

Limiting Liability Against Harm in Sporting Events

Adam Powell - Head of Corporate Commercial - Ras Al Khaimah - Corporate / Mergers and Acquisitions / Corporate Services
- Ras Al Khaimah

April 2016

Moreover, participation, as well as spectating, appears to be ever increasing, with operators advertising adventure sports including skydiving, bungee jumping, and sandboarding as well as individuals increasingly spending their leisure time entering sportives and pursuing activities such as mountaineering, rock climbing, and kite surfing.

Across the board, this is good news for the UAE economy generally as each event and activity brings with it potential revenues for businesses on a local and national scale.

This article will consider the risk of civil liability of an operator, and the potential damages which may be awarded against it as a result of an injury at a hosted event in the UAE. The article will also consider the manner in which event operators should seek to manage their liability in relation to this risk. Naturally, this article is general in context and non-exhaustive with regards to the topic, and any operator with specific concerns should seek appropriate professional advice.

Of course, any operator must consider numerous legal issues when hosting an event, from advertising to intellectual property rights, permissions to policing. Unfortunately, a common trait of participants and, in some cases, spectators of sports appears to be a tendency to believe that their activity is special and, perhaps, detached from reality; but, by their very nature, these activities carry a significant risk of injury to both participants and spectators. This means that safety must be particularly considered bearing in mind this cavalier approach. An event's success, amongst other things, depends greatly on its reputation for safety. Moreover, if an individual is injured and the injury is caused as a result of an act or omission of another person, that person and the operator who runs the event may be culpable under civil and criminal law and liable to the injured party in the form of damages or they may even face imprisonment.

Whilst the UAE does not recognise punitive damages (those intended to deter the defendant and others from engaging in similar conduct), UAE Federal law does ensure that compensation may be available in the event of injury or harm to a person caused by another.

References to the 'Code' in this article are references to the UAE Civil Transactions Act (commonly referred to as the Civil Code) and references to 'sections' are reference to sections in the Code.

Liability

Generally, a person in the UAE owes an obligation (or a duty) of care to other persons under section 124(3) of the Code, which establishes liability arising from acts causing harm, and section 282, which provides that any harm done to another shall render the actor liable to make good the harm. This duty of care extends to each natural person and also to juristic persons, which includes trading companies and public departments. Section 313 establishes the principle of vicarious liability whereby an employer will be liable, on the face of it, for the actions of its employees.

Nevertheless, section 104 negates liability in circumstances when a person's actions are not unlawful.

Therefore, in terms of harm caused to a participant or spectator during a sporting event, unless deliberate, such harm would generally need to be proved as a result of a negligent or reckless act or omission, be it by a fellow participant, an instructor, a supervisor, a volunteer, or a contractor working for the event operator. In most circumstances the injured party would look to the operator's indemnity insurance cover for compensation.

Accordingly, an operator may be liable under these provisions where it, or someone under its authorisation, has breached the obligation of care (by a reckless act or omission), another person has suffered a loss, and there is a causal link between the breach and the loss.

Breach of Obligation

Section 296 makes it clear that contracting out of liability arising as a result of a 'harmful act' is not lawful and any attempt to do so would render such a contract void. A 'harmful act' is not defined in the Code and, therefore, it will be at the sole discretion of the Court to interpret whether the operator was in fact in breach of its obligation or duty of care in a given situation. Related commentary by the UAE Ministry of Justice has provided that ". . . there is an obligation imposed upon everybody not to cause harm to others. A breach of that prohibition is one which involves harm. This obligation requires an examination of conduct, and this gives rise to the principle of the care to be taken by a prudent man". Therefore, there is an assumption that any judgment should consider the actions of both the claimant and the defendant and consider any elements of imprudence or recklessness on the part of either. The outcome of such a case would turn on the facts on a case by case basis.

In comparison to common law jurisdictions, such as England and Wales, the interpretation of whether a person has acted negligently (breached the duty of care) is based around a fictitious reasonable person applying binding precedent case law, which has developed the maxim of *volenti non fit injuria* (no injury can be done to a willing person), which is often applicable in cases involving sports related injury. In limited circumstances, this can provide a complete defence when harm caused was not deemed to be unduly reckless nor carried out with disregard of the safety of others.

Award of Damages

The reader will no doubt be aware of the concept of punitive damages, the large financial sums which Courts in certain jurisdictions (for example, in the USA) may award in certain circumstances as a deterrent. UAE law does not recognise the concept of punitive awards, and the general principle of damages under the Code is that compensation should be equal to the amount of loss suffered or incurred by the person.

There is a distinction made between 'direct' and 'consequential' harm under section 282 of the Code. Compensation must be paid for any 'direct loss' caused by a person notwithstanding whether the act or omission amounts to a crime or breach of any contract. On the other hand, compensation for 'consequential loss' will only be awarded if the act or omission includes elements of wrongful or deliberate behaviour.

Section 299 of the Code provides that compensation shall be payable for harm caused to a person, which includes compensation for personal injury and death (unless *diyah*, or blood money, under Sharia law are payable). Direct damages will be assessed on the basis of the extent of loss suffered by the injured person and includes material damages, future earnings, and damage to property, provided the loss was directly related to the act. The Court will assess the amount of damages on a case by case basis.

Future loss of profits may be recoverable if they arise as a direct result of the harm and the loss was foreseeable at the time and certain to occur in the future; however, losses must be certain and prospective damages may not be recoverable. Section 389 of the Code stipulates that if the amount of compensation is not fixed by contract or law, which will generally be the case in these circumstances, the Court will make the final determination.

Managing Risk and Liability

Any award for damages will be at the discretion of the Court, based on an expert's report, which will consider the circumstances and whether the parties were reckless, imprudent, or indeed deliberate in their actions. The Code makes it clear that contracting out of liability for harm is not possible and, therefore, an operator must seek to ensure that risk and liability are adequately managed. In addition to complying with any and all obligations it may have under the law concerning the Security of Sports Facilities and Events (Federal Law No (8) of 2014), an operator should always consider commissioning a risk and hazard assessment in relation to specific events and implement any safety recommendations.

Although a general legal disclaimer may, on the face of it, appear of little value, it would be imprudent, and reckless, for any event operator not to forewarn all participants and spectators in writing of the dangers and risks involved. Such health warnings, or lack of, may impact on the assessment of damages.

Third parties with an active interest in the event, such as contractors and concessionaries, should enter into collateral contracts that provide the operator with insured recourse in the event of a claim as a result of third party actions.

The operator should also fully insure the event. Specialist insurance providers offer, amongst other things, spectator and participant coverage. These providers are favourably positioned to provide the operator with any additional recommendations which must be satisfied to validate the cover.

Reducing injuries, litigation, and reputational damage are common interests, but awareness of the underlying law as it relates to sports and events is fundamental for all of those involved. Adam Powell (a.powell@tamimi.com) is Head of the Corporate Commercial Practice in Ras Al Khaimah and a member of Al Tamimi's dedicated Sports Law & Events Management practice. Adam brings diverse legal experience to the team which he has gained from working in private practice in London for over 15 years, latterly as a partner.