

COURTS ECHO

Quarterly, Legal, Judicial

His Excellency Judge Khaled Al Hosani:

Personal Status Law is Subject to Amendment

JOINT VENTURE CONTRACT
TERMS - CONDITIONS - CHARACTERISTICS

The Position of the UAE Law
and Judiciary on the Electronic
Communications of the Child
Subject to Custody

TESTIMONY
BETWEEN DUTY AND REALITY



Virtual Litigation
New Manners and Behaviors
Controlling the Attendance of Judicial
Hearing Sessions

Compensation for Damage Caused by
Smart Vehicles
(Autonomous or Driverless Cars)



DUBAI COURTS CONGRATULATE UAE, GOVERNMENT AND PEOPLE, ON NATIONAL DAY



Intellectual Diversity and Technical Pioneer Ship



H.E. Taresh Eid Al Mansouri
General Director, Dubai Courts

Diversity is the engine of life, and no wonder it is aptly described as the Dynamics of Life, and without this indispensable diversity, life would be simply boring and harsh, just like it is the case with our beloved Magazine, Sada AL-Mahakim (Courts' Echo), which, in each of its issued editions, is nothing but a cornucopia of a lush tree, with its colorful leaves and fruits, harmonious and verdant branches, anchored trunk, and a high and proud zenith of knowledge, where all of this richness manifests itself in its conspicuous diversity with regard to its intellectual capacity that encompasses the law in all of its branches and topics, and you, our dear reader, will find, from time to time, incorporated into this richness those vessels that are modern, sophisticated and in tune and at one with the accelerating wheel of life, which is, in general, the prevailing characteristic of the UAE, and in particular, the prevailing characteristic of Dubai, the proud Emirate that carries the banner of progress and technical leadership in every matter and in every area of life, with a spirit of development, progress and pioneer ship that inhabits it and which is instilled in it by its wonderful and inimitable leader, His Highness Sheikh Mohammed Bin Rashid Al Maktoum, the Ruler of Dubai, Vice President and Prime Minister of the United Arab Emirates, may Allah protect him, a man who spares no effort to push Dubai forward with exquisite progressive technical means that not only aim to make Dubai keep up the pace with the world, but aspire to place it at the forefront of this whole wide world, as with his wonderful spirit, it (Dubai, that is) is relentlessly moving forward, and on the move, day in and day out, and apropos every matter and aspect of its affairs, including the Judiciary, and the Courts of Dubai reflect and express this inspiring and uplifting spirit with the transparency and the splendor and the high quality of their remarkable work that they tirelessly render, which outpaces many of its predecessors in the field of judiciary and justice, thus, making the digital justice as the feature that distinguishes Dubai and its Courts, and in consequence of that, the Sada AL-Mahakim (Courts' Echo) Magazine has become a vibrant expression of such a spirit, and if you peruse the pages of this Magazine from one edition to another, you will find a noticeable acceleration to everything that is beautiful, new, modern and technical, and you will find in it a magnificent and profound thought that is reflected in those pioneering writings that are penned by Sada AL-Mahakim's (Courts' Echo) Magazine's distinguished and prolific writers and in this no-less august fourth edition, you will find a mélange of articles that encapsulate within them a unique contract, in which exist those essays that straddle the borders of the variegated branches of the Law and the Sharia, which we all hope will enrich the Sada AL-Mahakim (Courts' Echo) Magazine's readers arena and will make it as one of the tributaries of the legal, social and humanitarian awareness of society, and all of this has rendered the Sada AL-Mahakim (Courts' Echo) Magazine as a bouquet of Thought, Law and Sharia that we are proud at the Dubai Courts that we have put together its arenas of thought, knowledge and judicial fields. And God willing, the Sada AL-Mahakim (Courts' Echo) Magazine will continue and with a spirited awareness to stand astride between the judicial and the legal thought, which is an exquisite way of thinking that seeks to support life with everything that is intellectually, humanly and socially enriching, because Law is one of those Sciences that result from the human-centered society, and which grows and develops with the tandem growing and development of societies, and so the Sada AL-Mahakim (Courts' Echo) Magazine is the constant elevation and advanced thinking that blossoms more and more with each and every new edition that comes sprouting out to life.

To Begin with



Issue 4 - December - 2022

A quarterly journal specialising in the publication of the courts management-related judicial, legal and administrative topics, with the objective of enhancing the exchange of knowledge in the judicial and court administration domain, and issued for the purposes of:



Vision:
We seek to be the first choice of the elite.

- Objectives:**
- Enhancing the dissemination of knowledge in the judicial and court administration field;
 - Attracting specialists in judicial, legal and administrative matters that are related to the management and services of the courts;
 - Following up and commenting on the trends and judicial rulings, both locally and internationally;
 - Cementing the relationship between theory and jurisprudence and the practical reality and judicial application.

Sponsor



INDEX

12 **Virtual Litigation - New Manners and Behaviors Controlling the Attendance of Judicial Hearing Sessions**

Edition File

22 **The Meeting of the Mandated Will and the Optional Will in Matters of Inheritance**

30 **The Independence of the Documentary Credit From the Marine Sales Contract**



38 **Compensation for Damage Caused by Smart Vehicles (Autonomous or Driverless Cars) And Applicable Law**



46 **Testimony Between Duty and Reality**

48 **The Position of the UAE Law and Judiciary on the Electronic Perspective of the Person Subject to Custody**



56 **His Excellency Judge Khaled Al Hosani: President of the Courts of First Instance in Dubai: Personal Status Law Under the Spotlight...**

66 **Joint Venture Contract Terms - Conditions - Characteristics**

The articles, studies and opinions are a reflection of the point of views of their authors and do not necessarily express the opinion of the Magazine and its administrators.



General Supervisor:
H.E. Taresh Eid Al Mansouri
General Director, Dubai Courts

Editor-in-Chief:
H.E. J/Dr. Jassim Mohammed Al Hosani
Judge at Supreme Court, Dubai

Editing Manager:
H.E. J/Dr. Ebtessam Ali AlBadwawi
Judge at Appeal Court, Dubai

Editorial Board:
H.E. J/ Dr. Saeed Mohammed Alshaali
Judge at First Instance Court, Dubai

Sultan AL Zeraim Al Suwaidi
Head of Section at Case Management Sector Senior - Dubai Courts

Mohammed Abdulrahman Mohammed
Case Manager - Dubai Courts

Editorial Secretary:
Sharifa Khalid Khasrawi
Senior Head of Internal Knowledge Unit - Dubai Courts

English language Translation Reviewed by:
Translators Affairs Unit - Dubai Courts

Contact numbers with the Magazine Administration:
Tel: 0097143347777
E-mail: CourtsEchoMagazine@dc.gov.ae
P.O.Box 4700 Dubai, U.A.E.
Bur Dubai, Riyadh Street, Beside Al-Maktoum Bridge.

Design and Electronic Version Production



radwan@3plets.com
00971 55 9730002



Sheikh Mohammed Bin Rashid Issues a Law to Amend Some Provisions of the Judicial Authority Law in Dubai

His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE, and in his capacity as the Ruler of Dubai, has issued Law No. (24) of (2022) amending some provisions of Law No. (13) of (2016) on the Judicial Authority in the Emirate of Dubai.

Law No. (24) of (2022) provided for amending the title of the "Judicial Inspection Department" to become the "Judicial Inspection Authority", as well as amending the title of "Director of the Judicial Inspection Department" to become the "President of the Judicial Inspection Authority", wherever they are mentioned in the Judicial Authority Law and the legislation in force in the Emirate of Dubai.

The Law also provides for replacing the provisions of Articles Nos. (2), (33), and (63) of the original law with new texts related to the determination of grades and job titles of employees of the judicial authority, citizens and non-citizens, and with the Courts, the Public Prosecution and the Judicial Inspection Authority, in full legal accordance with the table and schedule set out in the law.

Under the new law, the Judicial Inspection Authority will be affiliated to the President of the Judicial Council in Du-

bai, provided that the Judicial Inspection Authority shall be consisted of the President of the Authority and a sufficient number of experienced and competent judicial inspectors who have practiced the judicial work, and who shall be appointed by a decree issued by

His Highness the Ruler of Dubai, provided that the President of the Dubai Judicial Council shall issue rules and regulations governing the Judicial Inspection Authority's administrative, financial and technical operations, including HR matters, and the Judicial Inspection Authority shall have an administrative body appointed by the President of the Inspection Authority and those judicial inspectors shall be subject to Dubai Government HR Law No. (8) of (2018) until the issuance of specific HR regulations for the Judicial Inspection Authority as prescribed in the Law, and Law No. (24) of (2022) shall be effective and shall go into force from the date of its issuance, and being published in the Official Gazette.

His Highness Sheikh Mohammed Bin Rashid Al Maktoum also issued decrees Nos. (47, 48, 49, 50 and 51) on the appointment and promotion of Judges in Dubai Courts and employees of the Public Prosecution Department.

A Decree is Issued to Appoint Judge Mohammed Mubarak Obaid Al Sabousi as the Director of the Judicial Inspection Department

His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE, may God protect him, and in his capacity as the Ruler of the Emirate of Dubai, has issued Decree No. (39) of (2022) appointing Judge Mohammed Mubarak Obaid Al Sabousi as Director of the Judicial Inspection Department and this decree shall be effective from the date on which it shall be issued and the date on which it shall be published in the Official Gazette.



Visiting the Pavilions of a Number of Government Departments Participating in the "GITEX GLOBAL" 2022 Tech Event

Shiekh Maktoum Bin Mohammed briefed on Dubai Courts Services at the «GITEX GLOBAL» 2022 Tech Event

His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, Deputy Ruler of Dubai and Deputy Prime Minister and Minister of Finance, visited the "GITEX GLOBAL" 2022 Tech Exhibition at the end of its 42nd session, which was held over five days at Dubai World Trade Center and his Highness iterated that the experience of digital transformation in Dubai and the UAE, all thanks to the vision and guidance of his Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, has become one of the leading and inspiring experiences worldwide, especially with regard to the application of the latest technology solutions globally. His Highness's visit included the "Dubai Courts" Platform, which keeps pace with the vision and strategy of the Government of Dubai towards the digital transformation of all services offered to the public, which will enhance the confidence



of customers and stakeholders in the judicial system through a wide range of innovative digital initiatives and projects. The exhibition witnessed the participation of major international companies representing the poles of the global ICT industry, in addition to the different platforms of the governmental departments.



Dubai Courts celebrate the Fifty-First National Day with Various Events

Dubai Courts celebrated on the occasion of the Fifty-First National Day of the United Arab Emirates, in the presence of His Excellency Mr. Tarish Eid Al-Mansoori, Director General of Dubai Courts, His Excellency Judge Omar Atiq Al Marri, Deputy Director General of Dubai Courts, the Judicial and Administrative Authority and all employees and visitors of Dubai Courts.

On this occasion, His Excellency Mr. Tarish Eid Al-Mansoor, Director General of the Dubai Courts, stated on the occasion of the Fifty-First National Day, quote: "[i] am honored today to convey my sincere congratulations and blessings to his Highness Sheikh Mohammed Bin Zayed Al Nahyan, President of the UAE, may God protect him, and to His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, may God protect him, and their Highnesses the members of the Supreme Council of the Union, the Rulers of the United Arab Emirates, and to the Highnesses of the Crown Princes, on this great national occasion, in which loyalty and patriotic giving are renewed among the people of the UAE, and we, on the Fifty-First National Day of our beloved Country, celebrate the anniversary of the founding of the Union of our Emirates and we take pride in the exceptional achievements that have built those Emirates' past and created their pres-

ent with concerted and unwavering efforts exerted by our wise leadership and its steadfast people", unquote.

For his part, Mr. Abdul Rahim Hussein Ahli, the Executive Director of the Institutional Support and Communication Sector at the Dubai Courts, added that, quote: "[t]oday, at the Dubai Courts, we are celebrating a rich march of achievements, due to the sincere and tireless work, which is a success for and a harvest of the devotion of the sons and daughters of this homeland so that its flag remains raised and unfurled at the highest of heights among all nations", unquote, noting that the celebration was painted with a national character, which included a patriotic poem by Dr. Arif Al - Sheikh, and the participation of school students, in addition to a military parade and other performances reflecting and expressing the national joy.

The Executive Director of the Institutional Support and Communication Sector went on to say that the main building of the Dubai Courts and its other branches have become more and more elegant with them being all decked out in the flag of the UAE and the emblem of the National Day, which provided for an attractive national character that reflected the elevation of this homeland and the love of its people and its residents and strengthened the values of unity among them all.



Dubai Courts Achieve Great Success In the First Integrated Judicial Project in the World

During "GITEX GLOBAL" 2022 Tech Global Exhibition Week, Dubai Courts announced the outstanding achievements that were realized and arrived at by the Digital Litigation Project, the first integrated technical litigation project in the world, which has effectively contributed to strengthening the judicial system in light of the accelerated development witnessed by the judicial sector to achieve effective justice characterized by accuracy and speed and provide accessible judicial services for all, through the values of justice, transparency, judicial independence, tolerance, innovation and teamwork, to reach its vision as a world-class leading and distinguished Courts. His Excellency Mr. Tarish Eid Al-Mansoori, Director General of the Dubai Courts, noted that the Digital Litigation Project has succeeded in achieving a qualitative leap in litigation procedures with its three levels from the traditional method that was carried out by attendance in person or by entering papers and files into an intelligent, interactive and integrated system easily and conveniently around the clock, including all stages of the case, from submitting the application, attaching supporting documents, reports, electronic signature and verifying the identity of users electronically, to holding investigation sessions and deliberating cases remotely, and including internal procedures to follow up on the progress of the case, in addition to the establishment of remote cases and judgments management programs, which is something that enables the judges and the concerned departments to follow

up on the progress of cases and judgments and to execute them electronically around the clock.

His excellency also pointed out the factors that had an imprint on the success of the Digital Litigation Project, the most important of which were the cooperation and outstanding efforts of the judicial and administrative teams and cadres, the development of systematic and thoughtful plans, the desire of all parties and stakeholders, including judges, to continue working with this system, in addition to the tests practices that the department has prepared well and making readily available the enablers that support the continuity of work during times of crises and emergency and the existence of a proactive policy at the Courts and the obtaining of an accredited certificate issued by the International Organization for Standards (ISO) on business continuity to provide the finest services to facilitate customers' access to justice and achieve the highest degrees of transparency and confidence to keep pace with the data of the time and its requirements and the high pace of the Comprehensive Development Movement in Dubai, and the adoption of innovative solutions that are in line with the direction of the Government of Dubai to reach a qualitative leap in litigation procedures, all in an exerted effort to implement the directives of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and the Ruler of Dubai, may God protect him, to permanently convert court sessions into remote litigation sessions.



Director General of Dubai Courts Launches Annual Report For 2021 Under the Title «Digital Justice and Future Making»

As part of the agenda of the Dubai Courts Forum, which was recently held at the Museum of the Future in Dubai, His Excellency Mr. Tarish Eid Al-Mansoori, Director General of Dubai Courts, launched the Annual Report for (2021), entitled "Digital Justice and Future Making", in order to document the activities of the Courts and the achievements that they achieve annually and provide important information about Dubai Courts and its sectors, in the presence of His Excellency Judge Omar Atiq Al Marri, Deputy Director General of Dubai Courts, heads of courts, sectors managers, departments managers, and a gathering of employees from various job categories... And the annual report included information on the judicial and administrative system, along with the strategic plan, completed projects and initiatives, and on this occasion, His Excellency Tarish Eid Al-Mansoori said, after a year full-to-the-brim with achievements, quote: "[w]e are putting in your hands this summary report of the highlights of what the Dubai Courts have achieved", unquote, explaining His Excellency that the annual report of the Dubai Courts contains the Department's strategy, vision, mission, strategic objectives and indicators, and a summary of the work of all organizational units in the Dubai Courts, their projects, initiatives and the level of performance, in a bid to ensure providing the best services to visitors, achieving happiness for all and well-being for the society, all in line with the vision of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President of the UAE, Prime Minister and the Ruler of Dubai, may God protect him.

The Director General of the Dubai Courts also stressed that the change in business management may face obstacles that would



resist it, the most important of which is resistance to change and concern about the incompatibility of employees and society with it, but in fact, every change is inevitably met with resistance, and recent days and experiences have proved that a well-thought-out change seeking speed and accuracy, cannot but prove the soundness of the decision that was taken and His Excellency pointed out that the decision of the Dubai Courts was the inevitable change towards digital transformation in the services that are provided by the Dubai Courts, and it was a decision that was made in line with the direction of the Government of Dubai and the UAE towards the latest digital change in all areas of government business, where the resulting figures came in with a promising (100%) success rate, with respect to the transformation of ordinary and electronic services into digital ones, providing a whole raft of different essential services, which all resulted in the happiness indicators at the Dubai Courts for employees reaching a whopping (98%) satisfaction and happiness rate. Al-Mansoori also stated that Dubai Courts have had an imprint in international events by organizing the International Union of Judicial Officers Conference during (2021), in addition to its distinguished presence at (Expo 2020) by launching the Digital Litigation to convert court sessions into remote litigation sessions permanently, emphasizing His Excellency at the same tandem time that the report is chock full of the results that we take pride in of our determination to work towards achieving the latest, best and finest with which we keep pace with the march of progress and success, and the achievement of the aspirations of the UAE Government and its people to make the UAE the number-one country in the world.



«Dubai Courts Forum» Discusses the Exceptional Achievements and Future Visions of the Courts' Journey into the future

As part of the smart transformation plan for the Department's services, and in line with Dubai's Paperless Strategy, Dubai Courts have started implementing the "Request for an Electronic Determination of Inheritance" Service with an integrated smart system that works on computers, tablets and smart devices for all citizens and residents of the Emirate of Dubai, to reduce the service completion time to one working day. Mr. Mohamed Ahmed Youssef Al Obaidly CEO of the Case Management Sector at the Dubai Courts, noted that through the application of the "Request for an Electronic Determination of Inheritance" Service, a Determination of Inheritance process is embarked on at all stages, and it also allows the client to submit the application electronically, and the transaction is carried out until it is completed through smart tablets without the need for paper transactions records and it also provides all the information needed by the system user to obtain the said service, and allows the client to obtain an electronically certified Determina-

tion of Inheritance Certificate.

Mr. Abdullah Al Rayes, Director of Customer Happiness Department at Dubai Courts, explained that the steps of providing the service are done through submitting an electronic request by the customer after all the data of the parties are entered (Testimony Requester and Witnesses) and the terms of the contract are entered and the required documents are attached (Copies of the identities of the heirs and the deceased - A copy of the death certificate), after that the request is withdrawn by the Notary to audit and review the data and thus the contract is sent to the Judge for approval and to be subsequently sent to the customer on the pertinent registered e-mail.

Al Rayes added that the customer can gain access to the service through several channels, including the website of the Dubai Courts (dc.gov.ae), Law Offices, and AL Adheed Centers (Services Centers authorized by the Dubai Courts to provide specific judicial services).



Dubai Courts Implements the «Request for an Electronic Determination of Inheritance» Service

To Harness Modern Technologies in the Development of the Judicial Work

As part of the smart transformation plan for the Department's services, and in line with Dubai's Paperless Strategy, Dubai Courts have started implementing the "Request for an Electronic Determination of Inheritance" Service with an integrated smart system that works on computers, tablets and smart devices for all citizens and residents of the Emirate of Dubai, to reduce the service completion time to one working day.

Mr. Mohamed Ahmed Youssef Al Obaidly CEO of the Case Management Sector at the Dubai Courts, noted that through the application of the "Request for an Electronic Determination of Inheritance" Service, a Determination of Inheritance process is embarked on at all stages, and it also allows the client to submit the application electronically, and the transaction is carried out until it is completed through smart tablets without the need for paper transactions records and it also provides all the information needed by the system user to obtain the said service, and allows the client to obtain an electron-

ically certified Determination of Inheritance Certificate. Mr. Abdullah Al Rayes, Director of Customer Happiness Department at Dubai Courts, explained that the steps of providing the service are done through submitting an electronic request by the customer after all the data of the parties are entered (Testimony Requester and Witnesses) and the terms of the contract are entered and the required documents are attached (Copies of the identities of the heirs and the deceased - A copy of the death certificate), after that the request is withdrawn by the Notary to audit and review the data and thus the contract is sent to the Judge for approval and to be subsequently sent to the customer on the pertinent registered e-mail.

Al Rayes added that the customer can gain access to the service through several channels, including the website of the Dubai Courts (dc.gov.ae), Law Offices, and AL Adheed Centers (Services Centers authorized by the Dubai Courts to provide specific judicial services).

Dubai Courts Review Their Achievements via the Works and Activities of “Government Best Practices Meetings” Organized by Dubai Government Excellence Program

The Dubai Government Excellence Program of the Executive Council of the Emirate of Dubai organized "Government Best Practices Meetings", with the participation of heads and representatives of government agencies in Dubai and members of the Global Council for Excellence. The excellence meetings discussed Dubai's success in consolidating its position as the global capital of excellence and government innovation, and the contributions of the Dubai Government Excellence Program in achieving this status through its specialized programs, initiatives and events.

During the second day's sessions, the first of which was held under the title of "The Happiest Work Environment",

the achievements of the Dubai Courts and some detailed practices were highlighted within four main axes, including: (Regulations and Policies Related to Human Resources, Talent Management, Incentives and Rewards, Communication and Social Relations).

The session reviewed the journey of the Dubai Courts towards happiness and its commitment to work in accordance with the Department's strategic document, which places the happiness of employees and customers as a top priority, a strategic objective and a national responsibility, in line with the national trend towards making happiness a human value and a way of life for all members of the UAE society.

Dubai Courts Obtains Membership of The World Futures Studies Federation (WFSF)



Dubai Courts have reaped a new achievement in their journey of excellence and future foresight by obtaining membership in the World Futures Studies Federation (WFSF).

This is the sixth membership attained in the long march of Dubai Courts, which is the first judicial body in the UAE, for their exerted efforts in designing future projects and initiatives, including the C3 Court (The world's first judicial system in which all three courts - first instance, appeals and supreme court - will hear cases concurrently rather than consecutively) and the Integrated Digital Litigation. Ms. Alya Al Majid, Acting Head of the Quality Department, stated that this membership will contribute to the adoption of accredited international standards, raise the profile of the Dubai Courts regarding future foresight, and

in line with the directions of the Dubai Government and the senior leadership in the Dubai Courts to keep up with the best practices in the field of future foresight, and the integration of future digital judicial services.

She also pointed out that this membership will enable the Courts to view the latest international reports issued on future foresight, especially in the judicial field, and seek to adopt future technologies from block chain and artificial intelligence, and open the way for the Courts to share their future experiences and publish studies and research papers in the fields of future foresight in addition to benefiting from courses and conferences within the best applied international practices, and participate in awards in the fields of the future.

Virtual Litigation

New Manners and Behaviors

Controlling the Attendance of Judicial Hearing Sessions



The Virtual Litigation System has made profound changes in the judicial work system in the Emirate of Dubai, shifting it from a traditional system to a smart system, and the parties to the lawsuit (Judges, lawyers, experts and arbitrators, etc..) moved from the courtrooms with its prestige and dignity to behind the screens, cameras and microphones, hence, the video communication applications becoming the preferred means of communication, which led to a change in the traditional controls of the judicial work, where the usual sitting judicial bench found itself in front of a completely different virtual environment in all of its details and nuances, so there had to be rules regulating behaviors and public morals on how to attend sessions by each party concerned in the lawsuit after this transformative change came into being.

So, the Question that Presents itself here is How were the Dubai Courts Able to Cope with this Revolution in the Judicial Work? And Have they Been Able to Control the Manners and Behaviors Concerning Attending Judicial Hearing Sessions?

To answer these questions, the Sada AL-Mahakim (Courts' Echo) Magazine met with:

- His Excellency Judge Khalid Al Hosani, President of the Courts of First Instance in Dubai;
- His Excellency Judge Khaled Al-Mansoori, President of the Execution Court at the Dubai Courts;
- His Excellency Judge Dr. Sa'eed Al Sha'ali, Judge at the Criminal Court of First Instance at the Dubai Courts.
- Dr. Juma Alfalasi, Director of Advocates and Legal Consultants Affairs Directorate at Dubai Courts.
- Consultant Mr. Ibrahim Habashi, Legal Advisor - Deputy President of the Professional Conduct Committee at the Dubai Courts.
- Consultant Mr. Shadi Al Sherbini, Legal Advisor - Member of the Professional Conduct Committee at the Dubai Courts.
- Mr. Mohammed Abdulrahman, a Case Manager at Dubai Courts.
- Mr. Hamad Al Janahi, Director of Personal Status Department at Dubai Courts.

Manners and System of the Judicial Hearing Sessions:

His Excellency Judge Khalid Al Hosani

To Plead Before the Courts, whether in Personal Status Cases or Others - A System and Manners that Must Be Observed



The Dubai Courts require of lawyers, legal advisers, experts and parties to the case to adhere to a set of manners while attending judicial hearing sessions, the most prominent of which is the obligation to wear appropriate attire, turn off mobile phones and not to talk during the session and to communicate with the Court according to rules governed by respect and not to deviate from the text or raise the voice or drink coffee or tea in court.

His Excellency Judge Khaled Al-Hosani, President of the Courts of First Instance, elaborates on this subject, indicating that pleading before the Courts, whether in personal status cases or others, requires a system and manners that must be observed, and the most important of these manners begins in terms of the dress code, as the litigant, whether a man or a woman, must comply with the dress code of the Courts, where it is forbidden to attend sessions in sports clothes or indecent cloths, or to attend with drinks, or eating, or wearing sunglasses for no reason and also the phone must be put on silent mode and it is forbidden to photograph, record, or talk to others in the courtroom. Al-Hosani also points out that the parties must remain calm and not raise their voices or shout at the opponent litigant or interrupt them during the time allotted to him/her, and that the speech should be directed to the presiding judge, and the litigant should control his/her emotions and not to be provoked by the other party, as shouting or getting angry and raising the voice at the other party in the courtrooms is unacceptable and the litigant may be subjected, according to the text of Article No. (82) of the Federal Decree-Law No. (42) of (2022) issuing the Code of Civil Procedure, to the penalty of removal from the courtroom and if he/she does not comply, the Court may order his/her detention for twenty-four hours or fine him/her an amount of no less than (1000) AED and no more than (3000) AED.

His Excellency Judge Dr. Sa'eed Al-Sha'ali

Violations of Manners and Behaviors are Dealt with in Full Legal Accordance with Article No. (163) of the Code of Criminal Procedure



In order for the litigation process to take place optimally, and the picture does not change here even after the application of the Virtual Litigation, the Dubai Courts have imposed on the parties to the lawsuit the requirement of complying with the general and specialized controls in the nature imposed by virtue of this type of litigation, namely the obligation to attend at the set time of the judicial session, and to adhere to the appropriate dress code that befits the court and its standing, in addition to attending the sessions without covering the face and creating the appropriate and decent environment that is fit for the aura and prestige of the court away from any noise, commotion and other sources of sound, and attending from a fixed place - that is, not in a walking position or when driving a vehicle - and providing an appropriate connection to the internet to be able to gain access to the virtual judicial session without interruption or slow connection, not recording sessions or filming them, or keeping the camera rolling during when the hearing is in session, and to speak in a clear and audible voice when called upon to speak and to keep the handset off and on silent mode so as not to cause any distraction. His Excellency Judge Dr. Sa'eed Al Sha'ali, Judge at the Criminal Court of First Instance at the Dubai Courts, explains about this topic, pointing out that violations of courtrooms' manners and behaviors are dealt with in accordance with Article No. (163) of the Code of Criminal Procedure, and the court takes into thorough account the academic and cultural level of the parties involved in any courtroom infraction.

His Excellency also points out the need for the judge to have an instinct to distinguish between real technical malfunctions and intentional errors in order to be able to discern and find out the person who is indeed doing deliberate things to disrupt the smooth flow of the hearing

Courtroom's Manners and Behaviors' Infractions Are Dealt with According to Article No.

163



session, by citing for instance technological malfunctions as excuses for it, and here the judge would request them to attend to the court in person to complete the required procedures appropriately.

And in the event of an occurrence of a technical error, the court determines a link to which the client enters in the event of a disconnection, and the judge also allocates time at the end of the session to address these topics by meeting with each client with whom a technical malfunction occurred and then resuming the session afterwards.

Judge Al-Sha'ali shares with us a humorous allegory that happened with him as a presiding judge at a remote virtual hearing session where he was in the process of charging an underage defendant, and his father was attending the session with him remotely, and whenever the defendant would be asked a question, the father would instead answer on his son's behalf, but he (The Defendant, that is) drew the attention of his father to this issue and for the need to abide by the rubric of rules (Manners and Behaviors) of the court session and the father actually did indeed abide by them.



Strict Rules for Lawyers and Legal Advisers

Dr. Juma Al Falasi

Infractions are Dealt with Directly Where the Professional Conduct Committee is Addressed to Summon the Lawyer and to Hear the Facts



Lawyers appear as an important party in the public landscape of the Virtual Litigation Process, as this process can only be considered as sound and valid by ensuring those lawyers' commitment to the prevailing public morals and behavior. The Professional Conduct Control Committee for Lawyers and Legal Advisers monitors their professional conduct by considering and reviewing the control reports submitted against them, investigating complaints submitted to the Department against them, reviewing judicial rulings issued in relation to them, and consequently imposing the appropriate penalties against them.

The Committee issues disciplinary decisions either by filing (Dismissing) the case if the complaint is proved to have been not true or meritless, or by conviction if the complaint is found to have been true and valid, and if the lawyer or legal adviser is found to have committed any professional or behavioral violation contrary to the ethics of his/her profession and its described duties, he/she shall be subjected by the Committee to one of the following disciplinary measures:

1. Written censure or written reprimand.
2. Suspension from work for a period not exceeding two years.
3. Having the offending lawyer or legal adviser removed (Disbarred) from the Table (Roll) of Lawyers or the Table (Roll) of Legal Advisers.

One of the most prominent transgressions that lawyers may fall into, in the case of traditional litigation, is the lawyer's attendance at the hearing sessions of the case without fully grasping its details, talking to members of the Judicial Body in an inappropriate way, failure to implement court decisions within the specified deadlines, requesting deadlines unnecessarily, providing untruthful information about the facts of the pending case, directing the conversation to the other parties to the lawsuit directly and not through the Judicial Body of the Court, in addition to the delay in submitting

memos and documents to immediately before the hearing getting in session to prevent the opponent litigant from being informed and up to date about them.

Some of those infractions concern the clients (The Mandator or the Grantor of Power) such as interrupting the judges, speaking without permission, verbally sparring with the opponent litigants and their legal representatives, and speaking inappropriately with the presiding judges.

Dr. Juma Al-Falasi, Director of Advocates and Legal Consultants Affairs Directorate at Dubai Courts, points out that in the case of Virtual Litigation, the Professional Conduct Control Committee for Lawyers and Legal Advisers presses on the parties to the lawsuit of the need that they must commit to attend right on the time set by the Court and to leave the session immediately after completing the attendance of their client's relevant lawsuit, and not to open the microphone when the session is being considered so as not to cause any noise or distraction, and not opening the camera to identify his/her identity, and not to photograph the session.

There are terms of use for Smart Electronic Services published on the Court's website ([Click Here](#)) and can be accessed under the terms of service at Dubai Courts.

The most prominent violations that can occur according to Al-Falasi are interrupting the judges, speaking without permission, verbally sparring with the opponents and their legal representatives, and speaking inappropriately with the judges, and the way to stop those breaches in their tracks is to prevent any violation from happening on the spot by the Chairman of the Committee, and to draw the attention of the offending party to their infraction and for the need for them to cease committing it.

There are also controls related to the lawyer's relationship with his/her colleagues, including that the lawyer should treat his/her colleagues with politeness, appreciation and respect, provide advice and guidance to newcomers to the legal profession, and provide advice to his/her colleagues in a way that does not create a conflict of interest with his/her clients.

Al-Falasi also notes that these breaches are dealt with directly, where the Professional Conduct Committee is addressed to summon the offending lawyer and to listen to the facts, and the judge writes up a note that is also presented to the Committee, and the request shall be reviewed and the appropriate disciplinary measures shall be taken in this regard.

Consultant Mr. Ibrahim Habashi

underlines and echoes what was stated by Dr. Al-Falasi, referring to the existence of manners and behaviors that govern the attendance of judicial sessions, whether by lawyers, legal advisers or clients, and lawyers must adhere to wearing lawyers' specified uniform, turning off mobile phones, not talking during the session and addressing the Court according to the rules that are governed by respect, and it is a given that litigants shall not speak unless the Court allows them to do so, and they should not be deviating from the text or be drinking coffee and tea in Court, and they ought not to be raising their voice on the Court. And if it just so happened that some lawyers spoke to the judges in such a way that they raised their voice, then the Committee shall be addressed to summon the lawyer and to listen to the facts, and afterwards the judge shall write up a note to be presented to the Professional Conduct Control Committee for Lawyers and Legal Advisers and the request shall be studied and the appropriate disciplinary measures shall be imposed in this respect.

And here it must be emphasized that the lawyer must adhere to the rules of conducting judicial hearings, and not to get overexcited and to stand down when the Court disciplines and suspends him/her.

The law clearly distinguishes between the general manners and behaviors for attending sessions and the crimes of the sessions, as each of which has its own specific penalties or disciplinary measures that are specified in full legal accordance with their own pertinent laws, and they are to be dealt with on this basis and for the appropriate action (s) to be taken accordingly, in relation to them.

And this is explained by Legal

Consultant Mr. Shadi Al Sherbini

who stressed on the need to distinguish between the public manners and behaviors for attending sessions and the crimes of the sessions, as the latter are regulated by the Code of Civil Procedure and the Penal Code, whereas for the former that are concerned with by the Professional Conduct Committee, only disciplinary measures are imposed, and not penalties.

The Professional Conduct Committee of the Department of



Legal Affairs is responsible for regulating the conduct of lawyers and legal advisers.

And on the issue of Virtual Litigation, there is a slight difference between direct and in-person attendance and remote attendance, as apropos the public manners and behaviors there is no difference between adhering to dress code and speaking manners and not raising the voice and speaking in compliance with one's turn, without raising one's voice or uttering inappropriate words.

Now, another question that duly presents itself here which is: (Has Virtual Litigation facilitated the work of lawyers?)

Virtual Litigation has indeed facilitated the work of lawyers by facilitating the process of attending sessions and adhering to set times of sessions, and it achieved a qualitative leap through the ability to deliberate judicial cases, ease postponements in the department and judicial committees, and save time and effort to attend and manage sessions and hearings.

Legal Control Over the Work of Experts

His Excellency Judge Khalid Al Mansoori

The Committee of Experts applies one of the penalties provided for by Law No. (13) of (2020) on organizing the work of expertise before the judicial authorities in the Emirate of Dubai



The expert also appears as an important party within the lawsuit, and he/she attends the Virtual Litigation Session in order to directly contribute to the improvement of the judicial expertise system, which works to speed up litigation procedures, especially in cases that require technical or specialized opinions.

Who is the Expert: He/she is the technical person who is familiar with the technical matters that judges need in their judicial decisions and the expert may be a natural or legal person, and he/she must have a university degree with the same specialization in which his/her experience is required and the law has distinguished between a citizen and non-citizen expert, as the citizen expert must have practiced technical work for seven years after obtaining a university degree, whereas the non-citizen expert must have practiced technical work for ten years after obtaining a university degree.

The expert is then the judicial technical assistant for judicial judgments and he/she is therefore an assistant to the judiciary.

The expert's work is supervised by the Committee of Experts, which attracts and enrolls new experts, develops judicial expertise, assigns assignments, manages complaints against experts, objections to issued disciplinary measures, carries out control, inspection and technical evaluation, in addition to directly contributing to the upgrading of the judicial expertise system, which accelerates litigation procedures, especially in cases requiring technical or specialized opinions, in addition to increasing the efficiency of practitioners of expertise work, empowering national expertise, and enhancing their role in achieving justice.

Experts must adhere to a set of technical rules, where they are carefully prepared through the availability of a computer or smartphone connected to the (Internet, microphone and camera), in order to achieve high audio and visual image quality, prepare the place and adhere to the customary behaviors before the judiciary, and also adhere to the official dress code during attendance at judicial sessions, and not to speak except after a permission is given and issued by the setting Court Body, stay away from any sources of distraction and hold sessions according to the schedule of cases presented in the "Roll Sessions" and in case there is any information that the expert would like to convey to the Court body, it shall be written through the chat box and it will be viewed and responded to during the session convened, and all documents and memos from experts in the cases are submitted according to the usual set procedures and through smart requests and before the scheduled hearing session.

When asked about the rules governing the work of the Committee of Experts and Arbitrators, His Excellency Judge Khalid Al Mansoori, President of the Execution Court at the Dubai Courts, indicated that they are organized according to:

1. Federal Law No. (7) of (2012) on regulating the profession of expertise before judicial authorities (Click Here).
2. Ministerial Resolution No. (116) of (2015) on the work charter of technical experts.
3. Law No. (13) of (2020) on organizing the work of expertise before the judicial authorities in the Emirate of Dubai. (Click Here)
4. Decision of the Director General of the Dubai Courts

No. (43) of (2021) on the adoption of the Charter of Experts' Work before the judicial authorities in the Emirate of Dubai.

5. Guidelines on the rules for estimating expert fees and organizing the work of expertise issued by the committee (Click Here)
6. Decisions and circulars issued by the Experts Affairs Committee and the Department of Experts and Arbitrators on organizing the work of expertise in the Dubai Courts.

Judge Khalid Al Mansoori emphasizes that the Committee is applying one of the penalties stipulated by Law No. (13) of (2020) on organizing the work of expertise before the judicial authorities in the Emirate of Dubai, such as removal from the list of experts of the Dubai Courts or temporary suspension from assigning any new tasks to the expert for a period not exceeding one year, in addition to being issued with a censure letter.

The Committee of Experts has exerted awareness-raising efforts to ensure the soundness and validity of the conduct of the expert's work, and as per the following:

- The implementation of the Diploma of Judicial Expertise Works in cooperation with the Dubai Judicial Institute - a number of four graduate classes - with about (13) experts enrolled in them.
- Preparing knowledge-informing bulletins containing the Articles of Law No. (13) of (2020) on organizing the work of expertise before the judicial authorities in the Emirate of Dubai and explaining their content.
- Preparation of training workshops provided by one of the members of the Experts Affairs Committee.

Case Management is an Integral Part of the Judiciary

In the management of the case, the litigant must adhere to the same manners mentioned earlier on, as the Case Management Office is part and parcel of the judicial sessions held before the judge, and the Case Manager is complementary to the judicial role, where the Case Manager prepares, arranges and constructs the case to be ready for adjudication by the presiding judge, which means the need to comply and observe the same controls and manners before the Case Manager or the setting Judicial Body.

Mr. Mohamed Abdelrahman



the Case Manager, remarks that in the event that one of the litigants violates these controls, the Case Manager may direct the litigant to comply with the controls and manners of attending Virtual Litigation Sessions, and alert the offending litigant of the mistake that he/she has committed, and the Case Manager may also grant this litigant sufficient time to correct the error made, whether this is possible to be done on the spot or by leaving the virtual session and returning later on before the end of working hours, taking concomitantly into thorough account the controls that he/she violated, and also taking into thorough consideration that the Case Manager may submit a report on the violation that was committed by the offending litigant to the person in charge of the Cases Management Department, if necessary, to take the appropriate action.

An Important Role for the Sessions Managers

The Sessions Managers have an important role to play in controlling the sessions, as they must ensure that the sound and visual image are clear, in addition to choosing a suitable place away from noise or inappropriate views, and ensuring not recording or photographing the judicial sessions.

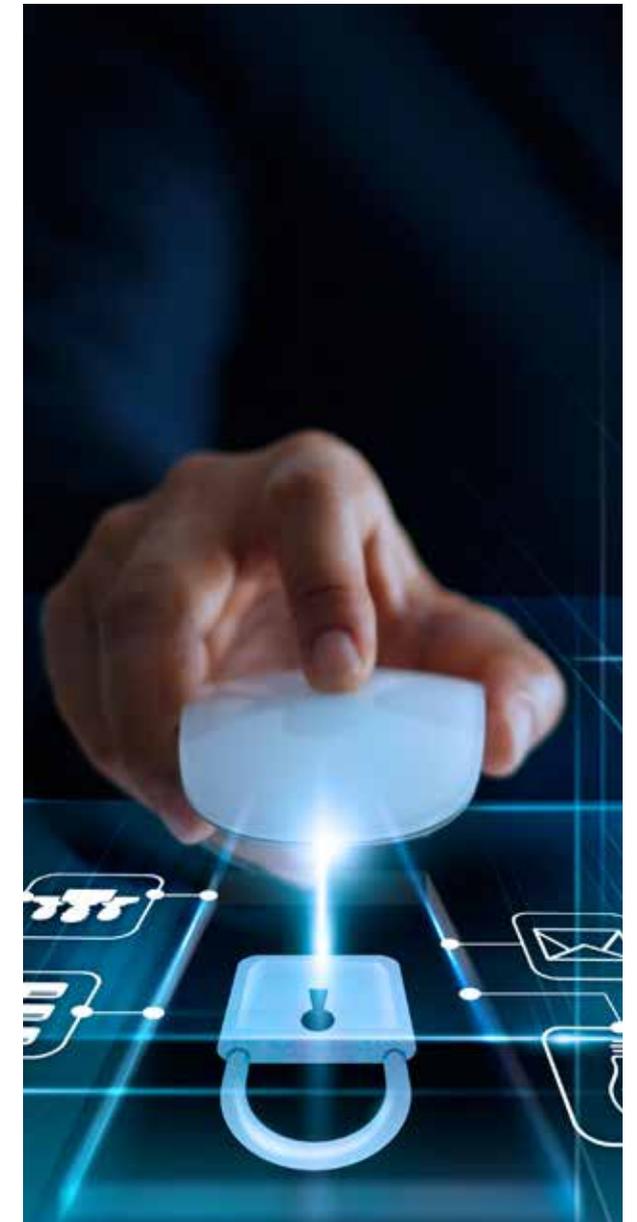
And Mr. Hamad Al Janahi,



the Head of the Personal Status Department, states that the Information Security Team at the Dubai Courts has prepared a Safe Organization Guide, through activating some controls to manage the virtual judicial sessions, for secretaries so that the Session Manager controls remotely by allowing or preventing attendees from turning the microphone on, allowing or preventing attendees from turning the camera on or removing the party from staying in the virtual session.

The judge is the one who is concerned with any action made against the party that infringes on the rules of the judicial session, such as turning the microphone or camera off, or even removing him/her from the virtual session.

If the party enters the virtual courtroom before the judge, the secretary shall alert the visitor user of the need to comply with



the rules of the judicial session, otherwise he/she shall be refused to join the session and his/her excellency, the Head of the pertinent Department, shall be informed accordingly. It should be noted that the most serious of violations were (Failure to comply with the appropriate place) and (Not wearing the appropriate official attire at the time of the held hearing sessions).

The Meeting of the Mandated Will and the Optional Will in Matters of Inheritance



Dr. Ziad Sobhi Theyab

Currently Vice President of the Supreme
Sharia Court of Jordan and Former
Judge at Dubai Courts of Appeal

The UAE Personal Status Law No. (28) was issued in (2005), and it was the first Law in Personal Status matters to be issued in the United Arab Emirates and it contained provisions that set it apart from other similar laws and it introduced provisions that preceded it in the other Arab Personal Status Laws, including the provisions on the Mandated Will.



Since the law did not indicate how to divide the Mandated Will -and this is not the duty of the law- (As if the indication of this was left to the Explanatory Note/Memorandum), but this Explanatory Note, although it clearly clarified the issues of inheritance and its provisions, when talking about the Mandated Will, mentioned only the evidence of its legality, and the opinions of the different Jurists in relation to it, and it repeated some of the texts of the article, but it did not show the judge how to extract the Mandated Will, and its amount (Shares) from the inheritance of the deceased/bequeather, and did not show how to solve the Mandated Will that cross paths with the Optional Will.

Since extracting the amount of the Mandated Will in specified shares is not easy for every person, then it requires the intervention of the science of mathematics, and the knowledge of the solution of Munasakhah (Which is derived from the Arabic word "Naskh" which means transmission, abrogation and removal, and it technically refers to a person who dies, then one or more of his inheritors die before his estate is distributed among them), and Munasakhah is considered one of the difficult topics of Ilm Al-Farā'id (Islamic Science of Inheritance or the Science of the Ordained Quota), and the matter becomes more difficult when the Optional Will cross paths with the Mandated Will.

And whoever takes on the task of finding the solution to inheritance issues that include a Mandatory Will and an Optional Will must apply the provisions of the law in this regard, and Article No. (272) has provided for the provisions of the Mandated Will, and among these provisions are those provisions that are related to the meeting of the Mandated Will with the Optional Will, such as the second paragraph of this Article that states that the Mandated Will supersedes and takes precedence over the Optional Will in inheritance entitlement and this means that the Mandated Will must be executed first from the third of the estate, and this also means that:

1. The sum of the amount of the Mandated Will and the Optional Will may not exceed one third of the estate.

2. The Mandated Will supersedes and takes precedence over the Optional Will, to the effect that the holders of the Mandated Will are first given the amount of their entitled share according to the provisions of the law, provided that their share does not exceed one third of the estate, and if the amount of the due Mandatory Will is less than one third, the holders of the Optional Wills take their Will from the completion of the third and they all shall compete in it, and if the amount of the Mandated Will is one third of the estate or more, then, there will be nothing left to be entitled to for the holders of the Optional Wills.

And based on these provisions, the meeting of a Mandated Will with Optional Wills does not depart from one of these following possibilities:

The First Possibility: The sum of the Mandated Will and the Optional Will is no more than a third of the estate.

In such a case, the holders of the Mandatory Will shall take the full amount of their Will and the holders of the Optional Wills shall take the full amount of their Will.

The Second Possibility: The sum of the Mandated Will and the Optional Will is more than a third of the estate, and the amount of the due Mandated Will is less than a third of the estate.

In such a case, the holders of the Mandated Will shall take the full amount of their Will, and the holders of the Optional Wills shall take that which compliments one-third with the amount of the due Mandated Will.

The Third Possibility: The sum of the Mandated Will and the Optional Wills is more than one third of the estate, and the amount of the due Mandated Will is one third of the estate or more.

In such a case, the holders of the Mandated Will shall take the amount of one third and the holders of the Optional Wills shall take nothing. And to clarify how such issues and possibilities are solved, an example of each possibility will be given and how an inheritance issue with reference to the Mandatory and Optional Wills is solved will be illustrated too.

The First Possibility

The sum of the Mandated Will and the Optional Will is no more than a third of the estate.

Example:

A man passed away and was survived by his wife, his five sons and his two daughters, and the children of his son who passed away before him, and they are three sons that were given birth to by his ex-wife whose Iddah or iddat time period (Which is the period a woman must observe after the death of her husband or after a divorce) has been completed while he (The Son) was alive. The Man (The Deceased) donated a sixth of his estate to charity. To solve such a matter case, it is necessary to ascertain the amount of the Mandated Will to know whether it is more than one-third or less than one-third, and if it is less than one-third, then, is the complement of one-third sufficient for the amount of the Optional Will?

To determine the amount of the Mandated Will, we shall follow the following steps:

1. To find out the amount of the share of the grandchildren -the holders of the Mandated Will- from the estate of their grandfather, considering that their father passed away after their grandfather had passed away himself, the matter shall be solved through AL-Munasakhah and as per the following:

	9		1	
	18		2	
	16		18	144=16*9
The Wife	2	The Mother	3	21= (1*3)+(9*2)
The Son	2			18= (2*9)
The Son	2			18= (2*9)
The Son	2			18= (2*9)
The Son	2			18= (2*9)
The Son	2			18= (2*9)
The Daughter	1			9=(9*1)
The Daughter	1			9= (9*1)
The Deceased Son	2	T		
		The Son	5	5= (5*1)
		The Son	5	5= (5*1)
		The Son	5	5= (5*1)
	Assuming in this matter case that the Deceased Son is Still Alive		The Inheritance Matter of the Deceased Son	The Holistic Issue

After we have determined the amount of the grandchildren's share from their grandfather considering that their father had passed away after his father (Children's Grandfather) had passed away himself first, we must get this amount share out of the capital of the estate since it is considered as a Will, and to have it taken out of the capital of the estate, the following steps shall be followed:

		43	32	
		129	96	
	144	129	96	4608=144*32
The Wife	21	21	12	516=12*43
The Son	18	18	14	602=14*43
The Son	18	18	14	602=14*43
The Son	18	18	14	602=14*43
The Son	18	18	14	602=14*43
The Son	18	18	14	602=14*43
The Daughter	9	9	7	301=7*43
The Daughter	9	9	7	301=7*43
The Son The Son	5			160=5*32
The Son The Son	5			160=5*32
The Son The Son	5			160=5*32
	The Holistic Issue of Al-Munasakhah	The Matter Case After Taking out the Amount of the Share of the Grandchildren	The Legitimate Issue of Heirs	The Holistic Issue of the Mandated Will

In this matter case, we found that the amount of the Mandated Will, which is (160 +160+160 = 480) shares out of (4608) total shares, if together reduced with the baseline of the matter case, it would have been (5) out of (48), which is less than a one-third, as the one-third of (48) is actually (16).

And since the amount of the Optional Will is one-sixth of the estate, then the sum of the Mandated Will and the Optional Will shall be (5/48+1/6=13/48) and this amount is less than one-third of the estate since one-third of the estate is equal to (16) out of (48).

Accordingly, the holders of the Mandated Will shall be given the amount of their share, which is (5) shares out of (48), and the holders of the Optional Will shall be given one-sixth of the estate, and the rest shall be divided among the heirs, each according to their inheritance shares:

	48	144	96	4608=144*32
The Wife	35	105	12	420=12*35
The Son			14	490=14*35
The Son			14	490=14*35
The Son			14	490=14*35
The Son			14	490=14*35
The Son			14	490=14*35
The Son			14	490=14*35
The Daughter			7	245=7*35
The Daughter			7	245=7*35
The Son The Son	5	5	160=5*32	
The Son The Son		5	160=5*32	
The Son The Son		5	160=5*32	
Optional Will	8	24		768=24*32
	The matter case here is illustrated by giving the holders of the Mandated Will the amount of their share and giving the holders of the Optional Will the amount of their share and the rest shall be divided up among the rest of the heirs.	Correcting the matter case for the holders of the Mandated Will by multiplying it by (3).	The Legitimate Issue of Heirs	The Holistic Issue

The Result

In this matter case, the holder of the Optional Will shall take (768) shares out of (4608) total share, and the holders of the Mandated Will (And they are three grandchildren) shall take (480) shares out of (4608) total shares, with each grandson/granddaughter taking (160) shares, a piece.

The Second Possibility

The sum of the Mandated Will and the Optional Will is more than a third of the estate, and the amount of the due Mandated Will is less than a third of the estate.

Example:
A woman passed away and was survived by her husband, her two sons, a daughter, and the children of her deceased other daughter who passed away during the woman's lifetime, and her children are a boy and a girl who were conceived and given birth to during the deceased daughter's marriage to her husband (Father of the boy and the girl)), and this deceased daughter passed away while she was still lawfully married to her husband, who recommended a one-third of his estate to charity.

First Step: We solve the matter case here through Al-Munasakhah, so that we would be able to determine how much the share of the deceased daughter's children is.

	8		36	288
The Husband	2	The Father	6	78
The Son	2			72
The Son	2			72
The Daughter	1			36
The girl is deceased.	1	T		
		The Husband	9	9
		The Son	14	14
		The Daughter	7	7
	Assuming in this matter case that the daughter passed away after her mother passed away first.		The question of legality for the heirs of the deceased daughter assuming that she passed away before her mother.	The Holistic Issue of Al-Munasakhah

We find that the amount of the share of the holders of the Mandated Will (The daughter's children) is (21) shares, of which the daughter's son receives (14) shares and the daughter's daughter receives (7) shares.

The Second Step: We perform the steps to resolve the Mandated Will so that we would be able to get the amount of the Will out of the basis of the matter case and to subsequently distribute the rest to the heirs by following the following steps:

	288	267	20	5760=288*20
The Husband	267	267	5	1335=5*267
The Son			6	1602=6*267
The Son			6	1602=6*267
The Daughter			3	801=3*267
The son of daughter	14			280=14*20
The daughter of daughter	7			140=7*20
	The Holistic Issue of Al-Munasakhah	The matter case after determining the amount of the share of grandchildren	The Legitimate Issue of Heirs	The Holistic Issue of the Mandated Will

The Third Step: As long as the sum of the Mandated Will and the Optional Will exceeds the one-third, and since their amount should not exceed the one-third by virtue of Sharia and the Law, then the holders of the Mandated Will and Optional Will shall be given one-third of the estate, and we give the heirs two-thirds, then we give the holders of the Mandated Will the amount of their share that we took out in the previous example and give the holder of the Optional Will the rest of the third and as per the following:

	3	5760	17280	17280=5760*3
The Husband	2	5760	17280	11520=5760*2
The Son				
The Son				
The Daughter				
The Son of Daughter	1	280	5760	840=280*3
The daughter of daughter		140		420=140*3
Optional Will				4500=1260-5760
	The matter case here is illustrated by giving the holders of the Mandated Will and the Optional Will one-third of the estate.	The matter case here is illustrated by giving the holders of the Mandated Will their share as mentioned in the previous step.	The matter case here is illustrated after doubling the previous matter case three folds so that we would be able to give the holders of the Mandatory and Optional Wills a one-third of the estate and the rest shall be distributed among the heirs.	The matter case here is illustrated by giving the holders of the Mandated Will their share after doubling the matter case three folds, and we give the holder of the Optional Will that which remains from the third of the estate after determining the amount of the Mandated Will beforehand.



The Result

With this step, we determined the amount of the Mandated Will, the amount of the Optional Will and the amount of the rest that we shall distribute to the heirs according to their shares, all as per the following steps

	576	1	17280	1440
	17280	20	17280=17280*1	1440
The Husband	11520	5	2880=5*576	240
The Son		6	3456=6*576	288
The Son		6	3456=6*576	288
The Daughter		3	1728=3*576	144
The son of daughter	840		840=840*1	70
The daughter of daughter	420		420=420*1	35
Optional Will	4500		4500=4500*1	375
	The matter case here is illustrated after determining the amount of the Mandatory and Optional Wills.	The Legitimate Issue of Heirs	The Holistic Issue	The Holistic Issue After Abrogation (Al-Munasakhah).

The Third Possibility

The sum of the Mandated Will and the Optional Wills is more than one third of the estate, and the amount of the due Mandated Will is one third of the estate or more.

In this matter case, the holders of the Mandated Will are given one-third of the estate and nothing will remain for the holders of the Optional Will.

Example:

A man passed away and was survived by his wife, his son, and the children of another son, who passed away and was survived by a son and two daughters and their mother (The mother of the grandchildren), who was legally divorced from her husband while he was still alive and who donated a quarter of his estate to charity before his passing away.

The First Step: We solve the matter case through Al-Munasakhah so that we would be able to know how much their share is and if it is less than a one-third or more.

	16	4	64
The Wife	2		8
The Son	7		28
The Son	7	T	
		The Son	2
		The Daughter	1
		The Daughter	1

We notice that the share of the grandchildren is (28) out of (64) total shares, and this share is more than a one-third as a one-third of (64) is (21) and a three-tenths periodic number. Accordingly, we return the share of the holders of the Mandated Will to one-third.



	3	12	8	12
The Wife	2	8	1	1
The Son			7	7
The Son The Son		2		2
The daughter of The Son	1	1		1
The daughter of The Son		1		1
	The matter case here is illustrated by giving the holders of the Mandated Will a one-third of the estate.		The matter case here is illustrated after being corrected according to the number of the holders of the Mandated Will.	
			The Legitimate Issue of Heirs	The Holistic Issue

The Result

And since the share of the holders of the Mandated Will has taken up one-third of the estate, then the holders of the Optional Will are left with nothing.



The Independence of the Documentary Credit

From the Marine Sales Contract



Mr. Khaled Al-Zar'ouni
Settlements Officer in Dubai Courts

The Documentary Credit plays an important role in the development and prosperity of international maritime trade. However, this contract arises only in the case of an international maritime sales contract that is entered into by parties, each of whom is located in a country far from the other party's country and is governed by a different set of legal systems. The Letter of Credit is a guarantee for the parties to the maritime sales contract of the performance of their resulting obligations in the sale contract, and if it was not for the existence of the international maritime sales contract, the documentary credit contract would not have arisen to begin with.

A Documentary Credit is a banking operation that plays a major role in the process of facilitating international sales between parties each of whom is located in a country that is far from the other party's country and it is originally what has created the banking notion as a result of the requirements of the international trade market as a means of guarantee for the seller and the buyer to fully and duly acquire their legal rights. And the bank plays the role of an intermediary to implement the obligations arising from the international sales contract through ensuring payment of the value of the goods to the seller against his/her delivery of the documents required in the documentary

credit that was issued by the buyer. And nowadays, the documentary credit enjoys a major role in facilitating the international trade process.

Definition of the Documentary Credit:

The UAE legislator defined a documentary credit in the text of Article No. (428/1) of the UAE Commercial Transactions Law as " A contract whereby a bank opens a credit at the request of a customer ordering the opening of a credit within a certain monetary amount and for a certain period of time in favor of another person with the guarantee of documents representing goods shipped or prepared for shipment".

A documentary credit can be briefly defined as: "A banking contract between the bank and the person who ordered the opening of the credit (The Buyer), that includes obligating the First Party to pay the value of the credit for the benefit of a Third Party (The Beneficiary) if he/she submits all the documents required by the documentary credit contract".

Creating A Documentary Credit Contract:

At the outset, we must point out that the documentary credit is the product of one of the international sales for reasons of Credit, Guarantee and Trust between different parties residing in different countries that are governed by legal systems that are different from one another.

For this reason, the parties to the international sales contract resort to a documentary credit as a guarantor of their rights, and this transpires after the conclusion of the sales contract and after being agreed upon between the Seller and the Buyer, where the latter opens the documentary credit with a bank in the country where he/she resides, and in favor of the Seller, who is entitled to the value of the credit for the shipped goods, immediately after submitting the documents that are stipulated in the documentary credit contract that is entered into between the Buyer Party that has ordered the opening of such a Credit and the Bank that opened the credit.

Usually, the payment of the value of the documentary credit is made out in favor of the beneficiary

// Documenta-ry Credit is a banking process that has a major role in the process of facilitating international sales between parties each of whom is located in a country that is far away from the other party's country.

and is paid by the crediting bank that has opened the credit through another bank located in the country of the credit beneficiary party and the latter bank is called as a Correspondent Bank in the case of an unconfirmed documentary credit since its role is then limited only to paying the amount of the documentary credit on behalf of the crediting bank that opened the documentary credit. And the beneficiary of the documentary credit cannot ask the correspondent bank to pay the value of the credit if the crediting bank does not fulfill it, but it is possible that the crediting bank could promote and support the documentary credit with another bank in the beneficiary's country, and then the strengthening and supporting bank becomes a guarantor of the value of the credit alongside the bank that opened it, and this kind of credit is irrevocable, and the strengthening and supporting bank cannot abdicate or shirk its guarantee obligation in the event that the bank that opened the documentary credit violates its own legal obligations.

The UAE Commercial Transactions Law dealt with this matter in Article No. (434) of the Law, which stated that:

- 1- A bank other than the one that opened the documentary credit may support the confirmed and irrevocable credit by committing itself categorically and directly before the beneficiary and before each bona fide holder of the cheque that is drawn on a bank account, in implementation of the contract of opening the documentary credit.
- 2 - The mere notification of the opening of a confirmed documentary credit, which is sent to the beneficiary through a bank other than the bank that opened the documentary credit, is not considered as an endorsement of the credit by the other bank."

The Importance of the Documentary Credit in the Maritime Sales Contract

The importance of the documentary credit contract appears in international sales that need to be imported and exported between different and far-flung corners in the world, which are thousands of

kilometers away from each other, and which are governed by different legal systems, and with the development of international sales methods and their rapid growth since the beginning of the last century and their demand for speed, the importance of documentary credits has emerged as a means of guarantee for each of the parties to the international sales contract, where on one hand, it facilitates the Seller's sales procedures process, where he does not have to travel long distances to the Buyer's country to collect the price of the goods, on the contrary and as soon as he/she submits the required documents that are stipulated in the documentary credit, the bank shall hand him/her the price of the sold goods, which is the value of the credit, and also regarding the Buyer, the bank guarantees him/her, and based on the documentary credit contract, that the Seller will not receive the value of the credit not until after all of the conditions required in the terms of the credit contract have been met.

The documentary credit guarantees the Parties to the sales contract the full fulfillment of the contractual obligations existing between them and resulting from the international sales contract, and the Seller will receive the price of the goods only if he/she meets the requirements stipulated in the documentary credit, and the Buyer will receive the goods only if he/she pays the value of the credit to the bank. Accordingly, the importance of the documentary credit is exemplified as a means of guarantee that is governed by some systems to fulfill the rights specified in maritime sales contracts, and it is considered as the most important means in the field of international trade today, and we will not be committing a hyperbole, if we would say that thanks to the documentary credit, the import and export trade around the world has flourished remarkably in recent years, and this resulted in the recovery of the world trade market, despite the flaws that it encompasses, which we will address head on later on.

The Principle of Independence of the Documentary Credit

We cannot absolutely deny that there is no correlation between the maritime sales contract and the



documentary credit, as if it were not for the first contract, the second contract would not simply have materialized, and it is, therefore, the reason for its existence. However, and from a legal stand point, the UAE legislator resolved the matter once and for all, and considered the documentary credit contract an absolutely independent contract from the sales contract, and as it is well known, no jurisprudence to be employed in the case of existence of an explicit legal text that is issued by the legislator indicating the independence of the two contracts from one another, just like it is the case in point in the second paragraph of Article No. (428/2) of the UAE Commercial Transactions Law that states the following that (The documentary credit contract is considered independent of the contract because of which it was opened and the bank remains a non-party to this contract). And this is what the Dubai Court of Cassation has confirmed in one of its judgments, where it ruled that, quote: "[a]lso and according to Article No. (428) of the same law, the documentary credit contract is independent of the contract because of which it was opened and the breach of obligations arising from either of them is not considered as

a breach of obligations arising from the other", unquote (Appeal Ruling No. 260/2008).

And from the foregoing, it becomes clear to us that the UAE legislator has agreed with the Judiciary on the principle of the independence of the documentary credit contract from the maritime sales contract.

The Consequences of the Independence of the Documentary Credit from the Sales Contract

At the very beginning, it should be noted that the documentary credit is based on the emergence of four legal relations that are independent of one another, and they are as follows:

- 1- The relationship between the Buyer and the Seller, which is formed by concluding a sales contract.
- 2- The relationship between the Buyer who orders the opening of the credit and the Bank opening the credit.
- 3- The relationship between the Bank opening the credit and the Bank informing of the issuance of the credit.
- 4- The relationship between the Bank opening or confirming the credit and the Seller benefiting from the credit.

The documentary credit is a contract independent

“
The UAE Legisla-
tor’s agreement
with the Judiciary
on the principle of
independence of
the Documentary
Credit Contract
from the Maritime
Sales Contract.”

“
There are many
forms of maritime
fraud associated
with documentary
credit due to the
abundance of
letter of credit
documents.”



“**Maritime fraud committed on the contracts of sales and documentary credit can be dealt with by the legislator, the judiciary, the buyer –the giver of the order– the seller, the beneficiary, and the credit-opening and confirming bank.**”

of the existing sales contract between the Seller and the Buyer, although the contract of credit arises because of the contract of sales and executes it, and one of the most important consequences of this positioning is that the contract of credit creates its own contractual obligation only in relation to its parties, and they are the Buyer and the Bank, without any consideration with regard to the person of the beneficiary, as he/she is not one of the parties to the contractual relationship in the contract of credit, that is, there is no contract between the Seller, Beneficiary and the Bank, and the contract of credit does not create any obligation, with respect to the beneficiary, and such credit contract only encompasses certain restrictions and requirements specified in it and in the event of their submission, the value of the credit shall become due.

In summary, the documentary credit contract is based solely on the contractual relationship existing between the Buyer ordering the opening of the credit and the Bank opening the credit, without extending to the other contractual relations existing between the Seller and the Buyer in the sales contract and the relationship between the Bank opening the credit and the Bank informing of the issuance of the credit and the relationship between the Bank opening or confirming the credit and the Seller benefiting from the credit.

Fraud in the Maritime Sales Contract Related to Documentary Credit

There are many forms of maritime fraud associated with documentary credit, and this is actually due to the abundance of letter of credit documents, including, for example, bills of lading, sea transportation letter, cargo insurance policy and cargo invoice, which includes a description of the goods, a statement of price, certificate of origin and certificate of weight, and all of these documents can be simply forged in a professional way that would make it difficult for non-experts and non-specialists to detect and pick up forgery, which makes it a fertile and fecund field for fraud operations.

The Role of the Bank in the Documentary Credit Contract

At the outset, it is necessary to point out that the bank's role is limited only to the visual examination of the documents required in the letter of credit without looking closely and delving into the falsification that could be employed into these documents, as long as their appearance indicates that they are valid and corresponds to the letter and not tainted by any forgery, and the bank only has to verify the conformity of the documents to the letter without checking the conformity of the goods themselves that are in the port or on board the ship to the documents submitted by the Seller

to the Bank to obtain the value of the credit.

And this quandary is addressed by the UAE Commercial Transactions Law in the text of Article No. (436), where the law states that (The Bank is only obliged to check the documents to verify that they appear to be identical to the documents required in the letter of credit. As for checking the conformity of the goods themselves with the documents they represent, it is beyond the scope of the bank's obligation).

However, it is the duty of the Bank to refuse to execute what was included in the documentary letter of credit related to the delivery of the value of the credit to the benefit of the Seller, in the event that it discovers during its visual examination of the documents that they are fraudulent or that they do not comply with the conditions guaranteed by the credit, otherwise, it shall fall within the scope of legal liability, and the person ordering the opening of the credit (The Buyer) can resort to the judiciary to hold the bank accountable for its negligence and its non-performance of its obligations stipulated in the contract.

Fraud Committed by the Party Ordering the Creation of a Letter of Credit (The Buyer)

It is most often represented in the form of falsification of a letter of credit, where the Buyer provides the Seller with a copy of a forged documentary

letter of credit issued by an unknown entity that does not have a real existence on the ground, or that the documentary letter of credit is issued by a well-known entity in the Buyer's country but this letter is in fact forged, for example, the forged documentary letter of credit is issued by a well-known bank with a high reputation in the Buyer's country.

The Buyer's goal of this fraudulent operation, by forging and falsifying the letter of credit and delivering it to the Seller, is to obtain the goods without paying its value to the Seller, after handing over the forged letter of credit and reassuring the Seller that he/she has indeed received the value of the goods that were shipped for the benefit of the fraudster buyer.

Fraud Committed by the Beneficiary (The Seller)
This type of fraud is the most widespread in practice.

1- Fraud committed by the Beneficiary on the documentary credit contract related to the maritime sales contract.

The Seller here exploits the nature of the letter of credit and the abundance of its required documents to carry out forgery and falsification of these plethora of documents to deceive the Buyer and the Bank to obtain the value of the credit, such as the Seller hiding the real weight

“**The Bank must know its rights and obligations towards the parties to the documentary credit contract.**”

“
The Judiciary
can counteract
maritime fraud
by excluding
fraudulent acts
from the principle
of independence
of documentary
credit.”

of the shipment or shipping goods that do not conform to specifications and issuing instead a forged document that fits the conditions of the documentary credit to obtain the amount of credit from the bank.

2- Fraud committed by the Beneficiary on the contract of sales.

This means that fraud is limited to the maritime sales contract, where the beneficiary of the documentary letter of credit hands over to the bank all the correct documents requested by the letter, but at the same tandem time the shipped goods are not identical to what was included in the maritime sales contract.

Ways to Deal with Maritime Fraud Related to Documentary Credit

Maritime fraud committed on the contracts of sales and documentary credit can be dealt with by the legislator, the judiciary, the buyer, the giver of the order, the seller, the beneficiary, and the bank that opened and confirmed the credit.

First: The Legislator's Response to the Committed Fraud

The legislator should exclude fraudulent acts that are committed on the maritime sales contract that is related to the documentary credit from the principle of independence of the documentary credit from the maritime sales contract, and yes, we acknowledge that there are two separate contracts from each other, the first of which is the maritime sales contract and its parties are the (Seller and the Buyer), and the second of which is the documentary credit contract and its parties are the (Buyer and the Bank) and we also acknowledge that the Beneficiary of the documentary credit contract is only a decider beneficiary of the contract and not a party to it, that is, there is no union of legal statuses between the two contracts, but we do not forget in the same breath that the maritime sales contract is the founder contract and the creator of the documentary credit contract, and if it were not for the first contract, there would have been no existence of the second contract. So, there is a straight forward linkage between the two contracts that requires protecting its parties from fraudulent acts and requires also

taking into thorough account that the documentary credit contract arose only to guarantee the rights of the parties to the maritime sales contract and to establish trust between its two sides.

Second: The Response by the Judiciary to the Committed Fraud

The judiciary can confront maritime fraud by excluding fraudulent acts from the principle of independence of the documentary credit based on the principle that states that (Fraud Will Nullify the Contract) or (Fraud Spoils Everything), and this is what the Court of Cassation in Britain and the French Court of Cassation adopted, where the latter ruled in one of its judgments that, quote: "[t]he documentary credit cannot be executed until after the end of the adjudication of the criminal case related to the commission of fraudulent acts by one of the parties to the sales process", unquote, and if this rule is applied, the judiciary can order the Bank to cease paying the value of the documentary credit to the benefit of the Beneficiary in case it is discovered or there are real doubts about the existence of a fraudulent operation, and this is done by the resorting of the Party that ordered the opening of the credit to the Judge of Urgent Matters (The Magistrate of Summary Justice) To suspend payment on an urgent basis until the adjudication of the substantive claim on fraud that is committed on the contract of sales.

Third: The Buyer's Response to the Committed Fraud

The Buyer can verify the credibility and reputation of the Seller before making the purchase and opening the letter of credit and can also require in the letter of credit to be handed over all of the documents and papers required in the sales contract and in case of their insufficiency or the existence of real doubts about their correctness, he/she (The Buyer) can inform the Bank so that he/she can review them or contact the International Maritime Bureau for assistance, in order to protect himself/herself from becoming a victim of maritime fraud.

Fourth: The Beneficiary's Response to the Committed Fraud

The Beneficiary can exert a reasonable effort to ensure the credibility of the documentary letter



of credit and that it was issued by a well-known Bank in the country of the Buyer who ordered the opening of the credit and in case of any reservations or doubts on his/her part, he/she can inform the strengthening or supporting Bank in his country to enquire about the letter-of-credit-issuing body and the validity of the documents submitted by this body, and if need be, to request for more documents.

Fifth: The Role of the Bank in the Committed Fraud

The bank has a major role in countering maritime fraud committed on the maritime sales contract, which is linked to the documentary credit contract that is established between the Bank and the Party who ordered the opening of the credit (The Buyer). The bank must know its rights and its obligations towards the Parties to the documentary credit contract. And the bank shall fall within the scope of legal liability in case of its breach of its obligations under the documentary credit contract, such as the obligation of the Beneficiary to submit all of the documents and papers stipulated in the letter of credit for the benefit of the Bank, and in the event that the Bank delivers the value of the credit for the benefit of the Beneficiary without him/her providing all of the documents required by the letter of credit, the Buyer who ordered the opening of the letter of credit has the right

to file a substantive claim and demand the Bank of the value of the documentary credit that was disbursed for the benefit of the Beneficiary as a result of the Bank's breach of its obligations arising in the documentary credit contract.

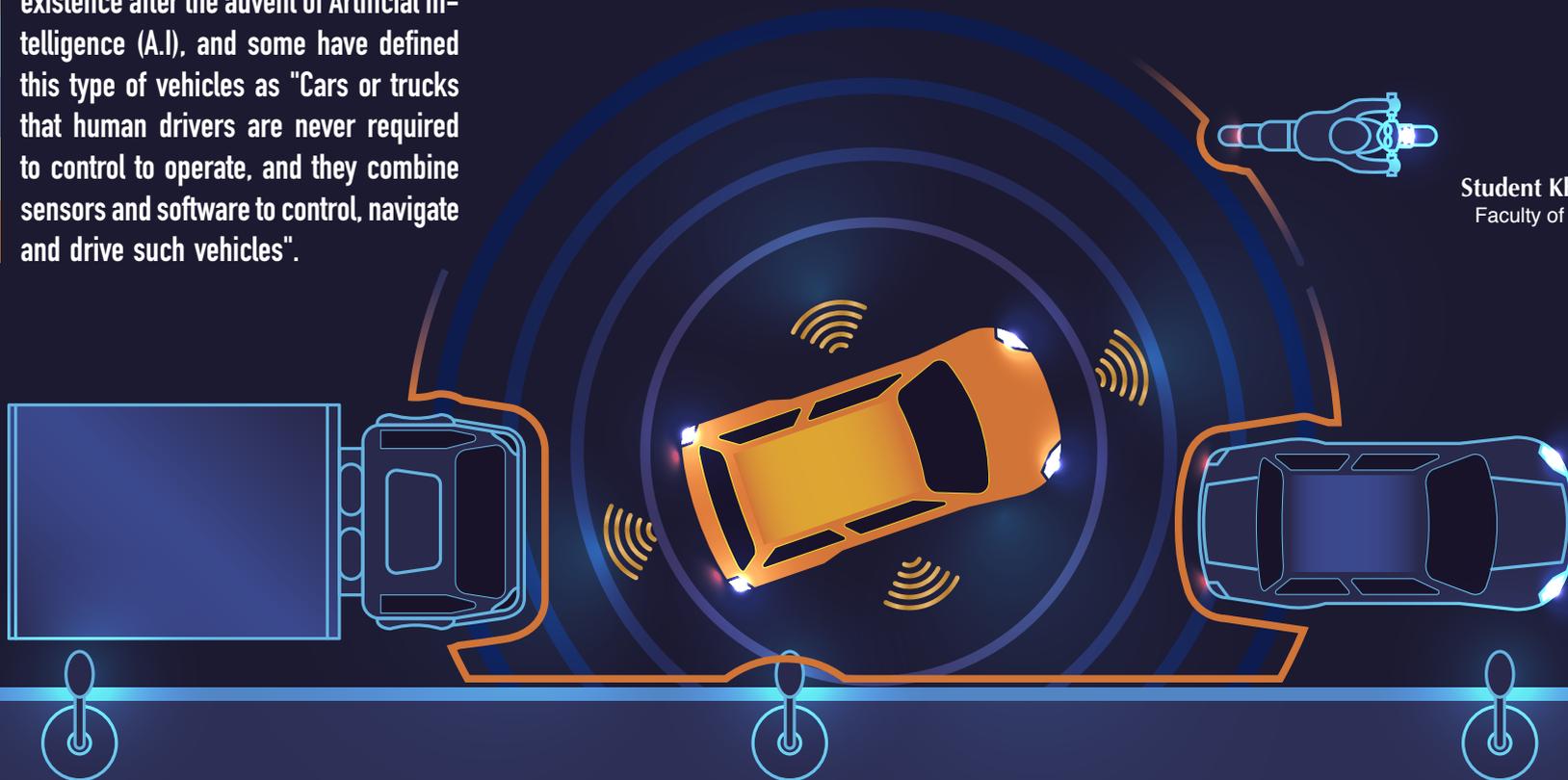
The Bank will also have an essential role in countering fraud operations in the event that it discovers through visual examination that some of the documents submitted by the Beneficiary in keeping with the letter of credit are forged and that these forged documents do not comply with the requirements of the documentary letter of credit, then the Bank has an obligation not to pay the value of the credit to the benefit of the Beneficiary.

The Bank also has an essential role to play in countering fraud if it checks the documents submitted by the Beneficiary and there are suspicions that they are not identical or that they are forged, then it can stop the disbursement process to the Beneficiary until it verifies their truthfulness. However, Banks are afraid that in case of breach of their obligations in the documentary credit contract, which is to disburse the value of the credit in favor of the Beneficiary once he/she submits the documents required in the letter of credit, that the Buyer who ordered the opening of the letter of credit will ask to be refunded on the basis of the provisions of the legal principle of Liability in Tort in the Civil Code.

“
The Bank must
know its rights
and obligations
towards the
parties to the doc-
umentary credit
contract.”

Compensation for Damage Caused by Smart Vehicles (Autonomous or Driverless Cars) And Applicable Law

The concept of Smart Vehicles came into existence after the advent of Artificial Intelligence (A.I), and some have defined this type of vehicles as "Cars or trucks that human drivers are never required to control to operate, and they combine sensors and software to control, navigate and drive such vehicles".



Dr. Hamed Alostath
 Consultant to the office of Minister of Foreign Affairs and International Cooperation
 Ministry Of Foreign Affairs- Abu Dhabi



Student Khalid Mohammed Al-Baluki
 Faculty of Law, Saint Joseph University, Dubai

The Executive Council of the Emirate of Dubai has given a special definition of these Smart Vehicles in Resolution No. (3) of (2019), as it considered it as (A vehicle operating under the simulation system, dedicated to driving on the road, and meeting the specifications approved by the Authority".

And Land-Based Self-Driving Smart Vehicles, such as cars, motorbikes, buses, trucks, etc. have five driving levels:

- **The First Level: Driver Assistance:** In which the driver either steers or steps on the gas pedal and brakes (Cruise Control) on a permanent basis.

- **The Second Level: Partial Driving Automation:** This level is considered one of the latest in technology today. The system handles both steering, pedaling and braking (Advanced Driver Assistance Systems or ADAS).

- **The Third Level: High Driving Automation:** The system automatically takes over steering, pedaling and braking for a certain period of time or in certain situations (Level 3 vehicles can intervene if things go wrong or there is a system failure. In this sense, these cars do not require human interaction).

- **The Fourth Level: Full Driving Automation:** The system takes full control for a certain period of time or in certain situations and does not need to be monitored.

- If the system has to leave the automation mode, it asks the driver to take over the task.
- If this does not transpire, the system will create a situation of minimal risk.

(Level 4 vehicles do not require human attention. The "Dynamic Driving Task" is eliminated).

- **The Fifth Level: Autonomous Driving:** The system fully controls all traffic situations and at whichever speed, and the presence of a person behind the wheel is no longer required at this level. Hence, land-based smart vehicles are different from conventional vehicles that are driven, controlled and steered by humans, and the latter need fuel, oils and many other things in order for them to be roadworthy, and individuals have been accustomed to seeing this type of cars and vehicles for many years.

Smart vehicles combine sensors and software to control, navigate and drive the vehicle.



“
The UAE has not yet allowed driving smart autonomous vehicles either through a federal law or through a federal executive decision.

The definition of this type of vehicles came in Federal Law No. (9) issued on (6/7/2011) on Road Transport, where the first Article of which defines Road Transport as (Any vehicle, bus, truck and trailer traveling on roads, including those traveling on railways). And despite the similarity between smart vehicles and conventional vehicles, as both are considered as Land Transport Means, smart vehicles differ in many respects, as most of them have become dependent on electricity instead of fuel, in addition to the fact that there is no need to have a driver to drive them, as they drive themselves by themselves, as we mentioned, all thanks to the radar, cameras on all sides, thermal devices and other things that are installed in these vehicles and assist them in this endeavor.

It should be noted that the damage caused by smart vehicles falls under the type of physical damage because they either cause damage to another vehicle due to a traffic accident that results in financial loss to the victim, or they cause and result in physical damage.

The damage caused by vehicles is usually material damage, but it is possible that this damage is sometimes moral, for example, when the family of the victim deceased as a result of a traffic accident demand a financial amount from the driver of the vehicle that caused the accident to

compensate them for their moral loss, despite the existence of the Deyyah or Diya (Legal Blood Money) - (Financial indemnity in Islamic Law paid out to a victim or the victim's family to compensate for death, bodily damage, or property damage) and the obligation of the perpetrator to pay it. Many consider that traffic accidents will simply increase after the entry of smart vehicles into the driving arena. And although there are intelligent systems through which these vehicles operate, but due to some technical errors that have occurred, it is expected that these vehicles will make some mistakes that will result in causing accidents and damage. For example, the American Automobile Company (Tesla) introduced many smart vehicles and was one of the first pioneering companies to manufacture this type of smart vehicles, but its cars broke records in the number of accidents resulting from technical errors. For instance, and not limited to, the latest accident of one of its smart vehicles was reported in the US City of Texas when the vehicle in question collided head on with a tree. The increase in accidents caused by these vehicles has led to an increase in people's fears and their criticism of this type of cars, as they considered that they may increase the risk of traffic accidents in the future. Following this

Tesla Vehicle incident, the US Traffic Safety Agency opened the twenty-eighth investigation into the accidents of this company.

Through the accidents caused by smart vehicles or by the use of the autonomous driving system in these vehicles, we are in the process of facing an increase in the number of accidents caused and a doubling in the damage resulting from them.

When talking about smart vehicles and the traffic accidents resulting from them, the error of committing the traffic accident must be available, and then followed by the damage caused by this accident to the other damaged vehicle or to its owner. Also the causal relationship between the traffic accident and the damage caused must exist too and without this act and error (Traffic Accident), the result (Injury to the victim, or to his/her vehicle or moral damage) would not have been caused. These compensations vary as to their types and to how they are estimated, and we can divide them into: (General Compensation, Special Compensation) and (Nominal Compensation, Deterrent Compensation).

First: General Compensation

The compensation in this case is monetary and is represented, for example, by permanent dis-

ability or significant damage to a person's body. This damage causes a great physical suffering to the individual, so we are in front of an estimate that is to be made by the Court itself and based on its discretion in this regard of the amount of compensation that is to be determined.

Second: Special Compensation

It is the compensation that arises from the loss of a business opportunity due to this damage or for the loss of earning a certain amount that would have been obtained, had it not been for the accident and the damage it caused and resulted in or for the expenses incurred by the injured person for treatment as a result of this damage. And here, the Plaintiff must prove this damage in the legal case's Memorandum of Claim (Statement of Claim) and determine its value in order for the Court to issue its verdict on this matter.

Third: Nominal Compensation

It is the compensation that is determined in the event of passing through the land of others, and it could be set at (500) AED, for example.

Fourth: Deterrent Compensation

It is compensation that relates to some cases that affect ethics or to any new act that the State,

“
Anyone in the UAE is not allowed to drive a smart vehicle or bring it to public roads for the purpose of operational testing until after signing a contract with the Roads and Transport Authority in Dubai to conduct the operational test, and obtaining a permit to that effect.

as a sovereign, seeks to permanently limit or stop. The State then imposes large and substantial compensation to act as a deterrent to others and prevent them from committing these acts. And the question that arises here is who is responsible for these compensations?

Many legal experts believe that any error caused by a smart vehicle and causes harm to others, the manufacturer of this vehicle shall be responsible for compensation and accountability, because it was it who set the global standards that allow the vehicle to drive autonomously without the driver. There are different schools of thought here, as some consider that it is the owner of the vehicle who must make the compensation and others think that they must not. The issue of who is responsible for these damages and their compensation is still ambiguous and complex, to say the very least.

The laws regulating smart vehicles also differ in their assessment of the liability that may fall on any of the parties concerned. In this context, many experts and those familiar with the jurisprudence of smart vehicles considered that it is the manufacturing companies who ought to take on many of these obligations.

Among the most prominent countries that have developed modern legislation and laws on smart vehicles are Germany, Japan and some US States. Japan is one of the very developed countries that has worked to enact this type of law because of its prosperity and the high development level of the vehicles it manufactures and the high quality roads it designs and builds. And Japan has already allowed the testing of some smart self-driving vehicles taking into thorough account some specific criteria such as the presence of a certain number of cameras and radars installed in the vehicle. To date, Japan is still conducting several experiments with smart vehicles to see if they will allow all people to use them or not and it has allowed some companies to submit an application for the sale of some smart vehicles to the public, provided that these vehicles are not one hundred percent self-driving.

On November 11, 2020, the Japanese Govern-

ment approved Honda's request to sell smart vehicles in the third phase. This approval also included some of the controls and restrictions imposed by the State on Honda Motor Company by placing a device that records the status of the vehicle for the first (6) months to ensure that self-driving devices are working properly and to detect when to use and stop the self-driving technology and when to warn the driver of an incoming danger and many other pertinent things.

The United States of America has distinguished itself from most countries in legislating a law on smart vehicles. Some States have allowed smart vehicles to drive even if they are driving themselves without the presence of a driver, for example, and not limited to, Alabama State has allowed (100) percent autonomous smart vehicles to be driven without a driver present. This came within certain controls and in fulfillment of some of the required conditions stipulated in the law. The State of Arizona has allowed smart vehicles to be driven and tested on the streets by an executive decision of the Governor of the State, even if it is not based on any written legislation. The Governor of the State of Arizona ordered a ban on testing "Uber" cars in (2018) after the fatal accident of one of the smart vehicles.

In this regard, Germany is one of the first countries to experiment with smart vehicles due to the development of its smart vehicles infrastructure, modern technologies and the large domestic automotive industry in particular. In (2017), Germany issued a law allowing the driving of a smart vehicle of the fourth level on public roads, and although there are some controls, but what distinguishes Germany from some US States and Japan is that it oversaw the writing of history by enacting the first complete integrated law on smart vehicles and compensation resulting from traffic accidents caused by them, all while mentioning hypotheses, solutions and all that this type of vehicles requires from laws and legislation. The German law on smart vehicles came into

“
The German Law on smart vehicles detailed some points that the UAE legislator can benefit from.



force on July 28, 2021. The Council of Ministers approved the speaker's draft on February 10, 2021 and subsequently forwarded it to the German Bundestag and the Bundesrat. And on March 26, 2021, the Federal Council took a position on the bill, after a public hearing of experts of the Ruling Committee on Transport and Digital Infrastructure (AFVI) in the German Bundestag. And on May 3, 2021, the Federation approved the bill at its (113th) session. After that the notification procedure that was launched by the European Union was completed on May 10, 2021. The Bundestag passed the bill on May 20, 2021. In turn, the Federal Council approved the bill on May 28, 2021. This law is considered to be completely new as it regulates everything related to smart vehicles fully and broadly, such as insurance, permits, the type of vehicle that falls under this law, the hypotheses and compensations that may result from these vehicles, who is responsible for them and how to deal with them.

The Law Regulating Smart Vehicles and their Compensation in the UAE

The UAE has not yet allowed the driving of smart autonomous vehicles neither through

a federal law nor through a federal executive decision, and to date, no law on smart vehicles has been enacted, nor the current law has been amended, or any articles on smart vehicles have been included in this law. However, it should be noted that at the end of (2021), His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, announced that the Council of Ministers approved the request submitted by the Ministry of Interior to start testing self-driving cars on the roads and submit a report to the Council for permanent adoption in the future if the Ministry adopts that technology in coordination with the competent authorities, and also in (2019), Sheikh Hamdan Bin Mohammed Bin Rashid Al Maktoum, Crown Prince of Dubai, Chairman of the Executive Council of the Emirate of Dubai, issued a decision on the organization of the operational trial of an autonomous vehicle in the Emirate of Dubai. This decision stated that no person is allowed to drive this vehicle or bring it to the public roads for the purpose of operational trial only after signing a contract with the Roads and Transport Authority in Dubai to conduct the

“
A law on smart vehicles has not yet been enacted to date nor the current law has been amended.

In (2023), the world will witness self-driving vehicles in the Emirate of Dubai.

operational trial, and obtaining a permit in this respect. It is also stated in Article No. (11) of the same law that any damage caused by the operational trial of the smart vehicle is not the responsibility of the Roads and Transport Authority affiliated to the Government of Dubai and is the sole responsibility of the establishment, that is, the institution or company that is contracted by the Authority to conduct the operational trial of the autonomous vehicle. Sheikh Hamdan Bin Mohammed announced at a previous conference that in (2023) the world will witness self-driving cars in the Emirate of Dubai. And since this decision covers only smart vehicles subject to testing only, there is no law that allows driving these vehicles or clarifies some aspects related to compensation, responsibilities and other related issues. And since the legislator has not enacted a law on smart vehicles, we believe that the enactment of a law related to this type of vehicles has become necessary, and through this law, the legislator shall authorize driving smart vehicles from the fifth level in the UAE, at which point the UAE will become the first country to legalize driving smart vehicles from the fifth level on its territory. Consequently, this will make the UAE as one of the most organized countries in terms of roads and infrastructure, as it is easy to bring smart vehicles and organize their driving on these organized and fully equipped roads. However, this is not considered to be the case before the enactment of a law allowing these vehicles to be brought to the UAE. The legislator should pay attention in a clear and straight forward law to all aspects related to this area by finding a solution to the problems that may arise or answering the hypotheses, compensations and resulting responsibilities. Allowing the driving or presence of these vehicles in the UAE forces us to enact a complete and integrated law that explains to us all the rights, duties and responsibilities that will encounter us and even compensation more precisely and specifically for this type of vehicle.

In this context, we point out that the German law on smart vehicles mentioned above has detailed some points that the UAE legislator can benefit from. We recall, for example, what was mentioned in the first Article of it, which defined smart vehicles as: (An automated vehicle that performs the task of driving autonomously without being driven by anyone). This definition is clear and simplified and can be used by the UAE legislator. As for Article No. (2) of it, it states that:

1. The operation of the vehicle using the autonomous driving function is allowed if the vehicle meets the technical requirements in full legal accordance with Paragraph No. (2).
2. If the vehicle's operating license has been issued in accordance with Paragraph No. (4).
3. The operation of the mechanical vehicle in one of the specified operating areas is approved by the competent authority.
4. Under the state law, the motorized vehicle is approved for use on public roads in accordance with Section No. (41).
5. These conditions are important and must be taken into thorough consideration to provide a safe environment for the use of smart vehicles within the UAE.

The UAE legislator can also benefit from the German law, especially the Article on the obligations of participants in the operation of vehicles with an autonomous driving function, which states the following:

The Obligations of the Vehicle's Owner:

(The owner of a car with a driving function is responsible for maintaining road safety and the ecological compatibility of the car and must take the necessary precautions in particular for:

1. Ensuring regular maintenance of the systems required for the self-driving function.
2. Taking the required precautions to comply with other traffic rules that are not directed to the driver of the vehicle.
3. Carrying out technical supervision tasks, and

the technical supervision of a vehicle with an autonomous driving function is mandatory.

4. Activating the mechanical vehicle for an alternative driving maneuver in accordance with Article No. (1), Paragraph No. (2), No. (4) and Paragraph No. (3), as soon as it is indicated visually, audibly or in another tangible way through the vehicle's system so that the data provided by the vehicle's system would enable to assess the situation to deactivate the autonomous driving function immediately as soon as it becomes possible visually, audibly or in any form to evaluate the technical equipment indicators regarding the functional situation for the individual.
5. The width of the strip is determined by the vehicle's system.
6. Immediately contacting the passengers of the mechanical vehicle and carry out the necessary traffic safety.
7. Initiating agile measures when the vehicle is placed in a state of minimal risk).

The Obligations Shouldered by the Manufacturer of the Smart Vehicle:

- (1. During the entire period of development and operation of the vehicle and the proof submitted to the relevant authority that the electronic and electrical engineering of the car, electronic and electrical archives are all connected with the vehicle.
2. Conducting a risk assessment of the vehicle by the Federal Transport Authority Land & Maritime FTA (MOEI) and proving to the relevant authority how to conduct a risk assessment, critical elements, elements of the vehicle against the risks identified in the course of the risk assessment.
3. Providing proof of a sufficiently secured wireless connection for autonomous driving.
4. Making a system description for each vehicle, to create an operating manual and to declare it in a binding form through the Federal Transport Authority Land & Maritime FTA (MOEI), which confirms the full-

fillment of the requirements in accordance with Section No. (1-G), Paragraph No. (2), in addition to Paragraph No. (3).

5. Providing training to persons involved in the operation of the vehicle, in particular with regard to driving functions and performing technical tasks for which specialist supervision is taught).

Accordingly, and in case of violation of the above obligations, the owner of the vehicle or the manufacturer is considered liable for any damage caused by non-compliance with the obligations imposed on him/her or on it by law as contained in the second Article of the German Law.

Moving forward, the UAE legislator can benefit from the law being implemented in Germany, which is the world's first law related to smart vehicles from the fourth level.

*** Margins**

- (1) Union of concerned scientists, 26 January 2017 and updated in 21 February 2018, page 1.
- (2) Executive Council Resolution No. (3) issued by the Emirate of Dubai, (2019), Article No. (1).
- (3) Isabel Harner, IoT for all, July 3, 2020.
- (4) . Federal Law No. (9), issued on (7/6/2011) on road transport, Article No. (1).
- (5) Al-Arab Newspaper, Wednesday, April 28, 2021, Page No. (2).
- (6) Faegree Rinker, September 4, 2018.
- (7) Honda Cars official website, November 11, 2020, Japan.
- (8) Lifewire website, done by Jeremy laukonen, reviewed by Micheal Barton Heine jr, updated on July 7, 2020.
- (9) Simmons-Simmons, New German draft law on autonomous driving, 19 February 2021.
- (10) Federal Ministry for traffic and digital infrastructure, 28 May 2021.
- (5) Executive Council Resolution No. (3) issued by the Emirate of Dubai, (2019), Article No. (1).

The owner of a vehicle with a driving function is responsible for maintaining road safety and the ecological compatibility of this vehicle.

Testimony Between Duty and Reality



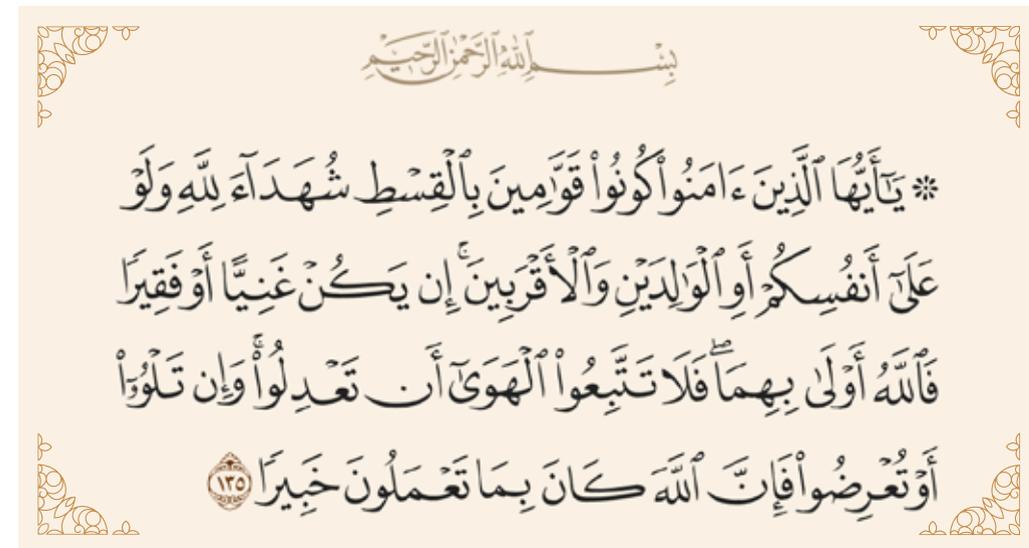
Judge / Dr. Ali Abdullah Al-Thabahi
Judge at the Personal Status Court - Dubai Courts

The Sharia of Islam came to preserve the rights of people and to spread justice among them. In Islam, the strong is weak until he/she has given what they are owed, and the weak is strong until his/her rights are restored.

(This is in reference to the inaugural address given by Abu-Bakr Al-Siddeeq, the successor to the Holy Prophet Mohammad (Peace be upon Him) after His passing away, in which he declared that, quote: “[t]he weak among you will be strong with me ‘till, God willing, his rights have been vindicated; and the strong among you shall be weak with me till, if the Lord wills, I have taken what is due from him”), unquote.

It is the wisdom of the Al-Mighty Allah to have legislated ways to prove punishments and rights when people dispute them and one such way is the Testimony by which the judge infers the truth and rules according to which, after making sure that the witnesses are credible, and the need for the testimony is urgent, as it is the reason to prove rights and save lives, property and lineages. Due to its importance, the Holy Qur’an spoke of its significance, and the Al-Mighty Allah attributed it to Himself, and He honored His Angels, His Messengers and the noble of His creation through

it, when He said, quote: “[b]ut Allah bears witness to that which He has sent down (the Quran) unto you (O Muhammad SAW), He has sent it down with His Knowledge, and the angels bear witness. And Allah is All-Sufficient as a Witness” unquote, and, quote: “[h]ow (will it be) then, when We bring from each nation a witness and We bring you (O Muhammad SAW) as a witness against these people”, unquote. What is being testified to must be known to the witness, as he cannot testify about the unknown, and he should not deal emotionally with the Testimony, as it is greatly consequential, since



it either proves the rights or loses them, and whoever has a duty to perform a testimony for the benefit of his brother or sister must perform it when it is needed. The Al-Mighty Allah said, quote: “[a]nd do not conceal what you have witnessed - for, verily, he who conceals it is sinful at heart”, unquote, that is: if you are invited to testify, do not hide it.

Abdullah Ibn Abbas (May God bless him) said, quote: “[g]iving false and/or concealing Testimony is a serious sin”, unquote.

Some people get apprehensive when testifying and ideate that they are not obliged to go to the judge to prove something as true, and they are also afraid of the physical toll that this might exact on them, but truth be told is that by not testifying, one is forfeiting being rewarded and they will be considered as to have sinned, and reward and sin are polar opposite of one another.

A person must bear witness to the truth, even if against themselves, or their loved ones, and one must not be distracted from testifying either by greed, fear, or favoritism. The Al-Mighty Allah said, quote: “[o] you who believe! be strict observers of justice, bearers of true evidence for the sake of Allâh, even though it be against yourselves or (against your) parents or near of kin”, unquote. The observer of the situation of Muslims today finds laxity, as some testify to what they did not see, but only as a result of trusting those who shared something with the! Therefore, they would just ask it from anyone, even from a stranger,

and if the latter refuses because they do not know this person, who is requesting the testimony, or they are not aware of the matter because of which the testimony is sought, then he (The person who asks for a testimony) just gets all riled up!

This is clearly seen when you are a visitor to a judicial court when suddenly you would be approached by someone, who would self-assuredly just ask you to testify about something you are clueless about, not to mention you do not know this person nor do you know what he is all about, and it will become a matter of just finding someone with an I.D to testify! How would a Muslim testify to what he did not see?!

Some might say that this is not a big deal! And to that I say: The Testimony issue is a great matter. And to those who falsely testify! You have wronged yourself and other people, and you have sold your principles to others for worldly gain, and by doing so, you are one of those who are considered to be causing injustice and corruption, and you have turned testimony into falsehood, deceived the judges, spoiled the issued judgments and aided criminality and criminals, and in consequence of such a falsehood, many rights were lost and that affected even familial and marriage relationships and denied many people their rights. For all of this, my advice is to put God’s fear between your eyes apropos your testimony, and the people to whose benefit you testify and to make sure that your testimony is the truth.

// The testimony issue is a greatly consequential matter; in consequence of which, rights are either protected or are just lost.

// A person must bear witness to the truth, even if it would cause them to be found at fault, or the people closest to them.

The Position of the UAE Law and Judiciary on the Electronic Perspective of the Person Subject to Custody



Judge Dr. Abdul Nasser
Mohammed Al-Shehhi
President of the Fujairah Federal
Court of First Instance

The possession and use of modern information and communication technologies in today's modern world has put institutions in front of new challenges, one prominent example of which: The challenging by the family courts to the child in custody, with regard to the implementation of their judgments, specifically the rulings on the Visitation Through Electronic Communications that come as a form of visitation when dealing with a child custody case.



The principle is that seeing the child in custody is an innate need for every parent, and that the courts-issued judicial decisions regarding such viewing, take into account this need, but the real difficulty lies when implementing these decisions, especially when one of the parents ceases their viewing; due to his/her absence either for travel, work or residence in another country; therefore, the child in custody is considered the first victim in this situation, and the following question arises: **Is Electronic Viewing an alternative solution in such situations? And does it achieve the desired objective of preserving the feelings of the child in custody and continuing communicating with those who have the right to view?**

First: The Legal Adaptation of Electronic Viewing of the Child in Custody:

There are a number of jurisprudence rules that the scholars have presented, including the rule of (Harm shall be lifted)⁽¹⁾, which is one of the general rules and is one of the principles of Sharia, which came to (Prevent mischiefs which is better than bringing benefits), the origin of which is the saying of Prophet Mohammad (PBUH), when he stated, quote: "[t]here is no injury nor return of injury", unquote⁽²⁾ ... And adhering to the rules of jurisprudence and relying on them in the merits of the issued judgment, especially that rule that expresses a legitimate text as the rule of "[t]here is no injury nor return of injury"⁽³⁾, makes the judge more confident in issuing a ruling that is valid and this inspires confidence in the souls of the disputants, and this rule is perhaps the legitimate basis for protecting the child in custody and effectuating his/her rights to ensure them a life of decent living, and most of the jurists built on it most of the child-related principles, such as custody.

It should be noted that the **(Harm shall be lifted)** Rule is the basis for lifting the harm that befalls the child in custody; therefore, the electronic viewing is rooted in the activation of this particularity, as well as the Bylaw on seeing the child in custody, which allowed the judge to grant his/her permission to communicate through modern means of communication, in accordance with Article No. (12) from the Bylaw No. (1150) of (2010) regarding seeing the child in custody that: **(.... The judge may also, when there is a valid interest for the benefit of the child in custody, make a reasoned decision to limit the number of visitations, contrary to the above,**

|| The (Harm Shall Be Lifted) Rule is the original rule based upon which the harm that has befallen the child in custody shall be lifted, and the Visitation Through Electronic Communication of the Child in Custody finds its roots in the putting into practice such a particularity.

and he/she may authorize visitation through modern means of communication with the child in custody at times specified by him/her).

The presence of such a rule in jurisprudence related to the child in custody makes it easier for the judge to issue an informed judgement, and saves him/her the rigmarole of researching when considering cases related to a child in custody, and the UAE legislator also took into consideration this rule in the above-mentioned legal text, and it is subject to the discretionary authority of the judge to determine the interest of the child in custody in accordance with the rule “[t]here is no injury nor return of injury”, and if one of the parties to the visitation right is unable to visit the child in custody in the usual direct way, then the judge shall, based on reasonable grounds, rule of electronic viewing, in accordance with the pertinent legal text, with the realization of the interest of the child in custody, and the inviolability of the private life of the party who has been awarded the right of legal custody, in view.

Second: The Position of Judiciary on the Electronic Viewing of Child in Custody:

The UAE Judiciary has paid a great deal of attention to assessing the interest of the child in custody, which is one of the factual matters that the trial court is competent to assess without any supervision when its ruling is issued based on clear reasons that make it stand on its own, just like it is the case in the “**Electronic Viewing of the Child in Custody**”, and the legislator may provide a general rule and leave it for the discretion of the judiciary to determine the special cases that can be included in the context of the legal text or its general meaning - and this is what we found in the text of Article No, (12) of the above-mentioned Bylaw. It is established in the judgments of the Court of Cassation in Abu Dhabi that the principle in “[t]he provisions of the visitation for children is that they are temporary, and they change with the change in the circumstances in which they were issued, and the right that is encompassed within them remains valid as long as the pertinent circumstances remain in place, and any change in such circumstances allows a reconsideration of those provisions”⁽⁴⁾. It is also established that in the judgment of the Federal Supreme Court that “[c]ustody, although it is related to the three Rights (1) the Right of the Father (2) the Right of the Custodian (3) and the Right of the Child in Custody, but the last right of

the Child in Custody supersedes any other right by giving it the priority with regard to ascertaining and determining his/her interests ⁽⁵⁾.

In considering the applications in the reality of the courts, an appeal No. (928) of (2015) was submitted to the Dubai Court of Appeal on (10/11/2015), and it ended with the court deciding in its session of (27/12/2015) to enable the Appellant to communicate with his daughter in custody through one of the electronic chat programs, which includes both conversation and electronic viewing to allow the Guardian (The Father) to check on his daughter, guide her and care for her on the one hand, and to achieve continued communication and acquaintance between the daughter and her father, on the other hand, and this ruling was not challenged through appeal and it acquired the force of the thing adjudged (Res Judicata) ⁽⁶⁾.

In such a case, the judiciary strived to take into consideration the “reality”, that is, to go down to the level of reality of people at the grass root level to find out the problems that they encounter in their familial life, search for solutions that address them, and have the needed judgments issued in relation to them. And with this endeavor in the Dubai Courts, a legitimate and innate purpose has been achieved, namely the preservation of ties of kinship and family, and the fact is that this judgment has added a new dimension in matters of visitation rights, taking into account the interest of the child in custody.

By activating the provisions of Article No. (12) of the ministerial decision on the Bylaw regulating the visitation rights of the children in custody, we find that the Abu Dhabi Judiciary launched the “**Electronic Viewing of Children Under Custody**” Service, to enable one of the viewing parties to communicate with the children in custody through modern means of audio and/or video communication, as it facilitates viewing in cases where direct vision is difficult.

If we reflect on the jurisprudence on the viewing of the child in custody, we will find that it expresses temporary rulings that are open to change with the change of time and circumstances, all in a bid to serve the best interest of the child in custody, not to mention that this jurisprudence is subject to the events and developments related to the reality that surrounds the viewing parties.

Third: Emergency Circumstances and Electronic Viewing of the Child in Custody:

One of the direct effects of the Corona Pandemic, which raises a lot of discussion before the judiciary, due to the cessation of many obligations, is the obligation of the custodian to enable the direct vision of the child in custody, and in this emergency circumstance, the mandatory responsibility remains suspended in the conditions that we are living under due to the spread of this virus, and this raises a question in this respect, which is:

Is the Covid-19 Pandemic an exceptional circumstance in which it is impossible to directly see the child in custody?

There is no doubt that the suspension of viewing will greatly affect the feelings of the child in custody, who has gotten used to being seen, so enabling one of the viewing parties by the judiciary to see the child in custody through electronic vision in emergency circumstances shall be considered as an alternative solution that assists in preserving the psychological and emotional balance of the child in custody, considering that Covid-19 is an exceptional circumstance, and the purpose of social distancing cannot be achieved without the existence of an electronic link that compensates for the lack of in-person viewing. This comes to lift the harm off of the child in custody, take into account his/her feelings and maintain his/her psychological and social stability, and this underscores what the Federal Supreme Court has ruled on regarding taking into consideration the right of the child in custody, when it ruled that, quote: “[t]he right of the child in custody comes before any other right”, unquote ⁽⁷⁾.

In conclusion, it can be said that children have the right to direct vision in accordance with legal texts and judicial rulings. If this cannot be achieved for any reason that the judge sees and adapts as the correct legal adaptation that is in keeping with the law, then the matter shall be moved to Electronic Viewing and the using of modern means of communication, as the electronic vision of the child in custody is not considered an alternative to direct viewing, but rather an exceptional measure in certain cases and circumstances such as force majeure, emergency, travel, illness and others.



* Margins

- (1) Al-Ashbah Wa Al-Natha'ier, Taj Al-Din Abdulwahab Bin Taqi Al-Din Al-Subki, Al-Kutub Al-Elmeyyiah (Scientific) House, Vol.1, 1411 (A.H - After Hijrah) -1991, Vol. No. (1), Page No. (41).
- (2) Edited by Al-Hakim-and others (Et al)-and corrected and approved by Al-Thahabi, Al-Mustadrik Ala Al-Saheehayn, Al-Kutub Al-Elmeyyiah (Scientific Books) House, Beirut, Vol. No. (1), 1411 (A.H) -1990, Al-Boyyoo'e (Sales) Book, Vol. No. (2), Page No. (66), Hadith No. (2345).
- (3) Al-Mowafaqat Lil Shatabi, Vol. No. (3), Page No. (61).
- (4) Appeal No. (428) of (2008) s2q,A, (8/10/2008)-Personal Status Session, Abu Dhabi Court of Cassation.
- (5) Appeal No. (929) for the year of (2018), Personal Status, Dated (19/3/2019), Federal Supreme Court.
- (6) Chapter of the Jurisprudence of the Judiciary in the United Arab Emirates (The Extent of the Guardian's Right to Oblige the Custodian to Enable the Talk with the Child in Custody by Phone) - (Dr. Mohammed Abdul Rahman Al-Dhuwaini, published in the Al-Ma'ahud (Institute) Magazine Issued by the Dubai Judicial Institute in Issue No. (21), Page No. (58) et seq.
- (7) Federal Supreme Court, Appeal No. (883) of (2018) Personal Status.

“The Visitation Through Electronic Communication is not considered as a substitute for a direct and in-person viewing, but rather an exceptional procedure or means in certain cases and reasons such as force majeure, emergency, travel, illness and others.”

Attempts by the UAE Legislator to Facilitate Announcement (Notification) Rules



Judge / Dr. Hassan Rashid Al-Haymar
Judge at the Personal Status Court - Dubai Courts

The rules of Announcement (Notification) are considered one of the most difficult challenges facing the judicial field, especially with regard to personal status claims, in which the requests of those who lack alimony, including food, drink, clothing, housing, medicine, etc., have become necessary and urgent most of the time, and they are not compatible with what those rules being described as, just like being slow and complicated, in addition to the insistence on taking the texts at their face value and according to what they indicate on the face of it, without taking into thorough account the situation of the family, and what it experiences of dysfunctionality and the breaking down of familial relationships for many reasons that have become widespread in the society.

There is no doubt that this complexity in procedures does not only stand at the family door, but it has gone on to throw its negatives effects on the entire society, as it is faced with a barrage of procedures, fees and retaining fees, not to mention delayed adjudication of cases and other great implementation difficulties. Therefore, rules of Notification must be flexible, so that people would attain their rights quickly and effectively, where formality is considered as a means rather than an end, and this is a testament to those who stated that, quote: “Justice is not only for the owner of the right to obtain his/her right, but justice is also for this owner to fulfill their right easily, non-violently and in a short amount of time, all while creating a spatial time ample enough to enable the exercising of discretion when preparing means of Defense”, unquote (Abu Al-Wafa, Civil and Commercial Pleadings-Page No. (44)), especially since the need to remedy the phenomenon of slow litigation procedures in matters of personal status, specifically with regard to Notification, has become urgent in light of what the family is going through, when it is forced by the disagreement that befell it to knock on the doors of the judiciary seeking a solution.

It is worth mentioning that the rules of procedure are entrusted to the person (s) in position of authority

as it is necessitated by sought-after interests, and therefore this person reserves the right to change such procedures whenever the need arises. Mr. Mustafa Al-Zarqa stated that, quote: “[p]rotocol laws are a must, because they are not based on the principles of rights and fixed rules of justice, but rather they relate to the policy of legislation and regulation of application more than being related to what is connected to those principles and rules. This regulation is one of the public rights of those who are in position of authority, and one of their authority is being able to always change the course of this public right, according to what they consider to be the most beneficial and disciplined”, unquote. (General Jurisprudence Introduction 1/203).

The Federal Personal Status Law has established some of those rules that regulate Notification, take into account the nature of topics that they deal with, and the status of their parties, who are linked to procedures that protect the rights and legal positions that are associated with the family, which is the building block in the establishment of any society, with the aim of achieving goals that are of a social and nature. Upon taking a look at some of these rules, we see that in Article No. (14), Paragraph No. (6), it states that, quote: “[w]ith regard to persons who have a known domicile, residence or place of work abroad, the copy of

Announcement (Notification) Rules are one of the most difficult challenges facing the judicial field, especially apropos Personal Status Lawsuits.





“
**The Rules on
 Announcement
 (Notification)
 should be flexible
 and streamlined,
 so that people can
 obtain their due
 rights quickly and
 effectively.**

the Notification is handed over to the Undersecretary of the Ministry of Justice, to be announced to them through diplomatic means, or when they are informed of its arrival (The Notification) by registered mail. 7- The Notification shall be considered as to have been legally delivered from the date on which a copy of it was delivered, or from the date on which a fax or an e-mail was sent, or from the date on which a registered mail has been received, or from the date on which the Notification was made, in accordance with the previous provisions”, unquote.

It is clear from the text of the above Article that it introduced new rules that had not been provided for in the Civil Procedure Law No. (11) of (1992) and before the issuance of its latest amendments, as we will explain later on, and this is because the UAE Legislator took into consideration the privacy of the family and the need for a speedy resolution of judicial cases related to it, in order to ensure its stability, especially when the delay in the Notification in most cases comes to the detriment of the parties to the lawsuit, leading to more discord.

One of these rules stipulated in the said Article is the Notification via modern means such as fax, e-mail, registered mail or whatever legally takes its place, and the law has left organizing this issue to the court. And to complement the attempts of the UAE Legislator to arrive with the Rules of Notification at the

highest level of facilitation, and to shorten the time and effort that is usually required by the length of its periods, the Civil Procedure Law No. (42) of (2022) was recently issued, and upon taking a closer look at it, the viewer realizes that the law has made use of more social media means to contribute to pushing the judicial process towards the speed required by lawsuits in general and by personal status lawsuits in particular, and one of those means was stipulated on by Article No. (9) of the law that stated that, quote:

*“[t]he person is notified in any of the following ways:
 A-Recorded audio or video calls, messages on a mobile phone, smart applications, e-mail, fax or other modern technical means or in any other way that is agreed on by the parties concerned”, unquote.*

There is no doubt that the aforementioned Article has expanded the use of Notification through electronic means beyond what is provided for in the Personal Status Law, and has provided for several options that the plaintiff in the lawsuit may resort to in an effort to quickly resolve his/her case, especially when it (The Article, that is) provided for technical notification means of recorded or video calls, telephone text messages or modern applications known in social media, and accordingly, it is sufficient to instruct the registry to contact the litigant, identify his/her name and identity, inform him/her of the lawsuit and the

preparation underway of an official memo to this effect, which is equivalent to him/her being notified via recorded or video communication.

Paragraph (B) of the same Article added that which is considered to be a facilitation of the rules of Notification, which is that a person may be notified wherever he/she is, and if he/she refuses to be notified, then this act of refusal shall be considered as an in-person Notification, and it (Paragraph B) also expanded the circle of those who are considered to be eligible to receive the Notification and who live with him/her, in addition to spouses, relatives or in-laws, and those working for him/her, and in the case of if any of the above refuses to receive the Notification or the Notifying Officer did not find anyone eligible who he/she can deliver the Notification to, then the Notifying Officer shall immediately paste the Notification in a conspicuous manner on the outer door of the place of residence of the person being notified without the need for a court decision to this effect. The fact is that none of those procedures were provided for in previous legislation, and they are indeed procedures that the legislator considered necessary in light of the many obstacles the justice facilities encounter, foremost of which are the Rules of Notification, which for decades have been limited by such obstacles with respect to their progress towards

the level the rights should be at.

The UAE Legislator’s attempts to facilitate the Rules of Notification came in response to the repeated calls of the society to curb the phenomenon of slowness, which burdened the opponents, and became a concern to the society due to its negative impact of causing the loss of the features of the case and the time of the person filing it in the corridors of the courts, and those attempts ushered in a new era characterized by speed and resiliency, which is something that should be aspired to by each person who is put in a position of authority, better yet, his/her own perspective should be derived from the legislator’s intention to narrow the invalidity rule as much as possible, as was alluded to by Article No. (13) of the Civil Procedure Law No. (42) for the year of (2022), which emphasized on the need to explore the depths of the Notification’s legal texts, in accordance with their purpose, and carefully consider them in order to achieve the goal of serving the members of the society, in keeping with the words of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai - may Allah protect him - who said, quote: *“[d]o not glorify procedures, do not sanctify laws, and do not believe that systems are more important than people .. The purpose of procedures, regulations and laws is to serve the people”, unquote.*

“
The Federal Personal Status Law has established rules regulating Announcement (Notification), that take into thorough account the nature of the topics that they cover and the status of their parties involved.

“
The attempts of the UAE Legislator concerning the facilitation of the Announcement (Notification) Rules came in response to the repeated calls of the Society to curb the phenomenon of slowness that burdened the opponents.

His Excellency Judge Khaled Al Hosani:
President of the Courts of First Instance in Dubai:

Personal Status Law Under the Spotlight... Open Possibilities for Modification or Change



After graduating from the Judicial Institute, top of his class, and majoring in Sharia studies, Judge Khalid Al Hosani, President of the Personal Status Court in Dubai embarked on his journey in the judicial world, studying cases and understanding their facts and details, moving between the offices of judges, consultants and experienced people, to deliberate with them and learn from them, and he worked his way up the career ladder at the Personal Status Court in all specialties, and his work in the Sharia implementation gained him a special kind of experience, during which he learned self-discipline, decisiveness, balancing between being hard and being soft in form and in substance with the ability to deal with different personalities with their variegated styles and backgrounds, and then he was chosen to preside over the Personal Status Court in Dubai at the beginning of (2016), where he simplified and streamlined the procedures to facilitate the work of litigants and during his presidency of the Court, paper certificates and documents were converted into digital ones, and the cases' files were converted into electronic ones, and the number of legal marriage officers in the Emirate of Dubai was increased and marriage contracts that were done on paper were converted into digital contracts, relying on the spirit of team work, in order to achieve the goal of speedy justice.



Seminal Personal and Professional Life Stages

I lived the beginning of my childhood in the Bur Dubai Area, then I moved to the Al Jafiliya Area, where I lived through the stages of childhood, adolescence and youth, and I studied my primary education at Jamal Abdul Nasser School, then completed my preparatory studies at Al Saeediya co-ed school, then the high school stage at Imam Malik School, and at this point, I decided to study law and realize my long held dream of becoming a Public Prosecutor or a Judge, in my own right.

And I used to share this dream of mine with my closest of friends, and perhaps this was the subject of dispraise on their part and sometimes maybe even the subject of friendly banter and repartee, as this position of being a Public Prosecutor or a Judge, which I long dreamed of, was considered too big and impossible to be achieved from their stand point, only for this to have actually increased my determination and motivation to achieve this lofty goal, so I completed my university studies and graduated from the United Arab Emirates University, and then I enrolled in the Judicial Institute in the Emirate of Dubai, in the Sharia Track, which actually was contrary to my desire, where my desire was the Civil Track, but I do not know the reason for being chosen for this track, and I was the only one among my colleagues who the Admittance Committee did not take into account their choice and their desire, and when I checked in with them to enquire about the reasons for my non-selection to the Civil Track, the Director of the Institute informed me at that time that the Sharia Track is a new field of study that was introduced, and that they felt that I would be more competent and would do very well in this specialty, and prophetically his intuition concerning me actually checked out and presciently proved to be true despite my repeated objections and attempts to have me transferred to the Civil Track.

And from the first day of my study and training, I focused on my goal and kept my eyes on the prize and I was keen to increase my knowledge in this specialty by reading more and more and taking advantage of the scientific and practical competencies that were at the institute, and I ended up liking so much this specialization in personal status, and it became my main concern and preoccupation and indeed I was able to excel in my studies and graduated from the Judicial Institute, top of my class, majoring in the Sharia Track.



Who encouraged you to study law, and is there a situation or a water-shed moment in your personal life that pushed you in this direction?

I chose to study Law because ever since I was a little kid I loved discipline, commitment, and knowing what my rights and duties are.

I come from an educated family, and for this all praise is given to the Al-Mighty God for his blessing and favor, as my father holds a bachelor's degree in Law and my mother holds a degree in Islamic Studies and the Arabic Language, and my father left it to me to choose my future, and the reason I chose this specialty is that ever since I was a little kid I loved discipline, commitment and knowing my rights and duties, and this is, in general sense, the meaning and definition of the law, rights and duties. And there was actually a situation that transpired with one of the professors that made me more determined and more persistent to study law, as in one time my answer to an exam question that he put to us was correct, however, this answer was formulated according to my style and way of expression, only for the professor to wind up denying me the grade that was prescribed for this question, if it was answered correctly, but he just wanted us to memorize and answer any question in a literal way, and as recorded in the pertinent book, without leaving any room to go beyond the obvious, and when I checked in with him, he said to me, quote: "[y]our answer is correct, but it is not in the same wording written in the book and this means that you did not study for the exam", unquote, and this made me feel so sad for I have been treated unjustly, keeping in mind that education at the time was mostly dependent on memorizing and cramming the taught information, and there was no space for any critical thinking way of education, and I

wished right then and there if there was a judge that would rule on this particularity, and from this situation on out, the meanings of justice and fairness began to manifest and unfold themselves to me, although the situation itself was not that very consequential, but it indeed affected my personality and my realization that whatever I will be faced with in life may not be fair at times, and this was what made me at the same tandem time to appreciate every situation that I find myself in and to always endeavor to put it in perspective, and to invariably always come down with my judgement on the side of justice and fairness and not to be ashamed to admit that I have made a mistake or to have wronged in any situation and to strive to rectify it if it turns out to me to be flat out wrong, as if the personality of a judge was gradually and steadily forming in me, only for me to make it official to study law at the beginning of high school, and as they say, the rest is history.

What are the most important milestones you have gone through in your career, leading up to your work as the Head of the Personal Status Court in Dubai?

Everything that I have been through beginning with my study and training, whether at school, university, all the way up to the Judicial Institute, were only enablers, but the practical field is the real battle, either one will hit the mark and achieve success or one will go off the mark and just be met with abject failure, and ever since the beginning of my enrollment in the Judicial Corps, the challenge race began in earnest and I recall that when I was in my mid-twenties, I was faced with my first real-life situation in the shape of the first case presented



to me when I was setting on the judicial bench in my judicial garb, and the hearing session was confidential since it was a personal status case, when the first litigant entered my court room, where he stood and looked stunned, and he looked at me, then looked at my clerk, then looked at me again, hesitantly asking me one question tinged with a lot of doubt and disapproval, quote: "[w]here is the judge?!", unquote, and I did not take this question at face value with what it entailed on the face of it, but I understood it in another sense, a sense that came along with his countenance and facial expressions when he posed this question, as if he was saying: (You are young, and the position is too big for you, and I will find it hard to trust your judgement!). This situation had indeed motivated me to strive, research, learn, work day and night, and disassociate myself from vanity and conceitedness as it is the graveyard and the antithesis for and of every successful person. So, I have started studying cases and understanding their facts and details at home, and early in the morning I would make the rounds between the offices of judges, advisers and experienced people to deliberate with them, learn from them and write my judgments with profound thinking, and I have started following my judgments in Appeals and Cassation Courts and started learning from my mistakes through experience and practice, and I have never ever missed viewing and following up on any judgment issued by the Court of Cassation, and I made sure to absorb it, understand it, and deliberate on it with the consultants in all of its aspects, and I have moved up the work ladder at the Personal Status Court in all specialties, whether

in personal status cases for Muslims or non-Muslims, Inheritance and witness testimonies, which in fact, were experiences and opportunities to familiarize myself with all the texts of the Personal Status Law and to simultaneously apply them on the cases that I was considering, and one of the most impactful milestone in my work in the Personal Status Court was when I started my work in Sharia Implementation/Execution, as it is a real challenge for every judge since at this stage the nature of enmity, intransigence, and clash between the parties concerned just bubble quickly to the surface, especially in personal status cases, which need the full skill and experience of the judge, with lots of wisdom, patience and professionalism in adapting the texts of the law to be in conformity with the reality that presents itself before you, as a Judge, and this stage had another challenge to my character when directly confronting the litigants, which requires of me to remain calm, cool, collected, and not to get angry, and to show self-control, decisiveness, and to balance out both toughness and softness all while exhibiting the ability to deal with different and diverse personalities, and all of this made me love what I was doing and be elated with it, and the mere appreciation and gratefulness of an aggrieved litigant who got their right back of me and of my work as a Judge, was enough for me to lift all the pressures of work off of my shoulders, and served as an incentive to continue and keep on giving in the field of the Sharia Execution, and perhaps this was one of the reasons as to why the leadership of the Court chose me at the beginning of (2016) and appointed me as President of the Personal Status Court.

The most impacting stage of my work in the Personal Status Court was when I started my work in Sharia Execution, and it was a real challenge for me as it is the case for every other judge who would take on it.



Digital Transformation of Files and Services in Court and the Work on Correcting Tracks

What changes have you made in the Personal Status Court since taking up this position?

The Personal Status Court in Dubai was and still is a distinguished Court and the focus of attention from the world in the field of Personal Status, and this was and still is a challenge for me, and the changes that I made came after being appointed as the President of the Court, where my interest was focused at the beginning of assuming my responsibilities to be close to judges and administrators and to work in a team work spirit to achieve the single goal of speedy justice, and ever since the beginning of my work, I started unifying procedures and circulars issued with delegating powers and focusing on priorities to cope with the next stage, which consists of simplifying and streamlining procedures to facilitate litigants' work in keeping with the directives and vision of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai, and I was very careful in case there would be any observations where I would stay on them until a final solution is found for them, so that these observations would not be repeated again, and the confidence of the leadership of the Court in appointing me as the President of the Personal Status Court -and I would especially like to thank the Director of the Courts, His Excellency Taresh Eid

Al - Mansoori, for this confidence-which as much as it encompassed support and trust in me, still, it has powers that have been granted to me, and were matched by great responsibilities that I must shoulder, and hardly a day passes by in the Court without me keeping abreast of the latest work developments through the pertinent indicators, and I also follow up on the projects that I supervise in the field of digital transformation of files and services in the Court and work on correcting the tracks if any, and developing them.

Among the changes that were made during my presidency at the Personal Status Court were the conversion of paper certificates into digital certificates, the conversion of case files in the court to electronic files, the increase in the number of legal marriage officers in the Emirate of Dubai and the conversion of marriage contracts that were made on paper into digital contracts with the ability to conduct and document them remotely, and some property-based cases were also converted into orders on petitions so that they are adjudicated faster. I also prepared a lot of Memorandums of Understanding (MoUs) with the strategic partners of the Court during my work at the Presidency of the Court to develop work, facilitate procedures and build up mechanisms in cooperation with them.

“The appreciation and gratefulness of an aggrieved litigant, who got their right back, of me and of my work as a Judge, was enough for me to lift all the pressures of work off of my shoulders, and served as an incentive to continue and keep on giving.”

Accelerated Steps in the Field of Virtual Litigation



How has the Personal Status Court been affected by Virtual Litigation?

The Personal Status Court started the mode of Virtual Litigation in (2017), before the advent of the Corona-virus Pandemic and long before this mode became a way of life, and that was when the first marriage contract was conducted in the presence of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, where His Excellency the Minister of Artificial Intelligence was one of the parties to the contract, and this was conducted remotely, and it was the first experience of its kind in the world to hold a remote marriage, and what gave this experience an advantage and media momentum was the presence of His Highness Sheikh Mohammed Bin Rashid Al Maktoum. We have worked on developing a program that allows the marriage not to be in a service center affiliated to any government body, but to be at home without the spouses ever attending any Center, and we were able to complete the project and develop it at the beginning of the corona crisis, and as much

as this crisis posed risks and challenges to the state, still, it was an opportunity to change people's behavior from personal attendance to the use of modern technologies in all courts of the whole country, and Dubai, in particular, took the lead on this, and indeed the application was actually issued and is currently in wide use, and its application has facilitated procedures for customers and stopped paperwork, and reduced the presence of people in service centers and decreased pressure on the infrastructure of the courts. This was the beginning of Virtual Litigation in the Personal Status Court in Dubai, bearing in mind that it is the first Court in the world that apply these procedures, and in consequence of all of that, we find ourselves nowadays dealing with a litigation that you are witnessing in the current period, which has been extended to be applied to the rest of the courts, where the courtrooms have become remote, starting with the experts going through the announcements and making our way to development at the procedural level.

“One of the changes that took place during my Presidency of the Sharia Court was the conducting of marriage contracts, witnesses testimonies, the digital transformation of personal status services, and the preparation of many Memorandums of Understanding (MoUs) with the strategic partners of the Court.”



II
Dubai Courts contributed to the amendment to the law that allowed the adoption of electronic signature in the Personal Status Law

How was the electronic signature adopted in the personal status laws?

The Dubai Courts were one of the main drivers of the amendment of the law and contributed to it, where this amendment allowed the adoption of the electronic signature in the Personal Status Law, and the crux of it was not a technical challenge as much as it was a legal amendment, as the Dubai Courts worked on preparing a draft amendment of this law in cooperation with the Ministry of Justice, because it happened in a period of many challenges and there was awareness on the part of the decision makers that this is an important legal requirement and the nature of the prevailing time and circumstance necessitated that we make a change and take a look at our legislation, so that we would move from the handwritten signature to the digital signature, thus, making the service readily available to everyone even from the comfort of their homes.

After this development, (90%) of testimonies in cases

became remote, and marriage contracts are remotely organized at a rate of (30%) or slightly more, and the reason for this is that people are keen to conduct marriage contracts in the personal presence of the legal marriage officer, in keeping with the prevailing social norms and the organizing of the remote marriage contract was resorted to in case of facing difficulties such as the need for the meeting together of the guardian, spouse or witnesses at the same time of signing the contract (At the same contracting setting/session), which meant that we at the Court had to facilitate this issue for them.

A Revolution in the Legislative Domain

How has the Personal Status Law contributed to reducing cases of separation between spouses?

The amendment to the Personal Status Law, which led to a reduction in divorces, was preceded in (2019) by a statement that was made by myself to the media



and spread widely and reflected the practical reality according to the data and statistics available in the Courts and the cases that were presented before me before the law was issued, as there were too many divorce cases, since the UAE Personal Status Law was the most lenient law in the world, where each party would obtain a divorce just by requesting it only without the need for submitting a proof to back up such a request, which is something that inflicted injustice on the other party.

Nonetheless, my statement at the time touched a nerve in our society, as if the law supports family disintegration, so there was a revolution in the legislative field, and the law was amended, and I was present in the legislative committee that approved it and we tried to take into thorough account the global trends and the authentic Emirati values derived from our balanced Islamic Sharia that coexists with others.

How has the legislation of other countries been

reconciled with the UAE and Islamic legislation on personal status issues?

The topics of personal status are specific, and they are either divorce, marriage, lineage, alimony or custody, and any Non-Emirati has the option to request to adhere to his/her law, where he/she must then be submitting to the Court this law in order for this law to be applied on him/her, and this applies on Non-Emirati Muslims or Non-Muslims, as he/she reserve the right to approach the national judge and inform him/her that he/she is requesting either custody, divorce or alimony under the foreign law of his/her nationality, then the judge is obliged, if this foreign law is submitted to him/her, to apply it on them.

There have been profound changes in the UAE Personal Status Law. Share with us the most important of those changes?

The most important changes that have taken place are those related to the issue of lineage, as many people



My advice to everyone is that before their death to prepare a will in which a way is recommended to divide his/her estate among his/her heirs and to have it officially notarized by the Court in order to ward off any possible disagreement among the heirs concerned.

think that lineage is established only by marriage (In bed), but in Islamic Law lineage is established either by marriage, or admission, which has its own clear conditions stipulated by the Sharia Law. And the new decision issued established a quick mechanism for applying the law in cases of lineage, which is either by an Order on Petition or by Testimony, and the importance of this decision comes from the importance of proving the lineage of a child to protect him/her and their rights and to preserve his/her family ties.

Are there any new proposed changes to the Personal Status Law?

A meeting has indeed been held with a Committee from the Ministry of Justice, which included women's associations, judges, lawyers, consultants and Islamic Affairs Sheikhs at the state level to study the Personal Status Law in full, and to look for any existing observations that could be amended, changed or improved, and we have conducted a study in relation to them, available at the Ministry, that included the preliminary amendments and we came up with observations and reconsideration.

A Particular Importance of the Inheritance Law and Deciding on Wills Before Death.

How does the Personal Status Court deal with Inheritance Law?

There is an important point to be made here related

to the Inheritance Law, which is it must begin before death and this topic is very important, because it is related to psychological and financial issues and it differs from other financial matters as it is done among siblings.

Therefore, I advise the Testator (Deceased/Bequeather) to arrange his/her affairs beforehand so that he/she would recommend a way to divide his/her estate while he/she is still alive, but within the lawful shares stipulated by the Sharia, and this is done by coming to the Personal Status Court and legally confirming the will at the Court and appointing a neutral person who is responsible for handing over the estate to the heirs, and this avoids the heirs many problems, disagreements and disputes that may last for years on end.

What should characterize the personality of the Judge of the Personal Status Court?

The Judiciary at its core is a craft and workmanship that can only be obtained and perfected through practical practice coupled with research and Ijtihad (Independent Judgment or Opinion), and this is what I have been and I am still continuing to do, and I have also been keen during my judicial career to adhere to the behavior of judges immortalized by history and through their books and to abide by their ethics. I actually painted in my mind a character of the judge that I want to be exactly like, a character that is just, dignified, calm, and collected, a judge

who is good at listening to opponents and can deal with the disputants impartially, and does not get angry but at the same tandem time is firm in his/her adherence to the law, and is well-versed in his/her knowledge of the law, and is decisive in

his/her issued decisions, and also attentive and astute with respect to what is being presented before him/her.

In short, to be the safe haven for every grief-stricken individual.

Love of Sports and Espresso Coffee

To organize my free time, I practice sports that relieves a large part of work pressure, as movement and being physically on the move discharges negative energy and clears up the mind, and I also listen while fast walking to audiobooks (talking books) about what is outside my line of work such as allegories, lectures, or political matters so that I would invariably always be up to date with what is going on in the world, and I also read stories in science fiction and in history and books of the greats as a way for me to benefit from the experiences of others. I also have a great deal of love for coffee, especially Italian espresso coffee, because its preparation, in and of itself, is very meticulous, and I can't keep it to working in a laboratory, where any mistake in the way coffee is prepared makes it spoil, and that is why I like to prepare it ultra-carefully, and perhaps this came as a direct reflection of my punctilious personality at work.



In my family, I apply the Principle of Magnanimity that is based on Benevolence between myself and my wife.

Regarding the family, do you apply the Personal Status Law among them?

With always praising the Al-Mighty God for His blessings and favors, I have been blissfully blessed with a wife who plays a tremendously great role in my professional success, as she is a great woman in her own right and always pushes me forward, and if it were not for family stability and my wife at the heart of it, I could not have achieved what I have achieved or devoted dutifully myself to my work, and for me, my family is my safe haven and sanctuary, and what I apply in my family is based on the Principle of Magnanimity that has Benevolence at its core and at the heart of the amazing relationship that I and my wife enjoy and cherish day in and day out, and there are things that do not require a full understanding of the Personal Status Law for the family to be sound and whole, and this can be just as easily arrive at the seminal and defining second a person fully understands his/her religion and ethics correctly, and only then one does not need any law, as important as it is, to intrinsically know what is right and what is wrong.

On another high note, I have two daughters and a son, and meeting with them over lunch is sacred and indispensable, where we exchange and share our opinions and together

build our future, and as a father, I leave my children the freedom to study whatever they wish to study, provided that our religion and our customs and traditions are adhered to and abided by, and then whatever a person achieves in their lives, they will definitely fall in love with big time.

Last but certainly not least, what is Judge Al-Hosani's advice to families to maintain their cohesion and their solidarity?

Answer: They ought not to forget the Principle of Benevolence-Based Magnanimity among them, since in married life, and in life in general, problems and disagreements would always arise, and spouses and couples should always be cognizant, tolerant, forgiving and focused on the well-dispensed advice that they receive, its timing and how to adhere to it and make good on it. There are in life those so-called compromises and finding the middle ground, and it is always heartening to have mutual understandings prevailing between spouses, while concurrently staying away from stubbornness and the lop-sided insistence on mistakes and one-sided way of thinking that aims only at hurting and offending the other party, just for the sake of it, when it should invariably always be the other way around by resorting to tolerance, dialogue and the focus on solving the problem instead of missing the forest for the trees and just make it all about the problem itself and who is at fault!

Do not forget to have benevolence among you all, and invariably always be mindfully cognizant, tolerant, forgiving and focused on the method by which an advice is dispensed, its timing and how to make good on it.

Joint Venture Contract Terms Conditions Characteristics



Dr. Rita Waked
Assistant Professor, Faculty of Law,
Saint Joseph University, Dubai

The Joint Venture appeared on the international trade stage as a legal system, which is based on the contribution of more than one natural or legal person to the creation of an independent project, working to achieve specific objectives, the achievement of which needs to combine different concerted and unrelenting exerted efforts into one state of harmony and this Joint Venture takes one of two formats:

The First Format: The Contractual Joint Venture, which is a contract concluded between two or more parties to implement a specific project within a certain period.

The Second Format: It is the Organizational

Joint Venture, which is that type of enterprise that takes the form of an independent company, which has a legal personality independent of its founding parties.

What are the most important items that should be included in the Joint Venture Contract or the Memorandum of Association of the Joint Venture Company?

Of course, each Joint Venture has its own characteristics, but the review and study of a number of Joint Venture Contracts and Memorandums of Association of Joint Venture Companies shows the existence of common clauses centered on the following:

ance with the financial contribution and others). Also, the partner's contributions could come in the form or shape of craftsmanship or workmanship, such as the construction of all or part of the project in exchange for the percentage that will be paid out to him/her during the implementation of the second stage, which is the Exploitation Stage. Contributions may also be in kind, such as the supply of raw materials or the transfer of certain technology.

Depending on their importance, these contributions may be the subject of clauses in the Basic Contract/Memorandum of Association of the Project Company or the subject of other special contracts such as the Supply Contract, Technical Assistance Contract, Manufacturing License Agreement, and in this context, the new UAE Commercial Companies Law stipulates that the in-kind contribution must be evaluated by one or more financial consultants.

Shareholders may also agree between them on the value of the in-kind share, provided that the value is approved by the Department of Economic Development.

If the in-kind contribution is valued at a price higher than its real value, the partner making this contribution must pay the difference in cash to the Company.

Composition of the Board of Directors and Management Arrangements

Within the framework of Joint Ventures, it is difficult to regulate the items of distribution of decision-making powers since the requirements for equal management must be combined with the requirements of effective economic management. The make-up of the Board of Directors is usually proportional to the contribution of each member. In the case of a 50/50-Contribution Joint Venture, it would be natural for the members to have the right to appoint an equal number of Directors, although this is not always the case. As for the party member that has a minority representation on the Board of Directors, he/she can request that a number of issues be put on hold pending the approval of the rest of the partner members. The list of matters being put on hold

||
A balance between the contributions and rights that the parties make to and receive from the Joint Venture.

||
New UAE Commercial Companies Law: In-Kind Contribution must be assessed by one or more Financial Consultants.



“
The Parties seek to protect the minority in the Joint Venture Contract and often the Basic Contract includes rules of amendment in the work of regulatory bodies without emptying them of their content.

pending the partners' approval is often one of the intensively negotiated matters in the Memorandum of Association of the Joint Venture Company. It should be noted that under the Memorandum of Association of the Project Company, it is common for partners' contributions to be subject to change. For example, when requesting a capital increase, one of the shareholders may subscribe for the shares while the other shareholder cannot, which leads to his/her weakening. Ergo, it is important that the provisions on the composition of the Board of Directors meet the possibility of changing and amending the appointment rights to the Board of Directors in the event that the Relative Ownership of Shareholders increases or decreases. We also may add that the day-to-day Management of the Joint Business of the Company is often delegated by the Board of Directors to the Director General or Chief Executive Officer (CEO) and in the event that the Project is a 50/50 Joint-Venture one, then the Board of Directors has the right to appoint the Director General or CEO, and this right can be granted to one of the shareholders.

Joint Venture Management

It appears from the above that the legal means available to the partners under the Companies Act are not necessarily compatible with the objectives of the Joint Venture, and we should not be surprised by that, since the company—especially the Joint-Stock Company—exists to regulate relations between partners, and does not give any importance to personal consideration and is based on the idea of the majority. On the contrary, and within the framework of the enterprise company, the parties seek to protect the minority, and the basic contract often includes rules of amendment in the work of regulatory bodies without emptying them of their content so that, for example, we could find clauses that make a reference to:

- The election of the Board of Directors by Qualified Majority or by Consensus of the Partners or the selection of a number of members of the Board of Directors by some partners instead of leaving the matter to the General Assembly.
- The appointment of Directors by the partners directly and not by the Board of Directors or

by the body that is usually responsible for their election.

- The adoption of a qualified majority or consensus rule on some decisions of the General Assembly or the Board of Directors, or when the General Assembly keeps on hold some decisions that are usually left to the Board of Directors or subject them to the prior written approval of the partners.

- The providing of a limited definition of the Powers of Directors or giving a broad definition to the Powers of the Board of Directors.

- The inclusion of special clauses that are more stringent than those usually established by the Companies Law in order to protect shareholders, such as the control of accounts by independent auditors, even when the characteristics of the company do not require or necessitate such a thing.

Financing of the Joint Venture Company

Clauses related to financing should be carefully designed to reflect the ways of financing the Joint Venture Company, and there are many options

available, but the typical method is left to the Board of Directors of the Joint Venture Company or Senior Management such as the CEO in deciding on the required financing and the source of funding, and this is often subject to the shareholders' approval, with a mechanism and a specific time frame to be adopted in case of disagreement. And when the shareholders are obliged to certain submissions in proportion to their contributions, the Agreement or the Memorandum of Association of the Joint Venture Company should clearly stipulate what should happen if one of them defaults on payments.

For example, does another shareholder have the right to provide a loan to shareholders equal to the amount of the deficiency? And if so, should this shareholder loan take first place over all other shareholder loans and attract a preferential interest rate?

Failure to comply with the financing obligation may also constitute a shortcoming and defaulting event leading to the application of the provisions on the compulsory transfer of shares, in which a non-defaulting shareholder can choose to pur-

“
The typical method of Joint Venture Financing is left to the Board of Directors of the Joint Venture Company or Senior Management such as the CEO.



“
Allowing the Board of Directors of the Joint Venture Company to set a reasonable level of profit on an annual basis.

chase the shares of the defaulting shareholder at less than market value.

Dividend Policy (Allocation of Profits)

It is important for the parties to initially consider the dividend policy of the Joint Venture in order to minimize the likelihood of a conflict arising in the future. This will often depend on the nature of the business, where one of the options is to distribute an annual dividend at a certain percentage of the annual profit of the Joint Venture or Joint Venture Company.

A more flexible option would be to allow the Board of Directors of the Joint Venture Company to set a reasonable level of profit on an annual basis. In any case, it is important to include some caveats—for example, dividends should be payable only to the extent that they comply with applicable laws (for example, regarding distributable reserves or reserve-keeping requirements) and do not lead to the Joint Venture Company breaking any of its banking obligations. When it is envisaged that the parties will provide loans to the Joint Venture Company, the Memorandum of Association

of the Joint Venture Company should clarify that no dividends will be paid until all shareholder loans are fully repaid. It should be noted that the distribution of the company's profits is usually proportional to the shares in the capital. As for the form of profits, we find in some contracts, such as Oil Joint Venture Contracts, that profits are not monetary, but consist of the right to receive a percentage of oil.

Term Item

Joint Venture Contracts are often long-term and have an evolutionary character. Companies or countries enter into the Joint Venture with an investor's mindset and their goals are long-term, and signing Partnership Contracts does not always mean making an investment in the economic sense. Investing may be limited to giving up special technological information or accepting to enter the market with a competitor instead of working on entering it individually. In all cases, short-term interests are sacrificed in favor of long-term goals, where we find partners keep the possibility of withdrawal in mind if it

turns out that the investment was not profitable, that is, the fruits of the partnership do not equal the sacrifices made. We also find an effect of this in the clauses related to the adaptation of the contract during execution due to the priority given to long-term interests. So, the partners are always trying to reconcile two contradictory goals. On the one hand, it requires sufficient restraint of the partner to ensure his/her presence until the long-term goals are achieved. While on the other hand, creating an exit door if the contract develops in a way that does not allow balancing the sacrifices made with the revenues achieved. And this usually leads the partners to choose an average duration for the Joint Venture with the possibility of subsequent renewal or to choose a long period with the possibility of reviewing the corresponding obligations during the validity period of the contract, in the light of the results achieved by the partnership. And sometimes the duration is dependent on the nature of the business, as the parties may prefer to inter into a contract for a short period for water-testing reasons, and if successful, the

contract is re-entered into for a long or indefinite period of time.

Terms and Consequences of Withdrawal

It is in the interest of the partners to provide in the Partnership Contract or the Memorandum of Association of the Joint Venture Company the possibility of withdrawal, for specific objective circumstances or at the initiative of the parties, or in the event that one of the parties made a contractual mistake or declared bankrupt. The partnership can also be terminated when a certain event related to the market situation for example, occurs, or when the results of the partnership are not satisfactory. Some contracts also allow the partner to withdraw at his/her own volition after a number of years of partnership had elapsed, especially since no one can be obligated to cooperate with another person without his/her consent. However, there are many reasons as to why the partner's right to terminate the partnership at his/her own will should be limited, and this is due to the personal consideration that characterizes the Project Company, and the withdrawal of the part-

“
Joint Venture Contracts are often long-term and have an evolutionary character.

It is in the interest of the Partners to stipulate in the Partnership Contract or the Memorandum of Association of the Joint Venture Company the possibility of withdrawal for specific objective circumstances or at the initiative of the Parties.

ner leads to disruption, since he/she may provide the technology needed, or the partner is one of the main suppliers or customers. The withdrawal may also lead to a change in the Management of the Joint Venture. Withdrawal can also have serious consequences, especially in terms of the issue of citizenship. For example, the exit of a local investor may lead to the company losing its legality. Also, the withdrawal of a partner may open the way for an undesirable partner to come in such as a company competing against the partner who remained in the partnership. Also, the withdrawal of one of the partners may mean the end of the partnership and the liquidation of the common elements of this partnership.

The Clause on Emergency Circumstances and the Obligation to Adapt the Contract

Since a partnership contract is a long-term one, the lawyers drafting the Joint Venture Contracts have tried to fill the gap posed by the absence or insufficiency of mechanisms related to the adaptation of the contract clauses proposed by the National Law. And the question that arises here is about the cases in which the contract had to be adapted and the system to which the adaptation is subject. To begin with, the contract may contain some clauses that notice possible developments and draw conclusions from them. For instance, they can notice the development of a certain market, the emergence of a new competing product, or the amendment of legislation. In other cases, the parties may make dependent specific results on the results achieved by the Joint Venture. For example, by determining what happens if the percentage of profit envisaged by the parties is not reached, and at a third stage, the parties may notice what is known as the Hardship Clause, which is a general clause that allows adapting the terms of the contract, that is, when an unforeseen and unpreventable situation occurs, which deviates from the usual state of contract execution and also constitutes a noticeable disruption in the performance of the contract and harms one of the parties, and the parties find themselves here facing two options:

(either renegotiation or the intervention of a third party).

Dispute Resolution Clause and Choice of Applicable Law

One of the characteristics of the Joint Venture is the importance of personal consideration, and in order to achieve cooperation and avoid obstruction of work, Dispute Resolution Mechanisms are stipulated that are appropriate for these necessities and require the careful drafting of the dispute settlement clause. Partners often prefer to resort to amicable means of dispute resolution, as resorting to litigation means the elimination of the partnership, especially since a kind of emphasized-on loyalty must remain between the partners.

And among the means that can be resorted to, to resolve disputes, we mention the following:

- The first simple way that can be resorted to in the event of a conflict is Hierarchical or Management Intervention, which means presenting the conflict to the Heads or Directors General of the partners. There is no doubt that changing the interlocutors may be enough to solve minor problems, except it is not the solution with regard to the major problems that still remain.
- Another method that can be resorted to is inspired by the Casting Vote or Tie-Breaking Vote (The decisive vote in the elections), according to which the Joint Venture Bodies should have a neutral element or a referee who can be chosen from the moment the contract is signed or keep this position vacant until the conflict arises. This procedure may be imposed by banks or entities that finance the Joint Venture, whose primary interest is to preserve the health of the Joint Venture, since the possibility of debt recovery hinges on it.

Lastly, among the external solutions (Mechanisms), we can mention Expertise and Reconciliation, in addition to Arbitration.

Finally, it should be noted that it is in the interest of the parties to choose the applicable law instead of relying on complex Conflict-of-Laws Rules under the Private International Law.

*** References**

- In English:

- Joint Ventures, a complete guide, 2021.
- How to navigate strategic alliances and joint ventures, Business Expert Press, 2020.
- Sensei Angie and Sohail Khan, Profitable joint ventures strategies, Create space independent publishing platform, 2016.
- Charles Wolf, The law and practice of shareholders' agreement in national and international joint ventures, Wolters Kluwer Law and Business, 2014.
- Irina Jormaneinen, Learning outcomes in international joint ventures for partner firms, LAP Lambert Academic Publishing, 2012.
- Fan Wu, Implicit incentives in international joint ventures: an expert mental study, GWV Fachverlarge GmbH, 2011.
- Dennis Campbell, International joint ventures, Kluwer Law International, 2009.
- International joint ventures, Aspatore Books, 2006.
- Battina Buchel, Development of Joint Ventures, Gabler, 1997.
- Tim Watkins, Joint ventures in the UAE: an overview, Thomas Reuters, Practical Law, Joint ventures in the United Arab Emirates: overview | Practical Law (thomsonreuters.com), 2021.
- Dyala Ali and Mohammad Tbaishat (Pinsent Masons), Setting up and operating a joint venture in United Arab Emirates, Lexology, Q&A: setting up and operating a joint venture in United Arab Emirates - Lexology.
- Douglas Smith (Squire Patton Boggs), Shareholders Agreement and Joint Venture Agreements in the United Arab Emirates: a checklist, corporate_shareholders_agreements_and_joint_venture_agreements_in_the_uae.pdf (squirepattonboggs.com).

- Reference Books in Arabic:

- Dr. Ahmed Abdel A'al Abu Qurain, Legal Center for Those Involved in the Implementation of Contractor Agreements, First Edition, Dar Al-Nahda Al-Arabiya Press, Cairo, 2001.
- Dr. Mohammad Shawqy Shahin, the Contractual Joint Venture, Dar Al-Nahda Al-Arabiya Press, Egypt, 2000.
- Dr. Essam Al-Din Mustafa Bassim, Legal Aspects of International Joint Ventures, Second Edition, Dar Al-Nahda Al-Arabiya Press, Cairo, 1984.

One of the characteristics of a Joint Venture is the importance of Personal Consideration.