

Does China Need “Good Samaritan” Laws to Save “Yue Yue”?

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Introduction	205
I. Background	209
A. The Peng Yu Case Verdict	209
B. The “Xu Yunhe” Case Verdict: The Second “Peng Yu” Case.....	210
C. Post “Peng Yu”: Effects in Chinese Society	211
D. Good Samaritan Laws Across Different Countries and Jurisdictions	213
1. <i>History of “Duty-to-Rescue” Doctrine</i>	213
2. <i>Positive Duty-to-Rescue Laws in Civil and Common Law Jurisdictions</i>	214
a. France	214
b. Similar Statutes in Germany, Italy, and Spain ..	215
c. United States.....	216
3. <i>“Good Samaritan” Immunity Clause</i>	218
a. Civil Law Jurisdictions	218
b. United States.....	218
c. Standard of Care	218
d. Class of Persons Protected	219
II. Analysis	220
A. The Main Defects in the “Peng Yu Case” and “Xu Yunhe Case” Verdicts	220
B. Are Good Samaritan Laws Right for China?	224
1. <i>Duty to Rescue</i>	224
a. Whether a Duty to Rescue is Desirable.....	224
b. Type of Liability.....	226
2. <i>Immunity Clause</i>	227
a. Standard of Care	227
b. Class of People Protected	229
C. The Newly Enacted Good Samaritan Statute in Shenzhen	229
Conclusion	230

Introduction

On October 13, 2011, a van struck a two-year-old girl named Yue Yue

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on a side street in Guangdong.¹ At least eighteen people passed by indifferently, leaving Yue Yue lying on the ground, seriously injured.² A second van came and struck the girl again; she died the next morning.³ A surveillance camera captured this incident and the video was aired on television and posted on websites.⁴ The indifference of those bystanders shocked the public, and thousands of people left comments questioning the morality in Chinese society.⁵

One possible reason for this tragedy is that China, unlike many other countries, does not have a “Good Samaritan” law. A Good Samaritan law is one that encourages citizens to aid strangers in need through various legal incentives. Globally, there are two common groups of Good Samaritan laws. Civil law countries such as France, Spain, and Germany, as well as some U.S. states, impose a “duty to rescue” that punishes those who fail to assist people in danger or to report to authorities.⁶ Others do not impose such a duty to rescue but instead have statutes that shield the rescuer from liability.⁷

This Note will address the Good Samaritan problems in China by answering three questions.⁸ First, why, from a legal perspective, were the bystanders so indifferent to the injured girl on the street? Second, how did a series of cases scare people away from acting as the Good Samaritan and cause the low morality in the Chinese society? Third, how do other countries or jurisdictions legislate and enforce Good Samaritan laws to deal with the problem? To answer these questions, I will compare Good Samaritan laws in various jurisdictions, with a specific focus on several European civil law jurisdictions that enforce a duty to rescue. I will also compare Good Samaritan laws in varying jurisdictions in the United States. Finally, I will analyze whether China needs to enact a Good Samaritan law and, if so, what is most appropriate for the current Chinese society.

Although China is a civil law country, several sensational lawsuits actually “embittered the public toward performing heroic deeds for strangers.”⁹ One major lawsuit occurred in 2007.¹⁰ Peng Yu, claiming himself

1. Chai Ling, *Can Video of Yue Yue, a Toddler Left for Dead, Change China?*, FOX NEWS (Oct. 22, 2011), <http://www.foxnews.com/opinion/2011/10/22/can-video-yue-yue-toddler-left-for-dead-change-china/>; Wu Zhong, *Little Yueyue and China's Moral Road*, ASIAN TIMES ONLINE (Oct. 19, 2011), atimes.com/atimes/China/MJ19Ad01.html

2. Chai Ling, *supra* note 1.

3. *Id.*

4. Wu Zhong, *supra* note 1.

5. *Id.*

6. See discussion *infra* Part I.D.2

7. See discussion *infra* Part I.D.3

8. This Note will focus on solving the Good Samaritan problems by offering a legal perspective. For other solutions, such as using “the Media to Raise Civic Consciousness” and implementing “Life Supporting First Aid (LSFA) Training to Equip and Encourage Helping Behavior,” see Melody W. Young, Comment, *The Aftermath of Peng Yu: Restoring Helping Behavior in China*, 22 PAC. RIM. L. & POL'Y. J. 691, 707, 708 (2013).

9. Holly McFarland, *Could a 'Good Samaritan' Law Help China Become More Compassionate?*, CHRISTIAN SCI. MONITOR (Nov. 3, 2011), <http://www.csmonitor.com/World/Making-a-difference/Change-Agent/2011/1103/Could-a-Good-Samaritan-law-help-China-become-more-compassionate>.

a Good Samaritan, helped and accompanied to the hospital Ms. Xu, a 65-year-old woman who fell to the ground when getting off of a bus.¹¹ Ms. Xu returned Peng’s kindness by suing him for \$7000 for medical expenses, alleging that Peng was responsible for her injury.¹² The judge held for Ms. Xu, reasoning that Peng would not have helped Ms. Xu “unless he was guilty of injuring her in the first place.”¹³

After this case, several judges in different provinces of China delivered similar verdicts. For example, in October 2009, Wang Xiuzhi, a 69-year-old woman, fell and suffered multiple bone fractures after illegally jumping a guardrail in the middle of a road.¹⁴ A man named Xu Yunhe saw the accident and got out of his car to help Ms. Wang. Ms. Wang later sued Xu for knocking her down from the guardrail and causing her injuries.¹⁵ Without determining that Xu actually hit Ms. Wang, the court found Xu 40% responsible for the accident.¹⁶ Similarly, a man named Wu Jundong became the subject of a lawsuit after he acted as a Good Samaritan. On November 23, 2010, Wu Jundong drove a three-wheeled motorcycle past two old men riding an electric bicycle.¹⁷ When the two old men suddenly fell from their bicycle, Wu Jundong stopped and called for help.¹⁸ The two old men subsequently sued Wu, and both the lower and middle level courts in the Jin Hua District held Wu responsible for 70% of the damages, without actual evidence that Wu had caused the two old men to fall down.¹⁹

These types of cases directly discouraged people from helping the injured on the street and greatly affected the morale of Chinese people. In December 2013, *China Youth Daily* conducted an online poll that asked if

10. See Xu XX Su Peng Yu Ren Shen Sun Hai Pen Chang Jiu Fen An (徐XX诉彭宇人身损害赔偿纠纷案) [Xu XX v. Peng Yu, Personal Injury Compensation Dispute], PKULAW.CN (Nanjing Mun. Gulou Dist. People’s Ct. Sept. 3, 2007) (China) [hereinafter Peng Yu Case].

11. *Id.*

12. *Id.*

13. McFarland, *supra* note 9.

14. *To Help or Not to Help?*, CHINA DAILY (Aug. 26, 2011, 3:13 PM), http://www.chinadaily.com.cn/opinion/2011-08/26/content_13199786.htm.

15. *Id.*

16. *Id.*

17. *Shi Zhaoshi Hai Shi Zuo Haoshi? Wu Jundong Fuqi Shuaidao Laoren Bei Pan Pei 7 Wan* (是肇事还是做好事? 吴俊东扶起摔倒老人被判赔7万) [Was He Responsible for the Accident or a Good Samaritan? Wu Jundong Was Held Responsible for 70,000 RMB for Helping Falling Old Men], ZHEJIANG NEWS (浙江新闻) (Nov. 29, 2011), <http://zjnews.zjol.com.cn/05zjnews/system/2011/11/29/018034196.shtml>.

18. *Id.*

19. *Id.* In some other cases Good Samaritans were not held liable but only because security videos proved their innocence. See e.g., Luo Wei, *Camera Dispels Woman’s Post Accident Fault Claims*, GLOBAL TIMES (Aug. 30, 2011, 11:14 AM), <http://www.globaltimes.cn/NEWS/tabid/99/ID/673199/Camera-dispels-womans-post-accident-fault-claims.aspx> (describing how an elderly woman accused a bus driver of hitting her, but video surveillance footage showed that a pedicab knocked her over and that the bus driver was there to help).

people would be willing to help a collapsed elderly person on the street.²⁰ Approximately 56% of the 139,010 participants said that they would not offer help for fear of extortion, while only 5.4% would be willing to offer assistance without hesitation.²¹

Good Samaritan laws are important to society because anyone could find themselves in Yue Yue's situation one day and in need of assistance from strangers. Thus, rather than simply casting blame on those people who indifferently passed by, societies must provide legal solutions to encourage people to help strangers on the street in these times of need. First, the defective and erroneous reasoning underpinning verdicts in cases such as the Peng Yu Case and Xu Yunhe Case must be recognized and resolved.²² Second, China, like many other jurisdictions around the world, should enact Good Samaritan statutes to encourage its citizens to aid people in danger. There are two types of Good Samaritan laws existing in European and American jurisdictions. Civil law countries such as France, Spain, and Germany, as well as several states in the United States, have in place a "duty to rescue" statute that punishes people who fail to assist people in danger or to report to authorities.²³ Alternatively, most U.S. states do not impose a general duty to rescue and instead have Good Samaritan statutes that provide various levels of immunity to shield rescuers from incurring liability.²⁴

In Part I, this Note will point out the defective reasoning behind the Peng Yu Case and Xu Yunhe Case and introduce various types of Good Samaritan laws in different jurisdictions. In Part II, this Note will analyze why the defective reasoning behind the Peng Yu Case and Xu Yunhe Case pushed people away from aiding others, and by comparative study, locate the most appropriate Good Samaritan laws to employ for today's Chinese society. This Part will also examine recent legislative developments regarding Good Samaritan issues in China. The Note concludes with the recommendation that China implement a Good Samaritan law and enforce a duty to rescue, with goals of reshaping both Chinese attitudes towards morality and potential rescuers' fear of incurring liability. To implement this duty will require overcoming the flawed legal reasoning in the Peng Yu and Xu Yunhe Cases. Further, this Note argues that China's ideal Good Samaritan law must feature both a duty to rescue and a broad immunity clause with a "gross negligence" standard of care that deters victims from making false accusations.

20. Xiang Nan & Tang Yingyue, *84.9% Gongzhong Tan Yan Bu Fu Laoren Hen Jiujiu* (84.9% 公众坦言不扶老人很纠结) [84.9% of the Public Said that They Would Be Hesitant to Help Fallen Elders on the Street], CHINA YOUTH DAILY (中国青年报) (Dec. 10, 2013), http://zqb.cyol.com/html/2013-12/10/nw.D110000zgqnb_20131210_2-07.htm.

21. *Id.* Poll results indicated that 55.6% of participants would ignore the accidents and leave directly; 23.4% would offer help after finding witnesses; 12.6% would call police; and only 5.4% would offer help without hesitation. *Id.*

22. See discussion *infra* Part II.A.

23. See discussion *infra* Part I.D.2.

24. See discussion *infra* Part I.D.3.

I. Background

A. The Peng Yu Case Verdict

The major dispute in this case is whether Peng Yu helped Ms. Xu to the hospital out of a sense of altruism or because he actually caused her injury.²⁵ Ms. Xu, the plaintiff, claimed that as she was trying to board a bus, the defendant, Peng Yu, rushed down from the bus and knocked her over, injuring her legs. According to Peng Yu, however, he was the first person to get off the bus and did not see or touch Ms. Xu at that time.²⁶ Only after he saw Ms. Xu lying on the ground in pain did he try to help Ms. Xu stand up and escort her to the hospital.²⁷

The court first noted that neither party was able to provide direct evidence to show who caused Ms. Xu’s injury.²⁸ However, rather than dismiss the case for lack of evidence from the plaintiff’s side, the court held that the defendant failed to provide enough evidence to “prove his innocence.”²⁹ While the defendant provided an eyewitness who testified that he saw the defendant run to Ms. Xu and try to help her stand up, the court reasoned that this evidence could not help the defendant’s case because the witness had not seen how Ms. Xu got injured in the first place.³⁰

The court then examined Peng Yu’s potential liability based on “common sense” and “experience from everyday life.”³¹ The court reasoned that because Peng Yu was the first one to get off the bus that Ms. Xu was trying to get on, it was “very likely” that Peng Yu caused her to fall down.³² The court also held that a reasonable Good Samaritan should have “caught the person who actually caused the accident,” or waited until the victim’s family arrived and let them send the victim to the hospital.³³ Peng Yu’s conduct—escorting Ms. Xu to the hospital—was, according to the court, “obviously against the common sense.”³⁴

Moreover, the court determined that Peng Yu’s failure to ask Ms. Xu to reimburse the medical expenses he paid when he escorted her to the hospital also hurt his case.³⁵ The court asserted that “according to common sense,” strangers would not lend money to each other.³⁶ Even if they would, a reasonable person in that circumstance would at least ask disinterested people to act as witnesses or would ask the family of the injured person to provide a written note describing the event.³⁷ Also, the court pointed out that Ms. Xu’s relatives were already at the hospital when Peng

25. See Peng Yu Case, *supra* note 10.

26. *Id.*

27. *Id.*

28. See *id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

Yu accompanied Ms. Xu there.³⁸ This fact made the court suspicious as to why Peng Yu still paid part of Ms. Xu's medical expenses, which totaled 200 RMB (about \$30).³⁹

After the court concluded that it was Peng Yu who had knocked Ms. Xu over, it then considered whether Peng Yu was negligent in doing so.⁴⁰ The court determined that because the bus door blocked Peng Yu's line of sight, Peng Yu's failure to predict Ms. Xu's movement was not unreasonable and Peng Yu was not negligent in causing Ms. Xu's injury.⁴¹ The court, however, cited the "fairness principle" in Chinese tort law, which requires courts to consider the "victim's damages, the financial condition of both sides, and other relevant circumstances," to determine if the person who caused the injury should partly compensate the victim for the resulting damages even if the defendant was not at fault.⁴² Based on this principle, the court held that Peng Yu was liable for 40% of Xu's medical expenses and legal fees.⁴³ Concerning this incident, an article from *China Daily* noted, "[such] 'reasoning' horrified, and angered, the whole nation. From then on, the number of pedestrians helping old people in need has dramatically decreased."⁴⁴

B. The "Xu Yunhe" Case Verdict: The Second "Peng Yu" Case

Similar to the Peng Yu case, the central dispute in the Xu Yunhe Case is whether Xu Yunhe was a Good Samaritan or caused Ms. Wang's injury.⁴⁵ Ms. Wang, the plaintiff, claimed that when she was attempting to jump over a guardrail in the middle of a road, the defendant Xu Yunhe drove by and hit her with his car.⁴⁶ Xu Yunhe, on the other hand, argued that he stopped his car only because he saw Ms. Wang falling from the guardrail and wanted to offer assistance and that his car had never actually touched Ms. Wang.⁴⁷

As in the Peng Yu Case, the court specifically noted that Xu Yunhe did not provide enough evidence to prove his innocence.⁴⁸ The only evidence that Ms. Wang provided in support of her claim was a photo showing that

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* (citing the original text, which indicates "公平责任是指当事人双方对损害均无过错，但是按照法律规定又不能适用无过错责任的情况下，根据公平的观念，在考虑受害人的损害，双方当事人的财产状况及其他相关情况的基础想，判令加害人对受害人的财产损失予以补偿，由当事人合理分担损失").

43. *Id.*

44. Liu Shinan, *Need to Protect Our Good Samaritans*, CHINA DAILY (Jan. 5, 2011, 7:45 AM), http://www.chinadaily.com.cn/opinion/2011-01/05/content_11794724.htm.

45. Wang Xiuzhi Su Xu Yunhe Daolu Jiaotong Renshen Sunhai Peichang Jiufen An (王秀芝诉许云鹤道路交通事故人身损害赔偿纠纷案) [Wang Xiuzhi v. Xu Yunhe, Traffic Accident Personal Injury Compensation Dispute], PKULAW.CN (Tianjin Mun. Hongqiao Dist. People's Ct. June 16, 2011) (China) [hereinafter Xu Yunhe Case]

46. *Id.*

47. *Id.*

48. *Id.*

the paint on Xu Yunhe’s car was chipped, which she argued occurred when his car hit her.⁴⁹ The police report, however, concluded that there was not enough evidence to determine what actually caused the paint chip. Also, according to Xu Yunhe’s testimony and the police analysis of the scene, there were 2.4 meters between where Ms. Wang fell off the guardrail and where Xu Yunhe’s car stopped.⁵⁰ The court, instead of finding that Ms. Wang did not have enough evidence to support her claim, held that this “was not enough evidence to eliminate the possibility that the defendant did not hit the plaintiff.”⁵¹

Additionally, the court stated that it did not matter whether Xu Yunhe had hit Ms. Wang or not. Because the car was only several meters away from Ms. Wang when the accident happened, she “must have been panicked” and her movement “must have been influenced by the car.”⁵² Therefore, the court determined, regardless of whether Xu Yunhe’s car hit Ms. Wang or not, Xu Yunhe should be partly responsible for her injury.⁵³

The court did consider the fact that Ms. Wang had actually broken the law by jumping the guardrail when evaluating her contributory negligence.⁵⁴ Still, the court held that Xu Yunhe was 40% liable for all the damages, and he was ordered to pay 108606.34 RMB (more than \$15,000).⁵⁵ Some commentators noted:

Such a large sum [of compensation] would transform the living conditions of most people in society today and is likely to draw some poorer to try and copy Wang. Since there’s no proof of the Good Samaritan’s innocence, the law encourages this type of extortion. This is where it is inadequate—treating the good unfairly and leaving the true offenders unpunished.⁵⁶

C. Post “Peng Yu”: Effects in Chinese Society

Many consider the Peng Yu and Xu Yunhe Cases to be “black marks on the country’s judicial record.”⁵⁷ Interestingly, however, when the Peng Yu Case was appealed to a higher-level court, the parties agreed to settle for a small amount of money and have the record sealed, leaving people to won-

49. *Id.*

50. *Id.*

51. *Id.* (citing the original test, which indicates “本院无法确认被告车辆与原告发生接触，也无法排除被告车辆与原告发生接触”).

52. *Id.* (citing the original test, which indicates “在此短距离内作为行人的原告突然发现被告车辆向其驶去必然会发生惊慌错乱，其倒地定然会受驶来车辆的影响”).

53. *Id.*

54. *Id.*

55. *Id.*

56. Sheng Chao, *China Scares Off Good Samaritans*, *ECON. OBSERVER* (Sep. 2, 2011), <http://www.eeo.com.cn/ens/2011/1018/213705.shtml>.

57. Chris Dalby, *Should Samaritan Laws Punish or Protect?*, *GLOBAL TIMES* (Oct. 31, 2011, 9:31 PM), <http://www.globaltimes.cn/NEWS/tabid/99/ID/681762/Should-Samaritan-laws-punish-or-protect.aspx>.

der whether Peng Yu really hit Ms. Xu.⁵⁸ Moreover, a state-owned magazine, *Oriental Weekly*, revealed that in 2006, Peng Yu not only confessed to the police that he had knocked over Ms. Xu from the bus, but also solicited local news media to promote him as a Good Samaritan.⁵⁹ However, regardless of the truth, these verdicts have already left the Chinese public with the impression that Good Samaritans cannot resort to the legal system for help when victims falsely accuse them.⁶⁰

Incidents across the country in recent years reflect the negative influence of these cases. On February 22, 2009, after a 75-year-old man fell to the ground getting off of a bus in Nanjing, no one moved to help him.⁶¹ Desperately, the old man yelled: "It is not anybody's fault. I fell by myself."⁶² It was only after this declaration that he was finally offered assistance.⁶³ Others, unfortunately, have not been so lucky. In Fuzhou, a southern China city, an 83-year-old man died after falling onto "a downtown street and lying on the cold pavement, face down, for half an hour;" he received no help from any bystanders.⁶⁴ An onlooker even went so far as to stop two women who went to help the man, saying, "Better not touch him. It will be hard for you to put it clearly later on." Instead of helping the man get up, the two women called the police, but the man died before an ambulance arrived.⁶⁵

A similar tragedy occurred in a residential community in Shenzhen, Guangdong province. Bystanders spotted a 78-year-old man lying face down on the "rain-soaked ground."⁶⁶ None of the bystanders took any immediate action beyond calling the police, and the man died.⁶⁷ One of the guards in the community later explained, "We dared not touch the old man because we would not be able to put it clearly should anything untoward occur."⁶⁸

A recent incident occurred in Sichuan when a 65-year-old old woman fell down and injured her legs.⁶⁹ Three children who saw the accident happen went to help the old woman.⁷⁰ However, once they approached her, the woman grabbed one of the children and insisted that the child had caused her injury and the child's family should pay for all her medical

58. Adam Minter, *China's Infamous 'Good Samaritan' Case Gets a New Ending*, BLOOMBERG (Jan. 17, 2012, 6:11 PM), <http://www.bloomberg.com/news/2012-01-17/china-s-infamous-good-samaritan-case-gets-a-new-endingadam-minter.html>.

59. *Id.*

60. *See id.*

61. Liu, *supra* note 44.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *See Sichuan Dazhou 3 Ming Ertong Chanfu Laotai Bei E Jingfang Yi Qizha Zui Lian* (四川达州3名儿童搀扶老太被讹警方以欺诈罪立案) [*Three Children Were Extorted for Helping an Old Woman Police Started the Fraud Investigation*], TENCENT NEWS (腾讯新闻) (Oct. 20, 2013), <http://news.qq.com/a/20131122/001702.htm>.

70. *Id.*

expenses.⁷¹ Since then there have even been discussions about whether parents and schools should continue to teach children to respect and help their elders.⁷²

These incidents fall into two categories. First, there are the “Peng Yu” type of incidents in which Good Samaritans are sued by the injured party. Second, there are the “Yue Yue” type of scenarios in which bystanders, fearing liability, do not help the injured strangers. Both types indicate that contemporary Chinese society needs Good Samaritan laws to shield Good Samaritans from legal liability and to encourage helping strangers who are in danger.

D. Good Samaritan Laws Across Different Countries and Jurisdictions

The term “Good Samaritan” originated from a Bible story in which Jesus explains who qualifies as a good neighbor.⁷³ In that story, a man, attacked by robbers, was lying on the ground half-dead.⁷⁴ A priest and a Levite both saw him but passed by. Only a Samaritan went to him and “bandaged his wounds, pouring on oil and wine . . . [and] brought him to an inn and took care of him.”⁷⁵ Eventually, jurisdictions around the world adopted this sentiment into their laws, and the Good Samaritan doctrine was thus developed. As noted earlier, different states generally adopt one of two categories of Good Samaritan laws.⁷⁶ The first category is usually referred to as “duty-to-assist” or “duty-to-rescue” laws, which impose a general duty to rescue and punish those who fail to lend a hand to people in peril.⁷⁷ Most European civil law jurisdictions and several U.S. states have enacted different versions of a duty-to-rescue law.⁷⁸ The second category of Good Samaritan laws, those that immunize rescuers from potential civil liabilities arising from “any negative result of their rescue attempt,” are most common in the United States.⁷⁹

1. History of “Duty-to-Rescue” Doctrine

Prior to the nineteenth century, few regimes or countries imposed a

71. *Id.*

72. See Huati: Yu Laoren Shuaidao Hai Yaobuyao Jiao Xiaohai Chanfu (话题：遇老人摔倒 还要不要教孩子搀扶) [Topic: Whether We Should Still Teach Children to Help Seniors Who Fell on the Ground], SU-LONG WANG (蜀龙网) (Oct. 19, 2013), <http://www.su-long.com/contents/2013/26/340039.html>.

73. Luke 10:25-37 (New International Version), available at <http://www.bible-gateway.com/passage/?search=Luke+10%3A25-37&version=NIV>.

74. *Id.*

75. *Id.*

76. See Justin T. King, Comment, *Criminal Law: “Am I My Brother’s Keeper?” Sherice’s Law: A Balance of American Notions of Duty and Liability*, 52 OKLA. L. REV. 613, 617-18 (1999); see also John T. Pardun, Comment, *Good Samaritan Laws: A Global Perspective*, 20 LOY. L.A. INT’L & COMP. L.J. 591, 593 (1998).

77. *Id.*

78. See King, *supra* note 76, at 618; Pardun, *supra* note 76, at 594-603; see also discussion *infra* Part I.D.2.

79. King, *supra* note 76, at 618; see also discussion *infra* Part I.D.3.

duty to rescue.⁸⁰ In 1751, Bavaria became the first European jurisdiction to impose a duty-to-rescue law, which applied “only in times of external aggression.”⁸¹ In the nineteenth century, while Spain, Portugal, Italy, Germany, and Russia adopted a duty-to-rescue with various limitations, France and common law England did not.⁸² During World War II, the totalitarian philosophy of Nazi Germany led to a broadening of the duty-to-rescue law.⁸³ When Nazi Germany occupied France during World War II, France also passed a duty-to-rescue statute, which became one of the few statutes that France did not repeal after Germany’s occupation ended.⁸⁴ Belgium and Austria adopted their first duty-to-rescue statutes in 1961 and 1975, respectively, and Spain and Portugal modified their statutes to expand the scope of the duty-to-rescue provision in the latter half of the twentieth century.⁸⁵ Similar to European countries, almost all Latin American countries have enacted duty-to-rescue statutes since the end of World War II.⁸⁶

Few common law jurisdictions impose a duty-to-rescue law. For example, England currently does not have a duty-to-rescue statute.⁸⁷ In the United States, a duty-to-rescue statute only exists in a minority of states.⁸⁸ Furthermore, even in those states that have criminal provisions regarding a duty to rescue, the penalties are very mild.⁸⁹ Moreover, none of the states allow for a private right of action against “bad Samaritans.”⁹⁰

2. Positive Duty-to-Rescue Laws in Civil and Common Law Jurisdictions

a. France

The French duty-to-rescue statute imposes criminal and civil liabilities on a bystander who fails to render necessary help that poses no risk to himself or any third party.⁹¹ The statute states:

Article 223-6. Any person who willfully abstains from rendering assistance to a person in a state of peril that necessitates immediate intervention when he or she could have rendered that assistance without risk to himself, herself, or others, either by acting personally or by calling for aid, may be punished by up to five years imprisonment and a fine of up to 75,000 euro.⁹²

80. See Damien Schiff, *Samaritans: Good, Bad and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS U. L. REV. 77, 81-83 (2005).

81. *Id.* at 82-83.

82. *Id.* at 83.

83. *Id.* at 86.

84. *Id.* at 86-87.

85. *Id.* at 87.

86. *See id.*

87. *See id.*

88. *See id.*

89. *See id.*

90. *Id.* “The phrase ‘bad Samaritan statutes’ refers to those statutes that punish with criminal sanction persons who fail to assist or fail to attempt to assist another in need. Likewise, a ‘bad Samaritan’ is one who fails to assist another in need.” *Id.* at 78-79 n.6.

91. *Id.* at 88.

92. CODE PÉNAL [C. PÉN.] art. 223-6 (Fr.). The original text is: “Quiconque pouvant empêcher par son action immédiate, sans risque pour lui ou pour les tiers, soit un crime, soit un délit contre l’intégrité corporelle de la personne s’abstient volontairement de le faire est puni de cinq ans d’emprisonnement et de 75000 euros d’amende.” *Id.*

The statute contains four elements to impose liability on an indifferent bystander:⁹³ (1) there must be a person exposed to an “imminent and continuous” danger;⁹⁴ (2) the potential rescuer must have knowledge that a person is in danger;⁹⁵ (3) the potential rescuer must be capable to perform the rescue;⁹⁶ and (4) the rescue does not expose the potential rescuer or any others to danger.⁹⁷

The most striking feature of the French duty-to-rescue law is the severity of the punishment: five years of imprisonment and a fine of up to 75,000 euro.⁹⁸ Moreover, such punishment is “almost always carried out.”⁹⁹ Additionally, accident victims can bring a civil law claim against a bystander for the bystander’s failure to rescue by “simply adding the tortious implications of the offence to the criminal action before the criminal courts.”¹⁰⁰ French courts generally determine the civil damages of failure to rescue by considering “what might have been avoided by a reasonable effort to rescue.”¹⁰¹

b. Similar Statutes in Germany, Italy, and Spain

After World War II, Germany amended its duty-to-rescue provision to the following:

§ 323c. Failure to Render Assistance. Whoever does not render aid during accidents or common danger or need, although it is required and can be expected of him under the circumstances and, especially, is possible without substantial danger to himself and without violation of other important duties, shall be punished with imprisonment for not more than one year or a fine.¹⁰²

Italy’s Good Samaritan statute reads:

Article 593. Failure to help. Whoever, finding an abandoned child of less than ten years, or another person incapable of providing for himself through physical or mental illness, through old age or for other cause, omits to inform the authorities immediately, is punishable.

93. Peter M. Agulnick & Heidi V. Rivkin, Comment, *Criminal Liability for Failure to Rescue: A Brief Survey of French and American Law*, 8 *TOURO INT’L L. REV.* 93, 110 (1998).

94. *Id.* at 111. A dead person is not in a danger and will not trigger a duty to rescue. *Id.*

95. *Id.* at 111-12. To illustrate, a defendant who did not know that an elderly man he encountered was stuck in a wall was not criminally liable for not offering help. *Id.*

96. *Id.* at 112-13. For instance, a non-swimmer bystander does not have the duty to rescue a drowning person. *Id.*

97. *Id.* at 113-14. For example, a defendant who extinguished flames on his car first before assisting the mechanic fixing his car was not criminally liable because a burning car posed greater danger. *Id.*

98. Jennifer L. Groninger, Comment, *No Duty to Rescue: Can Americans Really Leave a Victim Lying in the Street? What is Left of the American Rule, and Will It Survive Unabated?*, 26 *PEPP. L. REV.* 353, 371 (1999).

99. *Id.*

100. *See id.* at 354.

101. *Id.*

102. STRAFGESETZBUCH [STGB] [PENAL CODE], § 323c (Ger.); Schiff, *supra* note 80, at 88.

The same penalty may be imposed on one who, finding a human corpse or a person who appears to be dead, or an injured person or a person in danger, omits to give immediate assistance or to inform the authorities without delay.¹⁰³

Spain's current Good Samaritan provision reads:

489 bis. He who does not help a person who finds himself unprotected and in manifest and grave danger, when he could help without risk to himself or to another, shall be punished with major arrest or a fine¹⁰⁴

c. United States

Despite a general absence of duty-to-rescue laws in American jurisdictions, as of 2009, ten states have enacted statutes imposing a duty to rescue or to report to authorities.¹⁰⁵ Interestingly, while each state emphasizes different circumstances in which a duty to rescue is implicated, the common theme among these states is that their statutes are hardly ever enforced.¹⁰⁶

Minnesota's duty to rescue statute provides that:

A person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. A person who violates this subdivision is guilty of a petty misdemeanor.¹⁰⁷

Similar to the European countries' duty-to-rescue statutes, the Minnesota statute requires that the harm be serious in nature and states that the rescuer will be excused from liability if providing aid "would subject the rescuer or others to danger."¹⁰⁸ However, unlike in France where the punishments for failing to exercise a duty-to-rescue are frequently carried out, in Minnesota, there have been no "known arrests or prosecutions under this provision" since the statute's enactment in 1983.¹⁰⁹

Vermont was the first state in the United States to enact a duty-to-rescue statute.¹¹⁰ It reads:

(a) A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to

103. C.p. aprile 2003 n. 593 (It.); Schiff, *supra* note 80, at 89-90.

104. C.P., n. 489, Nov. 1995 (Spain); Schiff, *supra* note 80, at 90.

105. Eugene Volokh, *Duty to Rescue/Report Statutes*, VOLOKH CONSPIRACY (Nov. 3, 2009, 12:24 AM), <http://www.volokh.com/2009/11/03/duty-to-rescuereport-statutes/> (reporting that as of 2009, ten states, including California, Florida, Hawaii, Massachusetts, Minnesota, Ohio, Rhode Island, Vermont, Washington, and Wisconsin, have enacted statutes that impose a duty to rescue crime victims, assist a person suffering from grave physical harm, or report the crime to authorities).

106. Pardun, *supra* note 76, at 596-97.

107. See MINN. STAT. ANN. § 604A.01 (West 2013).

108. Pardun, *supra* note 76, at 598.

109. *Id.* at 597.

110. *Id.* at 598.

himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others (c) A person who willfully violates subsection (a) of this section shall be fined not more than \$100.00.¹¹¹

The only occasion when the Supreme Court of Vermont has interpreted this statute was in *State v. Joyce*,¹¹² where the court ruled that Vermont’s duty-to-rescue law “does not create a duty to intervene in a fight” because “[s]uch a situation [] present[s] [a] ‘danger or peril’ to the rescuer” and therefore “the statute prevents a duty from arising.”¹¹³ Aside from this case where the court narrowly interpreted the statute, Vermont’s duty-to-rescue law is rarely utilized.¹¹⁴ Also, because the only penalty is a fine up to \$100, as indicated by the statute, confusion arises as to whether the statute is “civil or criminal in nature.”¹¹⁵ As a one commentator indicated, “[o]n paper, at least, Vermont has made history, but the statute’s practical effect remains to be seen.”¹¹⁶

Rhode Island has some of the harshest penalties for failure to provide aid to someone in danger. Section 11-56-1 of Rhode Island’s General Laws provides that

Any person at the scene of an emergency who knows that another person is exposed to, or has suffered, grave physical harm shall, to the extent that he or she can do so without danger or peril to himself or herself or to others, give reasonable assistance to the exposed person. Any person violating the provisions of this section shall be guilty of a petty misdemeanor and shall be subject to imprisonment for a term not exceeding six (6) months or by a fine of not more than five hundred dollars (\$500), or both.¹¹⁷

This penalty is still not comparable, however, to the even harsher penalties enforced by the French Good Samaritan law.

In the mid-1980s, Wisconsin enacted a duty-to-assist statute.¹¹⁸ Compared to other jurisdictions’ statutes, Wisconsin’s duty-to-rescue statute does not require a general duty to rescue victims of any accident, but only a duty to “report a crime or aid a victim of crime.”¹¹⁹ Similar to other U.S. jurisdictions that impose a duty to rescue, Wisconsin rarely applies its duty to rescue statute in practice.¹²⁰ As Judge and former Professor Melody Stewart summarized, the duty-to-rescue statutes in the United States “are examples of laws easily made but . . . not [] enforced with any degree of regularity or consistency.”¹²¹

111. VT. STAT. ANN. tit. 12, § 519 (2012).

112. 433 A.2d 271, 273 (Vt. 1981).

113. *Id.*

114. Pardun, *supra* note 76, at 599.

115. *Id.* at 599 & n.52 (“The unique character of the Vermont approach is a blend of a civil exemption with a criminal penalty.”).

116. *Id.* at 599.

117. R.I. GEN. LAWS § 11-56-1 (2012).

118. Pardun, *supra* note 76, at 599.

119. *Id.* at 600.

120. *Id.*

121. Melody J. Stewart, *How Making the Failure to Assist Illegal Fails to Assist: An Observation of Expanding Criminal Omission Liability*, 25 AM. J. CRIM. L. 385, 424 (1998).

3. “Good Samaritan” Immunity Clause

While civil law jurisdictions usually do not have an immunity clause in their Good Samaritan statutes, common law jurisdictions generally provide statutory immunity to rescuers from potential liability.¹²²

a. Civil Law Jurisdictions

Although civil law jurisdictions usually do not codify Good Samaritan immunity, courts there protect potential rescuers by applying a “totality of the circumstances” test.¹²³ For example, in France and other civil law jurisdictions, courts might consider “the urgency of the situation requiring rescue” and excuse actions that might otherwise constitute negligence.¹²⁴

b. United States

Aimed at encouraging prompt assistance for emergency victims by eliminating the fear of legal liability, every state in the United States has enacted an immunity clause to shield rescuers from liability.¹²⁵ However, the scope of these immunity clauses varies in two major areas: the standard of care required and the class of people who are protected.

c. Standard of Care

Professor Victoria Sutton conducted a fifty-state survey analyzing the immunity clauses nationwide.¹²⁶ Professor Sutton found “five levels of conditions for avoiding liability, and accordingly, ‘one’ provides the best conditions for avoiding liability and encouraging rescue, and ‘five’ is the least conducive to encouraging rescue by private individuals.”¹²⁷ Unfortunately, Professor Sutton is not very clear as to the distinctions of the five levels. Careful reading of the statutes of each state and Professor Sutton’s five-level theory shows that there are actually three distinguishable levels of the standard of care.¹²⁸

122. See Schiff, *supra* note 80, at 109.

123. *Id.*

124. *Id.*

125. *Id.*

126. Victoria Sutton, *Is There A Doctor (and a Lawyer) in the House? Why Our Good Samaritans Laws Are Doing More Harm than Good for a National Public Health Security Strategy: A Fifty-State Survey*, 6 J. HEALTH & BIOMEDICAL L. 261, 261 (2010).

127. *Id.* at 282.

128. Sutton identified five levels regarding the standard of care. The first level of standard of care is good faith; the second level requires good faith unless the acts are “willful and wanton” or “reckless;” the third level asks whether the acts constituted “some level of negligence,” such as “gross negligence and willful and wanton;” the fourth level uses “gross negligence” to deny immunity, which according to the author, is “barely above” ordinary negligence; and the fifth level uses the standard of common law ordinary negligence. See *id.* at 283–86. However, “gross negligence” has sometimes been defined as “reckless, willful, or wanton misconduct.” See Mia I. Frieder, *Can You Lift the Good Samaritan Shield?*, 46 TRIAL 48, 50 (2010). Therefore, it is relatively hard to differentiate levels two, three, and four. For the purpose of this Note, I combine levels two, three, and four together as level two, and what is called level five in Sutton’s article will be level three in this Note.

According to Professor Sutton, the first-level states “provide the greatest incentive to the Good Samaritan.”¹²⁹ These states simply use “good faith” as the standard that caregivers must meet to avoid liability.¹³⁰ As Professor Sutton points out, of all of the levels of standards of care, “[g]ood faith is the lowest, or easiest, standard to meet.” The good faith standard does not require the caregiver to exercise any level of care as long as they acted with good faith, thereby doing the most to encourage emergency rescues.¹³¹

Second-level states do not extend immunity to acts that constitute gross negligence or reckless, wanton, or intentional misconduct.¹³² Some states, such as Texas and New Hampshire, still have a “good faith” requirement for any act to qualify for Good Samaritan immunity, while other states, such as Delaware and Alaska, do not.¹³³ However, all these states’ Good Samaritan immunity clauses require that civil liabilities not be excused for conduct that was grossly negligent, reckless, willful and wanton, or intentional.¹³⁴ An example of gross negligence that would result in disqualification for Good Samaritan protection is fraternity members who pushed a “fraternity pledge to drink excessively,” and upon realizing the pledge’s “perilous condition,” failed to take him to a hospital after rendering some emergency care.¹³⁵

Third-level states adopt a negligence standard and “provide no additional immunity [other] than what is available at common law.”¹³⁶ Existing in “[a] small minority of jurisdictions,” this standard does not give a Good Samaritan immunity “unless he or she acted with ‘ordinary prudence’ when exercising emergency care.”¹³⁷ In other words, these statutes merely codify the common law.

d. Class of Persons Protected

According to Professor Sutton’s fifty-state survey, states differentiate between the various levels of immunity that rescuers of different training

129. Sutton, *supra* note 126, at 282.

130. *Id.* These states include Alabama, Massachusetts, New Jersey, Oklahoma, Virginia, West Virginia, Wisconsin, and Wyoming. See ALA. CODE § 6-5-332 (2010); MASS. GEN. LAWS ch. 112, § 12B (2003); N.J. STAT. ANN. § 2A:62A-1 (West 2000); OKLA. STAT. ANN. tit. 76, § 5 (West 2002); VA. CODE ANN. § 8.01-225 (2010); W. VA. CODE § 55-7-15 (2010); WIS. STAT. ANN. § 895.48 (West 2006); WYO. STAT. ANN. § 1-1-120 (2010).

131. Sutton, *supra* note 126, at 282.

132. See *id.* at 283–86. See, e.g., ALASKA STAT. § 09.65.090(d) (2012) (does not preclude civil damages for acts constituting “gross negligence or reckless or intentional misconduct”); DEL. CODE ANN. TIT. 16, § 6801(a) (2010) (no immunity if victim’s injury was caused “willfully, wantonly or recklessly or by gross negligence” on the part of the rescuer).

133. See Sutton, *supra* note 126, at 283–85.

134. See *id.* Sometimes, “[g]ross negligence has been defined as ‘reckless, willful, or wanton misconduct.’” Frieder, *supra* note 128, at 50.

135. *Id.*; see, e.g., *Ballou v. Sigma Nu Gen. Fraternity*, 352 S.E.2d 488, 497–98 (S.C. Ct. App. 1986); see also Sutton, *supra* note 126, at 283–86.

136. Sutton, *supra* note 126, at 286.

137. Frieder, *supra* note 128, at 50.

backgrounds receive.¹³⁸ The state of Idaho provides the broadest protection to Good Samaritans in this respect: “Idaho does not require ‘Good Samaritans’ to be licensed physicians,” and its immunity clause is “broad enough to cover any person who stops at the scene of an accident and renders emergency medical care to another.”¹³⁹

Other states only provide immunity to people who are qualified. In these states, only individuals with “statutorily required health care training or certification” will receive immunity “for being a Good Samaritan in a public health emergency.”¹⁴⁰ Private individuals with no such background will be exposed to liability for their negligence in assisting or rescuing the injured, “even if their actions are conducted in good faith.”¹⁴¹

Some states provide “specific immunity” to people with training. For example, four states provide immunity to “health care-related graduate students.”¹⁴² Twenty-four states provide immunity for “physicians rendering emergency care in a hospital.”¹⁴³

II. Analysis

A. The Main Defects in the “Peng Yu Case” and “Xu Yunhe Case” Verdicts

The facts of the Peng Yu- and Xu Yunhe-type cases are not typical Good Samaritan cases contemplated by statutes in Europe and the United States, where the defendants have either refused to aid a victim or have aided a victim with some level of negligence. In both the Peng Yu Case and the Xu Yunhe Case, the defendant claimed that he helped the injured victim out of the goodness of his heart; however, both victims insisted that these “Good Samaritans” were the people who injured them.¹⁴⁴ Although neither case is a typical “Bad Samaritan”¹⁴⁵ case, the defects in the verdicts in each created the impression in Chinese society that the law allows victims to falsely accuse Good Samaritans as a means to recover monetary damages.¹⁴⁶ The name “Peng Yu” has developed a stigma, leading many Chinese citizens to believe that lending aid to injured people might bring about serious legal consequences.¹⁴⁷ The reasoning of these cases is defective in two major ways: first, instead of requiring the plaintiffs to provide enough evidence to prove a *prima facie* case of negligence, each court required the defendants to provide evidence to prove their non-culpabil-

138. Sutton, *supra* note 126, at 272-76.

139. *Id.* at 276.

140. *Id.* at 272.

141. *Id.* These states include California, Connecticut, Illinois, Indiana, Kansas, Louisiana, Missouri, and Oregon. *Id.*

142. *Id.* The four states are Alabama, Kansas, Louisiana, and Michigan. *Id.*

143. *Id.* at 273.

144. See Peng Yu Case, *supra* note 10; Xu Yunhe Case, *supra* note 45.

145. See *supra* note 90.

146. See Sheng Chao, *supra* note 56.

147. See Wang Fan, *In China, a Good Samaritan is Hard to Find*, ECNS (Sep. 7, 2011, 2:56 PM), <http://www.ecns.cn/in-depth/2011/09-07/2252.shtml>.

ity,¹⁴⁸ and second, the courts in both cases reached a conclusion based on speculation instead of actual evidence.¹⁴⁹

With regard to the first defect, it was unreasonable for both courts to put the burden of proof on the defendants. Chinese tort law systems have four basic principles for the imputation of tort liability: “fault,” “presumption of fault,” “liability without fault,” and “liability on the basis of fairness.”¹⁵⁰ In Chinese tort law, “fault” is “the [foremost] factor in determining whether the wrongdoer should bear . . . liability” and for evaluating how to distribute tort liability among the parties according to the degree of their fault.¹⁵¹ On the other hand, “presumption of fault” supplements the general principle of “fault” and requires that in certain circumstances stipulated by law, civil liability shall be assumed unless the wrongdoer proves the absence of fault.¹⁵² According to Professor Mo Zhang, “[a] major difference between fault and presumption of fault is the burden of proof.”¹⁵³ The “fault” principle requires the plaintiff to bear the burden of proof, while in the case of “presumption of fault,” fault is presumed and the defendant bears the burden to rebut such presumption with sufficient evidence.¹⁵⁴ Chinese tort law applies the “presumption of fault” principle in certain contexts.¹⁵⁵ For example, Chinese tort law states that if a domestic animal caused harm to a person, the owner of such domestic animal presumes fault unless the harm was caused by the victim’s intentional misconduct or gross negligence.¹⁵⁶ Another example of presumption of fault is that when falling objects from a building cause damage, the owner or manager of the building presumes fault for purposes of tort liability.¹⁵⁷ However, Chinese tort law never indicates in situations like the

148. See discussion *supra* Part I.A-B; see also Young, *supra* note 8, at 697-99 (pointing out that the two defects in the Peng Yu Case are that first, the judge “placed an undue burden on the defendant to prove his innocence; and second, that the judge improperly used “personal experience as evidence of culpability”).

149. See *id.*

150. Mo Zhang, *Tort Liabilities and Torts Law: The New Frontier of Chinese Legal Horizon*, 10 RICH. J. GLOBAL L. & BUS. 415, 432 (2011).

151. Zhang Lihong, *The Latest Developments in the Codification of Chinese Civil Law*, 83 TUL. L. REV. 999, 1027 (2009).

152. See Zhonghua Renmin Guohe Guo Qinquan Zeren Fa (中华人民共和国侵权责任法) [Tort Liability Law of the People’s Republic of China] art. 6 (promulgated by the Standing Comm., Nat’l People Cong., Dec. 26, 2009, effective July 1, 2010) [hereinafter Chinese Tort Liability Law]; see also Mo Zhang, *supra* note 150, at 437.

153. Mo Zhang, *supra* note 150, at 437.

154. *Id.*

155. See Zhang Lihong, *supra* note 151, at 1027.

156. *Id.*; see also Chinese Tort Liability Law art. 78 (citing the original text, which indicates

“饲养的动物造成他人损害的，动物饲养人或者管理人应当承担侵权责任，但能够证明损害是因被侵权人故意或者重大过失造成的，可以不承担或者减轻责任”) (emphasis added).

157. See Zhang Lihong, *supra* note 151, at 1027; see also Chinese Tort Liability Law art. 85 (citing the original text, which indicates

“建筑物、构筑物或者其他设施及其搁置物、悬挂物发生脱落、坠落造成他人损害，所有人、管理人或者使用人不能证明自己没有过错的，应当承担侵权责任”) (emphasis added).

Peng Yu Case—where the plaintiff alleged that Peng Yu pushed her to the ground—or the Xu Yunhe Case—where the plaintiff alleged that Xu Yunhe’s car hit her—that fault should be presumed and hence the burden of proof shifted to the defendant.¹⁵⁸ Therefore, the plaintiffs in both cases should have had the burden of proving a *prime facie* case that the defendants were liable.

Instead, the judges in both cases emphasized that the defendants needed to provide evidence to prove their non-culpability.¹⁵⁹ In the Peng Yu Case, the plaintiff did not provide any evidence to prove her claim, while the defendant provided the only witness. That witness testified that he did not see why the plaintiff fell to the ground but that he saw the defendant run to the plaintiff and try to help the plaintiff to stand up.¹⁶⁰ However, the judge considered this testimony to be of little probative value, because it could not eliminate the possibility that the defendant assaulted the plaintiff. In other words, the testimony did not help the defendant prove that he was not liable.¹⁶¹ In the Xu Yunhe Case, the only evidence the plaintiff provided to support her allegation that the defendant’s car hit her was a photo showing that the paint on the defendant’s car was chipped.¹⁶² The police report concluded that the distance between where the plaintiff fell off the guardrail and the defendant’s car was 2.4 meters, and that the photo itself could not prove that the paint was chipped because the defendant’s car hit a person.¹⁶³ However, the court read the police report not to show that the plaintiff did not have enough evidence to support her allegations, but instead to show that “there was not enough evidence to eliminate the possibility that the defendant did not hit the plaintiff.”¹⁶⁴ Moreover, the court specifically noted that the defendant “did not provide any evidence” to prove his innocence.¹⁶⁵

The judges in both cases reached their final conclusions based on speculation, rather than on actual evidence. In the Peng Yu Case, as law student Melody Young analyzed in a published Comment, the court improperly used “personal experience as evidence of culpability”.¹⁶⁶ As discussed in Part I, the court reasoned that because Peng Yu was the first one getting off the bus that the plaintiff was trying to get onto, it was “very likely” that the defendant caused the plaintiff to fall to the ground.¹⁶⁷ Moreover, the court reached the conclusion that Peng Yu must have hit Ms. Xu by pointing out that Peng Yu’s conduct—escorting Ms. Xu to the hospital and never asking Ms. Xu or her family to return the medical expenses he paid—was against “common sense.” As Melody Young summarized, the

158. See generally Chinese Tort Liability Law, *supra* note 152.

159. See Peng Yu Case, *supra* note 10; Xu Yunhe Case, *supra* note 45.

160. See Peng Yu Case, *supra* note 10.

161. See *id.*

162. Xu Yunhe Case, *supra* note 45.

163. *Id.*

164. *Id.*

165. *Id.*

166. Young, *supra* note 8, at 698–99.

167. Peng Yu Case, *supra* note 10.

court “found that Peng’s altruism was evidence of his culpability.”¹⁶⁸ Similar reasoning appears in the verdict of the Xu Yunhe Case. As discussed above, the police report showed that there were 2.4 meters between where the defendant’s car stopped and where the plaintiff fell off the guardrail and that the only evidence the plaintiff provided could not prove that the defendant’s car hit the plaintiff.¹⁶⁹ However, using “common sense,” the court reasoned that regardless of whether the defendant’s car hit the plaintiff, the defendant’s car must have disturbed the plaintiff and caused her to fall down the guardrail, as the car was only several meters away from the plaintiff when the accident happened.¹⁷⁰ Both verdicts show that even though the plaintiffs did not provide any actual evidence, judges were willing to use speculative reasoning to pin responsibility on the defendants.

Both cases have had significant negative influence on the morale of Chinese society. Both verdicts give the public the impression that the courts do not spend time finding the “truth” of what happened; rather, the courts concoct reasons to make a “Good Samaritan” responsible for a “victim’s” injuries. More importantly, both verdicts give the wrong signal to the public, teaching people that if they want to help an injured stranger on the road, they must carry the risk of being held responsible for the stranger’s injury, unless they happen to have evidence to prove their innocence—perhaps in the form of a video camera nearby to record the incident or witnesses willing to come forth and tell the truth. Moreover, media reports have reinforced the public’s hesitancy to help strangers in danger.¹⁷¹ At the same time as reports about the Yue Yue incidents evoked public emotion to promote public conscience, overwhelming media reports about the injustice of the Peng Yu case and the Xu Yunhe case portrayed the Chinese justice system as unreliable and caused the public to alter its behavior to avoid liability.¹⁷² Although *Oriental Weekly* revealed in 2012 that Peng Yu might not be the “martyred Good Samaritan” that the media depicted,¹⁷³ the verdict based on flawed reasoning, combined with the effects of the media, has already delivered a devastating message to the public: the law will not help Good Samaritans.

Whether Good Samaritan laws are necessary and what kind of Good Samaritan laws are appropriate notwithstanding, Chinese judges need to follow the law’s requirement regarding the burden of proof and base their reasoning on actual evidence rather than speculation. It is well established in Chinese tort law that the burden of proving fault is only shifted to the defendant in certain enumerated situations.¹⁷⁴ Reforming the Chinese legal system is a topic beyond the scope of this Note. If a Good Samaritan law is enacted, however, the law should specify that in situations where

168. Young, *supra* note 8, at 698.

169. Xu Yunhe Case, *supra* note 45.

170. *Id.*

171. Young, *supra* note 8, at 705.

172. *Id.*

173. Minter, *supra* note 58.

174. Zhang Lihong, *supra* note 151, at 1027.

victims allege that a Good Samaritan actually caused the victim's injuries, these plaintiff-victims should carry the burden of proof and must provide enough evidence to prove fault.

B. Are Good Samaritan Laws Right for China?

To remedy the negative impact of the Peng Yu Case and to encourage people to help strangers in need, it is necessary for the Chinese legal system to adopt Good Samaritan laws. This question remains: what sort of Good Samaritan laws are right for China?

1. Duty to Rescue

a. Whether a Duty to Rescue is Desirable

China should adopt a law to enforce a duty to rescue in response to the public's reluctance to help injured people like Yue Yue. Here, a universally applicable duty-to-rescue law is most desirable because more "lives would be saved and [more] injuries [would be] avoided."¹⁷⁵ As one legal scholar argues, "[t]he existence of a duty would encourage rescues in four subtly different ways."

[M]any people would act out of a desire to be law abiding; others would act out of fear of legal sanctions, particularly when witnesses were present; some who are timid would be provided with the necessary motivation to intervene; and still others would be moved to action by a heightened sense of the morality of rescue.¹⁷⁶

While the first three points address the direct effects of enforcing a law, the last point is based on the idea that "law not only reflects society's moral values, but also helps shape them."¹⁷⁷ In other words, a duty-to-rescue law could provide a sort of "moral compass" that guides Chinese society in the right direction. One might be worried about the practicality of a duty-to-rescue statute because similar statutes are largely dormant in the few American states that enforce such a duty. However, as Professor Mary Ann Glendon writes, "[t]he social effects of such legislation cannot be expected to be direct, or immediate, or dramatic [L]aw . . . is regarded by many citizens as a principal carrier of the few common values that are widely shared. Under such circumstances, even the silences of the law can sometimes speak."¹⁷⁸ Therefore, regardless of its effect, a law to enforce the duty to rescue would serve as an instrument of moral guidance in the Chinese society and increase the likelihood that people be "morally compelled to offer emergency aid."¹⁷⁹ It delivers a message to the public that the law wants every person to be a Good Samaritan under certain circumstances, such as that the person is capable to render aid and the assistance will not

175. See Jay Silver, *The Duty to Rescue: A Reexamination and Proposal*, 26 WM. & MARY L. REV. 423, 428-29 (1985).

176. *Id.*

177. *Id.*

178. Mary Ann Glendon, *Does the United States Need "Good Samaritan" Laws?*, 1 RESPONSIVE COMMUNITY. 9, 11 (1991).

179. Silver, *supra* note 175, at 429.

subject anyone to additional danger.¹⁸⁰ Such a law would tell all the bystanders who witnessed Yue Yue’s accident that law requires them to help injured strangers.

Many scholars have advanced arguments against the duty-to-rescue law.¹⁸¹ Although no scholar disputes the need to rescue, the issue is “whether such a duty places too great a burden on personal freedom or presents insurmountable administrative difficulties.”¹⁸²

One argument against the duty-to-rescue law is based on the distinction between commission and omission.¹⁸³ Criticisms posit that imposing a duty to rescue is to require “the performance of affirmative acts” and is coerced benevolence. In other words, failure to rescue is within the concept of “omission” and an omission should not be punished.¹⁸⁴ However, “the distinction between acts of commission and those of omission is meaningless,” especially when the acts of omission also lead to undesirable results.¹⁸⁵ For example, no one would argue that a mother who intentionally starves her child is less morally culpable than a mother who intentionally poisons her child “simply because starvation is an act of omission.”¹⁸⁶ Moreover, omissions have been a basis of liability in legal systems for a long time.¹⁸⁷ For instance, in the American legal system, long-established punishable omissions include “failure to file one’s tax return, to stop at a red light, or to install required safety devices in one’s factory”¹⁸⁸

Another related concern regarding the imposition of a duty-to-rescue law is that assisting people in danger is traditionally considered to be a moral duty, and it may be argued that the government should not coerce kindness.¹⁸⁹ However, as discussed above, legislation has a symbolic function in society and can serve as a form of moral guidance. Seeing how the Peng Yu case and Xu Yunhe case have left the public with the impression that the justice system will not help the Good Samaritan and have thereby scared Chinese people away from aiding strangers,¹⁹⁰ relying on the public conscience alone apparently cannot solve the Bad Samaritan problems in China. Without guidance, there will be more and more Yue Yues lying on the ground with no one to help. For the sake of restoring the public conscience, a duty-to-rescue law is necessary to establish new social norms.

Another argument against the duty to rescue relates to the practical concern that it is nearly impossible to determine whom the laws should be

180. See *supra* notes 93–97 and accompanying text.

181. See Silver, *supra* note 175, at 429–34.

182. *Id.* at 429.

183. *Id.* at 429–30.

184. *Id.*

185. *Id.* at 430.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. See *supra* pp. 220–223.

enforced against.¹⁹¹ In some situations, there may have been a large number of people who were equally in the best position to help but simply did not. In Yue Yue's accident, for example, at least eighteen bystanders saw her lying on the road, severely injured, but did nothing.¹⁹² In that case, a security camera caught some of the bystanders on tape,¹⁹³ but, in most cases, the police are not able to identify everyone who could have helped but did not. Therefore, two questions arise, the first of which is: Whom should the police prosecute? Should one indifferent bystander be charged with breaking a Good Samaritan law, while seventeen equally culpable people escape liability? Professor A.D. Woozley denies the importance of these types of concerns.¹⁹⁴ He argues that such "selective enforcement" problems happen often in the legal system.¹⁹⁵ According to Professor Woozley, certain analogous situations are inherently selective, such as street riots, illegal demonstrations, and speeding.¹⁹⁶ The police can usually stop only one rioter, illegal demonstrator, or speeding driver while many others escape.¹⁹⁷ However, even though "[t]he unlucky driver can lament that he was the one who was caught," he cannot deny the fact that he committed the crime and is thereby subject to punishment.¹⁹⁸ The same logic could apply to violations of duty-to-rescue laws.¹⁹⁹

b. Type of Liability

Having determined that a legal duty to rescue is necessary to solve the Bad Samaritan problem in China, one must next determine the type of punishment that should be imposed on offenders. China's duty-to-rescue law would benefit most from a strong and well-publicized criminal penalty that could provide a real deterrent to non-rescuers. European civil law countries and American states that enforce a duty to rescue mostly charge offenders with criminal liabilities.²⁰⁰ The criminal sanctions in these systems range in severity from the French penalty of imprisonment for up to five years and a fine of 75,000 euro to the Vermont penalty of a fine not exceeding \$100.²⁰¹ As discussed in Part I, the criminal liabilities imposed by the duty-to-rescue laws in states such as Vermont, Wisconsin, and Minnesota are almost negligible and the laws are rarely enforced.²⁰² On the other hand, French duty-to-rescue laws, harsh with respect to their criminal

191. See A.D. Woozley, *A Duty to Rescue: Some Thoughts on Criminal Liability*, 69 VA. L. REV. 1273, 1290 (1983).

192. Chai Ling, *supra* note 1.

193. *Id.*

194. See Woozley, *supra* note 191, at 1291.

195. *Id.* at 1290-91.

196. *Id.* at 1291.

197. *Id.*

198. *Id.*

199. *Id.*

200. See Silver, *supra* note 175, at 437-38.

201. See CODE PÉNAL [C. PEN] art. 223-6 (Fr.); VT. STAT. ANN. tit. 12, § 519 (2012).

202. See Pardun, *supra* note 76, at 597; Groninger, *supra* note 98, at 371-72.

liabilities, have been enforced frequently since their enactment in 1941.²⁰³ Unlike Vermont, Wisconsin, and Minnesota, where Bad Samaritan accidents have rarely happened in recent years, China needs the Good Samaritan statute to change the morality in the society given recent incidents. Therefore, criminal liability, even if not as harsh as French law imposes, should be strong enough to ensure that the duty will be taken seriously.

Some jurisdictions, such as France, also impose civil liabilities on Bad Samaritans.²⁰⁴ In France, besides the harsh sanctions imposed by the government, the victim has the right to sue the Bad Samaritan to get a private remedy.²⁰⁵ However, causation and fairness issues complicate the desirability of a private remedy. The harm a victim suffered might have been caused by his or her own carelessness, an act of nature, or the wrongdoing of a third party,²⁰⁶ while in most cases the causal link between a bystander’s failure to rescue and the victim’s harm is tenuous. Therefore, “forcing a nonrescuer to compensate a victim may be unfair” in such situations.²⁰⁷

2. Immunity Clause

Besides enforcing a duty to rescue, a Chinese Good Samaritan law should also provide immunity to Good Samaritans under certain circumstances. Since the Peng Yu case and Xu Yunhe case, people have been hesitant to help injured strangers because they fear consequential legal liability. Thus, any Good Samaritan statute, if adopted, should set clear guidelines defining immunity and stating when the statute applies. However, the immunity clause should not sacrifice the overall statute’s goal of encouraging people to be Good Samaritans.

a. Standard of Care

As discussed in Part I, existing statutes adopt one of three levels for the standard of care necessary for an individual to be eligible for immunity.²⁰⁸ The first level only requires that the rescuer have acted in good faith, and this level could do most to encourage Good Samaritan behaviors.²⁰⁹ The second level extends immunity to rescuers unless the rescuers’ acts constitute gross negligence,²¹⁰ and the third level provides no immunity for a rescuer whose act is “negligent,” offering no additional immunity beyond what is available under common law’s reasonableness standard.²¹¹

203. See Edward A. Tomlinson, *The French Experience with Duty to Rescue: A Dubious Case For Criminal Enforcement*, 20 N.Y.L. SCH. J. INT’L & COMP. L. 451, 453 (2000).

204. Schiff, *supra* note 80, at 104-05.

205. *Id.* Such cause of action is based on tort law theories, as failure to rescue is a “simple tort action” and is “in itself unreasonable.” *Id.*

206. Silver, *supra* note 175, at 438-39.

207. *Id.* at 438.

208. See discussion *supra* Part I.D.3.b.

209. See Sutton, *supra* note 126, at 282.

210. See Frieder, *supra* note 128, at 50.

211. See Sutton, *supra* note 126, at 286.

“Good faith” is usually not an appropriate standard because it sets almost no boundary to limit the rescuer’s action. Also, “good faith” as a mental state is difficult to prove. Some scholars assert that the standard of care should be “reasonable assistance” (level three) because courts usually consider reasonableness “in light of all circumstances,” and would take into account “the fact that even the most prudent rescuer would be forced to make hasty decisions in an emergency.”²¹² Scholars also argue that tort law has firmly established reasonable care as the normal standard of behavior, and to require less may “encourage carelessness.”²¹³ However, the reasonableness standard is no different from that of regular tort liability and such immunity statutes add little additional value for the rescuers.²¹⁴ In the context of Chinese society, the purpose of adopting a Good Samaritan statute is to encourage both certain medically trained persons and laypersons to render aid in emergency situations. Holding rescuers to the ordinary negligence standard while requiring them to render aid seems unfair.²¹⁵

With the aim to maximize Good Samaritan behavior, China should adopt an immunity clause with a standard of care below the negligence standard. The Chinese and American tort law systems function in a similar way. Although the Chinese Tort Liability Law does not define negligence, a prevailing argument is that “negligence is a conduct that violates a duty of care that a reasonable person should normally exercise.”²¹⁶ Furthermore, the Chinese Tort Liability Law defines a reasonable person’s duty of care as “the level of care most people would have [adopted] under the same circumstance;” such definition is almost identical to the “reasonableness” concept in American tort law.²¹⁷ The Chinese Tort Liability Law also divides negligence into “general negligence and gross negligence” depending on the degree of severity.²¹⁸ Normally, if a person has “also failed to reach the minimum level of care a regular person should have exercised, that person is found to be grossly negligent.”²¹⁹

However, the Chinese Tort Liability Law only applies the concept of gross negligence to contributory negligence situations, where “the defendant’s liability may be reduced because” of the gross negligence of the plaintiff.²²⁰ In this legal system where gross negligence is applied within a

212. See Silver, *supra* note 175, at 441-42.

213. *Id.* at 442.

214. Sutton, *supra* note 126, at 286 (“[Statutes] that merely provide for immunity if the acts of the rescuer are not ‘negligent’ . . . change[] nothing from common law tort liability and appear[] to make these statutes of no value for the rescuer at all.”).

215. See Silver, *supra* note 175, at 442.

216. Mo Zhang, *supra* note 150, at 435.

217. See *id.* at 435-36.

218. *Id.*

219. *Id.*

220. *Id.*; see also Chinese Tort Liability Law art. 78. Under Article 78, “where a domestic animal causes harm to another person, the keeper or manager of the animal shall assume the tort liability, but may assume no liability or reduced liability if it can be proved that the harm is caused by the victim intentionally or by the gross negligence of the victim.” *Id.* (citing the original text, which indicates

very limited scope, promoting a Good Samaritan law based on a standard of care of gross negligence will be a big step. However, the key issue of China’s Bad Samaritan problems is that people are afraid of the legal consequences of helping strangers. A Good Samaritan law, if enacted in China, has to serve the functions of relieving people from the bad influence of the Peng Yu Case and relieving people from the concern of unexpected legal liability. Therefore, the Chinese Good Samaritan law should adopt “gross negligence” as the standard of care to immunize rescuers from legal liabilities.

b. Class of People Protected

As discussed in Part I, existing Good Samaritan laws differentiate between the classes of people to whom they give immunity. Some states’ Good Samaritan laws extend immunity to any person who stops and renders aid,²²¹ while other states only provide immunity to people who are qualified, such as physicians and lifeguards.²²² These states only give immunity to people with qualifications because physicians and other qualified persons are usually best trained to give an injured person immediate and appropriate assistance.²²³ Additionally, the victims can always sue the physicians for malpractice in cases where assistance leads to a bad outcome.²²⁴

The conditions are different in China. The purpose of the law is to maximize people’s motivation to save injured strangers on the road. If the law only gives immunity to qualified medical workers, laypeople will continue to be indifferent because the law will still not protect them. A Good Samaritan statute should set clearer guidelines to address this problem. For example, despite extending immunity to all citizens, the statute should not provide immunity to rescuers who perform sophisticated medical treatment but do not have any related qualifications. The statute will treat mistakes arising from such actions as “gross negligence.” On the other hand, additional immunity might be given to qualified medical workers, as their expertise and experience could be very helpful in rendering first aid or emergency care.²²⁵

C. The Newly Enacted Good Samaritan Statute in Shenzhen

In 2011, Shenzhen, a major Chinese city, proposed the country’s first Good Samaritan law to encourage its residents to assist people in dan-

“饲养的动物造成他人损害的，动物饲养人或者管理人应当承担侵权责任，但能够证明损害是因被侵权人故意或者重大过失造成的，可以不承担或者减轻责任” (emphasis added).

221. See Sutton, *supra* note 126, at 276.

222. *Id.*

223. *Id.* at 292.

224. *Id.*

225. See *supra* notes 142–143 and accompanying text; see e.g., ALA. CODE § 6-5-332(a) (2006) (“When any doctor of medicine or dentistry, [or] nurse . . . renders first aid or emergency care at the scene of an accident . . . , he or she shall not be liable for any civil damages as a result of his or her acts or omissions . . .”).

ger.²²⁶ The proposal first suggests that if the victim alleges that it was the rescuer who caused the victim's injury, the victim must provide sufficient evidence to prove it; otherwise, the rescuer is not legally liable for any injuries.²²⁷ Second, the proposal suggests that if the rescuer exercises his "regular duty of care," then the rescuer is not legally responsible for the outcome of the rescue.²²⁸ The victim must provide evidence to prove that the rescuer did not exercise his "regular duty of care" in order to hold the rescuer liable for anything.²²⁹ Third, the proposal suggests that the government reward the rescuers and impose criminal liability on victims who hide the truth and falsely accuse rescuers of being responsible for their injuries.²³⁰ Further, the government proposes to award witnesses who stand up to tell the truth when there is conflicting information about the rescue.²³¹

This proposal is a great example of an appropriate Good Samaritan law for Chinese society. It covers the problems of burden of proof and immunity. More importantly, this proposal employs a mixture of "sticks and carrots." It directly addresses the problems of the Peng Yu and Xu Yunhe Cases—by imposing criminal liability on victims who falsely accuse rescuers of being responsible for their injuries, and by rewarding the rescuers and the witnesses who are brave enough to tell the truth. Shenzhen put into effect this proposal on August 1, 2013,²³² and hopefully, similar statutes will be implemented throughout China.

Conclusion

The incident of Yue Yue, during which bystanders showed indifference to a little girl seriously injured on the road, focused the world's attention on China's Good Samaritan problem. To solve this problem, first the Chinese legal system must face the defects in the reasoning of the Peng Yu and Xu Yunhe Cases. In situations where victims allege that their rescuers caused the victims' injuries, the victims should have the burden of proof and the obligation to provide actual evidence to prove their rescuers' liability.

Second, China must learn from European and American jurisdictions to adopt effective Good Samaritan laws. Considering the lowered sense of

226. See Tania Branigan, *Chinese City Poised to Introduce Country's First Good Samaritan Rules*, GUARDIAN (Nov. 29, 2011, 11:53 PM), <http://www.guardian.co.uk/world/2011/nov/30/china-good-samaritan-rules-shenzhen>.

227. *Shenzhen Proposed to Introduce Good Samaritan Rules, and Award Witnesses Who Stand Up To Tell The Truth* (深圳出台条例保护助人行为 旁观作证可获奖励), TENCENT NEWS (Jan. 12, 2013, 2:53 PM), <http://news.qq.com/a/20130112/000835.htm>.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Shenzhen Shou Ban "Lei Feng Fa" Zhu Ren Wei Le Xingwei Shou Mianze Baohu* (深圳首颁“雷锋法”助人为乐行为受免责保护) [*Shenzhen Implemented "Lei Feng Law" Good Samaritan Behaviors Will be Protected*], WEIHAI NEWS (威海新闻网) (Oct. 30, 2013, 8:57 AM), http://www.whnews.cn/news/node/2013-10/30/content_5831779.htm.

morality in Chinese society after the infamous Peng Yu case, China’s Good Samaritan law must enforce a duty to rescue and have a broad immunity clause. Finally, Shenzhen’s newly proposed Good Samaritan statute raises another good plan to help solve the Good Samaritan problem in China. A mixture of “stick and carrots”—punishing victims who falsely accuse their rescuers and rewarding both rescuers and witnesses who tell the truth—will deter victims from making false accusations and encourage more Good Samaritan behavior in Chinese society.

