The responsibility of health facilities for medical equipment in the UAE – how much is too much?

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*This illustration is inspired by the original painting of **Mona Lisa** by Leonardo da Vinci.*

It is well established that a person's responsibility for any equipment, materials, or things in general is governed by the realms of Federal Law No. 5 of 1985 on Civil Transactions Law in the UAE, as amended (the '**Civil Transactions Law**'), specifically article 316. However, in the context of medical responsibility, the provisions of Federal Decree No. 4 of 2016 on Medical Liability (the '**Medical Liability Law**') and the Executive Regulations on the Medical Liability Law issued by way of Cabinet Resolution No. 40 of 2019 (the '**Executive Regulations**') must be observed. Some judicial trends and precedents suggest that hospitals are responsible for achieving patient safety by verifying and examining the safety of medical equipment and apparatuses used throughout the provision of medical care, specifically in the context of surgical operations. However, this line of judicial reasoning may conflict with the law and reality. This article sets out to draw the boundaries of a health facility's liability for the safety of medical equipment through a recent landmark judgment issued in favour of one of Al Tamimi & Company's clients.

A hospital's responsibility for medical equipment and apparatuses is not absolute

As noted above, the responsibility for things, specifically those requiring special attention, is governed by article 316 of the Civil Transactions Law, which reads (translated from Arabic):

"*Any person who has things or mechanical equipment under his control, which require special care in order to prevent their causing damage, shall be liable for any harm done by such things or equipment, save to the extent that this damage could not have been averted. This is without prejudice to any special provisions laid down in this regard.*"

In other words, the liability of a user of things or mechanical equipment is limited to the damage arising out of such things or mechanical equipment that could have been averted. Similarly, a hospital's responsibility for medical equipment and apparatuses should not be unconditional. Rather, it should be assessed on a case-by-case basis, and the relevant legislative provisions should be read in a manner that is proportional to the facts of the respective case.

Thus, pursuant to the general rules prescribed in the Civil Transactions Law, medical equipment and apparatuses may be categorised as things requiring special attention. In this respect, medical liability is subject to the general rules on medical responsibility as well as the special rules established in the Medical Liability Law and the Executive Regulations. In the context of surgical operations, article 3 of the Executive Regulations states:

"Without prejudice to the provisions stipulated in the Decree-Law [the Medical Liability Law], surgeries may only be performed after ensuring the following:

1. *The health facility in which the surgery is performed shall be adequately equipped to be fit for the type of surgery in terms of the medical and nursing staff,* ***the medical equipment and supplies required for it in terms of quality and safety and all requirements that are necessary to perform such surgery and deal with any complications or other expected procedures****. "*

It is evident that the latter part of subsection (1) of the above article may serve as a basis for establishing a hospital's liability for any harm suffered by a patient during a surgical operation due to the quality and safety of the medical equipment and apparatuses used. With this interpretation in mind, the Abu Dhabi Court of First Instance decided in case no. 184/2020 (Civil) to establish our client's liability for the harm suffered by the heirs of a patient who died as a result of a manufacturing defect in a surgical apparatus used during a cardiac operation. In summary, the dispute involved a patient who unfortunately died while undergoing a cardiac catheterization as a result of a balloon catheter (a balloon-like apparatus used in this type of operation) failing to operate. This technical flaw in the manufacturing of the balloon catheter was proven against the supplier of the apparatus and it was found guilty pursuant to a judgment issued by the Abu Dhabi Criminal Court. The heirs of the deceased patient subsequently filed a civil lawsuit against both the supplier of the defective balloon catheter and the hospital where the operation had taken place (our client) to claim a total of AED 23 million in compensation for the material and moral damage sustained as a result of the patient's death. The Court of First Instance handed down its judgment in the civil proceedings and decided that the responsibility of the hospital, together with the supplier of the medical equipment, was established. The judgment supported its reasoning using subsection 1 of article 3 of the Executive Regulations, whereby the judgment stated:

"… according to article 3 of the Executive Regulations, the health facility shall be concerned with the safety and quality of the necessary medical equipment and supplies. The cause of the death of the deceased patient was a result of the non-discharge of the balloon catheter due to a technical defect. Whereas the care required from the balloon catheter was to achieve a specific result and not simply [for the hospital] to use its best efforts. Therefore, it is the responsibility of the joined defendant [the hospital]

to provide medical equipment and apparatuses at a level at which the result is achieved." (Judgment of the Abu Dhabi Court of First Instance dated 20/12/2020 – case no. 184/2020 – Civil).

Despite the Court of First Instance's interpretation of article 3 of the Executive Regulations, which led the said court to establish our client's responsibility, the team at Al Tamimi & Company had some reservations to the judgment. We were of the opinion that a hospital's responsibility for medical equipment and apparatuses is neither general nor is it absolute, rather it is confined to the limitations derived from the previously mentioned general rules and article 3 of the Executive Regulations (the very same provision that led the court to establish our client's liability). It should therefore be assumed that, in certain cases, the hospital should not be pursued for the damage suffered by the patient as a result of the safety and quality of medical equipment and apparatuses. Such cases include:

If it is established that a deficiency in the safety and quality of medical equipment and apparatuses is due to a manufacturing defect, which the hospital could not have verified, detected, or foreseen.

With that in mind, the litigation team at Al Tamimi & Company appealed before the Court of Appeal the judgment issued by the Court of First Instance using the above reasoning. This reasoning is in line with the general rules prescribed in the Civil Transactions Law pursuant to article 316. Additionally, the complications suffered by the deceased patient due to the manufacturing defect in the balloon catheter cannot be classified as an expected complication, as mentioned under article 3 of the Executive Regulations. Therefore, the said article does not apply to the facts of the dispute.

Ultimately, the Court of Appeal upheld our reasoning and decided to remove our client as a party to the proceedings. The Court of Appeal commented on the ruling of the Court of First Instance, which was partially overturned:

"… [the hospital] is not responsible for the manufacturing defect which the balloon catheter, used on the deceased patient, had featured, nor could it have identified, expected or assumed the extent of this defect, if any. Therefore, it cannot be said that a breach was committed by the hospital in carrying out its obligations to guarantee the patient's safety, which leads the court to exercise its right to overrule the appealed judgment solely on this point and to uphold the remainder of the judgment …" (Judgment of the Abu Dhabi Court of Appeal dated 26/04/2021 – appeal no. 29, 31, 32 – Civil).

The claimants escalated the dispute before the Court of Cassation and a judgment was recently issued upholding the Court of Appeal's judgment (Cassation appeal no. 142/2021 dated 31/08/2021).

Conclusion:

The responsibility of a healthcare facility for the safety and quality of medical equipment and apparatuses, in accordance with article 3 of the Executive Regulations, is not absolute nor is it unconditional. Rather, it is met by certain restrictions, the most important of which is where the damage or harm (which is the subject of a claim or a dispute) is the result of a cause that cannot be avoided or foreseen, nor can its collateral effects be expected.

Al Tamimi & Company's litigation team regularly advises and acts for hospitals and healthcare facilities before the UAE Courts. For further information please contact Dr. Omar Al Azawe (o.alazawe@tamimi.com).