons in return for the payment of a fare creates a contractual relation. The payment of material remuneration binds transporters to fulfill all the obligations arising from such contracts. In this type of transportation, the French and several Arab jurisdictions have adopted the principle of commitment to passenger safety. This requires transporters to transport passengers to their agreed destinations safe and sound. Where harm is caused to a passenger during transportation, it would be assumed that the transporter has breached this obligation. Therefore, it would be liable to compensate the passenger based on contractual liability rules, unless there is a proof of the intervention of an external cause.

This article focuses on a different type of transportation. It examines cases in which a passenger is transported without the payment of a fare to the transporter. This type of transportation abounds in daily life and may take various forms. Sometimes, it may occur with the knowledge of both the transporter and the passenger. A good example of this is free transportation, which is the primary focus of this article. At other times, it may occur without the knowledge of the transporter. This may take the form of a passenger sneaking into the means of transportation, or travelling with a forged or expired ticket. This article examines these and other types of transportation. The key objective is to determine the nature of the liability that may be faced by transporters in these cases for harm caused to passengers during transportation or its disruption, including the timeframe

for such liability. Based on the analysis of legal opinions, relevant legislation and case law, it can be surmised that, in these cases, the transporter may be subject to either tortious or presumed liability rules, and, very rarely, to contractual liability rules.

The article begins by reiterating the distinguishing features of transportation contracts. It then proceeds to review the development of liability in free transportation. It examines the legal nature of free transportation, particularly its essential elements, and concludes by defining the legal basis for the related liability. The article examines other cases, such as secret transportation, remaining aboard a transportation vehicle after the expiration of a transportation contract, as well as curious transportation and driving school contracts. It compares and differentiates these types of transportation to determine whether they are subject to the same type of liability. Additionally, the article examines the timeframe for such liability where transportation is provided by car, as well as where it is by train. A further issue examined is the transporter's liability for harm suffered by passengers during periods of temporary disruption in the transportation process. The article concludes with a synthesis of the main points of the discussion and suggestions for necessary improvements, particularly in UAE law.

### FREE TRANSPORTATION

The courts make a distinction between the transport of persons for a fare, which creates a transportation

contract, and the transport of persons without financial compensation, known as free transportation. Expressed in the two French synonyms, *le transport benevole* or *transport a titre gratuit*, meaning benevolent or gratuitous transportation, free transportation has stirred much legal controversy. The problem posed to both the law and the courts is whether it can be considered as a contractual act, which commits the transporter to ensure passenger safety or be contractually liable for failure to fulfil this commitment. If this question is answered in the negative, then what system of civil liability should apply, and what are its foundations, as well as applicable principles? This section of the article reviews the development of liability in free transportation, examines its legal nature and concludes by defining the legal basis for such liability.

It is useful to begin by recounting the key features of a contract for the transport of persons. This is a consensual arrangement that arises when a passenger accepts an offer made by a transporter. It implies an agreement by both parties to go into a transportation contract. This can be compared to an exchange contract in which one party exchanges something in return for something else; a form of *laissez passage* or trade by barter. Thus, a transportation contract imposes corresponding obligations on both parties. The payment of a fare is the most important obligation for the passenger, alongside other obligations incidental to the contract. For the transporter, the obligations include taking the passenger and his luggage to the agreed destination and, most importantly, commitment to his safety. The transporter does not undertake these obligations, unless the passenger has fulfilled his own obligations, especially the payment of a fare.

The absence of a fare changes the status of the transportation from a contractual one to what may be called “free transportation.”<sup>1</sup> In this case, neither party has the intention to relate with the other in a contractual manner and, accordingly, neither of them owes the other any obligation.<sup>2</sup> It should, nevertheless, be stressed that, even in cases where no fare is paid, the transporter may still receive consideration in some other form. Although such non-monetary consideration may give the transportation a different status, it is, nonetheless, related to a transportation contract. Thus, it is different from the notion of free transportation, which requires the presence of certain elements to constitute it. These elements will now be examined.

#### STANDARDS FOR FREE TRANSPORTATION

Free transportation is typically based on a transporter’s intention to extend courtesy to a passenger. That is to say, it is purely an act of charity. The transportation is free of any financial remuneration and the transporter receives no real or apparent consideration. Indeed, it is unlike

any other contract of exchange. A common example that can be added to this explanation is where a person takes a friend or relative in his car on a tour or for some other purpose.<sup>3</sup> It may also be in the form of a hitchhike, whereby the transporter decides to pick a passenger on the way to a certain destination along the route travelled by the transporter. Thus, free transportation is that mode of transportation that involves no remuneration for the transporter. The transporter and the passenger may or may not have had any previous relationship. The transportation is offered *ex gratia*, based on the transporter’s own volition or at the passenger’s request.

#### ELEMENTS OF FREE TRANSPORTATION

Based on the above explanation, it is possible to distill certain elements the presence of which would be sufficient to characterise a particular form of transportation as free transportation. These elements are examined *in seriatim* below.

#### IMMATERIAL ELEMENT

There must be the element of courtesy on the part of the transporter. This is the most essential feature of free transportation. The transporter’s motivation for providing the transportation service must not be in expectation of a material benefit. Where the transporter’s action appears to be motivated by profit rather than courtesy, the service provided may not be considered as free transportation, even if, ultimately, the transporter did not receive any remuneration.<sup>4</sup> Also, there must be mutual understanding by the parties that the transportation service is intended to be one of courtesy. Hence, it would not be free transportation where the passenger sneaks into the transportation vehicle, without the knowledge of the transporter or its officers.<sup>5</sup> In this case, the nature of the transportation will be determined based on the transporter’s intention, rather than that of the passenger.<sup>6</sup> The court will decide this issue based on the circumstances of the case. This point will be discussed in further detail later in this article, after the analysis of the concept of free transportation.

#### ABSENCE OF REMUNERATION

In addition to the immaterial element, there must be no payment to the transporter for the transportation service. It would not be free transportation, if the transporter receives or demands payment. Such payment would be sufficient to negate the existence of free transportation, even if it is incommensurate with the service provided. However, any discrepancy between the service offered and the payment made should not be of such magnitude as to render the remuneration a nullity.<sup>7</sup> If the payment is too

little or symbolic, the transportation may be considered to have been provided *ex gratia*.<sup>8</sup>

In effect, free transportation requires the presence of two concurrent elements. The first, the material element, is the non-payment of a fare to the transporter, while the second, the immaterial element, is intention on the part of the transporter to provide the service as a matter of courtesy, without expecting any remuneration.<sup>9</sup> Free transportation does not, however, discount the possible presence of some special interest. In fact, such interest would most likely be present in this type of transportation. Such cases may arise, where a person voluntarily transports a neighbour or friend in his car; an act that clearly involves some interest, which is to strengthen the relationship between both parties.<sup>10</sup> Nevertheless, this would be irrelevant and insufficient to negate the status of the service provided as free transportation.

#### THE SYSTEMATIC CHARACTERISATION OF FREE TRANSPORTATION AND ITS PRACTICAL IMPORTANCE

The systematic characterisation of free transportation is important to help determine the liability of free transporters and bring them within a particular system of liability. There is great polarity in legal interpretations of the liability of free transporters. Some clamour for free transporters to be made subject to contractual liability rules. This would render them liable once harm is caused to passengers during transportation.<sup>11</sup> Proponents of this view insist that free transporters should be contractually liable, unless intervention by an external cause is proven. Others argue that free transporters should be subject to tortious liability rules on the rationale that the failure to ensure passenger safety amounts to a wrongful act. Even within this group, there is some dissonance. While some insist on the occurrence of a serious wrongful act for there to be tortious liability,<sup>12</sup> others make no distinction between minor and serious wrongful acts.<sup>13</sup> Still, another group of commentators maintain that the liability of free transporters should be based on rules governing liability for default in protecting commodities. In this case, a free transporter can only escape liability, if a passenger's harm is shown to have resulted from an external cause.<sup>14</sup>

Without doubt, each characterisation of the free transporter's liability has implications for both parties. If such liability is deemed to be contractual, then both parties would be subject to contractual liability rules. This would impose on the transporter an obligation to ensure passenger safety, a result clearly favourable to the passenger. Here, mere proof of the harm suffered would be sufficient to render the transporter liable to compensate the passenger. If, contrariwise, tortious liability rules are applied, the free transporter would only be required to exercise due care. In this case, part of the transporter's burden will be shifted onto the passenger, who would have

to prove that his injury resulted from the transporter's fault. This is usually an onerous task for passengers.

To resolve the controversy over the nature of the liability borne by free transporters, it is pertinent to return to the characteristics of free transportation, as outlined earlier. One is that the transporter must be aware of its existence. This condition would not be present where, for example, a passenger secretly boards the means of transportation, without the transporter's knowledge. The transportation service must also be provided completely free of charge. Payment of remuneration would negate the courtesy nature of the transportation and change it into a transportation contract.<sup>15</sup>

The essential element that triggers the obligation to ensure passenger safety is the payment of a fare as compensation for the transportation service provided. Therefore, those who advocate for free transportation to be considered as contractual, lack a legal basis for doing so. There is no legal foundation for the suggestion that the free transporter has an obligation to ensure passenger safety or else incur contractual liability. Proponents of the contractual liability view further maintain that, even if no such contract is considered to exist, there would still be a contractual relationship rooted in the passenger's own request for or consent to the free transportation.<sup>16</sup> This implies that free transportation falls within the class of service contracts. They draw comparisons between free transportation and agency contracts. By requesting the transportation service, the passenger is taken to have authorised the transporter to provide it: that is, to execute the transportation process.<sup>17</sup> The goal of those, who call for free transportation to be treated on the basis of principles governing agency and depository contracts, seems clear. It is to alleviate the free transporter's liability, rather than enhance the protection available to passengers harmed in the course of transportation.

Another perspective of French jurisprudence claims that the relationship between the free transporter and the passenger constitutes a nameless contract. This view is premised on the freedom of individuals to consummate contracts. It has, however, been criticised, given the absence of contractual intention in free transportation. What has been proven to be the prevalent legal position is that free transportation involves no contract and, consequently, is not amenable to contractual liability rules. This is due to the absence of contractual intention and the payment of fare, which are necessary to establish a transportation contract.<sup>18</sup>

French jurisprudence has, thus, been perennially disinclined to any presumption of contractual liability to a passenger, be it a friend or some other person, who is transported without the payment of a fare. In the UAE, should such a passenger be harmed due to an accident during the transportation process, he would have to prove that harm, as well as a causal link between it and the free transporter's fault. This is in line with the provisions of Articles 299-312 of the Civil Transactions Law No.

5 of 1985, which dwells on a person's liability for his actions.<sup>19</sup> It is vital, therefore, to determine the nature of the free transporter's liability and clarify whether it is contractual, with a presumption of liability for failure to ensure passenger safety in the event of harm, or whether it is tortious in which case, proof of the transporter's fault would be necessary. The three views set forth already on the systematic characterisation of the nature of free transportation will next be scrutinised to determine the scope of the transporter's liability. Following this, the view considered most appropriate would be identified.

### CONTRACTUAL LIABILITY

Some commentators argue that the free transporter's liability is a contractual one.<sup>20</sup> This is based on what they consider as a contract, which should be interpreted according to the intention of the contracting parties.<sup>21</sup> Exponents of this view follow two different pathways. Some of them consider free transportation as just another type of transportation with a contractual link connecting the free transporter and the passenger in the same way as the link connecting a transporter and a passenger in paid transportation. For them, the absence of a fare does not remove this contractual link between the parties.

In their view, the difference between paid transportation and one without a fare, is like the difference between a deposit and a gift. This difference, which is marked by the absence of material remuneration, does not negate the contractual connection between the donor and the beneficiary. A similar relationship exists between the free transporter and the passenger, and would render the former liable for any harm that may befall the latter in the course of transportation. Such liability will remain on the free transporter, unless it can be shown that the passenger's harm resulted from an external cause.<sup>22</sup>

That standpoint has met the express disapproval of the French Court of Cassation. In its decisions, the Court has insisted that passengers of free transportation must have recourse to tortious liability rules.<sup>23</sup> The argument that free transportation involves a contract is predicated on the supposed presence of an intention to conclude one by both parties. But such an intention, according to the Court, is evidently not held by the transporter in the case of free transportation.

Those who espouse the contractual liability view do not believe that this type of transportation can amount to free transportation in all cases. They distinguish between what they call "defined transportation" and other kinds of transportation. They claim that a transportation contract exists in respect of the former and offer two illustrations to support their position. First, they point to the case of a railway company that transports a person on the basis of a free-ride permit. Second, they refer to a hotel operator that transports guests from the station to the hotel and *vice versa*.

In each of the above cases, they maintain, there is a transportation contract because the transportation is defined and this, therefore, subjects the transporter to contractual liability.<sup>24</sup> On the other hand, in undefined transportation, which is typified by free transportation, there is no contractual liability. Instead, the transporter is subject to tortious liability rules. An example is the case of a transporter, who takes his friend out in his car on a tour. This courtesy relationship does not amount to a transportation contract. In reality though, a transportation contract may still exist in such cases.

### TORTIOUS LIABILITY

The tortious liability rule is espoused by those, who insist that the free transporter cannot be subject to contractual liability.<sup>25</sup> Their argument rests on the absence of any intention to contract by the parties and, especially, the payment of a fare. Such payment is essential to the formation of a transportation contract and the transporter's assumption of the commitment to ensure passenger safety. They contend that, in free transportation, no such contract exists.

Accordingly, the free transporter can only be subject, if at all, to tortious liability rules. This shifts the burden onto the passenger to prove that any harm suffered during the transportation arose from the transporter's fault. Still, some division can be observed among commentators subscribing to this view. Some of them believe that the free transporter should only be subject to tortious liability, if a serious fault is proven, whereas for others, the distinction between a serious or a minor fault is unnecessary.<sup>26</sup>

French courts have adopted the position of the tortious liability proponents. They subject the free transporter to Article 1382 of the French Civil Code, which requires the passenger to establish the transporter's fault, before the latter can be called upon to prove otherwise. According to the French Court of Cassation, those who are transported for free, benefit from the use of the transportation vehicle, while also being fully aware that they are vulnerable to harm.

Nevertheless, some French court decisions have taken a narrow approach that requires proof of a serious fault before the free transporter can be tortiously liable. Despite that, most decisions of the French courts have only required proof of a fault, even if minor, to render the free transporter liable.<sup>27</sup> Among Arab jurisdictions, Egyptian courts have also adopted the tortious liability view based on Article 163 of the Egyptian Civil Code. This provision requires a passenger to prove the free transporter's fault before compensation can be awarded. However, Egyptian courts uphold such liability only where there is a serious fault on the part of the transporter.<sup>28</sup>

### PRESUMED LIABILITY (LIABILITY FOR FAILURE TO PROTECT PASSENGERS)

While the French Court of Cassation has relied on the notion of risk-taking to subject the free transporter to tortious liability under Article 1382 of the French Civil Code, some commentators have questioned the Court's assumption. They contend that, if the passenger, by accepting the free transportation service, is assumed to have accepted the associated risks, it would amount to saying that he has agreed to waive the transporter's liability, an act which is contrary to public policy.<sup>29</sup>

The notion that the passenger has accepted the risk associated with free transportation becomes more untenable when passengers, such as children or the disabled, are involved. This class of people lack contractual capacity. Therefore, they cannot be deemed to have agreed to waive the free transporter's liability for harm caused to them during transportation.

Additionally, on a practical level, such an agreement is hardly conceivable. A passenger, who is aware that free transportation will expose him to risk and that he would be deemed to have waived his right to compensation in the event of harm, would prefer not to use this mode of transportation. Instead, he would opt for paid transportation, which obliges the transporter to ensure his safety or face contractual liability in the event of harm.

On its part, the French Court of Cassation has rejected the above argument.<sup>30</sup> To overcome this dilemma, some commentators suggest that the free transporter's liability should be based on the rules for determining liability in cases relating to the protection of commodities under the French Civil Code. This is the rule of presumed liability as provided in Article 1384(1) of that Code.<sup>31</sup>

They argue that the presumed liability rule should be applicable to incidents capable of causing harm to passengers, and that there is no merit in differentiating between passersby and passengers. This is because both are factors external to the transporter. According to them, since Article 1384(1) of the French Civil Code makes no such distinction, the presumed liability rule should apply to free transporters, provided there is no remuneration. If remuneration is paid, the contractual liability rule would apply.

The presumed liability view has resonated with the courts because it is more likely than the others to assure appropriate remedy for passengers who suffer harm in the course of transportation. That is also why its proponents believe that the free transporter should be subject to this rule of liability, which normally governs default in protecting commodities. The free transporter retains the right to rebut this presumption by showing that all reasonably necessary precautions were taken to avoid harm.

Other commentators have made the additional argument that the free transporter should still be held liable where the transportation vehicle intervened

actively in causing harm to the passenger: this means that the transporter can only be relieved of liability, if the intervention of an external cause is established.<sup>32</sup>

The continued indeterminacy of the law robs passengers of free transportation the right ordinarily available to them at law namely, the right to benefit from the presumed liability or the contractual liability rule. As a result, they are compelled to turn to the general principles of tortious liability. This requires them to prove the free transporter's fault and demonstrate a connection between that fault and any harm suffered during the transportation process. This principle can be seen, for example, in Article 299 of the UAE Civil Transactions Law.

Among the different positions examined already, it is suggested here that the proper view is that, which argues for the free transporter to be held liable for the passenger's harm, once the transporter's fault is established, regardless of whether it is a serious or minor one.<sup>33</sup>

### APPLICATION OF THE PRESUMED LIABILITY RULE

Before 1962, French courts insisted on the existence of a fault before the free transporter could be held liable. They subsequently moved away from that position to embrace the presumed liability rule, which is usually applied in cases concerning default in protecting commodities. In a ruling rendered on 5 April, 1962, the French Court of Cassation endorsed the presumption of fault on the part of the free transporter, where a passenger suffers harm.

To escape liability, the transporter would have to show that the fault arose from uncontrollable circumstances. That decision was, in effect, an application of Article 1384(1) of the French Civil Code. The French Court of Cassation had delivered earlier rulings on this matter. For example, in a ruling earlier referred to in this article, which was made on 27 March, 1928, the Court subjected the free transporter to the provision in Article 1382 of the French Civil Code.

It is important to observe, at this point, that calls for free transporters to be made subject to contractual liability rules for harm caused to passengers during transportation, are unacceptable. There are cogent reasons for this objection. There is manifestly no intention on the part of both parties to go into a contractual relationship. Moreover, no material remuneration is paid to the transporter, which is a crucial condition for a valid transportation contract. Instead, the transportation service is provided as a matter of courtesy.

This objection extends to arguments for the exemption of free transporters from the presumed liability rule on the premise that, by accepting free transportation, passengers acquiesce in the associated risk and waive transporters' liability for any harm they may suffer. This is the argument usually made by those who believe that the free transporter should be subject to tortious liability

rules that require the passenger to prove the transporter's fault. But to accept this reasoning would mean that other cases, such as those concerning building owners, also have to be excluded from the presumed liability rule to which they are ordinarily subject. In those cases, it is important to differentiate between passersby and guests within a building. If the building collapses on a guest, who has come in there at the invitation of the owner, the latter may not be condemned for his kind gesture. Yet, it would be irrational to insist that the guest should bear responsibility for the harm suffered. Therefore, those who argue that the free transporter is liable for damage caused to the passenger based on the presumed liability rule, have a stronger case. In such situations, the transporter would only be free from liability, if the intervention of an external cause is established.

The chapter dealing with land transportation under the UAE Commercial Transactions Act does not address the issue of free transportation. There are no special provisions addressing the free transporter's obligations and liability to third parties. In dealing with free transportation cases, the courts usually resort to rules and orders in both commercial and civil law. As a result, it is not possible to determine the nature of the liability faced by free transporters for harm caused to passengers under UAE law. Such issues are normally referred to insurance companies. Ultimately, it is the insurance policy that determines whether or not the free transporter is covered for harm caused to third parties.<sup>34</sup> Needless to mention, it is a serious omission on the part of UAE legislators to treat the dignity and wellbeing of the passenger's physical body with such levity, potentially depriving him of remedy where harm is suffered.<sup>35</sup>

#### SECRET TRANSPORTATION (SNEAKING INTO A VEHICLE)

This type of transportation arises where a passenger secretly boards the means of transportation, whether a car, train or ship, without the transporter's knowledge or consent, and without any intention to pay a fare or conclude a transportation contract.<sup>36</sup> This is considered as transportation without remuneration, akin to free transportation.

It, however, differs from free transportation in one important sense. The latter is provided with the knowledge of both parties, whereas the former occurs without the knowledge of the transporter. The passenger boards the means of transportation without a ticket<sup>37</sup> and has no intention of paying the fare. Hence, it is usually considered as an unlawful administrative act.<sup>38</sup> Where the passenger boards the means of transportation with a false travel ticket, it would also amount to a form of ticket evasion. In situations where no ticket is required in advance, the passenger would be considered to have sneaked into the transportation vehicle, if he boards

without paying the required fare to the transporter's conductor when he passes by.<sup>39</sup>

#### NATURE OF THE TRANSPORTER'S LIABILITY IN SECRET TRANSPORTATION

In secret transportation, the passenger boards the means of transportation without the knowledge or consent of the transporter, and without intending to pay a fare or conclude a contract. This, therefore, cannot be considered as free transportation. Obviously also, no transportation contract can be said to exist.

Consequently, some commentators have suggested that, should the passenger suffer any harm during the transportation process, the transporter should only be subject to tortious liability rules. This would require the passenger to prove that the transporter's fault was responsible for that harm, before any compensation can be awarded. The French Court of Cassation did not accede to this view. Initially, it tended to exculpate transporters from every form of liability on the reasoning that the fault committed by the passenger equals the damage he has suffered.<sup>40</sup>

Some commentators condemned the stance of the French Court of Cassation on the grounds that the harm suffered by the passenger cannot be attributed solely to his act of sneaking into the transportation vehicle. They claim that the transporter's fault potentially also contributed to that harm. This makes it appropriate for liability to be shared equally between both parties. This criticism pressed the French Court of Cassation to modify its position by ruling that the transporter's fault arguably also contributed to that harm.<sup>41</sup>

The point would be made here that, in this type of transportation, if the passenger suffers harm as a result of the vehicle colliding with or rolling over some object, this bears no connection to his act of sneaking into the vehicle. While the passenger's failure to pay the necessary fare is reprehensible, this act is not accountable for the incident leading to the harm suffered. Thus, it cannot be argued that he contributed to that harm. On that account, it is concluded that, in such cases, the presumed liability rule should apply. Specifically, the transporter should be liable for the harm suffered by the passenger. The latter's fault in not paying the required fare may be factored in when deciding the amount of compensation payable to him. Of course, there is clearly no basis here for contractual liability, given the absence of any contractual relationship between the parties.

#### OTHER FORMS OF TRANSPORTATION

Apart from the cases examined already, there are other types of transportation that involve no contractual relationship between the parties because there is neither

any intention to conclude one nor pay a fare. These cases may be confused with the ones discussed earlier. Hence, it is useful to examine them and highlight any similarities and differences that may exist between them and the other cases, including whether or not they are subject to the same type of liability.

#### EXPIRATION OF THE CONTRACT AND THE PASSENGER'S CONTINUATION ON BOARD

Often, a passenger may travel beyond the destination for which a fare was paid. It should be remembered that, in this case, the parties were initially bound by a transportation contract. But the passenger remains in the transportation vehicle after the expiration of his ticket. His continued presence on board after the expiration of that contract makes this similar to free transportation, assuming this happened to the knowledge of both parties. If the transporter was unaware, then it would be close to secret transportation.<sup>42</sup> This means that there is no transportation contract.

With regard to liability, some commentators have suggested that the transporter, in this case, should be subject to the tortious liability rules. This would place the onus on the passenger to prove the transporter's fault, where harm is suffered. On the contrary, others maintain that the presumed liability rule should apply. Having analysed this type of transportation to determine its similarities or otherwise with free and secret transportation, including the type of liability that should apply, it is concluded that the presumed liability rule is most appropriate. This conclusion is justified by the absence of any basis for tortious liability.

#### CURIOUS TRANSPORTER

This is the opposite of secret transportation. The transporter executes the transportation, without the knowledge of the passenger. It may involve a sick passenger, who has to be transported to the nearest hospital for treatment or to the police station. Some commentators use the term, "curious transporter," to describe this type of transporter. Others believe that a contract can actually be deciphered from the circumstances of this case. They neither see it as free transportation nor as the act of a curious transporter.

The latter argument seems appealing. This is so in that the passenger is faced with an urgency that requires immediate transportation to the nearest hospital, if he is to survive. In such circumstances, it is doubtlessly in the passenger's interest to enter into a transportation contract. Thus, this type of transporter should not be considered as a curious transporter since he has only acted in line with what the law requires him to do. Also, his action conforms to a man's moral duty to his neighbour.

All that said, the transporter may still be viewed as curious, if he provided the transportation service against the passenger's will. In such a case, the provisions on virtue in Articles 325 - 332 of the UAE Civil Law will usually apply. In one decided case, where the driver of a vehicle saw an injured person and volunteered to take him to the nearest hospital, the French Court of Cassation concluded that it was free transportation.<sup>43</sup>

#### TRANSPORTATION AND DRIVING SCHOOL CONTRACTS

Driving school trainees have no contractual relationship with their instructors. The objective of the training programme is only to equip them with core driving skills. Therefore, the transportation involved in this case only serves as a means of instruction. The instructor cannot be considered as a transporter, neither can the trainee be considered as a passenger. Accordingly, the transporter cannot be subject to the liability associated with a transportation contract.

The driving instructor can only be liable on the basis of a clear and specific fault on his part, which must be proven by the trainee before any compensation can be awarded. To avoid liability, the instructor would need to take all precautionary steps necessary to prevent any accident from occurring as a result of the trainee's carelessness. Where, however, the instructor assumes total control of the wheel, he would be responsible for the trainee's safety.

#### TIMEFRAME FOR THE TRANSPORTER'S LIABILITY

A transporter does not incur contractual liability to a passenger immediately upon the formation of a transportation contract. Such liability takes effect only after the performance of the transportation contract begins. It ends when performance is completed. The duration of this performance varies with the means of transportation. It depends on whether a car or a taxi is involved. Similarly, the duration of the transporter's liability varies with the means of transportation.<sup>44</sup>

#### TIMEFRAME FOR THE TRANSPORTER'S LIABILITY IN TRANSPORTATION BY CAR

As mentioned previously, the transporter's obligation to ensure passenger safety does not arise immediately upon the conclusion of the transportation contract or when a passenger obtains a transportation ticket. Certain events may, indeed, occur before the execution of the transportation begins. During this interval, the transporter has no connection with the passenger. Exactly when, therefore, does the transporter's obligation begin and end?

To illustrate the question posed above, assuming a passenger is waiting to get a car. One finally arrives and he tries to board. Unfortunately, he suffers harm in the process. Would the transporter face contractual liability for that harm? Or is such liability negated considering that there is no contractual relationship with the passenger at that point? Also, assuming the accident happened not in the course of boarding, but after the passenger's arrival at his destination. However, he had not alighted from the car completely; he had only put one foot on the ground, while the second still remained in the car. If the harm occurred during this period, whose responsibility would it be? Would it be covered by the obligations arising from that contract?<sup>45</sup> Most commercial law jurists are of the view that the transporter's liability to the passenger begins at the point when he attempts to board the vehicle;<sup>46</sup> when there is physical contact between the passenger and the vehicle,<sup>47</sup> for example, when he attempts to open the car door,<sup>48</sup> or intends to embark or when he gets into the vehicle.<sup>49</sup> The important condition in these situations is that there must be an intention by the passenger to conclude a contract with the transporter. Otherwise, there would be no basis to talk about a transportation contract and its attendant obligations.<sup>50</sup>

As to when the transportation contract comes to an end or when the transporter's liability is terminated, this is believed to be the time when the passenger alights from the car. This act constitutes the expiration of the contract. The key requirement is that there is no longer any physical contact between the passenger and the vehicle, and the passenger stands on his feet safe and sound.<sup>51</sup> Where the passenger suffers harm during disembarkation such as when his hand is trapped by the car door,<sup>52</sup> or if he is harmed because the car moved, without giving him sufficient opportunity to get out completely, the transporter would be liable.<sup>53</sup> For French courts, the transporter's liability commences when the passenger sets out to board the vehicle, insofar as there is physical contact between him and the vehicle. This is so even if fare has yet to be paid, since it is usual for payment to be made at a later time after boarding.<sup>54</sup> Based on this principle, the French Court of Cassation ruled that a transporter was liable for harm suffered by a passenger as he attempted to open the car door to board.<sup>55</sup> On this issue, Egyptian courts have followed the line taken by their French counterparts. They have, for example, ruled that a transporter was liable for the death of a passenger, who due to congestion, was compelled to stand on the stairs of a bus, clinging on to a handrail. The rail broke off and the passenger fell out, suffering fatal injuries. The court ruled that the transportation contract became effective immediately upon embarkation anywhere on the vehicle.<sup>56</sup>

Since the transporter's liability begins upon the establishment of physical contact between the passenger and the transportation vehicle, it also terminates when

that contact comes to an end and the passenger stands on the ground safely. The transporter would be liable, if the passenger slides on the stairs of the vehicle before it begins to move, or the vehicle begins to move following the conductor's signal, but before the passenger disembarks completely.

In the UAE, Article 334(2) of the UAE Commercial Transactions Act specifies the period within which the transporter's liability is effective.<sup>57</sup> It carefully defines this timeframe, drawing upon insights from French and Egyptian courts. According to that Article, the transporter's liability commences right from when a passenger sets out to board the vehicle and ends when he disembarks. Therefore, should the passenger suffer harm after disembarking the vehicle safely, the transporter would not be liable. This is because the obligations of the contract have been discharged and the duration of the liability has ended.

It can be concluded that the view expressed by the majority of commercial law jurists on this issue is reasonable and the rulings by the courts are legally justified. As well, the provision in Article 334(2) of the UAE Commercial Transactions Act is a well-reasoned stipulation of the timeframe of the transporter's contractual liability to the passenger for any harm that may be suffered. This begins right from the time when the passenger ascends the vehicle and establishes physical with it such as by holding the handrail. It lasts until the passenger ends that contact by disembarking the vehicle safely.

#### TIME FRAME FOR THE TRANSPORTER'S LIABILITY IN RAIL TRANSPORTATION

The French judicial system devised the obligation to ensure safety as a means to provide effective protection for passengers, who become victims of accidents. This principle relieves them of the usually onerous burden of proving the transporter's fault before they can receive compensation.<sup>58</sup> The goal of the principle is to prevent accidents and harm to passengers.

Thus, whenever accidents occur, the transporter would be deemed to have breached its obligation to ensure passenger safety, exposing it to contractual liability, unless it proves the intervention of an external cause.<sup>59</sup> Where the transporter prepares special areas reserved exclusively for passengers, it is responsible for their protection and safety while they await the transportation vehicle and until they board it.<sup>60</sup>

Before 1969, French courts took the view that the obligation to ensure safety started when passengers arrived at platforms and terminated when they exited the station. On that basis, the obligation to ensure safety was seen to cover accidents occurring on station platforms.<sup>61</sup> However, from 1969 onwards, the French Court of Cassation established the principle that the obligation to ensure safety is a commitment to achieve a result and



this becomes effective only when the execution of the transportation contract commences.<sup>62</sup>

It means that the obligation to ensure safety does not cover accidents occurring on station platforms since there is no contract in force at that point in time. On 21 July, 1970,<sup>63</sup> for example, the Court ruled that the obligation to ensure safety would not cover situations where a passenger left the train. In this case, the transporter would only be bound to the passenger on the basis of ordinary care and caution.<sup>64</sup>

In 1989, the French Court of Cassation, once again, reversed its position. It acknowledged that the transporter should be tortiously liable for incidents occurring outside the period when the performance of the transportation contract actually begins. French courts link the obligation to ensure safety to the time when the passenger is inside the vehicle or, at least, attempts to board it.<sup>65</sup> This obligation ends when the passenger leaves the vehicle. If he suffers any harm while on the station platform, he could still claim compensation, if he is able to prove fault on the part of the transporter.<sup>66</sup>

There is, however, divergence of views among jurists as to when contracts for transportation by train begin, triggering the transporter's liability. Some commentators tend to extend the duration of the transporter's liability. They maintain that the transporter is liable for the passenger's safety right from when he steps on the station platform adjacent to the train. In other words, the obligation takes effect even before there is any physical contact between the passenger and the train, so long as the passenger has a travel ticket and an intention to travel. Commentators who take that position claim that, if harm befalls the passenger while waiting to board, such as when a station worker accidentally knocks him down, causing him to fall under the wheels of an incoming train, the transporter would be contractually liable.<sup>67</sup>

A different group of commentators seek to restrict the duration of the transporter's liability. As to when this liability begins, they note that the transporter's liability in rail transportation is not different from that of a transporter in transportation by car. In their view, the transporter cannot be contractually liable for harm suffered by the passenger during his entry into the platform of the train station. This is because at that point, the passenger has yet to establish any contact with the train and the performance of the contract has yet to begin. Also, they argue that the transporter's liability ends right from the time when the passenger loses contact with the train, similar to the case of transportation by car. Thus, the liability is terminated before the passenger leaves the destination terminal. If the passenger suffers harm during the period between his exit from the train and departure from the platform, the transporter cannot be contractually liable. In summary, with regard to rail transportation, the French and Egyptian courts consider the transporter's liability to

commence right from the time when the passenger enters the station platform, provided he has a valid travel ticket. This liability comes to an end only when the passenger leaves the terminal<sup>68</sup> after handing his ticket to the station officer. If the passenger remains on the station platform for more time than is necessary for all passengers to leave, he would not benefit from the transporter's obligation to ensure passenger safety, in the event of harm. In respect of rail transportation, most Arab jurisdictions are yet to clarify the period during which the transporter's liability is effective. One exception is the UAE where Article 334(2) of the Commercial Transactions Act provides that the transporter is liable for passenger safety during the execution of the transportation contract. For rail transportation, this liability covers the period between the passenger's arrival at the boarding platform and at the destination platform.<sup>69</sup> This provision lends support to advocates of the first view considered earlier, as well as the stance of the French and Egyptian courts, which is that the transporter is liable for passenger safety right from when he steps on the station platform adjacent to the train. In effect, the obligation becomes operative even before there is any physical contact between the passenger and the train, so long as the passenger has a travel ticket and an intention to travel.

Altogether, the transporter's liability for harm suffered by the passenger can appropriately be said to begin when the passenger enters the station platform with a valid transport ticket and an intention to travel. The period of liability also covers the time when the passenger disembarks, leaves through the door and presents his travel ticket. The transporter's liability comes to an end when the passenger leaves through platform's exit. If the passenger spends more time on the platform chatting with a friend, for example, the transporter's liability would end after the time necessary for all passengers to leave the platform, even if the passenger remains there.

There is clear justification in extending the duration of the railway transporter's liability to the time when the passenger enters and exits the station platform. The reason for this is that passengers are more prone to harm during their presence on station platforms due to the constant flow of passengers and movement of trains.

Turning to the UAE, the government has begun a project to establish the Union Railway. This project is still ongoing. Special laws considered appropriate for this mode of transportation are also being drafted, although they are yet to be finalised. In line with its desire to keep abreast of technological advancements, the UAE has also established the Dubai Metro through a decree by His Highness Sheikh Mohammed bin Rashid Al Maktoum. Dubai Metro is a rapid transit rail network in Dubai that was ceremonially inaugurated at the symbolic time of 9:09:09 pm on 9 September, 2009. That special legislation was implemented by the Dubai Roads and Transport Authority through Regulation

No. 5 of 2009 and its by-law, Administrative Decision No. 68 of 2010. This is meant to regulate railway transportation and establish the Emirate-sponsored Rail Transport Authority. It is considered to be the first railway regulation governing metro-based transportation in Arab and Gulf countries.

In the interest of safety, Article 1 of the Railway Regulation states that, “trains, railways, and their infrastructure must be clean of any hazard or damage unaccepted by safety regulatory bodies.” The Article further states that, “safety conditions are a set of regulations and standards, which must be adhered to when designing railway infrastructure and safety management systems, to remove hazard and reduce incidents in pursuance of international benchmarks.” It is obvious that safety is defined above in its engineering, rather than legal sense. Most articles in that Regulation contain provisions that are implemented in the event of an accident. They also provide for the establishment of a committee to investigate the nature of the fault and whose responsibility it is.

Thus, the Regulation is not a real type of legislation. It focuses on general technical issues, while ignoring the legal dimension of the assurance of passenger safety. It is vital for the regulatory authorities to give some attention to this limitation. The Regulation also contains articles that provide for cases to be referred to the courts, where fault cannot be determined. In resolving such disputes, the courts usually resort to the commercial and public inland transport regulations.

In view of the shortcomings highlighted above, it is recommended that UAE legislators should create a law specifically for the regulation of inland transportation, including all forms of road transportation from cars to railways. This is similar to what already exists in the air and maritime sectors, which have their own specific laws. Such a law is necessary because of the role played by inland transportation as a major pillar of the UAE economy.

#### TEMPORARY INTERRUPTION DURING TRANSPORTATION

A transporter may experience disruption during the execution of the transportation contract due to some temporary reasons. These may be natural causes or unavoidable factors related to the transporter or the passenger. Such interruption may also arise from a defect in the means of transportation and the necessity for repairs. In this case, the passenger may have to leave the vehicle until it is repaired. A relevant question is whether the transporter would be contractually liable for any harm the passenger may suffer during this interruption or waiting period. Put in a different way, is the period of disruption covered by the transportation contract?

Determination of the transporter’s liability during periods of disruption in the transportation process depends on what the duration of the transporter’s contractual liability is defined to be. If the period of interruption is considered to fall outside the duration of liability, then the transporter would be exempted from liability, leaving the passenger to bear responsibility for the harm suffered during that period. On the other hand, if the period of disruption is seen as a continuation of the transportation contract, being necessary for its completion, then the transporter would be solely liable for any harm caused to the passenger during that period.

#### LEGAL OPINIONS ON THE TRANSPORTER’S LIABILITY DURING DISRUPTIONS

Some commentators argue that, if the means of transportation is interrupted and the passenger forced to leave the vehicle, be it a train or car, the transporter’s contractual liability would also be interrupted temporarily. This is due to the interruption of physical contact between the passenger and the vehicle. They believe that the transporter should not be contractually liable for any damage caused to the passenger during this interruption so long as he is disconnected from the means of transportation, even if temporarily.<sup>70</sup> The transporter’s liability would be restored once the passenger reconnects to the same means of transportation after repairs or boards an alternative one to avoid a protracted delay.

Other commentators take the opposite position. They argue that to adopt the view expressed above would unduly limit the transporter’s liability to the passenger. For them, the transporter’s liability continues even during the period when the passenger changes train because, in their view, the performance of the transportation contract covers this period. The change from the defective to another train is a necessary part of the performance of that contract. Hence, the transporter’s liability covers the waiting period spent by the passenger. This means, right from when he disembarks from the faulty train until he boards the replacement train, an act that is obviously related to the performance of the transportation contract.<sup>71</sup>

Proponents of this latter view argue that it is inconceivable that where a passenger awaiting a replacement train in one of the stations, suffers harm upon boarding the train due to an explosion, that harm should fall outside the scope of the transportation contract. The passenger’s harm, according to them, certainly occurred during the performance of the transportation contract. They further contend that the performance of the transportation contract is not limited simply to the transportation process, but also covers all other acts that are necessary to enable the performance of that contract. In the case at hand, the period spent in repairing or changing the defective train is, quite clearly, complementary to the execution of the transportation process.

The view expressed by the second group of commentators is more persuasive. It should be noted though that it relates only to interruption or waiting period spent by passengers travelling by train and not by cars. This author suggests that the same principle should apply to passengers travelling by car and irrespective of whether disruption of the transportation resulted from natural causes, the fault of the transporter or that of the passenger.<sup>72</sup>

#### THE TRANSPORTER'S LIABILITY DURING DISRUPTIONS UNDER UAE LAW

The UAE Commercial Transactions Act does not contain explicit provisions on whether or not the contractual liability of the transporter extends to interruption or waiting times during the performance of the transportation contract. This is a gap in the law. There is a need for UAE legislators to remedy the situation by clarifying the transporter's liability during periods of temporary interruption in the transportation process.

Aspects of the Commercial Transactions Act provide that the transporter's liability for passenger safety covers the period necessary to change the means of transportation. This is, however, subject to the condition that the passenger's transition from one train to another is overseen by the transporter or its officers. This position is reflected in Article 334 of that Act, which states that, "if a change of the means of transport is required on the road, the liability shall not include the period of the passenger's transition from one means of transport to another without the escort of the carrier or his subordinates."

Based on the above provision, if the transporter is to be liable for any harm caused to the passenger during periods of disruption, the passenger's transition between trains must be supervised by the transporter or its officers. Those officers should be available, if the passenger is to act on their instructions. Since that provision does not refer to any specific type of transportation, it can be argued that it applies to transportation by both trains and cars. It is also important to add that Article 334 ought not to be restricted to cases involving the changing of trains. It should ideally also cover periods when trains are interrupted due to some defect, because the rationale underlying that provision applies to all cases.

#### CONCLUSION

The transport of persons for a fare involves a transportation contract. The payment of material remuneration binds transporters to transport passengers to their agreed destinations safe and sound. A transporter would be presumed to have breached this obligation, if harm is caused to a passenger during transportation.

Consequently, it would be contractually liable to compensate that passenger, unless the intervention of an external cause is proven.

This article has examined a different type of transportation; one in which no fare is paid to the transporter. Examples of this mode of transportation include free transportation, secret transportation and curious transportation. Other examples are driving school contracts and remaining on board a transportation vehicle after the expiration of a transportation contract.

The key objective of the article has been to determine the type of liability imposed on such transporters where passengers are harmed during transportation or its disruption, including the timeframe for such liability. Having analysed relevant legal opinions, legislative provisions and case law, it is concluded that, in these forms of transportation, the transporter may be subject to either tortious liability or presumed liability rules, and, very rarely, to contractual liability rules.

As to the timeframe for the transporter's liability, where transportation is by car, such liability becomes effective only after execution of the transportation contract begins. It ends when the execution is completed and the passenger alights from the car. In respect of transportation by train, views vary on when the transporter's liability is triggered. Nonetheless, a better view is that it begins right from when the passenger steps on the station platform even before any physical contact with the train is established, provided he has a travel ticket and an intention to travel. This position is supported by French and Egyptian courts, as well as legislative provisions such as Article 334(2) of the UAE Commercial Transactions Act. Where there is temporary disruption during transportation warranting repairs or substitution of trains, legal scholars sharply disagree on whether the transporter should be liable for harm suffered by the passenger during this period. Notwithstanding, it seems reasonable for the transporter to bear such liability as this period forms part of the transportation process. Article 334 of the UAE Commercial Transactions Act endorses this view, provided the transporter or its agents supervises the passenger's transition from one train to another. This provision arguably applies to transportation by both trains and cars. It is suggested, however, that in addition to the substitution of trains, which Article 334 focuses on, the provision should also cover periods when trains suffer disruption because of some defect.

To enhance passenger safety, the UAE adopted Railway Regulation No. 5 of 2009. A close examination shows, however, that this is not a real form of legislation. It defines safety in an engineering, rather than a legal sense. Moreover, it focuses on more technical issues to the neglect of the legal aspects of the obligation to ensure passenger safety. Where fault cannot be established, the Regulation requires cases to be transferred to the courts. To resolve such cases, the courts normally fall back on

the commercial and public inland transport regulations. It is suggested that UAE legislators should take steps to address those shortcomings. In the interest of justice, particular attention should be given to the issue of the land transporter's liability to passengers so as to ensure certainty and prevent unnecessary legal disputes. Such clarification will also facilitate the speedy resolution of disputes by the courts.

Further, existing laws and regulations in the UAE fail to clearly address the issue of disruption during the transportation process, and especially what the transporter's liability might be for harm caused to passengers during such periods. This omission is a serious defect in the law and legal clarification is needed, given the significance of this problem. It is suggested that the law should consider periods of disruption as constituting the overall performance of the transportation contract. Also, UAE law presently does not specifically refer to or regulate other forms of transportation where no fare is paid, such as free transportation. This often compels the courts to fall back on civil and commercial law provisions in attempt to resolve disputes arising from these types of transportation. This is another shortcoming that calls for attention. Similar to what already exists in the air and maritime sectors, it would ultimately be necessary to enact a new law dealing specially with inland transportation, whether by car or train, to address the limitations highlighted above. This is important given the crucial function performed by inland transportation in the UAE economy.

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#### NOTES

- <sup>1</sup> A.H. Younis, *Transport Contract*, 1965, p. 5.
- <sup>2</sup> A.H. Younis, *Commercial Contracts*, p. 1969, 285.
- <sup>3</sup> Z.M. Abdullatif, *Liability of the Carrier in Courtesy Transport and Free Transport*, (1974) 18 *Journal of Lawsuits Management*, p. 715.
- <sup>4</sup> M.L. Shanab, *Liability for Things: A Study of the Egyptian Civil Law in Comparison with the French Law – A PhD Thesis*, 1957, pp. 186-187.
- <sup>5</sup> M.L. Shanab, *Liability for Things: A Study of the Egyptian Civil Law in Comparison with the French Law – A PhD Thesis*, 1957, p. 188.
- <sup>6</sup> A.W. Al-Azraq, *Foreign Jurisprudence*, (1967) 5(18) *Journal of Law*, p. 517.
- <sup>7</sup> S.A. Wahab, *Responsibility of Travel and Tourism Agencies for their Work* (1967) 9 *Journal of Legal and Economic Sciences*, pp. 13-15.
- <sup>8</sup> A.H. Younis, *Transport Contract*, 1965, p. 6.
- <sup>9</sup> A. Ash-Shawrbi, *Commercial Act: Commercial Contracts*, 1992, p. 417.
- <sup>10</sup> A.H. Younis, *Transport Contract*, 1965, p. 8.
- <sup>11</sup> G. Guyon, *Urban Collective Transport of Travellers*, Paris: CELSE, 2000, p. 12.

- <sup>12</sup> S.D. Thompson, *The Law of Carriers of Passengers: Illustrated by Leading Cases and Notes*, 2009, pp. 23-26.
- <sup>13</sup> L. Aarts & I. van Schagen, *Driving Speed and the Risk of Road Crashes: a Review. Accident Analysis and Prevention*, 2006, pp. 215-224.
- <sup>14</sup> M.A. Clarke, *International Carriage of Goods by Road: CMR (Maritime and Transport Law Library) Informa Law (6th Edition)*, 2014, pp. 57-59.
- <sup>15</sup> A. Ash-Shawrbi, *Commercial Act: Commercial Contracts*, 1992, p. 417.
- <sup>16</sup> J. Boré, *Did the Civil Division Create a Presumption of Fault on the Part of the Volunteer Carrier? – D 1963*, 1980, p. 21.
- <sup>17</sup> W.A. Ali, *Compensation for Failure to Meet the Obligation for the Safety of Passengers and Travellers*, 2004, p. 101.
- <sup>18</sup> W.A. Ali, *Compensation for Failure to Meet the Obligation for the Safety of Passengers and Travellers*, 2004, p. 104.
- <sup>19</sup> There are equivalent provisions in Article 163 of the Egyptian Law and Article 204 of the Iraqi Law.
- <sup>20</sup> "The guardian of a movable or immovable thing is responsible for the damage that it causes, even during the time when it would not actually be under its control or direction, as is the case with a moving automobile, an airplane during its flight or an elevator during its operation. This objective responsibility only disappears if the guardian foresees a case of force majeure or the fault of the victim. It would not be enough for him to establish that he has not committed any fault."
- <sup>21</sup> The pre-existence of a contractual relationship between the guardian and the victim does not prevent the functioning of the liability from the fact of things, unless otherwise provided by law.
- <sup>22</sup> P.E. Toubia, *Legal Basis for the Liability of the Free Carrier and the Responsibility of the Owner When the Car is Sold by an Agency or According to an Unregistered Contract*, 2002, p. 15.
- <sup>23</sup> I. Hassan, *Civil Tortious and Contractual Liability Resulting from Car Usage*, 1959, p. 50.
- <sup>24</sup> Z.M. Abdullatif, *Liability of the Carrier in Courtesy Transport and Free Transport*, (1974) 18 *Journal of Lawsuits Management*, pp. 727-728.
- <sup>25</sup> A. Al-Baroudi, *Commercial Law (Commercial Papers – Commercial Contracts – Banking Operations)*, 1961, p. 264.
- <sup>26</sup> A.A. Al-Sanhouri, *The Mediator in Explaining the New Civil Law*, 1952, p. 814.
- <sup>27</sup> Z.M. Abdullatif, *Liability of the Carrier in Courtesy Transport and Free Transport*, (1974) 18 *Journal of Lawsuits Management*, p. 736.
- <sup>28</sup> Z.M. Abdullatif, *Liability of the Carrier in Courtesy Transport and Free Transport*, 18 *Journal of Lawsuits Management*, p. 718.
- <sup>29</sup> A.A. Al-Sanhouri, 1952, *The Mediator in Explaining the New Civil Law*, p. 814.
- <sup>30</sup> I. Hassan, *Civil Tortious and Contractual Liability Resulting from Car Usage*, 1959, p. 53.
- <sup>31</sup> See also Article 178 of the Egyptian Civil Law, 1948.
- <sup>32</sup> A.H. Younis, *Transport Contract*, 1965, p. 285.
- <sup>33</sup> However, the inapplicability of the principle of assumed liability in the case of free transportation relates only to the transporter and the passenger.
- <sup>34</sup> The Verdict of the Dubai Cassation Court of 11 May, 2008 in Appeal No 84/2008 – Civil Appeal, issued in 2008 that reads: "Car accidents insurance against the damage caused by its driver to others. Ministerial Decision No. 54 of 87 on the Unification of Insurance Documents. The insurance company may not be liable to cover the damage caused by the accident to the insured and his family or the driver of the car. Exception. Agreement under additional supplements to require the company to cover accidents that may be caused to them. Identifying the damages, the company is required to cover under these supplements. Allowed", [http://www.dubaicourts.gov.ae/pls/portal/eservice.rpt\\_adv\\_rules](http://www.dubaicourts.gov.ae/pls/portal/eservice.rpt_adv_rules) [14/11/2017].
- <sup>35</sup> The Verdict of Dubai Cassation Court of 21 September, 2011 in Civil Appeal No 89/2011 and Civil Appeal No. 145/2011, issued in 2011- Rights – which reads as follows: "Car accidents insurance

- against the damage caused by its driver to others. Ministerial Decision No. 54 of 87 on the Unification of Insurance Documents. The insurance company may not be liable to cover the damage caused by an accident to the insured or the driver of the car. Exception. Agreement under additional supplements to require the company to insure against accidents that may be caused to them. Identifying the damages, the company is required to cover under these supplements. Allowed," [http://www.dubaicourts.gov.ae/pls/portal/eservice.rpt\\_adv\\_rules](http://www.dubaicourts.gov.ae/pls/portal/eservice.rpt_adv_rules) [15/11/2017].
- <sup>36</sup> M.K.Taha, *Commercial Act*, 1971, p. 323.
- <sup>37</sup> But a person may be not regarded as a sneaker before meeting the ticket agent as long as he has the intention to pay.
- <sup>38</sup> S. Wassef, *Liability Insurance – A Study of Land Transport Contract*, 1985, p. 305.
- <sup>39</sup> M.S. Al-Wasit, *Egyptian Commercial Law*, Footnote 3, 1955, p. 159.
- <sup>40</sup> A.H.Younis, *Commercial Contracts*, 1969, p. 285. See also the decision of the French Court of Cassation of 18 July, 1929, referred to by S. Wassef, 1969, in *Liability Insurance*, p. 305, which supports the opinion of the Court of Cassation as it does not encourage sneaking.
- <sup>41</sup> French Court of Cassation Decision of 4 May, 1955 cited in Z. Meselhi, *Carrier's Liability in Courtesy Transport and Free Transport*, 1974p. 717.
- <sup>42</sup> Z. Meselhi, *Carrier's Liability in Courtesy Transport and Free Transport*, 1974, p. 416 – using the term “sneaking” for the passenger's insistence on staying aboard the vehicle despite the expiration of the contract regardless of whether or not the transporter knows.
- <sup>43</sup> French Appeal of 27 March, 1927, as well as French Appeal of 12 March, 1933, referred to in S. Wasef, 1985, *Liability Insurance*, p. 304.
- <sup>44</sup> M.K.Taha, *Commercial Contracts and Bank Operations in Accordance with the New Trade Law No. 17 of 1999*, 2005, p. 216.
- <sup>45</sup> A.H. Younes, *Transport Contract*, 1965, p. 287.
- <sup>46</sup> O. Kahan, *The Law of Carriage by Inland Transport (4th Edition)*, p. 499.
- <sup>47</sup> R. Rodiere, *Land and Air Transport*, 1968, pp. 283-284. With regard to delay, the transporter's responsibility starts from the time the vehicle is supposed to move. In respect of luggage, the transporter's responsibility comes into force from the time the transporter receives them. These two principles are applicable in transportation by both rail and car.
- <sup>48</sup> The Decision of the French Court of Cassation – Civil Service, (1969) (23) *Quarterly Journal of Commercial Act*, 1970, p. 477, cited in T.H. Musa, 1973, *Commercial Contracts in the New Iraqi Commercial Act: Contract of Transport (Part I, 1st Edition)*, pp. 89-90.
- <sup>49</sup> A.H.Younes, *Transport Contract*, 1965, p. 287.
- <sup>50</sup> F. Shawqi, *Fundamentals of Commercial Act (Vol. 1, 3rd Edition)*, 1959, p. 773.
- <sup>51</sup> A.J.D., *Awadh, Brief in Commercial Act*, 1975, Vol. 2, p. 233.
- <sup>52</sup> Decision by a Paris Court of 17 November, 1923, (1924) 3(5) *Journal of Law Firm*, p. 294.
- <sup>53</sup> H. Al Masri, *Commercial Contracts in Kuwaiti, Egyptian and Comparative Law*, Al Safa Library, Kuwait, 1990, p. 259.
- <sup>54</sup> T.H. Musa, *Commercial Contracts in the New Iraqi Commercial Act: Transport Contract (Part I, 1st Edition)*, 1973, pp. 89-92.
- <sup>55</sup> A Decision of the French Court of Cassation of 2 December, 1969, cited in M. Sahfeeq, 1957, *The Mediator in Egyptian Commercial Law, Commercial Contracts and Commercial Papers (Part II, 3rd Edition)*, pp. 160-161.
- <sup>56</sup> A Decision by the Cairo Court of Appeal of 16 March, 1985, cited in M.K. Taha, 1971, *Brief in Commercial Act*, p. 273.
- <sup>57</sup> Article 2(334) of the UAE Commercial Transactions Act No. 18 of 1993 reads, “The period of implementing the transportation covers the period from the time a passenger sets out to ride the mode of transport in the boarding area until he disembarks in the arrival area. In cases where there are platforms provided for the mode of transport, the contract covers the period when a passenger enters the departure platforms and leaves the platforms in the arrival area.”
- <sup>58</sup> The French courts require the passenger to prove that his injury occurred during the transportation in order to ascertain the liability of the transporter, who violates the contract and fails to provide safety in accordance with the phrase “to deliver a passenger to his destination safe and sound.”
- <sup>59</sup> R. Rodiere, *land and Air Transport*, 1968, p. 48.
- <sup>60</sup> This burden is placed on the passenger to establish the cause.
- <sup>61</sup> Court of Cassation, Commercial Chamber, Public Hearing of Wednesday, 8 October, 1969 published in the Bulletin Publication No. 284; Court of Cassation, Commercial Chamber, Public Hearing of Wednesday, 8 October, 1969 Published in the Bulletin Publication No. 284, <https://www.legifrance.gouv.fr> [11/1/2018]; Court of Cassation, Civil Chamber 1, Public Hearing of Tuesday, 4 July, 1995, No. 11, p. 212 Contested, <https://www.legifrance.gouv.fr> [11/1/2018].
- <sup>62</sup> This is reasserted by the French Court of Cassation, which confirms that the protection of passengers outside the vehicle is the duty of the transporter, who is to pay full attention and care. This is mentioned in W.A. Ali, 2004, *Compensation for Failure to Meet the Obligation for the Safety of Passengers and Travellers*, (1st Edition), p. 35.
- <sup>63</sup> A ruling of 1 July, 1969 by the French Court of Cassation clarifies that the obligation to deliver the passenger safe and sound to his destination does not start unless the passenger enters the vehicle, and this obligation continues until he leaves the vehicle.
- <sup>64</sup> The decision of the French Court of Cassation, issued on 21 November, 1911, was a landmark one in which the rules of contractual liability were affirmed for the transporters of persons. In the case, which led to that ruling, a passenger was travelling on board a vessel of the Trans-Atlantic Ocean Transit Company from Tunis to Bonn. During the voyage, the passenger was severely injured by a tank badly positioned in the vessel. When this case came before the French Court of Cassation, the Court ruled that the contract between the passenger and the transporter was the basis for determining the nature of the transporter's liability. The Court stressed that there was no scope for the application of the tortious liability rule. It then added the phrase commonly used in the judgments of the Court: “the implementation of the contract of carriage includes for the carrier the obligation to connect the passenger properly and well to the destination.” See A. Al-Kholi, 1958, *The mediator in Commercial Law*, p. 338.
- <sup>65</sup> Francois Collart Dutilleul, Philippe Delebecque, *Civil and Commercial Contracts*, 1991, p. 57
- <sup>66</sup> R. Rodierre, *Land and Air Transport Law* p. 58.
- <sup>67</sup> F. Mushraqi, *Fundamentals of Commercial Act (Part I, 3rd Edition)*, 1959, p. 773.
- <sup>68</sup> A.J.D. Awadh, *Brief in Commercial Act*, Vol. II, 1975, p. 233.
- <sup>69</sup> Article 2(334) of the UAE Commercial Transactions Act No 18 of 1993 reads: “In cases where there are platforms provided for the mode of transport, the contract covers the period when a passenger enters the departure platforms and leaves the platforms in the arrival area.”
- <sup>70</sup> Based on the view expressed in M. Sahfeeq, 1957, *The Mediator in Egyptian Commercial Law, Commercial Contracts and Commercial Papers (Part II, 3rd Edition)*, p. 161.
- <sup>71</sup> A.H.Younis, *Commercial Contracts*, 1958, p. 289.
- <sup>72</sup> In a case brought before the Court of First Instance in Belfort on 18 June, 1985, a transport company was carrying children in a large vehicle. They were on their way to a picnic and their luggage was on the roof of the vehicle uncovered. When it rained, the driver had to stop the vehicle and climb onto its roof to cover the luggage to protect it from getting wet. One of the passengers volunteered to help him, but soon fell unconscious and was badly injured. The court ruled that the transporter was contractually liable for that incident: 5(18) *Journal of Law*, 1967, pp. 512-513.

## REFERENCES

- Aarts, L. & van Schagen, I. 2006. Driving speed and the risk of road crashes: A review. *Accident Analysis and Prevention*: 215-224.
- Abdullatif, Z.M. 1974. Liability of the carrier in courtesy transport and free transport. *Journal of Lawsuits Management* 18: 715, 717, 736, 727-728.
- Al Masri, H. 1990. *Commercial Contracts in Kuwaiti, Egyptian and Comparative Law*. Kuwait: Al Safa Library, 259.
- Al-Azraq, A. W. 1967. Foreign jurisprudence. *Journal of Law* 5(18): 517.
- Al-Baroudi, A. 1961. *Commercial Law (Commercial Papers - Commercial Contracts – Banking Operations)*, Alexandria, Egypt: Monshaet almaaref Publishing House, 264.
- Ali, W.A. 2004. *Compensation for Failure to Meet the Obligation for the Safety of Passengers and Travellers*. 1<sup>st</sup> edition. Cairo, Egypt: Egyptian Books House, 101, 104, 35.
- Al-Kholi, A. 1958. *The mediator in Commercial Law*, Cairo, Egypt: Nahdet Misr Press, 338. Al-Sanhouri, A.A. 1952. *The Mediator in Explaining the New Civil Law*, Cairo, Egypt: Publishing House for Universities, 814.
- Al-Shawrbi, A. 1992. *Commercial Act: Commercial Contracts, Alexandria*. Egypt: Monshaet Almaaref Publishing House, 417.
- Assaf, I. 1959. *Civil Tortious and Contractual Liability Resulting from Car Usage*. 1<sup>st</sup> edition. Damascus, Syria: Printing Presses Boy The Arabs, 50, 53.
- Awadh, A. J. D. 1975. *Brief in Commercial Act (Vol. 2)*. Cairo: Egypt: Renaissance Bookshop, 233.
- Boré, J. 1980. Did the Civil Division Create a Presumption of Fault on the Part of the Volunteer
- Carrier, D. 1963. Paris, France: Sirey Publisher, 21.
- Clarke, M. A. 2014. *International Carriage of Goods by Road: CMR (Maritime and Transport Law Library) Informa Law*. 6<sup>th</sup> edition. Abingdon, United Kingdom: Routledge.
- Court of Cassation, Civil Chamber 1. Public Hearing of Tuesday, 4 July, 1995, No. 11. p. 212 Contested, <https://www.legifrance.gouv.fr> [11/1/2018].
- Court of Cassation, Commercial Chamber. Public Hearing of Wednesday, 8 October, 1969. Published in the Bulletin, Publication No. 284, <https://www.legifrance.gouv.fr> [11/1/2018].
- Decision of a Paris Court of 17 November, 1923, *Journal of Law Firm*, 1924, 3(5): 294.
- Decision of the Belfort Court of First Instance of 18 June, 1985, taken from *Journal of Law*, 1967, 5th Edition, Year 18, 512-513.
- Decision of the Cairo Court of Appeal of 16 March, 1985.
- Decision of the French Court of Cassation of 18 July, 1929.
- Decision of the French Court of Cassation of 2 December, 1969.
- Decision of the French Court of Cassation of 4 May, 1955.
- Decision of the French Court of Cassation, Civil Service of 2 December, 1969, *Quarterly Journal of Commercial Act*, 1970, C(23): 477.
- Dutilleul, F. C. & Delebeque, P. 1991. *Civil and Commercial Contracts*. Paris, France: Dalloz Publisher, p. 57. French Commercial Appeal of 12 March, 1933.
- Guyon, G. 2000. *Urban Collective Transport of Travellers*. Paris, France: CELSE, 12
- Kahan, O. 1949. *The Law of Carriage by Inland Transport*. 4<sup>th</sup> edition. London, United Kingdom: Stevens Publisher.
- Mohammed, M. R. 2003. *Civil Responsibility in Regard to Railway Accidents to Passengers: Comparative Study in Light of Algeria Jurisprudence and Judiciary, Algeria (Capital)*, Algeria: Homa House for Publication and Distribution, 55.
- Musa, T. H. 1973. *Commercial Contracts in the New Iraqi Commercial Act: Contract of Transport (Part I)*. 1<sup>st</sup> edition. Baghdad, Iraq: Freedom House Publisher.
- Mushraqi, F. 1959. *Fundamentals of Commercial Act (Part 1)*. 3<sup>rd</sup> edition. Cairo, Egypt: Egyptian Anglo Bookshop.
- Rodiere, R. 1968. *Land and Air Transport*. Paris, France: Dalloz Publisher.
- Ruling of the French Court of Cassation of 1 July, 1969.
- Sahfeeq, M. 1957. *The Mediator in Egyptian Commercial Law, (Part II)*. 3<sup>rd</sup> edition. Cairo, Egypt, Egyptian Renaissance Library.
- Shanab, M. L. 1957. *Liability for Things: A Study of the Egyptian Civil Law in Comparison with the French Law*. PhD Thesis, Cairo, Egypt: Nahda Egyptian Bookshop, 186-188.
- Taha, M. K. 1971. *Commercial Act*. Alexandria Egypt: Modern Egyptian Office.
- Taha, M. K. 2002. *Commercial Contracts and Bank Operations in Accordance with the New Trade Law No. 17 of 1999*. Beirut, Lebanon: Halabi Publications Jurisdiction.
- Thompson, S. D. 2009. *The Law of Carriers of Passengers: Illustrated by Leading Cases and Notes*. Carolina, United States: Bibliolife Publisher.
- Toubia, P. E. 2002. *Legal Basis for the Liability of the Free Carrier and the Responsibility of the Owner when the Car is Sold by an Agency or According to An Unregistered Contract*. Beirut, Lebanon: The Modern Institution for Books.
- UAE Commercial Transactions Act No. 18 of 1993.
- Verdict of the Dubai Court of Cassation of 11 May, 2008 in Appeal No. 84/2008 – Civil Appeal, [http://www.dubaicourts.gov.ae/pls/portal/eservice.rpt\\_adv\\_rules](http://www.dubaicourts.gov.ae/pls/portal/eservice.rpt_adv_rules) [14/11/2017].
- Verdict of the Dubai Court of Cassation of 21 September, 2011 in Appeal No. 89/2011 – Civil Appeal and No. 145/2011 – Civil Appeal, [http://www.dubaicourts.gov.ae/pls/portal/eservice.rpt\\_adv\\_rules](http://www.dubaicourts.gov.ae/pls/portal/eservice.rpt_adv_rules) [15/11/2017].
- Wahab, S.A. 1967. Responsibility of travel and tourism agencies for their work. *Journal of Legal and Economic Sciences* 9: 13-15.
- Wassef, S. 1985. *Liability Insurance – A Study of Land Transport Contract*. Cairo, Egypt: Cairo University Press.
- Younis, A. H. 1965. *Transport Contract*. Cairo, Egypt: Dar al-Fikr al-Arabi.
- Younis, A.H. 1969. *Commercial Contracts*. Cairo, Egypt: Dar al-Fikr al-Arabi.

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