

# COURTS ECHO

Semi-Annual - Legal - Judicial



Dubai Courts Participate in the Events of  
the Conference of International Association  
for Court Administration (IACA)

Green Taxation (Environmental Taxes) ...  
A Contemporary Framework for  
Sustainable Tax Policy

Procedures Before  
the Probate Court

(The Administration of a  
Deceased's Estate)

The Legal Nature of  
Threatening Fine in  
UAE Law

Voiceprint

(Sound Spectrogram)  
Between Application  
and Legislation

Administrative  
Liability Arising from  
Artificial Intelligence  
(AI) Faults (Tort)

Deep Fake ...  
Challenges and  
Solutions



Edition File

The Human Lawyer

Or

The Virtual Lawyer

## Who is Taking Whose Place?

## Dubai Courts

Congratulations to the Leadership and People  
of the UAE on the Occasion of the 53<sup>rd</sup> National Day  
Wishing our Country Continued Progress and Prosperity



عيد الاتحاد  
EID AL ETIHAD



**Pro. Saif Ghanim Alsuwaidi**  
Director of Dubai Courts

### Legal Insights and Contemporary Dimensions

I am pleased to welcome you to the eighth edition of "Sada AL-Mahakim" (Courts' Echo) Magazine, which has become a leading platform for disseminating legal knowledge and highlighting topics that serve judges, legal practitioners, and all those interested in the legal field.

Dubai Courts, as part of its vision to achieve innovative and renewed justice, recognizes the importance of empowering people with science and law, as law is the engine that regulates society and gives it the ability to keep pace with developments, as well as a shield that protects individuals and institutions from challenges that may stand in the way of their progress.

In this Edition, we discuss a number of contemporary legal issues that reflect the development and innovation in the legal field. Among these topics is Artificial Intelligence (AI) in the Service of Justice, where we review its opportunities and challenges, as well as highlighting the Administrative Liability Resulting from AI faults (tort) in UAE Legislation. We also address the Procedures followed before the Probate Court in the Emirate of Dubai according to Decree No. (25) of (2023), as well as the Legal Nature of Threatening Fines in UAE Law.

The Edition also discusses the Role of Criminal Law in Striking a Balance between Personal Freedom and the Public Interest, with topics such as Green Taxation as a Contemporary Framework for Tax Policy and the Impact of Legal Translation on Interpreting the Terms of International Agreements also taking center stage in the Edition. In the context of innovation, we focus attention on recent initiatives such as the Judges' Career Paths Project and the Ministry of Justice's Launch of the Virtual Lawyer Project, the first AI-powered legal profession in the UAE and the wider region.

The Edition also turns the spotlight on the global achievements of Dubai Courts, including receiving four prestigious accolades at the "Stevie International Business Awards 2024", and its active participation in international conferences such as the Conference of International Association for Court Administration (IACA) in Singapore.

In conclusion, I would like to emphasize that these topics constitute a rich scientific and legal addition that gives prominence to the vision of Dubai Courts towards legal innovation and contributes to building a legal community that is aware of local and international developments.

I thank all those who contributed to the preparation of this Edition, and I look forward to the continuation of this erudite giving in the service of justice and society.

To Begin with



# INDEX



Issue 8 - January - 2025

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.

14

## Procedures Before the Probate Court In the Emirate of Dubai in Accordance with Decree No. (25) of (2023)



32

## Green Taxation... A Contemporary Framework for Sustainable Tax Policy



39

## The Legal Nature of Threatening Fine in UAE Law

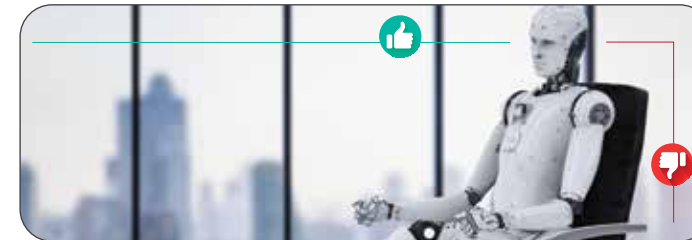


44

## The Virtual Lawyer or the Human Lawyer ... Who is Taking Whose Place?



## Administrative Liability Arising from Artificial Intelligence (AI) Faults (Tort) in UAE Legislation



47

## Deep Fake ... Challenges and Solutions



52

## Artificial Intelligence (AI) in the Service of Justice New Opportunities and Challenges



56

## Voiceprint Between Application and Legislation



58

## Arbitration in Commercial Contracts - The Impact of Legal Translation on Interpreting the Terms of International Agreements

64

## The Role of Criminal Law in Striking a Balance between Personal Freedom and the Public Interest

68

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:**  
Pro. Saif Ghanim Alsuwaidi  
**Director of 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  
**Head of Senior Division, Strategy and  
Corporate Performance Management**

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



## Mohammed bin Rashid

### Issued Two Decrees to Promote Certain Members of the Judiciary In the Dubai Courts and the Public Prosecution Office

His Highness Sheikh Mohammed bin Rashid Al Maktoum "May Allah protect him", Vice President and Prime Minister of the UAE, in his capacity as Ruler of Dubai, issued on Thursday, December the 12<sup>th</sup> 2024, Decrees No. (71) and (72) of (2024), which included the promotion of (96) members of the Judiciary in the Emirate of Dubai. The promotions included the promotion of (24) judges to the rank of 'Senior Supreme Court Judge', (16) judges to the rank of 'Supreme Court Judge', (18) judges to the rank of 'Appeal Judge', and (4) judges to the 'Sixth Grade of Primary Court Judge'.

The promotions also included the promotion of (10) members of the Public Prosecution to the rank of 'Senior Advocate General', (22) members to the rank of 'Advocate General', and two members to the rank of 'Chief Prosecutor'.

On this occasion, HE Isam Issa Al Humaidan, Attorney General of Dubai, HE Pro. Saif Ghanim Alsuwaidi, Director of Dubai Courts, HE Counsellor Mohammed Mubarak Al Sabousi, Chief of the Judicial Inspection Authority, and HE Pro. Abdullah Saif Al-Sabousi, Secretary-General of the Dubai Judicial Council, expressed their gratitude to His Highness Sheikh Mohammed bin Rashid Al Maktoum and His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum, First Deputy Ruler of Dubai, Deputy Prime Minister and Minister of Finance and Chairman of the Judicial Council, for their continued support for the entities and members of the Judiciary and their keenness to promote the distinguished members of the Judiciary to assume the highest judicial and leadership functions to enhance the efficiency of the work of the judicial system in the Emirate of Dubai.



## Maktoum bin Mohammed

### Approves the Judges' Career Paths Project

His Highness praised the efforts of the members of the Dubai Judicial Council in consolidating the pillars of the judicial system, and their contributions to strengthening the rule of law and providing the highest levels of justice for all who live and reside in Dubai.

His Highness added, quote: "[w]e are committed to providing all necessary resources to maximize the efficiency of our judicial system, and fostering an excellent legal environment characterized by prompt, accurate, and accessible justice. This reinforces trust of litigants in Dubai's judiciary, further establishing the Emirate as a global business and investment hub, in line with our future development aspirations.", unquote. During the meeting, His Highness Sheikh Maktoum

bin Mohammed bin Rashid Al Maktoum reviewed the development plans and projects of the judicial entities, and approved the Career Paths Project for Judges, which comes as a strategic step towards developing the judiciary and preparing specialized judges and qualified leaders.

The success of Dubai Courts in implementing the Judges' Career Paths Project represents a major achievement that contributes to building a solid judicial future, ensuring that justice is delivered in accordance with the highest international standards, and reflects Dubai's future ambitions in building a safe and just society, and reinforces the Emirate's position as a global center for advanced and effective justice.





## The Ministry of Justice Launches the Virtual Lawyer Project the First AI-Powered Legal Profession in the UAE and the Wider Region

The Ministry of Justice (MoJ), in partnership with the Office of Government Development and the Future and the Office of Artificial Intelligence, Digital Economy, and Remote Work Applications in the UAE Government, announced, in conjunction with the activities of "GITEX 2024", the "Virtual Lawyer" Project enabled by Artificial Intelligence, which helps legal institutions develop legal pleadings in simple cases, and contributes to enhancing the readiness of the justice sector for future opportunities and variables, and their impact on the justice sector and legal professions, and the use of advanced technology and Artificial Intelligence to create new government models to accelerate services and improve the customer experience in a digital and interactive litigation environment. The "Virtual Lawyer" is the first Project of its kind in the UAE and the wider region, and aims to achieve additional value in accelerating litigation time, developing its services and global leadership,

and facilitating the litigant's journey. The "Virtual Lawyer" will use the "Unified National Legislative Texts Database" that will be created by the Ministry of Justice, while law firms wishing to use it will have to feed its database, after registering the Virtual Lawyer with the Ministry. The trial version of the "Virtual Lawyer" will be launched in (2025), to be a model for services enhanced by advanced digital solutions that future governments seek to provide. In the first phase, it will be limited to assisting lawyers in simple cases with features, most notably the ability to interact with a human judge, convert voice to text and vice versa, and submit memoranda and documents.

His Excellency Abdullah Sultan bin Awad Al Nuaimi, Minister of Justice, said that, quote: "[t]he Ministry is always looking forward to employing innovations and visions that serve justice, raise the efficiency of procedures, and move forward in facilitating the journey of clients in the field of

providing legal government services, to ensure the quality of services provided to beneficiaries, in accordance with the best international practices, in partnership and integration with its strategic partners, whether from government institutions or the private sector, represented in supporting digital innovations and launching development initiatives and projects that enhance the values of justice and transparency, in implementation of the directives of our wise leadership to enhance efforts to develop government services", unquote. He added that, quote: "[w]ith regard to the technologies that support and enhance judicial guarantees, Artificial Intelligence technologies open up new horizons for us in developing the judicial system, in modern, flexible, and interactive ways that establish justice in a safe society and a competitive economy, which contributes to raising operational efficiency, saving time and effort, improving the effectiveness of judicial procedures, enhancing accuracy and speed in decision-making, and reducing the administrative burden on the judicial system; to keep pace with the requirements of the knowledge economy and the era of digital openness by investing these technologies to the fullest extent", unquote.

Her Excellency Ohood bint Khalfan Al Roumi, Minister of State for Government Development and the Future and Chairperson of the Higher Committee for Government Digital Transformation, said that, quote: "[t]his Project is part of the 'Emirates Future Mission', which focuses on transforming the vision of the wise leadership into proactive governmental action models for future readiness in all sectors, through a common platform that supports government entities in designing future government projects that achieve major leaps and transformations and enhance readiness for the future", unquote. Al Roumi added, quote: "[t]he Office of Government Development and the Future continuously works in partnership with government agencies to enhance their readiness for future variables and requirements, increase levels of performance, productivity, speed, flexibility, effectiveness, efficiency, and confidence in government work, design new government business models, develop change tools, strengthen the capacity of entities to transform future directions into projects, and identify the necessary future skills, which will contribute to increasing the government's readiness and preparation for the future, and its response to its opportunities.", unquote.

His Excellency Omar Sultan Al Olama, Minister of State for Artificial Intelligence, Digital Economy, and Remote Work Applications, stressed the importance of promoting government initiatives aimed at accelerating the adoption of technology and Artificial Intelligence solutions in various

areas of government work, especially in the development of the new generation of technology-based and digitized services, in support of the UAE government's directives to establish a seamless, fast, efficient, and technology-driven government services experience.

His Excellency said, quote: "[t]he Ministry of Justice's initiative represents a qualitative addition to the government's efforts to develop services, arrive at zero government bureaucracy, create new services that facilitate customer experiences, and support the realization of the leadership's vision to design, innovate, and deliver the best government services in the world", unquote. The Project will provide new and distinctive opportunities through the use of Artificial Intelligence to upgrade the legal work environment in the UAE and take it to a new stage to become a model to be followed globally, in light of the promise of Artificial Intelligence solutions of new horizons to develop the judicial system in modern, flexible, and interactive ways that improve the speed and effectiveness of judicial procedures, boost the accuracy and speed of decision-making, and reduce the administrative burden on the judicial system to meet the requirements of the digital economy and the age of Artificial Intelligence by investing in advanced technology, taking into account the cyber security of customers, securing the privacy of users and protecting their data within the cloud infrastructure of the UAE government and the digital environment of the Ministry of Justice. The Ministry of Justice is also working on studying the legal dimensions and preparing legislative formulas to keep pace with the new legal professions, and developing legislation to use the national digital infrastructure in the legal professions with the best digital security standards, in implementation of the directives of the wise leadership to enhance the efforts to develop government services by constantly striving to facilitate the journey of customers in legal government services, in accordance with the best global future practices, in coordination and integration with strategic partners.

This Project is part of the UAE Mission for the Future Projects, in partnership between the Ministry of Justice, the Office of Government Development and the Future, and the Office of Artificial Intelligence, Digital Economy, and Remote Work Applications, as part of efforts to develop and prepare for the future, and accelerate the technological and digital transformation, all within the framework of initiatives aimed at supporting the optimal use of Artificial Intelligence solutions, in order to make the Ministry one of the first judicial systems in the world that allows practicing legal professions in a virtual and interactive environment.



## Judicial Coordination Affairs Council Meeting with Civil Courts to Promote Judicial Coordination And Standardize Legal Principles

His Excellency Judge Omar Miran, Member of the Judicial Coordination Affairs Council at Dubai Courts and Head of the Technical Office at the Supreme Court, held the second meeting with representatives of civil courts to unify visions and consolidate the legal principles issued by the court.

The meeting was organized in accordance with Article No. (3) of Decision No. (6) of (2024), which regulates the work of the Judicial Coordination Affairs Council at Dubai Courts and emphasizes its pivotal role in enhancing coordination among courts and developing judicial performance at various levels.

These efforts come within a comprehensive strategic framework that seeks to unify legal principles and develop judicial work to ensure the achievement of prompt and sustainable justice. The Judicial Coordination Affairs Council is a key tool to achieve effective coordination among the courts, which enhances the effectiveness of the judicial system and keeps pace with Dubai's aspirations for leadership and legal excellence.

The meeting discussed a number of important legal top-

ics that contribute to strengthening judicial cooperation and standardizing practices, including the acceptance of the administrative body's motion to enter a residence to remove encroachments or administrative violations, the extent to which a managing partner in a commercial company is considered a merchant, as well as the jurisdiction of the civil court to consider insolvency applications submitted by individuals. The deliberations addressed these issues in a spirit of cooperation and understanding among the judicial parties, with the aim of reaching unified solutions that support efficiency and justice.

The meeting was attended by His Excellency Judge Abdullah Al Ketoub, President of the Civil Court of First Instance, along with a group of judges from the Technical Office of the Supreme Court and judges of the Supreme and Appeal civil courts. The meeting reflected everyone's keenness to increase coordination among judicial authorities and develop legal principles in line with Dubai's aspirations to achieve justice with the highest standards of quality and efficiency.



## Dubai Courts Marks New Global Milestone by Being Awarded Four Prestigious Accolades At the "Stevie International Business Awards 2024"

Dubai Courts Marked New Global Milestone by being awarded four prestigious accolades at the 21<sup>st</sup> edition of the "Stevie International Business Awards 2024" in Istanbul, underlining its leading position globally.

The Courts received a gold medal in the 'Sustainability and Social Responsibility' Category for its digital transformation projects that contributed to reducing its environmental footprint and enhancing operational efficiency, and a silver medal in the 'Human Resources Achievement' Category for its efforts in building an innovative work environment and developing human competencies with advanced training programs.

In the field of Women's Empowerment, Judge Dr. Hamda Al Suwaidi won a silver medal in the 'Women' Category, in recognition of her role in promoting the status of Emi-

rati women in the judiciary, while the Courts received a bronze medal in the 'Customer Happiness' Category for their smart services that ensure customer satisfaction.

Pro. Saif Ghanim Alsuwaidi, Director of Dubai Courts, expressed his pride in this achievement, emphasizing that it reflects an innovative strategic vision that aims to provide advanced judicial services that support the values of justice and sustainability. He added that these awards are an international testimony to the Courts' excellence and sustainable innovation, commending the concerted efforts of the teams and partners.

Through this success, the Courts aim to continue promoting Dubai's position as a global center of judicial excellence and support its strategic objectives in innovation and quality of life.





## Dubai Courts Participates in the Events of the Conference of International Association for Court Administration (IACA) In Singapore to Share Experiences and Promote Innovation in the Administration of Justice

Dubai Courts participated in the events of the Conference of International Association for Court Administration (IACA) held in Singapore, which was attended by senior leaders and experts in the judicial and legal field from around the world.

The Conference included panel discussions and workshops on the latest trends and developments in court management, with Dubai Courts' presence reflecting its commitment to developing judicial systems in line with international standards.

The Dubai Courts delegation was led by Pro. Saif Ghanim Alsuwaidi, Director of Dubai Courts, with the participation of senior officials such as Judge Khalid Yahya Al Hosani, Judge Omar Miran, Judge Khalid Al Mansouri, and Moham-

med Al Obaidli, Executive Director of Case Management Sector, and a number of specialists in governance and strategy, confirming Dubai Courts' keenness to learn and adopt global best practices to develop judicial work in support of Dubai's vision of leadership and innovation.

In a statement, Pro. Alsuwaidi stated that Dubai Courts' participation in this Conference reflects its commitment to applying the best international practices in court management, and he pointed out that the Conference provided an opportunity to exchange experiences with international experts, which contributes to supporting the continuous development plans of courts and adopting modern technological solutions to improve the quality of judicial services provided to litigants and customers, and that the ideas and insights



gained during the Conference will help update policies and implement new initiatives to face future challenges.

Pro. Alsuwaidi highlighted the importance of the Conference as a global platform that brings together specialists to exchange expertise and knowledge, focusing on several strategic topics, including digital transformation in courts and leveraging modern technology to improve the efficiency of judicial procedures.

Participants reviewed experiences of using Artificial Intelligence (AI) and digital systems to speed up judicial procedures and provide innovative and efficient services, thereby contributing to improving the experience of court customers.

The Conference addressed the topic of Access to Justice, with a focus on reducing the costs and time required to resolve disputes and promoting social justice through more efficient services. The Conference also reviewed best practices in Human Resources Management, including developing the skills of judges and staff and improving their performance to ensure high-quality services, while emphasizing the importance of sustainable training that keeps pace with judicial transformations and meets the needs of society.

The Conference also touched on enhancing international co-operation among courts, where participants discussed the exchange of successful experiences in resolving disputes across borders, thus supporting the development of judicial systems globally and achieving better justice.

Dubai Courts concluded its participation with a working paper presented by Alia Al Majid, Director of Strategy and Organizational Performance Department, which reviewed digital transformation and Access to Justice initiatives. The paper underlined the role of modern technologies in improving the efficiency of the judicial system and expediting procedures, which amplifies the customer experience and makes judicial services easier and more effective.

Pro. Alsuwaidi iterated that Dubai Courts' participation in this International Conference is part of its commitment to achieving Dubai's vision to build a distinguished judicial system that reflects its leadership in various fields, and considered these events as an opportunity to continuously develop judicial performance by acquiring knowledge and applying international best practices to meet the aspirations of the community with innovative judicial services.





## Dubai Courts Participates in “Sharjah International Book Fair”

Dubai Courts is participating in the 43rd edition of the Sharjah International Book Fair (SIBF), which is being held at the Sharjah Expo Centre from (6 to 17) November, under the theme ‘It Starts with a Book’.

The participation comes as part of the Courts' commitment to fulfil its strategic vision to spread legal awareness and promote judicial culture in the community, as well as inform the public about its achievements and contributions.

Through its presence at this prominent cultural event, Dubai Courts aims to open effective communication channels with those interested and working in the judicial sector, with its Pavilion highlighting a library of important legal titles, particularly the collection of judgements and rules issued by the Dubai Supreme Court, which is considered a key reference for judges and lawyers.

Khalifa Al Mahrazi, Head of Knowledge Section at Dubai

Courts, underscored the importance of participating in (SIBF), noting that such exhibitions play a pivotal role in supporting knowledge development and the transfer and promotion of legal knowledge among peoples. He added that the Fair is an international platform that brings together different cultures and promotes knowledge co-operation among countries.

Al Mahrazi invited visitors to visit the Dubai Courts Pavilion in Hall No. (3), Section No. (P20), where they can view the Courts' various publications and the services provided to researchers and lawyers. During its participation, the Courts will also unveil an innovative e-service that allows subscribing to legal principles, giving interested parties the opportunity to review judgements and legal principles issued by the Dubai Supreme Court in the criminal, civil, commercial, labor and personal status fields.



## Dubai Courts Forum 2024

### Witnesses the Launch of the New Dubai Courts Organizational Excellence System

The Dubai Courts Forum (2024) witnessed the launch of the new Organizational Excellence System, where Maryam Bin Lahej, Consultant / Quality and Organizational Performance at Dubai Courts, reviewed the main pillars of this system, which aims to enhance institutional efficiency, provide advanced judicial services commensurate with the aspirations of customers, and support the vision of the Government of Dubai to achieve leadership in institutional excellence.

Consultant Maryam Bin Lahej explained that the Organizational Excellence System is based on three main axes that work in an integrated manner to achieve its objectives.

**The First Pillar: 'Excellence'**, which represents (30%) of the total weight of the System, and was formulated based on the Dubai Government Excellence Program (DGEP) criteria and periodic assessments that address opportunities for improvement. The Pillar focuses on the Concepts of (Proactivity, Readiness, and Future Foresight), and includes criteria such as (Future Readiness, Change Management, Human Capital, Entrepreneurial Orientation, Global Position, Innovation, and Community Value).

**The Second Pillar: 'Quality of Services and Operations'**, which constitutes (40%) of the total weight of the System and focuses on improving the efficiency of operations and

the quality of services provided. This Pillar aims to magnify the customers experience by providing world-leading services commensurate with their expectations, thereby enhancing the competitiveness of Dubai Courts and its position among leading institutions.

**The Third Pillar: 'Compliance'**, which constitutes (30%) of the total weight of the System, to ensure adherence to the highest standards of internal control, periodic reporting, and the requirements of centralized regulatory units. It also covers adherence to feedback from legal affairs and the application of best practices to ensure full compliance. Bin Lahej emphasized the importance of the strategic objectives of the initiative, focusing on innovation and human resource development as key elements to improve organizational performance and boost the customer experience, in line with government and international trends. Dubai Courts announced that the System will undergo a pilot application during December (2024), with the aim of assessing its effectiveness and the degree to which it is aligned with the needs of internal and external customers. The pilot application will include the Customer Happiness and Human Resources Departments, with performance evaluated according to the three main axes of the System, to make sure that the desired results are achieved and support the strategic objectives of the Dubai Courts.



## Procedures Before the Probate Court

### In the Emirate of Dubai in Accordance with Decree No. (25) of (2023)



#### Dr. Mariam Sandal

Assistant Professor of Civil Procedure Law  
University of Al Dhaid

#### Abstract:

In line with the keenness of the local legislator of the Emirate of Dubai to preserve family and social ties, and to protect them from the negative impact of disputes that may arise from estate claims, lawsuits for subdivision of property co-owned in undivided shares, and their ancillary claims and applications, the legislator issued Decree No. (25) of (2023) to establish the Probate Court in the Emirate of Dubai.

The Study addressed the subject of the Procedures followed before the Probate Court in the Emirate of Dubai in accordance with

Decree No. (25) of (2023), through two Sections. In the First Section, titled the Preparation of Probate Court Claims, the topic of Preparation of Estate Claims is discussed in its First Sub-section, followed by the Preparation of Lawsuits for Subdivision of Property Co-owned in Undivided Shares in its Second Sub-section. The Study also addressed the subject of Adjudication of the Probate Court Claims and the Appeals against them in the Second Section, which was divided into two Sub-sections, the First of Which dealt with the Adjudication of the Probate Court Claims, and the Second of Which dealt with the Appeal of a Judgement rendered by the

First Instance Division of the Probate Court before the Appellate Division of the Probate Court.

The Study aimed to identify the procedures followed before the Probate Court in Estate Claims and Lawsuits for Subdivision of Property Co-owned in Undivided Shares, and their ancillary claims and applications from before the registration of the Claims, until the appeal of the judgement issued in these claims, through the proposal of settlement or consensual sub-division among the parties, or the issuance of a decision by the Reporting Judge declaring failure to conduct consensual sub-division if the parties do not accept such proposal, and other procedures.

The topic at hand was studied in accordance with the analytical approach that suits the nature of such topic, by analyzing legal texts and the relevant jurisprudential opinions and judicial rulings, all in an effort to solve the Study's issue (problem), which is the need to determine the exact dates related to some of the procedures followed before the Probate Court.

At the end of the Study, the following conclusions were reached: (The Emirate of Dubai's local legislature is keen to avoid disputes related to estates and the subdivision of property co-owned in undivided shares among family members, and not to register the claim before an amicable settlement is proposed and its subsequent sub-division is arrived at among the concerned parties, and in the event that either of them fails, the claim will be heard and determined by the Probate Court, which the legislator took into account in its formation, the diversity of the competencies of the judges commensurate with those claims).

The Study also put forward recommendations regarding the periods during which some measures should be taken, in keeping with the objective of the issued decree in question, which is the shortening of the procedures of litigation in estate claims and lawsuits for subdivision of property co-owned in undivided shares, without prejudice to the requirements of prompt justice.



**The Local Legislator of the Emirate of Dubai Established the Probate Court Under Decree No. (25) of (2023) to Achieve a Set of Goals of Preserving Family and Social Ties**

**As a principle, the jurisdiction of the judiciary that is established for the federal and local courts is general, while the jurisdiction that is established for special courts and judicial committees is one that is established by way of exception, and therefore the provisions of this exception must be applied, and there must be texts that determine them all while such texts are interpreted narrowly and implemented restrictively in full accordance with the issues and limits contained therein<sup>(1)</sup>. Consequently, the jurisdiction of the ordinary courts does not apply to matters that fall within the jurisdiction of specialized judicial formations, whether courts or special judicial committees<sup>(2)</sup>. In application of this, the local legislator of the Emirate of Dubai established the Probate Court by Decree No. (25) of (2023) to achieve a set of objectives, namely to (preserve social family ties from any disputes that may arise among heirs/inheritors due to inheritance and estates, and to shorten the litigation procedures for the litigants and the court in estate claims and lawsuits for subdivision of property co-owned in undivided shares, while ensuring the speedy adjudication of these claims, without prejudice to the requirements of prompt justice).**

**The Probate Court also aims to consolidate the claims and applications related to, or arising out of, inheritance or estates into a single lawsuit before one judicial authority instead of being heard by multiple judicial authorities as a result of applying the rules of jurisdiction, thus creating a specialized judiciary capable of adjudicating estate claims and lawsuits for subdivision of property co-owned in undivided shares, and their ancillary claims and applications.**

**In addition, the Probate Court provides procedural flexibility in estate claims and lawsuits for subdivision of property co-owned in undivided shares that require innovative judicial solutions<sup>(3)</sup>.**

||  
The Topic 'Procedures Followed Before the Probate Court in the Emirate of Dubai, in Accordance with Decree No. (25) of (2023)' was Studied Through the Analytical Approach that Suits the Nature of the Topic.



#### Jurisdiction of the Probate Court:

The Probate Court has the exclusive jurisdiction to hear and determine Estate Claims, Lawsuits for Subdivision of Property Co-owned in Undivided Shares, and all Claims and Applications arising out of them. The legislator excluded from the jurisdiction of the Probate Court (criminal lawsuits and labor claims arising in connection with inheritance or estate applications, and estate claims deemed under the jurisdiction of the Special Tribunals formed in the Emirate pursuant to a resolution of the Ruler, unless such claims are referred to the Probate Court pursuant to a resolution of the Ruler and upon the recommendation of the Chairman of the Judicial Council in the Emirate of Dubai). The legislator also excluded from the jurisdiction of the Probate Court the claims filed by partners in companies whose ownership devolved to the heirs<sup>(4)</sup>.

#### Problem (Issue) of the Study:

The Issue of the Study is that some legal texts related to the durations (terms) of certain procedures before the Probate Court, whether related to estate claims and/or lawsuits for subdivision of property co-owned in undivided

shares, need amendments that include a more precise definition of these durations, which is something that contributes significantly to achieving the legislator's intention of establishing the Probate Court specifically for these claims.

#### Objectives of the Study:

- To determine the procedures to be followed to prepare the claims that the Probate Court specializes in.
- To identify the procedures for adjudicating the claims that the Probate Court specializes in.
- To shed light on the procedures and cases of appeal against the judgements issued by the Probate Court.

#### Methodology of the Study:

The topic 'Procedures Followed Before the Probate Court in the Emirate of Dubai, in Accordance with Decree No. (25) of (2023)' was studied through the analytical approach that suits the nature of the topic, by analyzing all legal texts related to the subject matter of the Study, the jurisprudential opinions in some parts, as well as the judicial rulings issued, all



to solve the Study's Problem and achieve its Objectives.

#### The Study Plan:

**The First Section:** Preparation of Probate Court Claims.

**The First Sub-section:** Preparation of Estate Claims.

**The Second Sub-Section:** Preparation of Lawsuits for Subdivision of Property Co-owned in Undivided Shares.

**The Second Section:** Adjudication and Appeal of Probate Court Claims.

**The First Sub-section:** Adjudication of Probate Court Claims.

**The Second Sub-section:** Appealing the Judgements Issued by the Probate Court.

**The First Section: Preparation of Probate Court Claims**

The term '**Preparation of Claim**' refers to: (A set of procedures made from the date of filing of the Statement/Particulars of Claim in preparation for adjudication)<sup>(5)</sup>, whereas the definition of '**Preparation/Reporting Judge**', according to the decree under study, is: 'A judge assigned to consider Inheritance and Estate Applications and Applications for Subdivision

of Property Co-owned in Undivided Shares amongst the Heirs or between the Heirs and other parties; to issue the relevant orders and decisions; and to register, prepare, and manage before the Probate Court Estate Claims and Lawsuits for Subdivision of Property Co-owned in Undivided Shares'<sup>(6)</sup>.

Accordingly, the legislator in the Emirate of Dubai relied on the System of the 'Preparation/Reporting Judge' and stipulated that one or more Reporting/Preparation Judges will be appointed to the Probate Court with a grade that may not be lower than Senior First Instance Judge, and as a matter of exception, and pursuant to a resolution of the Chief Justice of the Probate Court, a Preparation/Reporting Judge may be a member of a Division other than that in which he/she has undertaken preparatory work or rendered legal opinion<sup>(7)</sup>.

The legislator granted the Preparation/Reporting Judge in the Probate Court all the powers and responsibilities of a Supervising Judge stated in the Code of Civil Procedure promulgated by Legislative Decree No. (42) of (2022), and all the powers, responsibilities, and functions related to managing Estate Files as stipulated in the Personal Status Law promulgated by Feder-

||  
The Emirate Legislator Obligated the Preparation/Reporting Judge of the Probate Court to Propose a Settlement to the Parties of the Claim.



al Law No. (28) of (2005) and other legislation in force in the Emirate<sup>(8)</sup>.

And since the local legislator of the Emirate of Dubai has defined the Jurisdiction of the Probate Court, according to the decision under study, to include Estate Claims and Lawsuits for Subdivision of Property Co-owned in Undivided Shares, in addition to Inheritance and Estates Claims as mentioned above, then all of which are considered to be Estate Claims. In the following First Sub-section and Second Sub-section, the Preparation of Estate Claims, and the Preparation of Lawsuits for Subdivision of Property Co-owned in Undivided Shares, will be studied respectively.

#### **The First Sub-section Preparation of Estate Claims**

An Estate Claim is defined as: 'Any dispute arising amongst the Heirs or between the Heirs and other parties in respect of Inheritance or Estate Applications. This includes civil, commercial, or real property claims; family lawsuits; and claims related to gifts and wills arising in respect of, or in connection with, rights to an inheritance or estate'<sup>(9)</sup>.

Since the aim of the local legislator of the Emirate of Dubai in establishing the Probate Court is to preserve and protect social and family ties from disputes that may arise due to inheritance and estate, the legislator obligated the Preparation/Reporting Judge of that Court to propose a settlement to the parties of the claim. The Preparation/Reporting Judge must first try to resolve the dispute between the parties through settlement, and the legislator granted such Judge complete freedom regarding this settlement between the parties, while in return obligated him/her with specific procedures to be taken both in case a settlement is reached or otherwise.

And once the Preparation/Reporting Judge is able to reach a settlement acceptable to the parties in the Estate Claim, a Settlement Agreement shall be drafted under his/her supervision, and shall be signed by all the parties to the Claim, then it shall be ratified, approved, and documented by the said Judge, and a copy of the Settlement Agreement shall be delivered to each party to the Estate Claim, and another

copy shall be maintained by the Probate Court. The Settlement Agreement in question shall have the force of a writ of execution<sup>(10)</sup>. If reaching a settlement between the concerned parties in an Estate Claim is something possible by the Preparation/Reporting Judge, then failing to reach a settlement is also equally possible, and in this case, the Preparation/Reporting Judge must document this in his/her decision, citing the legal classification of the subject matter of the dispute. The local legislator of the Emirate of Dubai has granted the concerned parties in this case the right to file an Estate Claim with the Probate Court within (30) days from the date of issuance of the Preparation/Reporting Judge's decision declaring failure to reach a settlement, and where the Estate Claim is not filed with the Probate Court within the prescribed period, the Preparation/Reporting Judge may take any action he/she deems appropriate in this respect, including issuing a decision to close the Estate File, noting that such a decision will not preclude the concerned parties from submitting a subsequent application for filing the Estate Claim, i.e. there will be no prohibitive effect on the registration of the Estate Claim before the Probate Court, if the Preparation/Reporting Judge issues a decision to close the Estate File due to the inability to reach a Settlement Agreement between the parties concerned<sup>(11)</sup>. The Preparation/Reporting Judge takes on the task of registering the Estate Claim, and he/she is obligated, after registration, and within a period not exceeding (45) days from the date on which the Claim is registered, to schedule a hearing for the parties to appear before the competent First Instance Division of the Probate Court. It should be noted here that the legislature has not imposed a procedural sanction for the violation of that deadline by the Preparation/Reporting Judge; which indicates that it is an organizational deadline that does not result in any penalty in case of its violation or non-compliance. Prior to the scheduled hearing, the Preparation/Reporting Judge is obligated to order each of the parties to submit, within (15) days from the date of the order, a comprehensive statement containing their applications, the points of dispute with



each of the other parties, and the relevant supporting evidence and documents that back up their argument. It is also noted here that this deadline is an organizational deadline that does not result in any penalty in case of its violation or non-compliance. The Preparation/Reporting Judge then prepares a memorandum stating his/her legal opinion on the Estate Claim, and specifying its subject matter, the disputes arising out of it, the claims and defense of each party, the points of disagreement between the parties, and the legal principles established in similar disputes; all in order to refer the Estate Claim and his/her legal memorandum to the competent First Instance Division of the Probate Court, and the parties to the Claim will be summoned to appear before it at the scheduled hearing<sup>(12)</sup>.

#### **The Second Sub-Section: Preparation of Lawsuits for Subdivision of Property Co-owned in Undivided Shares**

The local legislator of the Emirate of Dubai defined 'Lawsuits for Subdivision of Property Co-owned in Undivided Shares' as: 'A claim for the termination of co-ownership of undivided

shares in Real Property or Movables devolved to Heirs through inheritance, and for division of the same amongst the Heirs or between the Heirs and other parties...'<sup>(13)</sup>.

Lawsuits for Subdivision of Property Co-owned in Undivided Shares fall within the jurisdiction of the Probate Court -The Subject of the Study- and applications related to Subdivision of Property Co-owned in Undivided Shares shall be filed with the Preparation/Reporting Judge at the Probate Court who will propose to the parties a consensual subdivision<sup>(14)</sup>, and if the parties accept the proposal, a Consensual Subdivision Agreement shall be drafted under the Reporting Judge's supervision, and shall be signed by all the parties to the Lawsuit, then it shall be ratified, approved, and documented by the said Judge, and a copy of the Agreement shall be delivered to each party to the Lawsuit, and another copy shall be maintained by the Probate Court. The local legislator in the Emirate of Dubai decided that the Consensual Subdivision Agreement in question shall have the force of a writ of execution<sup>(15)</sup>. If the parties do not accept the proposed consensual subdivision, the Preparation/Reporting

**The Legislator Obligated the Preparation/Reporting Judge of that Court to Propose a Settlement to the Parties of the Claim.**

**The Preparation/Reporting Judge is Obligated When a Lawsuit for Subdivision of Property Co-owned in Undivided Shares is Registered to Order each of the Parties to Submit a Comprehensive Statement Containing their Applications, and the Points of Dispute with Each of the Other Parties.**

**Lawsuits for Subdivision of Property Co-owned in Undivided Shares Fall Within the Jurisdiction of the Probate Court -The Subject of the Study- and Applications Related to Subdivision of Property Co-owned in Undivided Shares Shall Be Filed with the Preparation/Reporting Judge at the Probate Court.**



Judge must issue a decision declaring failure to conduct consensual subdivision.

The parties may file a Lawsuit for Subdivision of Property Co-owned in Undivided Shares with the Probate Court, within (30) days from the date on which the Preparation/Reporting Judge issued his/her decision declaring failure to conduct consensual subdivision, and where the Lawsuit for Subdivision of Property Co-owned in Undivided Shares is not filed within the prescribed period, the Preparation/Reporting Judge may take any action he/she deems appropriate in this regard, including dismissing the application. However, not filing the Lawsuit within the prescribed period will not preclude the parties from submitting a subsequent application at a later date to the Probate Court for filing the Lawsuit<sup>(16)</sup>.

The Preparation/Reporting Judge is obligated when a Lawsuit for Subdivision of Property Co-owned in Undivided Shares is registered to order each of the parties to submit, within (15) days from the date of the order, a comprehensive statement containing their applications, the points of dispute with each of the other parties, and the relevant supporting evidence and documents that back up their argument.

The Preparation/Reporting Judge then prepares a memorandum stating his/her legal opinion on the Subdivision Lawsuit, and specifying its subject matter, the disputes arising out of it, the claims and defense of each party, the points of disagreement between the parties, and the legal principles established judicially in similar disputes; all in order to refer the Lawsuit for Subdivision of Property Co-owned in Undivided Shares and his/her legal memorandum to the competent First Instance Division of the Probate Court, and the parties to the Lawsuit will be summoned to appear before it at the scheduled hearing<sup>(17)</sup>.

We conclude this Section by emphasizing that Inheritance and Estate Applications will be filed with the Preparation/Reporting Judge who will issue the appropriate certificates, decisions, or orders in respect thereof, in accordance with the legislation in force in the Emirate and the relevant adopted procedures. An Estate File will be opened at the Probate Court upon the request of a concerned party. The Preparation/Reporting Judge will, either personally or through the Estate Custodian, take the necessary action to conduct an inventory, administration, and liquidation of the Estate's

assets, in accordance with the legislation in force in the Emirate<sup>(18)</sup>.

The local legislator in the Emirate of Dubai permitted any affected party to file a grievance with the First Instance Division of the Probate Court against any order or decision rendered by the Preparation/Reporting Judge by submitting a Statement of Grievance within (5) working days from the day following the date on which he/she is notified of the contested order or decision. The Statement of Grievance must specify the contested order or decision and the grounds for the grievance. The First Instance Division of the Probate Court will decide in camera (Council Chamber) on the grievance presented to it. The decision rendered by the First Instance Division on the grievance will be final and will not be subject to any form of appeal. That is, the only way to challenge the orders and decisions of the Preparation/Reporting Judge relating to the cases within the jurisdiction of the Probate Court is to appeal only to the Court of First Instance through a Statement of Grievance, and the decision of this Court is also final and will not be subject to any form of appeal in any way<sup>(19)</sup>.

#### **The Second Section: Adjudication and Appeal of Probate Court Claims.**

It is well known that 'the court as a means of justice has an abstract meaning independent of the person of the judge or the persons of the judges, so the entity of the court is not affected by the change of these persons, and in this regard it is more like a legal person whose entity is distinct from its elements (persons), and therefore judgements are attributed to the court and not to the judges by their names. The term 'Court' also has an administrative connotation, as it is a government department that provides a public service to the general public, and includes a group of employees who provide assistance to the judge to facilitate the performance of his/her job"<sup>(20)</sup>.

According to the decree in question, the Probate Court is tasked with adjudicating Estate Claims and Lawsuits for Subdivision of Property Co-owned in Undivided Shares, and their ancillary claims and applications related

thereto, which is the exclusive jurisdiction of this court<sup>(21)</sup>. The local legislator in the Emirate of Dubai authorized appeal against the judgements issued by the chambers of this Court by some of the legally prescribed methods of appeal.

We will discuss all of this in the two Sub-sections of this Second Section, starting with the (First Sub-section: Adjudication of Probate Court Claims), and then moving on to the (Second Sub-section: Appealing the Judgements Issued by the Probate Court).

#### **The First Sub-section: Adjudication of Probate Court Claims**

What we would like to emphasize at the outset is that Claims before the Probate Court, like any other Claims, may require the opinion of an expert in a particular field; therefore, the legislator in the Emirate of Dubai has authorized the Probate Court to use expertise in order to adjudicate the Claim, and in this respect, Law No. (13) of (2020) Regulating Expert Witness Work before the Judicial Authorities in the Emirate of Dubai is in force. And in order to achieve speedy litigation in Claims brought before the Probate Court, the legislator required the Probate Court to determine the time limit for the Expert Witness to complete his/her assignment and submit his/her report. The legislator in the Emirate of Dubai set controls to extend the duration of the work of the expert, where this time limit may be extended only at the discretion of the Probate Court based on substantial grounds, provided that the extension period does not exceed the originally prescribed period to get the expertise work done, and that any extension must not conflict with the court-approved timetable for adjudicating the Claim, as we will see later<sup>(22)</sup>.

The local legislator in the Emirate of Dubai has made sure that Estate Claims and Lawsuits for Subdivision of Property Co-owned in Undivided Shares, and their ancillary claims and applications related thereto are adjudicated as soon as possible; ergo, it obligated the Court to adjudicate these Claims within a period not exceeding one year from the date of registration of the Claim before it.

Since the adjudication (time wise) of Claims in



**The Legislator in the Emirate of Dubai Has Authorized the Probate Court to Use Expertise in order to Adjudicate the Claim.**





general, and cases within the jurisdiction of the Probate Court in particular, is unpredictable, not to mention that the competent court may need additional time to adjudicate this type of Claim due to its complexity and intricacy, the local legislator in the Emirate of Dubai has authorized, in a commendable move, the extension of the period of Claims consideration, adjudication, and disposal, when it made it conditional on the approval of the President of the Court, but on the other hand, it did not specify a time period or time for this extension, leaving it as a discretionary power of the President of the Court, which he/she determines based on the circumstances of each individual Claim and the progress of the proceedings in

that Claim.

However, in our view, it would have been preferable for the legislator to set a maximum limit for the extension of the period of consideration and adjudication of Estate Claims and Lawsuits for Subdivision of Property Co-owned in Undivided Shares, and their ancillary claims and applications related thereto that fall under the jurisdiction of the Probate Court in the Emirate of Dubai.

It is also noteworthy with regard to the extension of the duration of the hearing and determination of the Claims of the Probate Court that the legislator did not specify the number of extensions allowed, which means that the extension of the period -under study- may be

extended more than once, depending on the circumstances of each individual Claim and the progress of its proceedings.

The keenness of the local legislator in the Emirate of Dubai on the timeliness of the adjudication of Probate Court Claims is evident from the above, in addition to its obligation for the competent department that hears the Claim to prepare a timetable, which is communicated to the parties to the Claim at the first session and includes the requirements and procedures for adjudicating the Claim within the legally prescribed period for adjudicating such Claims, which is one year from the date of its registration, as we mentioned earlier.

#### **The Second Sub-section:**

##### **Appealing the Judgements Issued by the Probate Court**

An appeal against a judgement means a grievance against the administration of justice (Judicature) contained therein. Jurisprudence divides appeals against judgements into Ordinary and Extraordinary Appeals. An Ordinary Appeal is an appeal that is submitted to a court higher in degree than the court that issued the challenged judgement in order to ascertain its formal validity or substantive fairness. An Extraordinary Appeal is an appeal for which the legislator specified its grounds exclusively<sup>(23)</sup>. In general, the right to appeal is a procedural right, independent of the true facts of the Claim, that arises in litigation as a result of a judgement rendered<sup>(24)</sup>. The right to appeal against judgements is a personal right and is not compulsory for litigants; who are free to use it or waive it, which means that appealing against judgements is not related to public order, but the fact that it is not related to public order does not mean that litigants are deprived of it, as the Principle of Two Level-Litigation is one of the basic and important principles in judicial systems. 'The appeal is the practical translation of this principle, which is based on providing litigants with the opportunity to re-submit their disputes to a higher court'<sup>(25)</sup>.

And because the Principle of Two Level-Litigation serves a dual purpose: Firstly, it encourages the judges of the court of first instance to endeavor to realize justice and to examine the

claims of the litigants and the correct application of the law, and it also Secondly, enables litigants to correct the judgements of the court of first instance that were issued in error, ignorance, or negligence<sup>(26)</sup>, the legislator in the Emirate of Dubai made sure to apply the Principle of Two level-Litigation in the judgements issued by the Probate Court<sup>(27)</sup>.

Parties to Estate Claims and Lawsuits for Subdivision of Property Co-owned in Undivided Shares, and their ancillary claims and applications related thereto may appeal against judgements issued by the first instance chambers of the Probate Court before the Appellate Chamber formed therein, and the periods, cases, and procedures set out in the Code of Civil Procedure, promulgated by Federal Legislative Decree No. (42) of (2022), apply to the appeal of the Probate Court Appellate Chambers' Judgements.

In contrast, Dubai's local legislature has closed the door to cassation appeals against the judgements issued by the Appellate Chambers of the Probate Court, and therefore the judgements issued by the Probate Court's Appellate Chambers are final and not subject to cassation appeals before the Dubai Supreme Court.

And in the composition of the Probate Court and its Presidency in the Emirate of Dubai we find that which justifies the prohibition of a cassation appeal against the rulings of the Probate Court, as all Probate Court's Chambers are comprised of (3) judges, whether they are first instance chambers or appeal chambers, selected by appointment or secondment, based on a decision by the President of the Court and taking into account the diversity of the judges' jurisdictions<sup>(28)</sup>. The number of judges in these chambers, their diversity of jurisdictions, and their selection by the President of the Probate Court all contribute to avoiding errors in the judgments issued by these chambers that require a cassation appeal.

The Presidency of the Probate Court is entrusted to a judge who is no lower than a judge of cassation in level, and who is appointed based on a decision by the Judicial Council of the Emirate of Dubai, which supervises the work of the Probate Court, and the legislator authorizes him/her to preside over any appellate division

**||**  
Dubai's Local Legislature Has Closed the Door to Cassation Appeals Against the Judgements Issued by the Appellate Chambers of the Probate Court.

**||**  
'Petition for Review/Reconsideration' Means that the Appellant Requests That the Same Case that was Resolved by a Final Judgement Be Examined Again by the Same Court That Rendered the Contested Judgement.

It is Clear That the Legislator in the Emirate of Dubai is Keenly Interested in Ensuring the Speedy Litigation Procedures and Adjudication of the Claims that the Probate Court has Jurisdiction Over.

therein<sup>(29)</sup>, which greatly contributes to avoiding the fulfilment of one of the grounds for cassation appeals against judicial rulings.

With regard to appeals against the judgements of the Probate Court, we note that the legislature has opened the door for appeals by 'Petition for Review/Reconsideration' of final judgements rendered by the Court's Chambers. 'Petition for Review/Reconsideration' means that the Appellant requests that the same case that was resolved by a final judgement be examined again by the same court that rendered the contested judgement<sup>(30)</sup>. The 'Petition for Review/Reconsideration' differs from the ordinary methods of appeal in that it is not intended to injure or reform the judgement, but rather to erase the judgement itself so that the petitioner's position in the litigation returns to what it was before its issuance and faces the dispute anew to obtain another judgement after the litigated against judgement is no longer res judicata (a matter adjudged)<sup>(31)</sup>. And the same notion applies to the 'Petition for Review/Reconsideration' of final judgements issued by the Probate Court.

The 'Petition for Review/Reconsideration' of the judgement of the Probate Court is subject to the general rules relating to this type of appeal, as stipulated in the Federal Code of Civil Procedure, and therefore the general rules relating to the time limits, cases, and procedures for 'Petition for Review/Reconsideration' stipulated in the Code of Civil Procedure apply to 'Petition for Review/Reconsideration' of the judgement of the Probate Court<sup>(32)</sup>.

In conclusion, we emphasize that the execution of judgments issued by the Probate Court, whether in Estate Claims or Lawsuits for Subdivision of Property Co-owned in Undivided Shares, is subject to the execution of judgments in the courts of the Emirate of Dubai.

#### The Conclusion:

The Study addressed the subject of the Probate Court, which was established and regulated by Decree No. (25) of (2023) in the Emirate of Dubai, by describing the procedures followed before the Court, from the stage prior to the Preparation of the Claim -the Settlement Proposal- and the subsequent stage, ending with

the Appeal against the Judgements issued by the Probate Court, and we reached the following results and recommendations at the end of the Study and as per the following:

#### The Results:

- Based on the keenness of the local legislator in the Emirate of Dubai to preserve and maintain social and family ties, and in recognition of the disputes that may arise from Inheritance and Estate Applications and Applications for Subdivision of Property Co-owned in Undivided Shares that may affect these ties, Decree No. (25) of (2023) regarding the Probate Court was issued, and in which the amicable settlement and the consensual subdivision procedures were imposed between the parties before the registration of the Claim.
- The Preparation of Estate Claims and Lawsuits for Subdivision of Property Co-owned in Undivided Shares, and their ancillary claims and applications related thereto is done through the system of the 'Preparation/Reporting Judge'; and not through the Case Management Office, as is the case for other Claims.
- It is clear that the legislator in the Emirate of Dubai is keenly interested in ensuring the speedy litigation procedures and adjudication of the Claims that the Probate Court has jurisdiction over, by setting the dates of most litigation procedures before this Court within specific time limits, all of which contribute to achieving the objectives of Decree No. (25) of (2023).

#### The Recommendations:

- We recommend that the local legislator in the Emirate of Dubai, in order to achieve the objectives of the Decree under study, specify the duration of the Amicable Settlement and Consensual Subdivision, provided that the limit is limited to the maximum duration and not the minimum, and that the President of the Court is authorized to extend this period on a case-by-case basis, provided that the extension period does not exceed the original prescribed period and that it is for one time only.

- We recommend that the local legislator in the Emirate of Dubai amend the text of Article No. (15/A) of Decree No. (25) of (2023) -under study- to include a time period to be adhered to by the President of the Court

in case of the need to extend the period of hearing and adjudicating the Claim before the Probate Court, and specify the number of extensions allowed to achieve the objectives of the Decree in question.

## \* References

#### First: Books:

- Abu AlWafa, Ahmad, "Almurafa'at Almadaniah Waltijariah Bimuqtadha Qanun Almurafa'at Raqm 13 Lisanat 1968 Waqanun Al'ithbat Raqm 25 Lisanat 1968" (Civil and Commercial Pleadings in Accordance with the Pleadings Law No. (13) Of (1968) and Evidence Law No. (25) Of (1968)), Dar Al-Fikr Al-Arabi (Arab Thought) House, Egypt, 2012.
- Abu AlWafa, Ahmad, "Almurafa'at Almadaniah Waltijariah" (Civil and Commercial Pleadings), Mansha'at Al Ma'arif (Knowledge) House, Alexandria, 1990, 15<sup>th</sup> Edition.
- Zaghloul, Ahmad, "Usul Waqawa'id Almurafa'at Wifqan Limajmua'ut Almurafa'at Almadaniah Waltijariah Waltashriea'at Al-mukammilah Laha Walmurtabitah Biha" (Principles and Rules of Pleadings in Accordance with the Set of Civil and Commercial Pleadings and its Complementary and Related Legislation), Dar Al-Nahdah Al Arabeyyah (Arab Renaissance) House, Egypt, 2001.
- Sudqi, Ahmad, "Qawae'id Almurafa'at Fi Dawlat Al'imarati" (Rules of Pleadings in the United Arab Emirates), No Publisher, 1999, 1<sup>st</sup> Edition.
- Al Sarhan, Bakr, "Qanun Al'ijra'at Almadaniah" (Civil Procedure Law), Dar Hafez Press, United Arab Emirates, 2021.
- Turki, Ali Abdul Hamid, "Sharh Qanun Al'ijra'at Almadaniah Wifqan Lilqanun Alaitihadii Raqm 11 Lisanat 1992 Walqawanin Al-mukamilah Walmuaddilah Lahu" (Explanation of the Civil Procedures Law in Accordance with Federal Law No. (11) Of (1992) - And The Complementary and Amending Laws There-to), Cairo, Dar Al-Nahdah Al Arabeyyah (Arab Renaissance) House, Egypt, 2011, 2<sup>nd</sup> Edition.
- Wali, Fathi, "Alwasit Fi Alqadha'a Almadani" (The Mediator in The Civil Judiciary Law), Jami'ut Al Qahirah (Cairo University) Press, Cairo, Egypt, 2001-2002.
- Al-Sandal, Mariam Ahmad, "Alwilayah Walikhtisas Wa'ishkalat Altanzue Fi Alqadha'a Alittihadi Walmahalli Lidawlat Al'imarati Alarabiah Almuttahida" (Jurisdiction and Dispute Issues in the Federal and Local Judiciary of the United Arab Emirates), Dar Al-Nahdah Al-Elmiyyah (Scientific Renaissance) Press, United Arab Emirates, 2021.

- Al-Sandal, Mariam Ahmad, "Sharah Qanun Al'ijra'at Almadaniah Al'imarati Wifqan Lilmarsum Biqanun Ittihadi Raqm 42 Lisanat 2022 Bi'isdar Qanun Al'ijra'at Almadaniah" (Explanation of the UAE Civil Procedure Code in Accordance with Federal Decree Law No. (42) of (2022) Promulgating the Civil Procedure Code), Dar Al-Nahdah Al-Elmiyyah (Scientific Renaissance) Press, United Arab Emirates, 2023.
- Qandil, Mustafa Metwalli, "Alwajiz Fi Alqadha'a Waltaqadhi Wifqan Liqanun Al'ijra'at Almadaniah Al'imarati Alsaadir Bilmarsum Biqanun Ittihadi Raqm (42) Lisanat 2022 Waltashriea'at Al-mukammilah Laha Walmurtabitah Bih Waara'a Alfiqh Wa'ahkam Alqadha'a" (The Brief In The Judiciary And Litigation According To The Civil Procedures Law Of The United Arab Emirates Issued by Federal Legislative Decree No. (42) of (2022) and its Complementary and Related Legislation Thereto, Jurisprudential Opinions and Judicial Rulings), Dar Al-Afaq Al-Elmiyyah (Scientific Horizons) for Publishing and Distribution, United Arab Emirates, 2024, 6<sup>th</sup> Edition.
- Omar, Nabil Ismail, "Usul Almurafa'at Almadaniah Waltijariah" (Fundamentals of Civil and Commercial Pleadings), D.N., 1986.

#### Second: Research and Scientific Theses:

- Ibrahim, Ibrahim Harb, (The Extent to Which the Two Level-Litigation is Related to the Public Order) - A Comparative Study, Studies Journal - Sharia and Law Sciences, University of Jordan, Vol. (39), Edition No. (1), 2012.
- Mousa, Ahmad Kamal El-Din, (The Competent Authority Tasked with the Preparation of the Administrative Claim), Journal of Administrative Sciences, International Institute of Administrative Sciences - Egyptian Division, Vol. No. (20), Edition No. (2), 1978.

#### Third: Legislation:

- Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- Federal Decree-Law No. (42) of (2022) Promulgating the Civil Procedure Code.



## \* Footnotes

- (1) Turki, Ali Abdul Hamid, "Sharh Qanun Al'ijra'at Almadaniah Wifqan Liqanun Alaitihadii Raqm 11 Lisanat 1992 Walqawanin Almukamilah Walmuaddilah Lahu" (Explanation of the Civil Procedures Law in Accordance with Federal Law No. (11) Of (1992) - And The Complementary and Amending Laws Thereto), 1<sup>st</sup> Part, Dar Al-Nahdhah Al Arabeyyah (Arab Renaissance) House, Egypt, 2011, 2<sup>nd</sup> Edition, Page No. (296).
- (2) Al-Sandal, Mariam Ahmad, "Alwilayah Walikhtisas Wa'ishkalat Altanazue Fi Alqadha'a Alittihadi Walmahalli Lidawlat Al'imat Alarabiah Almuttahida" (Jurisdiction and Dispute Issues in the Federal and Local Judiciary of the United Arab Emirates), Dar Al-Nahdhah Al-Elmiyyah (Scientific Renaissance) Press, United Arab Emirates, 2021, Page No. (35).
- (3) According to Article No. (4) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (4) According to Article No. (5) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai. The Dubai Supreme Court ruled on the jurisdiction of the Probate Court that, quote: "[s]ince it is established that the case was initially filed by the first Respondent requesting the validity and enforceability of her uncle's (.....) waiver and the validity and enforceability of her aunt's (the Appellant) waiver of their share in the above-mentioned properties inherited from her father, and since it is proven that the inherited shares of the above-mentioned persons in those properties were registered in their names at the Department of Land and Property, then the subject matter of the case will be about the realization or not of the validity and enforceability of the waiver contracts, and consequently the subject matter will not fall within the realm of the estate claims, which the Probate Court has jurisdiction over. This is in addition to the fact that the trial court has already ruled on the subject matter in question and a judgement was issued by the Supreme Court in relation to that ruling that included an implied (implicit) adjudication on the jurisdiction of the trial court affirming this jurisdiction, which in turn prevents the court from returning to discuss this issue, and renders the objection as unfounded", unquote. Dubai Supreme Court, Real Estate Rulings, Appeal No: (797) of (2023), Date of Hearing Session: (1/4/2024). Judgement published on the Dubai Courts Website: <https://www.dc.gov.ae/>.
- (5) Mousa, Ahmad Kamal El-Din, (The Competent Authority Tasked with the Preparation of the Administrative Claim), Journal of Administrative Sciences, International Institute of Administrative Sciences - Egyptian Division, Vol. No. (20), 2<sup>nd</sup> Edition, 1978, Page No. (98).
- (6) According to Article No. (1) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (7) According to Article No. (9/A) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (8) According to Article No. (9/B) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (9) According to Article No. (1) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (10) According to Article No. (11) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (11) According to Article No. (12) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (12) According to Article No. (13) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (13) According to Article No. (1) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (14) According to Article No. (14) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (15) In Accordance with the Reference to Article No. (11) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai, which is Stipulated in Article No. (14/B) of the same Decree.
- (16) According to Article No. (14/D, E) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (17) The procedures set forth in Article No. (13) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai shall be followed in accordance with the referral provided for in Clause (F) of Article No. (14) of the same Decree.
- (18) According to Article No. (10) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (19) According to Article No. (17) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (20) Zaghoul, Ahmad, "Usul Waqawa'id Almurafa'at Wifqan Limajmua'ut Almurafa'at Almadaniah Waltijariah Waltashriea'at Almukammilah Laha Walmurtabitah Biha" (Principles and Rules of Pleadings in Accordance with the Set of Civil and Commercial Pleadings and its Complementary and Related Legislation), Dar Al-Nahdhah Al Arabeyyah (Arab Renaissance) House, Egypt, 2001, Page No. (357).
- (21) The Dubai Supreme Court ruled that, quote: "[i]t is established in the judicature of this court that the Territorial/State Jurisdiction is a matter of public order and is always put before the court and that the ordinary courts have the general jurisdiction to adjudicate all disputes, regardless of the parties to them, unless the jurisdiction to adjudicate them is established as an exception to another body by the constitution or law. And pursuant to Articles Nos. (5/A) and (21/B, C, D) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai, (the Probate Court has the Exclusive Jurisdiction to Hear and Determine Estate Claims, Lawsuits for Subdivision of Property Co-owned in Undivided Shares, and Their Ancillary Claims and Applications Related Thereto). The Court replaces the Special Judicial Committee formed to consider and adjudicate applications, claims, disputes, and appeals submitted to it regarding the sale of the residential property from the Heirs. The Court shall transfer to it the jurisdictional matters of the courts of first instance, relating to applications and claims of inheritance, estates, and lawsuits of Property Co-owned in Undivided Shares. All inheritance and estates applications, as well as estate claims and lawsuits for subdivision of property co-owned in undivided shares heard before the courts of first instance, shall be referred to it. Since this is the case, and the present case is a suit for the subdivision of a property co-owned in undivided shares among the heirs, then the Probate Court has the jurisdiction over it and not the ordinary judiciary", unquote. Dubai Supreme Court, Real Estate Rulings, Appeal No: (453) of (2023), Date of Hearing Session: (9/1/2024). Judgement published on the Dubai Courts Website: <https://www.dc.gov.ae/>.
- (22) According to Article No. (16) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (23) Omar, Nabil Ismail, "Usul Almurafa'at Almadaniah Waltijariah" (Fundamentals of Civil and Commercial Pleadings), No Publisher., 1986., PP Nos. (1205, 1206).
- (24) Wali, Fathi, "Alwasit Fi Alqadha'a Almadani" (The Mediator in The Civil Judiciary Law), Jami'ut Al Qahirah (Cairo University) Press, Cairo, Egypt, 2001-2002. Page No. (282).
- (25) Ibrahim, Ibrahim Harb, (The Extent to Which the Two Level-Litigation is Related to the Public Order) - A Comparative Study, Studies Journal - Sharia and Law Sciences, University of Jordan, Vol. (39), Edition No. (1), 2012, Page No. (263).
- (26) Abu AlWafa, Ahmad, "Almurafa'at Almadaniah Waltijariah Bimuqtadha Qanun Almurafa'at Raqm 13 Lisanat 1968 Waqanun Al'ithbat Raqm 25 Lisanat 1968" (Civil and Commercial Pleadings in Accordance with the Pleadings Law No. (13) Of (1968) and Evidence Law No. (25) Of (1968)), Dar Al-Fikr Al-Arabi (Arab Thought) House, Egypt, 2012., Page No. (50).
- (27) This is emphasized in Article No. (6) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (28) According to Article No. (7) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (29) According to Article No. (8) of Decree No. (25) of (2023) Establishing the Probate Court in the Emirate of Dubai.
- (30) Al Sarhan, Bakr, "Qanun Al'ijra'at Almadaniah" (Civil Procedure Law), Dar Hafez Press, United Arab Emirates, 2021, Page No. (448). On the meaning of the 'Petition for Review/Reconsideration', see: Wali, Fathi, op. cit. PP. Nos. (757, 758). Sudqi, Ahmad, "Qawae'id Almurafa'at Fi Dawlat Al'imat" (Rules of Pleadings in the United Arab Emirates), No Publisher, 1999, 1<sup>st</sup> Edition Page No. (473).
- (31) Abu AlWafa, Ahmad, "Almurafa'at Almadaniah Waltijariah" (Civil and Commercial Pleadings), Mansha'at Al Ma'arif (Knowledge) House, Alexandria, 1990, 15<sup>th</sup> Edition, Clause No. (633).
- (32) For more details on the time limits, cases, and procedures for 'Petition for Review/Reconsideration' according to the general rules, see: Al-Sandal, Mariam Ahmad, "Sharah Qanun Al'ijra'at Almadaniah Al'imarati Wfqaan Lilmarsum Biqanun Ittihadi Raqm 42 Lisanat 2022 Bi'isdar Qanun Al'ijra'at Almadaniah" (Explanation of the UAE Civil Procedure Code in Accordance with Federal Decree Law No. (42) of (2022) Promulgating the Civil Procedure Code), Dar Al-Nahdhah Al-Elmiyyah (Scientific Renaissance) Press, United Arab Emirates, 2023, Page No. (461) et seq. Qandil, Mustafa Metwalli, "Alwajiz Fi Alqadha'a Waltaqadhi Wfqaan Liqanun Al'ijra'at Almadaniah Al'imarati Alsaadir Bilmarsum Biqanun Ittihadi Raqm (42) Lisanat 2022 Waltashriea'at Almukammilah Iaha Walmurtabitah Bih Waara'a Alfiqh Wa'ahkam Alqadha'a" (The Brief In The Judiciary And Litigation According To The Civil Procedures Law Of The United Arab Emirates Issued by Federal Legislative Decree No. (42) of (2022) and its Complementary and Related Legislation Thereto, Jurisprudential Opinions and Judicial Rulings), Dar Al-Afaq Al-Elmiyyah (Scientific Horizons) for Publishing and Distribution, United Arab Emirates, 2024, 6<sup>th</sup> Edition, Page No. (525) et seq.

# Educational Tutorship

## Ensuring Education and Protecting Children's Rights



**His Excellency Judge  
Dr. Jassim Mohammed Al Hosani**  
Judge at the Supreme Court in Dubai

Praise be to Allah the Lord of the Worlds. May His peace and blessings be upon the Seal of all Prophets and Messengers, our Prophet Mohammad and upon all his family and companions:

The provisions of the Islamic Shari'ah enshrine the importance of Knowledge (Education) and urge its pursuit in all fields, and since the child, after birth, is alive and vulnerable and needs others for all his/her affairs, the Islamic Shari'ah has given him/her full attention by guaranteeing him/her all physical, psychological, edificational, financial, and educational rights, and entrusting him/her to the care and attention of caregivers by making him/her a trust and responsibility in the hands of his/her parents to ensure his/her upbringing to adhere to the Islamic creed, to possess virtuous morals, to love work, to take the initiative, and to earn a legitimate livelihood in order for him/her to be able to rely on themselves and fulfil his/her obligations and commitments. However, some guardians (Tutors) have strayed away from these rights by arguing that the child's rights are limited to food, housing, and clothing, which led to neglecting him/her in other aspects and even assaulting him/her by word and/or deed. In consequence of that, the law intervened by stipulating in Article No. (148), which was replaced by Federal Decree-Law No. (52) of (2023), amending some provisions of Federal Law No. (28) of (2005) on Personal Status, that:

((1. The father or else another tutor of the fostered child must look after his affairs, discipline, orientation, and education.

2....3....4. As an exception to Clause No. (1) of this Article, the fostering mother shall have the educational tutorship over the fostered child, in the interest of the latter.

5. In case any dispute arises with regard to the things that serve the best interest of the fostered child, any of the concerned persons may bring the matter before the magistrate of summary justice to issue his decision by an order on petition taking into account the solvency of the tutor and without prejudice to the right of the fostering mother to the educational tutorship.

6. Should the interest of the fostered child requires the transfer of the educational tutorship from the fostering mother to the father or any other person entitled to the proven tutorship over the fostered child, either may refer the matter to the magistrate of summary justice to issue an order on petition

designating the person who shall have the educational tutorship over the fostered child.

7. In the event the fosterer of the fostered child is a woman within the prohibited degrees of kinship other than the mother, and the tutor is not the father, the female fosterer may –based on the interest of the child– bring the matter before the magistrate of the summary justice to issue an order on petition to designate the person who shall have the educational tutorship over the fostered child.

8. The provisions of this Article shall be without prejudice to the alimony prescribed for the fostered child by virtue of the present Law)).

According to this text, the First Paragraph requires the father and other tutors (1) to provide for the education of the child, hence, the origin of the Educational Tutorship is in the hands of the father, meaning that the father and the next tutors exercise Educational Tutorship over the child under his tutorship, without the need to apply to the competent court to obtain a judgement, decision, or order from the judge granting him Educational Tutorship, as he enjoys this legal status under the rule of law without the intervention of the judiciary.

It follows from this that if someone wishes to take the Educational Tutorship away from the father and transfer it to any other person, it is necessary to resort to the competent court to obtain a judgement, decision, or order to transfer the Educational Tutorship from the father's hand to the next person, and as a result, if the mother disagrees with the tutor in directing the child towards a particular profession or type of education, the father has the final say because of his tutorship over his young son.

And as an exception to the provisions of the First Paragraph and in the event that Child Custody (Fostering) is awarded to the mother, whether during or after marriage, Paragraphs Nos. (4 to 7) of the aforementioned Article regulated the provisions of the Educational Tutorship of the female fosterer, making her by law the legal tutor of the fostered child and having the right to take charge of the child's educational affairs, guide him/her, and act on his/her behalf in making decisions and receiving documents relating to education, and when the tutor and the fostering mother disagree over what is in the best interest of the fostered child, the law allows the matter to be referred to the magistrate of summary justice, who will issue his/her decision by order on a petition, taking into account the extent of

“  
The Islamic Shari'ah Has Guaranteed Children all Physical, Psychological, Edificational, Financial, and Educational Rights.

“  
If Someone Wishes to Take the Educational Tutorship Away from the Father and Transfer it to any other Person, it is Necessary to Resort to the Competent Court.



**A Judge of the Court of First Instance Shall Be Designated at the Seat of the Court to Render a Judgment on a Temporary Basis.**



the tutor's solvency, without prejudice to the right of the fostering mother to the Educational Tutorship over the fostered child, unless the child's interest requires the transfer of the Educational Tutorship from the fostering mother to the father or other tutor, then the magistrate of the summary justice may issue an order on petition to designate the person who shall have the Educational Tutorship over the fostered child

This means that in the matter of Educational Tutorship, the legislator authorized the magistrate of the summary justice to order, on the basis of a petition submitted by the concerned parties, to establish the Educational Tutorship to the fostering mother and to take urgent measures that protect the Educational Tutorship without prejudice to the fostering mother's right to Educational Tutorship, and also authorized him/her, on the basis of a petition submitted by the concerned parties, to transfer the Educational Tutorship from the fostering mother or other female fosterers to the father or other tutors, if the interest of the fostered child required the transfer of the Educational Tutorship, without prejudice to the jurisdiction of the trial judge to decide on the issue of the rightful holder of the right to Educational Tutorship over the fostered child, whether the matter is brought before him/her by a separate claim or by way of subordination (related claim) to a substantive lawsuit pending before him/her, as long as there is a link between the right to Educational Tutorship claim and the original case.

The legislature's assignment of this matter to the magistrate of the summary justice does not constitute a change in the nature of the dispute, as Article

No. (27) of Federal Decree-Law No. (42) of (2022) Promulgating the Civil Procedure Code stipulates that:

1. A judge of the Court of First Instance shall be designated at the seat of the Court to render a judgment on a temporary basis without prejudice to the substance of the right involved on the urgent matters where the passage of time could affect them.

2. The Trial Court shall have the jurisdiction to hear such issues if they are brought before it by way of subordination.

It is understood from this text that urgent matters are those in which the decision issued is limited to temporary or precautionary measures, without prejudice to the substance of the right, which is left to the litigants to plead their case before the substantive judiciary.

In addition, the judgement issued in these cases is not authoritative when deciding on the substance of the right.

Consequently, the legislator's assignment -as an exception and in departure from the general rules of the task of adjudicating a substantive matter to the magistrate of summary justice or the judge of urgent matters does not change the nature of the dispute.

Moreover, the judgement in these matters is not based solely on the appearance of the papers (Prima facie), and the judgement rendered is not considered to have been issued in a temporary or urgent matter.

Therefore, the magistrate of summary justice has

the authority to decide on the request to transfer the Educational Tutorship after verifying the realization of the best interest of the fostered child, without the requirement of the character of urgency.

The judgement on the transfer of Educational Tutorship is considered a prejudice to the substance of the right, as it deals with a substantive issue related to the holder of the right to Educational Tutorship.

Ergo, such judgement is not considered an urgent matter judgement that prevents the trial judge from considering or adjudicating it.

On this account, these judgements may be appealed before the Supreme Court.

And here it is necessary to distinguish between two types of Educational Tutorship Requests:

1. Requests related to establishing the Educational Tutorship to the Female Fosterer or providing her with temporary protection without prejudice to the substance of the right; and the courts of summary justice/urgent matters are competent to hear them, and the trial courts may also hear them if they are submitted to them by way of subordination.

2. Requests related to the transfer of Educational Tutorship from the female fosterer to the tutor, which affect the substance of the right; and the courts of summary justice/urgent matters are competent to hear them by way of exception by the law, and the trial courts may also hear them, depending on the nature of the dispute.

Accordingly, judgements issued regarding the transfer of Educational Tutorship are subject to appeal before the Supreme Court.

## \* References

(1) Tutorship (Tutelage) in Language (Linguistic Meaning): It means assistance, love, and obligation. In Terminology (Terminological Meaning): It is the ability of a person to create an enforceable contract for themselves or others. Therefore, Tutorship is either:

A - Limited to Oneself (Person) in the sense of Capacity (Competence); or,

B - Extended to Others, such as (the Young, the Insane, the Imbecile, the Incompetent, and the Woman in the marriage contract).

The person to whom the Shari'ah and then the Law gives this right is called a Tutor (Guardian), whether he is a father, grandfather, brother or uncle, by order of their inheritance.

Tutorship according to the type of the tutor's function and the work entrusted to him is of two types:

### A. Tutelage on the Person:

It is the care of whatever is related to the person of the minor, his/her supervision, protection, education, teaching, orientation and proper raising; this includes consent to his/her marriage.

Tutelage on the Person is for the father, then to the "Al- 'asabah" (The Magnates/ Residuaries) from the father's side by order of their inheritance. This means that the paternal side, which includes the father and grandfather, is ahead of the sibling side, which includes the full (real) brother and the step-brother (half-brother), and this side is ahead of the uncle side, which

includes the full (real) paternal uncle and the half-paternal uncle. Therefore, the "Al-'asabah" (The Magnates/Residuaries) are: (the father, the paternal grandfather, how highsoever; the son, the son's son (Grandson) how lowsoever; he takes the place of his father, the real brother; the half-brother by father (Consanguine brother); the son of the full brother or his descendant; the son of Consanguine brother or his descendant; the real paternal uncle, the half paternal uncle (consanguine paternal uncle who is father's half-brother by grandfather), the son of the real paternal uncle, the son of the half paternal uncle (consanguine paternal uncle)), and so on, and so forth. The full (real) brother is ahead of the step-brother (half-brother) because he is the strongest relative by being the closest to the father and mother's side, which is why the full (real) paternal uncle is ahead of the half-paternal uncle.

And in case several persons are entitled and they are all in the same degree, of the same strength of kinship and they are equal in maturity, Tutorship shall be to the eldest; and if they are different in maturity then the court shall choose the best among them. And where there is no one entitled, the court shall appoint a tutor on the person from among the minor's relatives, if any is qualified, otherwise from among others.

**B. Tutelage on Property:** It is the care of all what concerns the property of the minor, its safe keeping, management, and investment.

# Green Taxation (Environmental Taxes)

## A Contemporary Framework for Sustainable Tax Policy



The UAE is marching on a steady path towards achieving Sustainable Economic Development, a key and pivotal objective of the UAE Vision 2050, and has made strides in diversifying its economic structure, no longer a country whose economy is dependent on oil resources, but has become characterized by the diversification of its economic structure.



**Mr. Zain Hosny**  
Researcher, Ministry of Finance,  
Arab Republic of Egypt

In order to achieve Sustainable Economic Development, the UAE has established a tax structure that is primarily based on a balance between two things: (Mobilizing revenues to support the state's general budget while at the same tandem time encouraging investment and the country's business environment as one of the most attractive countries for investment globally), as evidenced by the reports of the Organization for Economic Co-operation and Development (OECD) and the Global Competitiveness Report, which confirm that the UAE ranks first in the Arab world in attracting Foreign Direct Investment (FDI).

As a result, the Federal Tax Authority (FTA) was established to be the entity responsible for the administration, collection, and implementation of federal taxes through the application of tax laws and international agreements to which the UAE has acceded, and the structure of tax revenues is divided to include (Value Added Tax (VAT) and Excise Tax (ET)). And in a move that some ex-

perts saw as risky, the UAE introduced a Corporate Tax in (2023), through the issuance of Federal Decree-Law No. (47) of (2022), which came into effect as of June (2023). The UAE applied a competitive corporate tax rate of (9%) of net profits, which is undoubtedly one of the lowest corporate tax rates in the world, which has strengthened the UAE's role globally in attracting more investments. Based on the important role that taxation plays in the economies of countries, it is no longer what was previously recognized as a tool to finance the budget deficit, but has become one of the most important economic tools that enhance growth opportunities through its facilitation of doing business. And according to the International Finance Corporation (IFC), taxation is one of the most important indicators of doing business, and therefore, it was necessary in the UAE to develop and formulate a development vision for tax administration that would strengthen its position and leadership role in the national economy.



**The UAE Ranks First in the Arab World in Attracting Foreign Direct Investment (FDI)**



**“**  
The Idea of Linking Taxation to the Environment is not New, and it Was Mentioned in Many Tax Studies Beginning in the 1970s



During the preparation of this paper, a question arose about how the Tax Administration can play an effective role in protecting the environment and climate change, which is the number one issue globally in international forums, especially since the UAE plays a pivotal role in the issue of climate change through its plan to reduce greenhouse gas emissions.

So, how can the Tax Administration contribute to reducing the risks of climate change? What are the ways in which it can achieve this goal? And what are the objectives or benefits that the UAE will accrue by creating a new Department called the Green Taxation Department?

In this context, it must be emphasized that the idea of linking taxation to the environment is not new, and it was mentioned in many tax studies beginning in the 1970s, and was based on imposing taxes on activities or businesses that harm the environment. However, the technical organization of it did not have clear parameters, which made the

idea of its global spread not popular, and at a later stage the term 'Carbon Tax' appeared, which is a tax imposed on countries producing oil and petroleum products and imposed on each ton of greenhouse gas emissions as a kind of reduction or contribution to bear the risks of such harmful emissions. However, the idea of creating a Green Taxation Department is distinctive in several ways, which we will discuss below.

#### (1) The Concept of Green Tax

It is not a tax in the legal sense which is a sum of money that is imposed by legal texts, but rather a means through which tax reductions are granted to companies that engage in investment activities that support the green economy, or companies that adhere to environmental safety standards.

In other words, we can describe it as 'TAX INCENTIVES', and therefore it is an approach that encourages sustainability in order to achieve the goals and vision of the Tax Administration, to get out of the traditional

framework of collection of taxes to a broader role, that encompasses incentivizing and encouraging the transition to a green economy.

#### (2) Green Tax Strategy

The vision of the Green Taxation Department focuses on following a different approach to the traditional concept, as it does not impose high taxes on projects that contribute to increasing environmental pollution rates, but rather it will incentivize and encourage projects that support the green economy by:

**A-** Providing tax incentives to those projects after ensuring their compliance with the criteria to be set by the concerned authorities, for example, if a company is required to pay AED 1 million for a fiscal year, it can be granted a tax reduction on a percentage of the actual revenue achieved during such a fiscal year, which may raise a question about the reduction in government revenue through this tax reduction.

But the fact to the matter is that this measure will increase the tax base, and thus boost revenues because there will be competition to establish environmentally friendly projects, which will be reflected in the volume of investment by increasing it, which in turn will increase tax revenues.

**B -** Tax reduction for new projects, by granting a reduction in the amount of tax payable for the first three or five years after the start of the activity.

It is worth noting that the above mechanism is different from tax exemption, as the Green Tax Administration is not about tax exemption, but rather tax reductions for environmentally friendly projects.

The question here remains: Does the establishment of the Green Taxation Department contribute even (1%) to achieving the strategic objectives of the UAE Federal Tax Authority (FTA)?

With reference to the strategic objectives of the FTA, we find that they are centered on two objectives:

**1-** Enhancing compliance and minimizing tax evasion.

**2-** Resolving tax disputes, whether by law or appeal.

According to the general principles of taxation, and in reference to a paper issued by the World Bank (WB), there are four factors that help build confidence in any tax system and they are (Fairness - Equity - Reciprocity - Accountability). And we find that one of the most important objectives of the UAE Tax Administration is to promote Compliance. In other words, the voluntary commitment by taxpayers to pay their taxes on time, without following methods and techniques that violate the rules of tax law, and thus fall under the umbrella of tax evasion.

In order to reach the previous result, (the voluntary compliance on the part of taxpayers), the tax system must have some qualities that constitute an element of trust, as when there is trust between the taxpayer and the Tax Department, tax evasion rates will fade or decrease.

And here we find that the introduction of the Green Taxation Department as mentioned above will create the kind of equity or tax fairness that is sought after, because it does not discriminate between companies charged with tax, and when elements of a tax cut are achieved in accordance with the criteria to be established, the reduction or tax benefits will be granted to that company, and then we will find that the element of trust has begun to materialize between the company and the Tax Department, and this ultimately reduces tax evasion and increases compliance rates.

**Practical Example:** Suppose that Company A wishes to establish a project in the UAE market to produce batteries in accordance with recognized environmental safety standards and regulations, and this company obtained a tax reduction for the first three years of production, and after the passage of the first fiscal year and by reviewing the company's records, it was found that it complied with the environmental controls and standards and thus was granted a tax reduction, and upon review and audit after the end of the second fiscal year, the Tax Department found that the company violated some controls, which resulted in losing the condition for granting

**“**  
When Elements of a Tax Cut Are Achieved in Accordance with the Criteria to be Established, the Reduction or Tax Benefits will be Granted to that Company, and then We Will Find that the Element of Trust Has Begun to Materialize Between the Company and the Tax Department

**“**  
The Federal Tax Authority (FTA)'s Primary Strategic Objective of Tax Compliance and Reducing Evasion Rates Can Be Achieved Through the Role of the Green Taxation Department

the tax reduction. In this case the Tax Department will have two options:

- 1- Deprive the company of the tax reduction it will receive during the fiscal year under examination, in addition to depriving it of the tax reduction scheduled for the next year.
- 2- Depriving the offending company of the tax reduction for the fiscal year under examination, while requiring it to refund the value of the tax reduction it received for the previous fiscal year.

In all cases, the matter is addressed on a case-by-case basis in light of what the Tax Department deems appropriate. From the above example, the FTA's primary strategic objective of tax compliance and reducing evasion rates can be achieved through the role of the Green Taxation Department.

### **(3) The Importance of Having a Green Taxation Department**

We mentioned earlier that the Green Taxation Department plays an important role in achieving tax compliance through the controls it is based on and governs its work, as we saw in the previous example. What's more, the matter is not limited to that importance, as there are other advantages that are achieved through the Green Taxation Department and they are as per the following:

- 1- Enhancing the business environment and climate by creating investment opportunities in promising sectors that meet the requirements of the transition towards a green economy.
- 2- Increasing tax revenues through the expansion of the Tax Base through the entry of new entities into the UAE market.
- 3- Strengthening the FTA's role on the climate action map and playing a key role in promoting the country's efforts to mitigate climate change at the global level.
- 4- Emulating tax departments in developed countries, as will become clear through the case studies discussed in the following lines, where some tax departments play an important role in the national economy, through the tax support they provide to green projects.

### **(4) Case Studies**

#### **China**

China has long been working on sustainable taxation programmes, and its environmental protection efforts focus on three main areas (Reducing Pollution, Reducing Greenhouse Gas Emissions, and Conserving Resources). And in order to achieve the above goals, China has launched a package of tax incentives that cover the three previous areas, and examples of which are the following:

- 1- Reducing corporate income tax rates.
- 2- Decreasing tax rates on some sources of revenue.
- 3- Increasing VAT refunds.
- 4- A package of cash grants.

According to EY's Annual Report, the sustainability incentive package launched by the Chinese authorities includes, for example, (Investment in Recycling Equipment, Use of Research and Development Machinery to Manufacture Green Products, and Investment in Carbon Capture Technology). The Republic of China's efforts in the field of using tax policy for environmental protection purposes culminated in the issuance of Law No. (1) of (2018) on Environmental Protection Tax. This Law consists of (28) Articles divided into (5) Chapters, the Third Chapter of which dealt with the issue of tax reductions and exemptions, and the tax reduction is obtained by the company or institution by submitting its tax return, as stipulated by the regulations and laws of the Chinese State Taxation Administration, along with documents confirming its commitment to preserving the environment in any of the areas listed by the Chinese legislator in the aforementioned Law, and the tax authorities check with the environmental authority (Ministry of Environmental Protection (MEP)) to ensure the validity of what is included in the documents submitted by the company or institution.

#### **Australia**

Australia has long been moving towards using federal tax exemptions and incentives to reward and encourage environmentally



friendly activities and policies, and some reports indicate a growing trend of companies in Australia to practice sustainable activities, not only to play a role in preserving the environment and climate, but to also benefit from tax benefits and incentives, where the importance of green tax incentives lies, for example, in:

- 1- Saving Costs, as whenever companies use energy-efficient production tools and equipment, this will be reflected in the long term in reducing some expenses.
- 2- Showing a positive brand image, because the global consumer has become very aware of the importance of environmental and climate issues, so adopting green and environmentally friendly practices reflects on the brand.

#### **An Example of Tax Incentives Approved by the Australian Government:**

A tax incentive for Small and Medium-Sized Enterprises (SMEs) to make energy efficiency

improvements. Under this incentive, companies with an annual turnover of less than (\$50 million) can receive a (20%) bonus tax deduction, up to a maximum of (\$20,000) per company.

**In conclusion**, we can say that the idea of creating a specialized Tax Department under the name 'Green Taxation Department' will have great benefits in achieving the vision and objectives of the UAE government in general, and the Federal Tax Authority (FTA) in particular, and will place it at the forefront of tax authorities in the region that have introduced this initiative in the Arab region, with the need to ensure that the main lines of work of this Department are established and its terms of reference are precisely defined, in order to encourage investments and increase the Tax Base, all in an effort to benefit from the initiatives and tax incentives package that the Green Taxation Department will provide. **(Our Intention is for the Sake of Allah)**

**“**  
The Idea of Creating a Specialized Tax Department Under the Name 'Green Taxation Department' Will Have Great Benefits in Achieving the Vision and Objectives of the UAE Government in General, and the Federal Tax Authority (FTA) in Particular





**Professor Dr. Ali Hadi Al-Obeidi**  
Professor of Civil Law, Al Ain University

## The Legal Nature of Threatening Fine in UAE Law

**A Threatening Fine is an amount of money that the Court determines and forces the obstinate debtor to pay for each unit of time –a day, week, month, etc. or as determined by the Court– in which the debtor continues to fail to fulfil his/her obligation, in order to pressure him/her to fulfil his/her obligation by way of compulsory real (In rem/in kind) execution.**

This is stipulated in Article No. (213) of the Egyptian Civil Code as follows:

1. When the specific performance of an obligation is impossible or not practicable, unless performed by the debtor himself, the creditor may obtain a judgment ordering the debtor to perform the obligation, and to pay a penalty if he abstains from performing his obligation.
2. If the judge finds that the amount of the penalty is insufficient to make the debtor perform his obligation, he may increase the penalty each time that he considers that is desirable to do so.

It is clear from this text that the following conditions must be met in order to impose a Threatening Fine:

- (1)-The Real Execution (In rem/specific execution) of the Obligation is Possible: The purpose of imposing the Threatening Fine is to exert pressure on the debtor to fulfil his/her obligation in kind, and therefore it is natural to require that the in-kind execution of this obligation is possible, as the debtor cannot

be compelled to execute an impossible obligation, and thus the justification for imposing the Threatening Fine in such a case is not justified. Similarly, the execution in kind must not be burdensome or onerous to the debtor. If it is burdensome to the debtor, it is not permissible to force him/her to execute or impose a Threatening Fine on him/her, unless the limiting of the creditor's right to a sum of money as a substitute would cause serious harm to the creditor. Article No. (380) of the UAE Civil Transactions Law stipulates that:

- 1- The debtor shall be compelled, upon being duly summoned, to perform his obligation in kind, whenever possible.
  - 2- When, however, specific performance is too onerous for the debtor, the judge may, upon request of the debtor, limit the creditor's right to a sum of money as substitute, if such performance does not seriously prejudice the creditor.
- (2)-The object of the debtor's obligation is an act that the debtor refrains from performing,

When the Object of the Right is the Doing of an Act, and the Nature thereof or the Agreement Demands that it be Performed by the Debtor in Person, the Creditor May Refuse the Performance of the Obligation by any Other Person

The Purpose of Imposing the Threatening Fine is to Exert Pressure on the Debtor to Fulfil his/her Obligation in Kind



and its nature or the agreement requires the debtor to perform it personally: Such as the obligation of a painter to paint a painting and the obligation of an author to write a scientific book, etc. This is stipulated in Article No. (381/1) of the UAE Civil Transactions Law as follows: 'When the object of the right is the doing of an act, and the nature thereof or the agreement demands that it be performed by the debtor in person, the creditor may refuse the performance of the obligation by any other person.', or the object of the debtor's obligation is to refrain from an act that the debtor continues to perform, and its nature requires that the debtor personally refrain from performing it, such as an artist's obligation not to exhibit his/her artwork except in a specific place and he/she violates it and continues to exhibit it in other places, or a person's obligation not to carry out certain works that compete with another person and he/she violates it and continues to carry out such works, and so on. It should be noted that in such cases, it is not permissible to force the debtor to execute in kind due to the infringement of his/her personal freedom.

(3)-The debtor refuses to execute in kind the court's decision: The judgement compelling the debtor to pay the Threatening Fine comes

at a later stage to the issuance of a judgement compelling him/her to execute in kind or accompanies it, but does not take effect until after the debtor's refusal to execute.

(4)-The creditor requesting the court to compel the debtor to execute in kind and oblige him/her to pay the Threatening Fine.

The Threatening Fine referred to in the aforementioned text is not compensation, but merely a means of applying pressure on the debtor to enforce performance. This means it either has the effect of changing the debtor's attitude and causing him/her to perform, or it does not and the debtor remains adamant in his/her non-performance. In either case, the monetary threat has exhausted its purposes, and therefore the Fine must be converted into a final compensation (Dr. AlSanhoury, "Al Waseet Fi Sharh Al Qanoon Al Madani" (The Mediator in Explaining the Civil Law, 2/1071, 1072)). And this is stipulated in Article No. (214) of the Egyptian Civil Code and as follows: 'After specific performance has been carried out or when a debtor has persisted in his refusal to perform the obligation, the judge shall fix the amount of damages that the debtor shall pay, taking into account the prejudice suffered by the creditor and the unjustifiable attitude of the debtor'. (This is what other laws have adopted and which introduced the monetary threat,

such as the Iraqi, Syrian, Kuwaiti and other civil codes.)

According to this provision, it can be said that if the Threatening Fine does not lead to the debtor's compliance with the court's order and the fulfilment of his/her obligation, its effect will be limited to requiring the court, when awarding compensation and determining its amount, to take into account the debtor's stubbornness, which means that stubbornness -contrary to the original principle- is considered one of the elements that result in imposing compensation, in addition to damage/prejudice, because the debtor's stubbornness causes moral damage to the creditor (Dr. AlSanhoury, "Al Waseet Fi Sharh Al Qanoon Al Madani" (The Mediator In Explaining The Civil Law, 2/1073)).

Regarding the position of the UAE Law on Threatening Fines, Article No. (385) of the Civil Transactions Law states that: 'After specific performance has been carried out or when a debtor has persisted in his refusal to perform the obligation, the judge shall fix the amount of damages that the debtor is bound to pay, taking into consideration the prejudice suffered by the creditor and the unjustifiable attitude of the debtor.' (identical to Article No. 360 of the Jordanian Civil Code).

Article No. (317) of the UAE Code of Civil Pro-

cedure No. (42) of (2022) stipulates that:'

- 1- A person applying for forcible execution of an obligation to perform or to refrain from an act shall submit an application to the Execution Judge for them to specify the manner by which such execution shall take place, and annex to the application the Execution Writ and the service thereof.
- 2- After summoning the other party to hear their representations, the Execution Judge shall make their order specifying the manner in which the execution will take place, and appointing the Execution Bailiff to carry it out, and the persons who are ordered to perform the act or the removal.

Article No. (318) of the same law states that:

1. If the execution in rem is not possible in the manner specified in Article No. (317) of this Code, or if the execution requires that the Debtor performs it themselves and they do not do so, then the Execution Judge may obligate them to pay a daily fine of not less than (1,000) one thousand dirhams and not more than (10,000) ten thousand dirhams to be disbursed as compensation to the Creditor who is party to the execution for the delay, provided that the total fines do not exceed the principal of the debt subject of execution.
2. The Execution Judge may cancel the fine or

Article No. (385) of the Civil Transactions Law States that: 'After Specific Performance has been Carried out or When a Debtor Has Persisted in his Refusal to Perform the Obligation, the Judge Shall Fix the Amount of Damages that the Debtor is Bound to Pay, taking into Consideration the Prejudice Suffered by the Creditor and the Unjustifiable Attitude of the Debtor'





**Article No. (318) of the UAE Code of Civil Procedure Indicates that the Legislature Has Authorized the Execution Judge to Order the Debtor to Pay a Threatening Fine as a Compensation to the Creditor Who is Party to the Execution for the Delay**

part of it if the person against whom the execution was made initiates execution before it is actually disbursed.

3. The provisions of Clause No. (1) of this Article shall apply to the legal representative of the legal person, and to those working for it who personally obstructed the execution'. Article No. (385) of the UAE Civil Transactions Law, which is identical to Article No. (214) of the Egyptian Civil Code, does not authorize the use of the Threatening Fine as a means of compulsory execution in rem, but it has taken its effect by requiring the court, when awarding compensation and determining the amount thereof, to take into account the debtor's unjustifiable attitude. And this means that the debtor's stubbornness is considered one of the elements that result in imposing compensation, in addition to the damage/prejudice, and this is a strange position to be taken. We believe that although there is no explicit provision that recognizes the Threatening Fine, there is nothing to prevent the court from resorting to this means of execution in rem. Article No. (318) of the UAE Code of Civil Procedure indicates that the legislature has authorized the Execution Judge to order the debtor to pay a Threatening Fine as a compensation to the Creditor who is party to the execution for the delay, but he/she may decide to cancel the entire Fine or part of it, if the debtor/person against whom the execution was made initiates execution before it is actually disbursed. The following should

be noted with respect to this position:

1. It has made the imposition of the Threatening Fine falls under the jurisdiction of the Execution Judge, contrary to the Egyptian law and the laws influenced by it.
2. It has made the Threatening Fine a daily Fine only and not for another unit of time.
3. It has specified the amount of the Threatening Fine for each day to be no less than one thousand dirhams and not more than ten thousand dirhams, and the total fines do not exceed the principal of the debt subject of execution. However, it is understood from the phrase: 'Total fines do not exceed the principal of the debt subject of execution', that the subject of this debt is the payment of a sum of money, and this contradicts the provisions of Articles Nos. (317 and 318), which deal with the subject of forcible execution related to the obligation to act or refrain from acting exclusively.
4. It has considered the Threatening Fine as a compensation payable to the creditor for delay in execution, and not for non-execution. So, what will the ruling be if the debtor insists on not executing his/her obligation, which requires his/her personal intervention? We believe that in this case the Execution Judge is not entitled to award the creditor with a compensation instead of execution in kind, because this matter is within the competence of the Trial Judge and not the Execu-

tion Judge, and therefore the creditor must file a new lawsuit to claim compensation. In order to avoid such a possibility, we believe that this matter should be resolved by the Trial Court. And when a Threatening Fine is imposed on the debtor, the proceedings before it can only end in one of two ways: (1- The debtor responds to the court's order and actually performs his/her obligation, or he/she fails to do so, and the court changes its judgement from execution in kind to a compensation. It can be said that if the Threatening Fine is imposed by the Trial Judge, he/she is empowered to award compensation for non-performance when the debtor persists in non-performance, or rule with compensation for delay in performance when the debtor responds to the court's order and performs despite the delay. If the Threatening Fine is imposed by the Execution Judge, the Judge is authorized to award compensation for delay in execution and not for non-execution.

5. It has granted the Execution Judge a discretionary authority to decide to cancel the Fine or part of it if the debtor/person against whom the execution was made initiates execution before it is actually disbursed. And commenting on what we mentioned in Clauses Nos. (4 and 5), we believe that despite the significant difference in the legal wording of Article No. (318) of the UAE Civil Proce-

cedure Code and Articles Nos. (213 and 214) of the Egyptian Civil Code, the legal nature of the Threatening Fine in these two laws is the same, as it is not compensation, but merely a means of putting pressure on the debtor to compel him/her to execute, with the court being obliged, when awarding compensation and determining its amount, to take into account the stubbornness/unjustifiable attitude shown by the debtor as well as the damage/prejudice caused to the creditor. And the reason for this is due to the broad authority granted to the Execution Judge regarding the fate of the Threatening Fine, as he/she is entitled to require the debtor/person against whom the execution was made to pay the entire amount of the Fine as a compensation to the Creditor who is party to the execution for the delay, when he/she finds that its amount is commensurate with the damage/prejudice suffered by the Creditor who is party to the execution for the delay, and the stubbornness/unjustifiable attitude shown by the debtor/person against whom the execution was made, who can also be required to pay part of the amount of the Fine as a compensation, when the Judge finds that its amount exceeds the amount of damage/prejudice and stubbornness/unjustifiable attitude. Finally, the Execution Judge may decide to cancel the Fine in its entirety when he/she finds that there is no prejudice or stubbornness that would justify forcing the debtor/person against whom the execution was made to pay compensation.

**If the Threatening Fine is Imposed by the Execution Judge, the Judge is Authorized to Award Compensation for Delay in Execution and not for Non-Execution**



The Virtual Lawyer

Or

The Human Lawyer

## Who is Taking Whose Place?



**Dr. Abdullah Yousef Al Nasser**  
Emirates Association of Lawyers and Jurists

**Technological Development in recent times has become accelerated at an ascending pace, reducing distances and times, and what was changing in a year now is changing within a month, and what previously needed a month to slightly change now becomes completely different in just a matter of days, and the list goes on and on and on.... In the midst of all this, the term 'Artificial Intelligence' (AI) has emerged strongly and has become an integral part of our daily and professional life in all its fields, including the field of law, which witnessed the emergence of the concept of the "Virtual Lawyer".**

But does this development and this Virtual Lawyer pose a threat to traditional Human Lawyers, or is it an opportunity to expand the horizons of the profession and enhance its efficiency?

The truth is that the Virtual Lawyer, as its name suggests, is not a substitute for the Human Lawyer, but rather a complementary tool under his/her supervision to provide some legal services such as researching legal texts, reviewing contracts, and providing direct counselling to users. etc. In this way, it helps lawyers improve their efficiency and save time. However, this virtual system cannot (at least not yet) and should not replace the Human Lawyer, who has the erudition, experience, and wisdom necessary to understand deep and complex issues that require reflection and critical reading.

It is no surprise that AI has the ability to process and analyze huge amounts of data quickly and accurately, such as reviewing thousands of legal documents and files and re-summarizing and classifying complex legal information, which saves time and reduces the risk of human errors, and this is what enhances the accuracy and quality of the legal work and allows the Human Lawyer to focus his/her effort on more complex tasks that require deep legal analysis, making AI a strong partner for the Human Lawyer, as it can generate quick legal insights that assist the lawyer make decisions faster and more accurately.

And one of the most important advantages of Artificial Intelligence is learning from past mistakes and promoting professional development, as the Virtual Lawyer -so to speak- can learn from past mistakes and avoid them in the future, helping the Human Lawyer to avoid the same mistakes and provide accurate legal services that evolve with trial and error.

And with all of the above-mentioned in mind, it is undeniable that AI is not a sufficient substitute for the Human Lawyer, but rather a complement to it, and the Virtual Lawyer should be looked at as a complementary tool that works under the supervi-

sion of the Human Lawyer, not as a substitute, as the Human Lawyer possesses communication skills, critical thinking, and the ability to interact with the client's emotional and social circumstances, qualities that Artificial Intelligence cannot master to the same extent. For this reason, joint work between Human and Virtual Lawyers results in better outcomes for clients and promotes the reputation of the Human Lawyer.

One the other hand, we should point out that maintaining client privacy and legal ethics must be of the highest standards, and the Human Lawyer must ensure that the Virtual Lawyer protects client data and preserves the confidentiality of legal information, as the Human Lawyer is directly responsible for the results of the analyses provided by the virtual system, and remains the final reviewer, ensuring that ethics are adhered to and the best possible legal service is provided.

In conclusion, it is worth emphasizing that AI and Virtual Lawyers do not pose a threat to the legal profession, but rather an opportunity to strengthen and develop it, as the Human Lawyer will remain the main driver of legal work, and the one who enjoys the ability to deal with the complexities of the law with deep skill and understanding. A Virtual Lawyer is a complementary tool that works under the supervision of the Human Lawyer, helping him/her to improve his/her efficiency and provide better legal services. In this way, AI can be a true partner for the lawyer, contributing to strengthening the quality of legal work and developing the legal profession to meet the needs of the modern era.

And we may highlight all of this with an example that may be one of the best examples in this regard, which is that this Article was generated by AI tools and the Author only did what was required to format the paragraphs and rephrase some of them in line with the purpose of the Article and the time and place of its publication.



**The Virtual Lawyer is a Complementary Tool Under the Supervision of the Human Lawyer to Provide Some Legal Services**



**Maintaining Client Privacy and Legal Ethics Must be of the Highest Standards**





## Administrative Liability Arising from Artificial Intelligence (AI) Faults (Tort) In UAE Legislation

Until the French Revolution at the end of the eighteenth century and the proclamation of the Principle of the Sovereignty of the Nation, the nations of the world remained irresponsible for their harmful actions against their citizens, as it was believed that the state was not responsible for its actions, and this thought changed as a result of the developments that the law experienced, and as a result of the developments that the state went through, from being a guardian state (Night-Watchman State/Minimal State or Minarchy) that was content to only protecting its territory against external aggression, providing security at home, and achieving justice among its citizens, to an intervening state (State Interventionism) that practices many activities that were left before to individuals or the private sector in the economic, educational, social, and other fields in which the modern state intervened.



**Counsellor Dr. Mutlaq Saleh Al Musa'abi**  
National Consultative Council - Abu Dhabi

With the increase and growth of social awareness of the need to protect individual rights and public freedoms, which is one of the priorities of the functions that the state must perform, as it is not possible to accept -under any justification or argument- an assault on the rights of individuals, even by the state itself, and because the modern state is a state of law, which means that the state itself must be subject to the law, all of this led to the establishment of the state's responsibility for the harms that may occur to individuals as a result of its various activities.

And since we live in the age of knowledge and its management, as they are a source of creativity and innovation, and to come up with new means, methods, and ideas that lead to riding the wave of competitiveness in an administrative world that seeks to achieve competitive advantage through modern tech-

**“ The Modern State is a State of Law, Which Means that the State Itself Must Be Subject to the Law ”**

**The Most Important Features That Characterize the Age We Live in Are Represented in the Increase in Information Around Us**

**Artificial Intelligence is a Science the First Goal of Which is to Make the Computer and Other Machines Acquire the Quality of Intelligence, and to Have the Ability to do Things That Until Recently Remained Exclusive to Humans, such as Thinking, Learning, Creativity, Communication and Others**

nology that has changed the face of the world and left its effects on existing legal theories, we find that the most important features that characterize the age we live in are represented in the increase in information around us, the increase in the use of this information, and the increase of our reliance on it in our daily life, and this is clearly illustrated in the growth of the Internet, and the increase in websites that provide their services on the World Wide Web, and Man as a result began to gravitate to digital life, after digital technologies entered all areas of life, whether in the means of communication with others or communication with machines.

In light of this scientific progress and the emergence of the so-called Digital Technology and Artificial Intelligence, the countries of the world had to move towards taking advantage of them in all fields, including the administrative fields, as well as in the field of Smart Government, where countries are currently seeking to apply Smart Government in all their dealings, to get rid of traditional administration and Red Tape, and among these countries is the United Arab Emirates, and so that the reader can understand the meaning of 'Artificial Intelligence', we will define it as 'a science concerned with the making of machines that perform behaviors that humans consider them intelligent', all in an attempt to make ordinary machines behave like machines seen in science-fiction movies. So, it can be said that Artificial Intelligence is a science the first goal of which is to make the computer and other machines acquire the quality of intelligence, and to have the ability to do things that until recently remained exclusive to humans, such as thinking, learning, creativity, communication and others. And when tracing the history of the UAE's leadership in all fields, especially the technological field, we find the UAE to be the first among all countries of the region to move towards the use of Artificial Intelligence, as the new global trend, in order for the UAE to remain a civilized country and at the forefront of the leading countries in the global technological revolution.

To that end, the Office of Artificial Intelli-

gence, Digital Economy, and Remote Work Applications was established by the UAE government to play an important role in consolidating the country's efforts and position in the fields of Artificial Intelligence, Digital Technologies, and Future Science, and to prepare and formulate policies, strategies, and regulations related to the fields of Artificial Intelligence, ensuring a prosperous and competitive digital economy for the country, maximizing the benefits of technology and innovation, promoting economic growth, and improving the quality of life of the society.

The Office also works on the agenda of achieving the objectives of the UAE Strategy for Artificial Intelligence, the National Strategy for Digital Economy, and the initiatives and plans aimed at establishing the country as the first destination and the main center for innovation in the fields of Artificial Intelligence, Digital Economy, Block chain Technologies, and other future technologies, and relying on smart and digital technologies in providing services, analyzing (100%) data over the coming years, improving government performance, accelerating achievement, and creating innovative work environments.

The UAE's interest in AI comes as a key pillar of the Knowledge Economy and an important tool for diversifying sources of income, maintaining a high standard of living for citizens, and achieving regional and global competitiveness.

Artificial Intelligence can activate administrative innovation, which is a means of employing knowledge and skill to come up with what is new, since we live in the era of knowledge economies based on innovation that drives the human being and motivates him/her to innovate inspired by a human behavior that is based on discipline, control, and hard work, which ultimately leads to the activation of the work of the administration that seeks to benefit from it, and this was finally embodied in the Artificial Intelligence System approved by the state to rely on in our government institutions, to serve citizens and residents in the United Arab Emirates.

However, the Artificial Intelligence System is one of the forms of technological development with the highest status in the current era, and despite its advantages, the Administration's reliance on it in all of the activities it carries out, and the resulting legal implications, may be fraught with risks due to the faults (tort) that may result from Artificial Intelligence, and thus lead to harm to customers, which necessitates the need to search for a legal adaptation commensurate with the requirements of the times, and to look at the administrative responsibility resulting from Artificial Intelligence faults (tort) from a new perspective that is commensurate with the amazing technological development in all fields, where administrative responsibility plays an important role in protecting the interests of citizens, maintaining security and public order in any country, as well as preserving the rights and freedoms of citizens, which may be subject to abuse of power, or any fault (tort) resulting from Artificial Intelligence, which the Public Administration relies on to manage its affairs, and benefits from it in all of its activities.

Some aspects of the importance of liability for AI risks can be referred to in quick points, as per the following:

- 1- The Automation of the decision-making process and other machine learning technologies may affect people's right to privacy and other rights as well, including the rights to health, education, freedom of movement, and freedom of expression.
- 2- AI Systems sometimes fail to exercise due diligence, and there have been many cases where people have been treated unfairly because of AI, such as being denied of some services because of faulty AI tools, or being arrested because of faulty facial recognition systems.
- 3- The risk of discrimination associated with AI-Managed Decisions or Judgments that may alter, determine, or harm human lives or freedoms is very real, such as the decisions and judgements that involve racial discrimination. It is therefore essential to systematically as-

sess and monitor the impact of AI Systems, in order to identify and mitigate the risks to human rights and freedoms.

In this respect, it is necessary to clarify the legal basis on which administrative responsibility is based in the case of AI error, because states are obliged to keep pace with technological developments in order to survive and exist, and this era makes it imperative for the Public Administration to allocate part of its investments or budgets to spend on modern technologies in the public interest and for the public good, and to enhance the Administration's ability to develop new methods of work, or develop the method of providing services to the beneficiaries of the government entity or those who deal with it, in a distinctive manner.

Recognizing the importance of Artificial Intelligence for all government agencies and bodies that have a relationship with the public in the current environment has become an urgent requirement in coming up with a new innovation for the work style, in order to achieve efficiency and high productivity by completing the procedures of beneficiaries with the least time, least effort, and lowest possible cost.

Accordingly, it is necessary to study the extent of administrative responsibility for AI damages, the pillars on which this responsibility is based, the basis on which it is based, the limits of this responsibility, the most important areas of utilizing AI to enhance the ability to activate administrative work in government institutions in the UAE, as well as the forms of fault (tort) resulting from the misuse of AI, especially the administrative fault (tort) related to poor service performance or not performing it at all, or delay in providing it, as well as forms of personal fault (tort) committed by the person operating the AI System on behalf of the Administration or in its name.

And despite the advantages of using Artificial Intelligence Systems in the administrative field, still, they have disadvantages and drawbacks represented in the many damages resulting from its use, which may sometimes cause serious and severe damage to individ-

**The Office of Artificial Intelligence, Digital Economy, and Remote Work Applications Was Established by the UAE Government**

**The UAE's Interest in AI Comes as a Key Pillar of the Knowledge Economy, an Important Tool for Diversifying Sources of Income, and Maintaining a High Standard of Living for Citizens**



**“ The Artificial Intelligence System is One of the Forms of Technological Development with the Highest Status in the Current Era, and Despite its Advantages, the Administration's Reliance on it in all of the Activities It Carries out, and the Resulting Legal Implications, may be Fraught with Risks**



uals, either materially or morally, with all this amid a fatal legal vacuum, where there are no legal rules in UAE legislation regulating administrative liability for Artificial Intelligence Actions and damages resulting from it, even though the administrative liability for AI faults (tort) is part of the legal liability that falls within the scope of administrative law, as it arises when damage to third parties results from the actions of the Public Administration, whether they are legal or physical actions, all of which aim at one goal, which is the public good. There is no doubt that reparation for AI faults (tort) is based on direct damage, as reparation in any form whatsoever is measured by

the amount of direct damage caused by the fault (tort), whether this damage is material or moral, expected or unexpected, present or future, as long as it is realized. Reparation for moral damage caused by the fault (tort) in the operation of Artificial Intelligence is only a symbolic reparation, confirming the right of the injured person to file a lawsuit against those who have offended his/her feelings, emotions, sensations, or reputation, and is not a reparation for the violation of feelings, sensations, and reputation, whose prestige and stature prevent them from being weighed with monetary value. The Administrative Responsibility lies with the manufacturer of Artificial Intelligence.

However, this fact soon disappears like a passing summer cloud, if we find that the vast majority of smart devices and machines do not operate with full autonomy, as they must be based on an operator who represents the human element in the operational process. It is inconceivable in reality and law that machines can be held liable for administrative responsibility and its consequences, and here we are not straying far from the established legal rules, especially the responsibility of the custodian of things (person who has things under their control), which is regulated by the wise UAE legislator in the Civil Transactions Law No. (5) of (1985) in Article No. (316). And this is because Liability is a very delicate legal issue, and by moving from theory to practice, and from the general to the specific, we find that in the case of self-driving cars, for example, we can determine the amount of control and command by the driver over the car, and if the driver does not have any control, then the manufacturer and other companies involved in assembling the car must be held more responsible, but the matter on the other hand becomes complicated when the driver has more control. And here we need to find out who made the decision that led to the accident, and the matter becomes more complicated if we know that the issue of car accidents and reparation involves the tricky aspect of figuring out who is at fault among many parties: (the driver, the car manufacturer, the manufacturer of the computer that gave the orders, and the company that created the intelligent system that takes over the driving and steering of the car). We also find a presence of Administrative Liability in the medical field, which is a more serious and delicate field. For example, if the Artificial Intelligence System allows the introduction of robots in the field of medical diagnosis, medical tests, and even conducting surgical operations, and a fault (tort) and damage occurs that requires legal liability, then here a group of parties or persons could be found at fault (liable), from the doctor to the laboratory technician to the technical

supervisor of the robot, as it is inconceivable to hold the robot legally responsible. Additionally, the question as to who bears the moral, ethical, and legal responsibility resulting from the actions of these increasingly ubiquitous robots, and if such responsibility should be borne by manufacturers, programmers, or users also arises. Finally, the current traditional rules in civil legislation are no longer sufficient to keep pace with the enormous and accelerating development in the field of Artificial Intelligence System Implementation, and legislation and policies must be modernized to keep up with the challenges and respond to technical developments. **In view of the above, the Study has come up with a set of recommendations, the most important of which are as per the following:**

1. To enact modern laws and legislations that keep step with the fourth industrial revolution and its smart tools.
2. We call on the legislator to intervene legislatively, either by introducing amendments to the liability rules contained in the UAE Civil Transactions Law in force, or by issuing legislation regulating legal liability for the actions and decisions of AI Systems, to accommodate the coverage of all legal liability requirements, whether in the administrative or other fields, so as to guarantee rights, and maintain the eternal rule in the Civil Code that states that 'Any person, even if non-discerning, shall be held accountable for inflicting damage on others'.
3. To establish more effective, efficient, and clear mechanisms to facilitate the process of establishing the responsibility of the Public Administration before the judiciary, especially for AI actions and the resulting damages, thus facilitating the claim for reparation against the Public Authority and its privileges.
4. To form a committee of experts specialized in the field of Artificial Intelligence to determine who is responsible for the fault (tort), assess the damage caused by it, and estimate the reparation commensurate with the damage.

**“ It is Essential to Systematically Assess and Monitor the Impact of AI Systems, in Order to Identify and Mitigate the Risks to Human Rights and Freedoms**



Mr. Mohammed Abdulrahman  
Case Manager - Dubai Courts

## Deep Fake... Challenges and Solutions

Deepfake is one of the most prominent challenges facing the digital world, as it relies on Artificial Intelligence Technology to produce digital video clips, digital audio recordings, and multiple texts that appear realistic but are in fact false. This Technology causes the dissemination of misleading information, defamation, and invasion of privacy, threatening individuals and organizations alike, as these Technologies are so accurate in producing fake contents so much so the average user – or what is legally known as the ‘Standard/Test of the Reasonable Man’ – is unable to distinguish a true clip from a fake one.

### What is Deepfake?

Deepfakes are a type of digital forgery based on Artificial Intelligence, where advanced algorithms are programmed and trained to assemble images, audio clips or videos of the target person and create a video that looks completely real, but its content is completely fake. Deepfakes are dangerous because they can contribute to the creation of offensive, misleading, or even straight up criminal content.

AI-Generated Deepfakes have revolutionized how digital technology is used, making it possible to create images, video clips, and audio recordings that look completely real but are fake.

Deepfakes rely on machine learning algorithms to analyze real data and images and recreate them in a way that accurately mimics reality. These technologies are used in many fields, both positive and negative, but misuse has harmful effects on individuals and society.

Professor Anderson Rocha emphasized during a workshop he presented in collaboration with the Dubai Judicial Institute under the title 'Methods, Mechanisms, and Ways of Deep Fake', that we must start by questioning that everything we see or hear can be fake, as questioning is the essence as long as everything we see or hear can be fake. His Excellency Mohammad bin Abdullah Al Gergawi, Minister of Cabinet Affairs in the UAE Government, stressed in his opening speech at the World Government Summit (WGS) 2024 that, quote: “[t]here are half a million fake content spread in our digital space in the last year, and the number of fabricated videos tripled year-on-year in 2023, distorting facts, changing attitudes, and shaping awareness for some. This is just the beginning, disinformation and the spread of misleading and false information will be one of the biggest challenges facing humanity. So, how can we protect the truth from distortion?”, unquote.

### Types of Deepfakes Using Artificial Intelligence

**Firstly: Visual Fakes:** It is based on produc-

ing fake photos or videos of real or even fictional characters, as it is sufficient to obtain a number of personal photos and video clips of someone -the target- to be modified and processed by Artificial Intelligence.

This includes changing facial expressions or superimposing a person's face on another person's body (Face Swapping), and is considered one of the most widespread and effective types of Deepfake due to its high realistic effect.

**Secondly: Audio Fakes:** It creates audio recordings that sound like they are for real characters. It is based on analyzing someone's voice and imitating it realistically, which allows the creation of fake audio clips with his/her voice and attributing them to him/her.

**Thirdly: Textual Fakes:** It relies on the creation of fake texts, conversations, news, and information using Artificial Intelligence by training complex linguistic models to write in a certain style.

And it must be taken into account that Textual Fakes have always been done using traditional technological means, i.e. before the advent of Artificial Intelligence. For example, falsifying written posts for social media or falsifying an email, and the falsifier often uses the accent and style of the person the subject of Deepfake, such as using terms, emoticons, or a specific style that he/she used to use, so that the falsified content is closer to reality and closer to being attributed to the person concerned.

### Real-life Examples of Deepfake Using Artificial Intelligence

**1- Examples in the Media:** Some fake videos have surfaced showing well-known political figures making statements that they did not actually make, one example of which is for the former U.S. President Barack Obama making sarcastic remarks that went viral, and it was later revealed that it was a fake clip aimed at educating people about the dangers of Deepfakes. Also, several years ago, specifically in (2019), many internet users fell victim to a fake video of Facebook founder Mark

“  
Deepfakes Are  
a Type of Digital  
Forgery Based on  
Artificial Intelli-  
gence



Deepfakes Rely on Machine Learning Algorithms to Analyze Real Data and Images and Recreate Them in a Way That Accurately Mimics Reality

Visual, Audio, and Textual Fakes Technology Allows Creating Fake Content Clips That Are Closer to Reality

Zuckerberg that went viral; in which he was making a statement acknowledging through it of the Conspiracy Theory and of his company's control over the world.

**2- Examples in the Entertainment Industry:** Some films have used Deep Fakes to bring back historical figures, replace actors with others, or even bring back deceased characters on the screen, for example, many concerts of deceased singers such as the late Egyptian Umm Kalthoum and Abdel Halim Hafez were revived, as scenes of them were produced using hologram technology, a unique feature of Artificial Intelligence that can recreate the image of original objects in three dimensions with a high degree of accuracy.

**3- Examples in the Commercial and Advertising Industry:** Some companies may use Audio Fakes to imitate the voice of famous personalities and use the facial imprint (Face Print) in their advertising campaigns without the need to sign contracts with the original personalities, and we find many advertisements that appear to us through various social media for public figures and influencers promoting investment companies in the fields of stocks and various commercial fields, but these clips are often faked using Artificial Intelligence.

**4- Examples of Deepfake for the Purpose of Blackmail:** Deep Fakes have been used in some cases to create offensive videos or recordings of people with the aim of blackmailing them, and some countries have recorded cases of individuals who were blackmailed after the spread of fake videos of them in embarrassing or compromising situations.

**The Impact of AI-Powered Deepfake on Society**

**1- Spreading Misinformation:** It has become easy to spread fake news and information using Deep Fakes, which may contribute

to creating confusion or misleading public opinion.

**2- Violation of Privacy:** Privacy is violated through Deep Fakes, as images or clips of people can be used without their permission to create fake content that may offend them.

**3- Impact on Personal and Professional Reputation:** Individuals can be at risk of losing their reputation due to fake content that appears to be real, which has a negative impact on their personal and professional lives.

**4- Legal Challenges:** Governments face legal challenges in tackling AI-Powered Deepfake, and as technology evolves rapidly, legislation needs to continuously evolve to protect individuals and institutions.

**5- The Loss of Trust in Everything that Can Be Viewed:** As the individual develops a feeling that everything that he/she lays their eyes on may be fake, which may lead to the loss of credibility in the thing that is being viewed and even in the thing that has a real content and is not fake to begin with.

**How to Address Deepfake**

It is important for countries to adopt a comprehensive approach to tackling Deepfake, combining technical tools, legal legislation, and societal awareness, and the following are the most prominent methods that should be used:

**1- Modern Technologies:** It is possible to rely on the use of Counter-Artificial Intelligence Technologies to detect the content of Deep Fakes, as international companies specialized in the fields of technology have developed tools that can analyze videos and audios to detect and prevent any malicious use of AI, through the use of many methods, for example, Histogram of Oriented Gradient (HOG), where this technology can make comparisons of the pixels in each image with the pixels in the surrounding images.



**2- Strengthening Partnerships with Global Technology Companies:** Collaborating with global tech companies such as Google, Facebook, and YouTube to detect Deep Fakes is essential, as these companies have clear policies on removing fake content quickly to prevent it from spreading.

**3- Societal Awareness and Outreach:** Many technical experts suggest that raising awareness will be the first and most important step to address this type of Deepfake. The competent official authorities, such as the Communications Regulatory Authority (CRA), and the law enforcement authorities such as the police, the public prosecution, and the judiciary can launch awareness campaigns that focus on spreading

awareness of the dangers of Deepfake. These campaigns should include advice on how to recognize fake content and warn against sharing controversial content before confirming its authenticity, as the more awareness there is out there, the shorter and easier the road to Digital Literacy will become.

**4- Strict Control and Imposition of Penalties:** If it is proven that deep fakes are used for harmful and negative purposes, whether or not they result in any damage, the perpetrator of the offence must be punished more severely, as the achievement and occurrence of the outcome of any committed crime is not usually considered as much as the occurrence of the crime itself in its material and moral elements.

Countering Deepfake is Through the Use of Modern Technologies, Societal Awareness, and Strict Control with the Imposition of Penalties

## Artificial Intelligence (AI) in the Service of Justice.. New Opportunities and Challenges



**Honorable Judge  
Mustafa Al Sharqawi**  
Judge at the Dubai Supreme Court



Justice has always been a timeless human endeavor, and now, with the advent of Artificial Intelligence (AI), we are witnessing a radical shift in the way we perceive and practice justice.

In our fast-paced digital age, Artificial Intelligence Technologies are infiltrating every aspect of our lives, including the judiciary and justice. So, how might these technologies shape the future of justice? Can you imagine sitting down and talking to a computer, as if you are talking to a friend, to visualize that future for you?

I will convey to you the conversation I had with my virtual friend as is, without interference or modification on my part.

### Dialogue on Artificial Intelligence and Judgment Writing: A Look into the Future

#### Preface:

The world is witnessing the rapid development of Artificial Intelligence (AI), which is impacting every aspect of our lives, including the judiciary.

The use of AI in judicial judgement writing is a topic that is both controversial and interesting in equal measure.

On the one hand, this development is a promising step towards faster and more efficient justice; on the other, it raises concerns about the machine's impartiality and ability to understand the human complex-

ities of law and justice.

#### Current Uses:

- **Legal Research:** AI is used to search for relevant case law (precedents/judge-made law/common-law) and statutes, saving time and effort for judges and lawyers.
- **Analyzing Contracts:** AI can quickly and accurately analyze complex contracts, helping to identify potential risks and speed up legal proceedings.
- **Predicting Outcomes:** Using machine learning models, AI can predict the outcome of cases based on a wide range of data, helping judges

make more informed decisions.

- **Generating Preliminary Drafts of Judgements:** AI can generate preliminary drafts of judicial judgements based on available legal and judicial facts, saving judges valuable time.

#### The Future:

**Increased Accuracy and Efficiency:** AI's judgement-writing performance is expected to improve over time, leading to more accurate judgements and fewer human errors.

**Specification of Judgments:** AI can specify judgements for each individual case, ensuring that each case is dealt with according to its own circumstances.

**Improved Access to Justice:** AI can facilitate access to justice for individuals who cannot afford the cost of hiring a lawyer, by providing automated legal services.

**Ethical and Legal Concerns:** The use of AI in the judiciary raises several ethical and legal concerns, such as:

- **Impartiality:** Can a machine be completely impartial in making decisions?
- **Liability:** Who is held responsible for mistakes committed by AI?
- **Privacy:** How can the privacy of personal data used to train AI models be protected?
- **Transparency:** Can the decisions made by AI be clearly and understandably explained?

#### The Conclusion:

The use of AI to write judicial judgements is revolutionizing the judiciary, but at the same time it raises many challenges and questions. It is imperative to balance the potential benefits of this development with the associated risks, and to develop an appropriate legal and ethical framework to ensure that it is used in a fair and responsible manner.

**Note:** This is a real dialogue, not a fictional one, and we will meet soon, God willing, to continue this dialogue and find out the answers to the questions that were posed by my virtual friend.





## Voiceprint (Sound Spectrogram) Between Application and Legislation



**Mr. Yahia Al Mahameed**  
Information Technology Department  
- Dubai Courts

In a world where technological developments are accelerating by the day, sorting out the truth from the fake has become an unprecedented challenge in the history of the judiciary, where Artificial Intelligence (AI) can make it difficult to distinguish a real voice from a fake one, raising legal and ethical challenges.

### The First Axis Understanding the Technology

#### Voiceprint, Deepfake, and Commercial Infringement

##### 1. The Concept of Voiceprint

Voiceprint is a biometric technology used to analyze and record the unique characteristics of an individual's voice such as pitch, speed, and rhythm. This technology relies on Artificial Intelligence (AI) for identification purposes or to create voices that are identical to human voices. In recent years, AI applications have evolved to the point that they can now create voice recordings similar to a specific person's voice using very simple data.

##### 2. How Voiceprint is Used and its Risks

Today, Voice printing is used in several areas, including improving customer service, securing access to sensitive systems, and even in entertainment applications. However, this technology has also raised some legal and ethical concerns, especially with the

emergence of cases where it has been illegally exploited.

##### 3. Voice Deepfakes

Some entities have used AI technologies to create fake voices that resemble the voices of famous people or specific individuals without their permission. In one incident in (2020), a Voiceprint was used to pretend that the manager of a British energy company was requesting a money transfer, causing a huge financial loss of over \$240,000.

##### 4. Voice Commercial Infringement

There have been cases where celebrities' voices have been used for commercials without their consent, raising legal questions about an individual's right to control their voice.

### The Second Axis: Current Legal Framework and Legal Gaps

#### Current Legal Framework

##### 1. Privacy Laws

Voiceprints are biometric data, which are subject to privacy laws in some countries. For example, the European General Data Protection Regulation (GDPR) categorizes Voiceprints as sensitive data that requires the explicit consent of the person concerned. Also, the Biometric Information Privacy Act (BIPA) in the US State of Illinois requires companies to obtain consent from individuals before collecting or using their voice data.

##### 2. Intellectual Property Rights

In some countries, intellectual property laws provide protection for voice recordings, but this protection does not usually extend to the voice itself. And while some legislation may provide certain protection for what is known as the Right of Publicity, this protection is not universally standardized.

##### 3. Fraud Laws

Traditional Fraud Laws prohibit the use of fake voices for the purpose of misleading or stealing, but due to the novelty of deep fakes technologies, the application of these Laws can be difficult and complex in some cases.

**Dealing with Artificial Voice Deepfakes is a Challenge for the Judiciary**

**Legal Gaps**

Although some Laws provide protection for Voiceprints, there are clear loopholes, including:

- There is no direct legal protection that fully guarantees voice rights, as artificial voiceprints can bypass intellectual property laws in some countries.
- The difficulty of applying national laws to digital content that moves easily across borders, making it complicated to track down those responsible for deepfakes.



**How Can Courts Deal with Voice Deepfakes in Evidence?**

**• Requesting Corroborating Evidence**

Additional evidence can be requested to verify the authenticity of recordings.

**• Use of Experts**

Technical experts can be used to analyze audio evidence.

**• Acceptance of Audio Evidence**

Audio evidence may be unreliable due to Deepfake.

**The Third Axis Practical Challenges and Solutions**

Dealing with Artificial Voice Deepfakes is a challenge for the judiciary, especially since this technology is capable of producing highly accurate recordings that make it difficult to distinguish real voices from fakes. And here we highlight the main challenges and proposed solutions as per the following:

**1. Practical Challenges**

**• Assessing the Reliability of Audio Evidence:**

Audio Evidence in court requires high reliability, and Voice Deepfakes make it difficult to fully rely on voice recordings as conclusive

evidence, as Artificial Intelligence can be used to manipulate voices to sound like they are for real people.

**• Establishing Liability:**

It is difficult to establish liability in cases of Voice Deepfakes, especially if the perpetrator is unknown or located in another country, and this requires international efforts to combat cross-border crimes.

**• Dealing with Cross-Border Evidence:**

Evidence circulating online requires international co-operation, as Deepfakes can be produced in one place and used in another.

**2. Solutions and Practical Guidance**

**• Analyzing Evidence by Technical Experts:**

It is advisable to use certified digital evidence experts to analyze and verify the authenticity of audio recordings.

**• Verifying the Chain of Custody of the Evidence:**

The Chain of Custody of each piece of Evidence should be documented to ensure that no party can tamper with it from the moment it is recorded until it is presented to the court.

**• Examining the Full Context of the Recording:**

This includes assessing the circumstances in which the audio was recorded and the surrounding evidence were produced, as contextual content can help determine whether the recording is real or fake.

**• Requesting Corroborating Evidence:**

In cases of doubt, the judge can request supporting evidence to verify the authenticity of the recording, such as video recordings or other related documents.

**3. Warning Signs of Voice Deepfakes:**

**• Unusual Changes in Tone of Voice or Tone of Speech:**

Some fakes can be detected due to unusual changes in voice.

**• Inconsistent Background Noise:**

AI can add noise but can't always make it consistent with the real recording environment.

**Voiceprint is a Biometric Technology Used to Analyze and Record the Unique Characteristics of an Individual's Voice**



**• Urgent Financial Requests or Decisions:**

When there are urgent and unusual requests, this could be a sign of Deepfake.

**4. Verification Procedures:**

**Technical Analyses** can be carried out to verify the authenticity of the recording, such as quality assessment and checking the temporal consistency between speech and events. The judge can request the questioning of witnesses related to the incident to confirm the authenticity of the voice and content.

**The Fourth Axis Legal and Regulatory Framework**

Current legislation relies on privacy and data protection laws, but they are not complete enough to deal with the recent developments in Voice Deepfakes. Here we highlight the current laws and future needs:

**1. Global Legislation**

**European Union**

**• General Data Protection Regulation (GDPR):**

It provides comprehensive protection for Voiceprints and imposes strict penalties for the unlawful use of biometric data, including Voiceprints, with penalties of up to (€20 million) or (4%) of a company's annual revenue.

**• European Union Artificial Intelligence Act (EU AI Act) (2024):**

It requires companies to disclose the use of Deep Fakes and sets strict rules to safeguard the rights of individuals and prevent the misuse of AI technologies.

**United States**

**• The Biometric Information Privacy Act (BIPA) in the US State of Illinois:**

This Law imposes strict requirements on businesses to obtain written consent from individuals before collecting and using their biometric data, including voice.

**\* Other State Laws such as the California Consumer Privacy Act (CCPA) and Biometric Data Protection Laws in New York and Texas.**

These Laws provide additional protections and restrictions on the collection and use of biometric information.

**2. Arab Framework**

**United Arab Emirates (UAE):**

**• Personal Data Protection Law (PDPL) 2021:** It provides comprehensive protection for biometric data and requires explicit consent before data can be used, along with penalties for violators.

**• Federal Decree Law No. (34) of (2021) on Combatting Rumours and Cybercrimes (Cybercrime Law):**

It criminalizes digital deepfakes, protects digital privacy, and establishes international co-operation mechanisms to deal with cross-border crimes.

**There is No Direct Legal Protection That Fully Guarantees Voice Rights**

**Voice Deepfakes Make It Difficult to Fully Rely on Voice Recordings as Conclusive Evidence**



**It is Advisable to Use Certified Digital Evidence Experts to Analyze and Verify the Authenticity of Audio Recordings**

**Saudi Arabia:**

• **Personal Data Protection Law (PDPL) 2023:** It establishes a modern biometric data protection system and restrictions on the manipulation of digital privacy.

**Egypt:**

• **Anti-Cyber and Information Technology Crimes Law (Cybercrime Law):** It criminalizes cyber malfeasance and ensures the protection of personal data, while providing mechanisms to cooperate with other countries to address digital crimes.



**How Can the Challenges of AI-Powered Voiceprinting be Addressed?**

• **Strengthening Legislation:**

To establish strict laws to protect Voiceprints and combat Deepfake.

• **Developing Technology:**

To invest in voice-deepfakes-detection and evidence-analyzing technologies.

• **Raising Awareness and Education:**

To raise awareness about the dangers of Voice Deepfakes and teach the public on how to distinguish between real and fake voices.

**The General Data Protection Regulation (GDPR) Provides Comprehensive Protection for Voiceprints and Imposes Strict Penalties for the Unlawful Use of Biometric Data**

**The Fifth Axis Practical Applications and Judicial Procedures**

In courts of law, accurate criteria need to be used to evaluate audio evidence. This requires adhering to standardized judicial procedures to ensure the integrity and authenticity of the evidence.

**Evaluating Audio Evidence in Court**

**1. Technical Criteria**

• **Analyzing Voice Characteristics:** This requires the use of advanced analysis technologies to examine pitch, rhythm, and frequency

consistency.

• **Examination of Digital Data:** It helps to detect possible manipulation or tampering.

• **Assessing the Quality of the Recording:** This depends on the clarity of the voice and the recording conditions, as higher quality may increase the reliability of the evidence.

**2. Judicial Proceedings**

• **Requesting Accredited Experts Reports:** Requesting technical attestations from audio evidence experts is important to ensure the accuracy of the assessment.

• **Verifying the Chain of Custody:** This verification ensures that the recording has not been altered since the time it was collected.

• **Requesting Technical Experts Witnesses:** Witnesses who specialize in audio technology can be questioned to explain any discrepancies.

**3. Dealing with Deepfake Cases**

**Preventive Measures:**

• **Documenting Important Calls:** It is recommended to document important calls to protect them from tampering.

• **Using Multiple Verification Techniques:** Such as verification via text message or email.

- **Implementing Strict Security Protocols:** This includes logging every access to sensitive files.



**How to Verify the Authenticity of Audio Evidence in Falsification Cases?**

• **Following Judicial Procedures:**

To request experts reports, verify chain of custody, and call technical experts witnesses.

• **Taking Preventive Measures:**

To document important calls, use multiple verification techniques, and apply strict security protocols.

• **Using Technical Standards:**

To analyze voice characteristics, examine digital data, and assess recording quality

**The Sixth Axis Recommendations and Future Solutions**

**1. Developing New Legislation**

Countries need to review and update laws to include technological developments, with an added emphasis on the protection of biometric data and the prevention of its misuse.

**2. International Cooperation**

It is recommended to strengthen international cooperation among countries to share expertise and apply unified standards in falsification detection.

**3. Continuous Training**

Continuous training for judges and stakeholders is vital to enable them to deal with modern Artificial Intelligence technologies and recognize the signs of falsification.

**4. Investment in Falsification Detection Technologies**

Countries should invest in advanced tools to help detect falsification, such as voice analysis software and Artificial Intelligence technologies that are able to detect falsification.



**Future Solutions to Technological Challenges**

• **Legislative Updates:**

To update laws to protect biometric data and prevent its misuse.

• **International Co-operation:**

To promote global co-operation to share expertise and standards.

• **Investment in Detection Technologies:**

To invest in advanced tools to detect falsification and deception.

• **Continuous Training:**

Continuous training for judges and stakeholders on Artificial Intelligence and falsification detection.



**Sources and References**

1. General Data Protection Regulation GDPR, European Union, 2016, Available at: <https://gdpr.eu/>
- 2- The Biometric Information Privacy Act (BIPA) in the US State of Illinois, 2008, Available at: <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3004>
- 3- UAE Personal Data Protection Law (PDPL), 2021, Available at: <https://u.ae/en/about-the-uae/digital-uae/data/data-protection-laws>
4. Al Tamimi & Co., «Understanding Biometric Data Regulation in the UAE: Implications of the Personal Data Protection Law, 2022 Available at: <https://www.tamimi.com/law-update-articles/biometric-data-regulation-uae/>
5. AI-Generated CEO Voice Deepfake Scams UK Energy Company, Business Insider, 2020
6. Voice Deepfakes: The Next Frontier in Digital Fraud
7. Judicial Approaches to Digital Evidence, Harvard Law Review, 2024 Available at: <https://harvardlawreview.org/>

**In Courts of Law, Accurate Criteria Need to be Used to Evaluate Audio Evidence. This Requires Adhering to Standardized Judicial Procedures to Ensure the Integrity and Authenticity of the Evidence**

**Countries Need to Review and Update Laws, Strengthen International Cooperation, Continue Training Judges and Stakeholders, and Invest in Falsification Detection Technologies**



## Arbitration in Commercial Contracts... The Impact of Legal Translation On Interpreting the Terms of International Agreements

**In the world of international trade, legal agreements between companies are essential to determine the rights and duties of the different parties. However, despite the precision of these agreements, the parties may face challenges in interpreting their clauses, especially when the translation is between different languages.**

**A dispute arises over an arbitration clause in a Master Services Agreement (MSA) between the parties which, due to inaccurate translation of legal terms, leads to different interpretations of the clause and delays the adjudication of the case.**

Prepared by  
Dubai Supreme Court  
Technical Office

In this Article, we review the details of a Dubai Supreme Court Judgement that sheds light on the role of legal translation in determining jurisdiction and the importance of adhering to the original texts in international commercial contracts.

### The Facts

Company (A) filed a lawsuit against Companies (X and Y) before the Court of First Instance requesting a judgement to compel them to pay it, jointly and severally, the sum of (USD 627721) or the equivalent of (AED 2303737) and legal interest at (9%) from the due date (Maturity Date) until full payment is completed, based on the fact that under a Master Services Agreement (MSA) and purchase orders for commercial transactions between them, it fulfilled its obligations by supplying what was agreed upon to the Appellant according to bills of lading, packing lists, and invoices, and the two mentioned Companies (X and Y) have acknowledged that the Plaintiff Company (A) was entitled to the amount claimed, but they failed to pay despite being requested to do so, and then the lawsuit was filed, and the Court of First Instance after appointing an expert who submitted his report ruled that the lawsuit was inadmissible against Company (Y) for it has been filed against incapacitated party (Suing without Legal Capacity/Filing against a non-party) and dismissed the lawsuit against Defendant Company (X). Plaintiff Company (A) appealed against this judgement, and Defendant Company (X) argued that the lawsuit was inadmissible due to the lack of jurisdiction of the Dubai Court due to the existence of an arbitration clause, then the Court ruled that the appealed judgement should be annulled insofar as it dismissed the lawsuit with respect to Defendant Company (X), and ordered it to pay to the Plaintiff Company (A) the amount claimed and interest thereon at the rate of (5%) per annum from the date of the filing of the claim until payment is completed, and to uphold the appealed judgement in all other respects, noting in its reasons that it rejected the aforementioned defense raised by the Appellee/Defendant Company (X), who appealed against this judgement before the Supreme Court requesting its reversal/annulment.

### Cause of Appeal

Whereas the appeal is based on a single ground on which the Appellant contends that the contested judgement was wrong in the application of the law,

and was vitiated by lack of causation and imperfection of reasoning, and that it rejected the defense of inadmissibility that was based on the fact that there was a previous agreement to resort to arbitration, on the grounds that the arbitration clause does not prevent any party to the contract from resorting to any competent court regarding any dispute about the contract, which makes the Dubai Courts competent to hear the dispute, as they are courts with original jurisdiction, despite this interpretation being contrary to what is stated in the agreement, since the parties have expressly agreed in the first paragraph of Article No. (35/2) of the agreement, which is the subject matter of the lawsuit, to resort to arbitration in accordance with the rules of the London Court of International Arbitration (LCIA), specifying its law and committee, followed by a second paragraph stating the rights of the parties to resort to the competent courts regarding urgent and temporary measures and orders, which does not include a reversion or waiver of arbitration to examine the origin of the dispute, and since the agreement was written in English, the will of the signatory parties to it was directed to what is contained therein in its written language, and it cannot be assumed that the will of the parties will be directed to what is contained in the agreement when it is translated into other languages, because translation cannot always be a faithful reproduction of the translated text, as translation and reproduction can lead to defect, and the court had adopted the translated version of the agreement, while the original English text did not refer at all to the right of any of the parties to bring a substantive action and dispense with arbitration, but only to the right to take the necessary interim measures before any competent court, which is in line with the UAE Federal Law No. (6) of (2018) on Arbitration, which stipulates that the parties have the right to resort to the courts regarding interim and provisional measures.

### Reasons for the Supreme Court's Judgement

It is established in the judicature/case law/the precedents) of this Court that according to Article No. (246) of UAE Civil Transactions Law, a contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith. It is also established that while the determination of whether or not the common will of the contracting parties to arbitrate, as well as the interpretation of the arbitration clause and its duration, are matters of fact



**“ The Appeal is Based on a Single Ground on Which the Appellant Contends That the Contested Judgement was Wrong in the Application of the Law, and was Vitiated by Lack of Causation and Imperfection of Reasoning**

**“ The Translator Should Realize That Legal Terms Formulated Within the Framework of a Particular Legal System Based on a Particular Culture May Not Correspond to the Terms Contained in the Language to Which it is Translated**

for the trial court, it still must base its judgement thereon on sound reasons that are based on their origins which are established in the case documents and lead to the result it reaches. It is also well established according to the rules that if the legal field is closely linked to a particular culture, where the structure of the legal text is determined in accordance with this culture, and this is reflected in the legal language of the text, then the translator should realize that the legal terminology formulated within the framework of a particular legal system based on a particular culture may not correspond to the terminology in the language into which it is translated, and therefore the translator must choose terms that fulfil the same functions as those in the original document. It is also recognized that while a judge may not rule based on his personal knowledge, he is not prohibited from ruling on general knowledge. The definition of legal terms, data, and figures published on the Internet on the official websites of international organizations or associated specialized agencies, foreign websites of courts, ministries of justice, universities, and high-level scientific institutes are usually considered to be public knowledge that does not require proof of its existence, as they are specialized in publishing laws and defining concepts for any legal term in the country concerned and continuously rely on checking and updating information. And it was open to all -through the sites referred to- to see that the terms 'Injunctive Relief' and 'Provisional Remedies' had no direct equivalent in the law or judicial system of the United Arab Emirates, since they were terms known only in Common Law States, and that the closest concept to translating those terms was that of 'Temporary Orders' and 'Interim or Provisional Measures'. Bearing the foregoing in mind, and since the last paragraph of Article No. (35/2) of the Master Services Agreement (MSA) No. (18/SAT/2019), which is the subject of the dispute, stated that: (This clause shall not preclude the parties from bringing an action in any court at competent jurisdiction for injunctive relief or other provisional

remedy in relation to any dispute in connection with the contract), then the correct translation for it shall be: (notwithstanding, this clause -i.e. the arbitration clause- will not prevent the parties from bringing an action before any court of competent jurisdiction to obtain an interim order or provisional measure in connection with any dispute relating to the contract). Consequently, the translation provided for this clause, which contains the phrases 'Reparation by Injunction' and 'Interim Reparation', contains an incorrect translation, which means that the will of the parties has been directed to the possibility of resolving their disputes by arbitration as the sole means of resolving disputes arising from the contract, and this is not prejudiced by their express agreement also -in this clause- to the right of any of the parties to bring proceedings before any court of competent jurisdiction to obtain a temporary order or provisional measure in connection with any dispute relating to the contract, which is not a waiver of the arbitration clause in Paragraph No. (1) of that Article, and this is consistent with Article No. (18) of UAE Federal Law No. (6) of (2018) on Arbitration, which stipulates that the parties have the right to request interim or provisional measures, whether before the commencement of arbitration proceedings or during the course of those proceedings, and that resorting to any of these measures shall not be considered a waiver of the arbitration agreement. And if the appellate judgement violates this consideration and bases its decision to reject the Appellant's defense of inadmissibility due to the arbitration clause on the basis of an incorrect translation of the aforementioned paragraph, it is therefore flawed and contradicting what is evidenced in the documents and must be reversed. Since the subject matter of Appeal No. .... for the year .... /Commercial/ is admissible for adjudication, and in view of the above, the Appellant's appeal judgement must be annulled and the case must be dismissed due to the existence of the arbitration clause.



#### **Ruling/Wording of the Supreme Court (Operative Part of Judgment)**

The Court ruled to overturn the contested judgement with respect to the Appellant and order the Appellee/Respondent to pay the expenses and (AED 2,000) in attorney's fees, and in the subject matter of the appeal, to annul the appeal judgement with respect to the second Appellee/Respondent Company (Y) and order the dismissal of the case before it due to the existence of the arbitration clause and order the Appellant to pay the appeal expenses and (AED 1,000) in attorney's fees.

#### **Takeaways: It is Concluded from this Ruling that:**

1- The translator should realize that legal terms formulated within the framework of a particular legal system based on a particular culture may not correspond to the terms contained in the language to which it is translated, and therefore

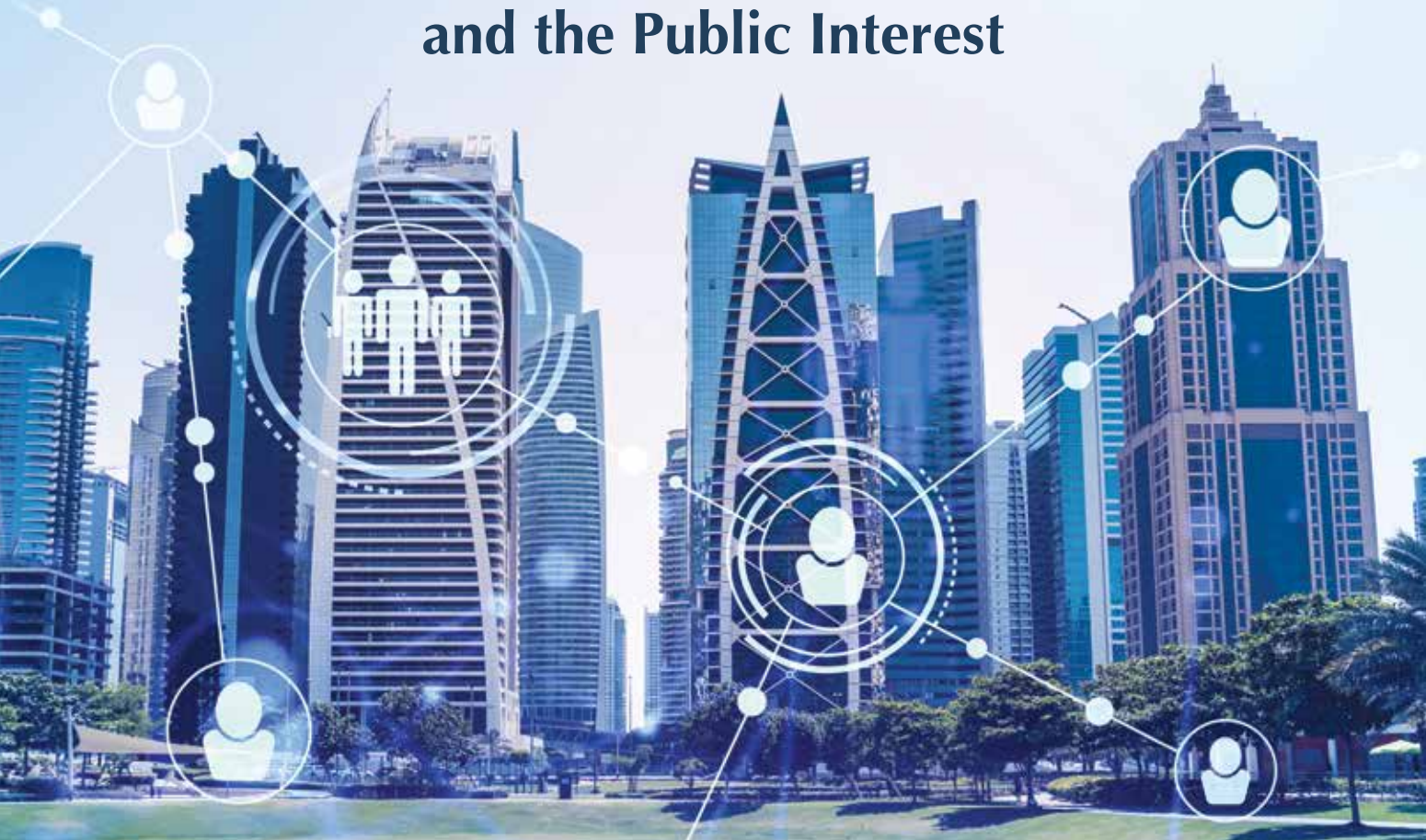
the translator must choose terms that perform the same functions as the terms contained in the original document.

- 2- The judge is not prohibited from judging by general knowledge.
- 3- The definition of legal terms, data, and figures published on the Internet on the official websites of international organizations or associated specialized agencies, foreign websites of courts, ministries of justice, universities, and high-level scientific institutes are usually considered to be public knowledge that does not require proof of its existence.
- 4- The right of any of the parties to file an action before any court of competent jurisdiction to obtain an interim order, provisional or conservatory measure, related to any dispute related to the contract, shall not constitute a waiver of the arbitration clause.

**“ The Will of the Parties Has Been Directed to the Possibility of Resolving Their Disputes by Arbitration as the Sole Means of Resolving Disputes Arising from the Contract**



## The Role of Criminal Law in Striking a Balance between Personal Freedom and the Public Interest



**Colonel  
Khalid Mohammed Ali Al Hammadi**  
Sharjah Police Sciences Academy - Sharjah

**The protection and guarantee of personal freedom requires that it should not be infringed upon except for the necessity required by the interest of society in protecting its security and fulfilling its right to punishment, and since the principle of innocence until proven guilty by a final judgement is the rule, this implies that an individual should not be punished for an act attributed to him/her unless a final judgement is issued against them by a competent judicial authority. However, the imposition of a punishment on the perpetrator of a crime requires, in the first instance, taking precautionary measures prior to conviction that may compromise personal freedom to reach that goal.**

And since these pre-sentencing procedures may be directed at an innocent person and may affect his/her freedom, any restriction on this natural right must be supported by the law in order to achieve a higher interest, namely the protection and security of society.

If the interest of society requires taking measures that affect the freedom of the accused before his/her guilt is proven by a final judgement, a balance must be struck between two conflicting interests: the interest of the individual in enjoying his/her right to freedom as long as his/her criminal liability is not proven by a judicial judgement that provides all the necessary guarantees for personal freedom, and the interest of society, which has the right to live in security and peace and requires taking the necessary measures to punish individuals who violate the regulations established for the maintenance and welfare of the collective.

And here, the role of Criminal Law emerges as a protector of social interests, whether they are public interests that affect the entity of the state and society, or private interests that relate to the rights and interests of individuals, and this protection is manifested in the penal code by imposing different patterns of behavior to protect social interests and values, and by imposing a legal penalty to ensure respect for these patterns, while in the Criminal Procedure Law, this protection is manifested through its procedures to uncover the truth and establish the authority of the state in the act of imposing punishment, and the guarantees established to protect individual freedom in the face of these procedures.

Criminal Law in its two branches balances between the private interest of the individual and the public interest, approving and recognizing that which benefits society and ensures its interest and security. Through this balance that is struck between the public interest and the private interest, Criminal Law does not fail to protect the individual's right to liberty in two ways, the first of which by punishing infringements on the individual's right to liberty, and the second of which by establishing guarantees to safeguard the individual's freedom against any criminal measure taken by the public authority.

From the foregoing, it is clear that Criminal Law protects rights and freedoms and balances them with the public interest in order to achieve a higher interest in protecting society. This protection is manifested in Criminal Law through several principles, the most important of which are the Principle of Criminal Legality and the Principle that the Defendant is Presumed Innocent Until Proven Guilty Beyond a Reasonable Doubt (Acquittance is the Rule).

### **The Principle of Criminal Legality (No Crime or Punishment Without a Legal Provision 'nulla poena sine lege')**

#### **A- The Concept of the Principle of Criminal Legality:**

It has been said that the Concept of Criminal Legality requires that every person in society should and must know what is prohibited under the description of crimes and the penalties prescribed for them, in addition to what he/she may be exposed to in the investigation and criminal trial in terms of procedures affecting freedoms, so that he/she will know the limits of his/her freedom of action and behavior in the face of the public authorities in the state who operate within the bounds of their functions and powers in combating crime to serve the entire society.

It has also been said that the Principle of Legality refers to those principles that ensure respect for human rights and balance between them and the public interest, which the state must adhere to when exercising its functions.

The content of Legality varies according to the source of Legality itself. If the source is the constitution, we are dealing with Constitutional Legality, corresponding to the obligation of the state to observe it, and if the source is the law, we are dealing with Legal Legitimacy, corresponding to the obligation of those subject to its provisions to respect it.

The Principle of Legality aims to protect the individual against the control of the authority and to ensure that the individual enjoys his/her human dignity. Nonetheless, the content of this Principle varies from one country to another in so far as its political and economic system differs, and the extent to which it is respected differs in terms of how much the soundness of application and the degree to which the State respects the law is abided by and adhered to.

#### **B- The Importance of the Principle of Criminal Legality:**

The Principle of Criminal Legality is based on two pillars: (the Protection of Personal Freedom and the Protection of the Public Interest).

With regard to the Protection of Personal Freedom, this Principle has served as a remedy against the various forms of control from which criminal justice has suffered for a long period of time, as this Principle sets clear limits for individuals by criminalizing acts before committing them, informing them through specific and clear texts of what is lawful or unlawful before they engage in them, as well as guaranteeing them security and tranquility in their lives, thus preventing the judge from overstepping his/her bounds, and who cannot convict anyone unless the crime attributed to the accused and the punishment to which he/



“  
**The Protection and Guarantee of Personal Freedom Requires That It Should Not Be Infringed Upon Except for the Necessity Required by the Interest of Society in Protecting its Security and Fulfilling its Right to Punishment**

she is subject has already been provided for in the law.

The Supreme Constitutional Court has confirmed this meaning in its statement apropos the Principle of the Legality of Crimes and Punishments, that although the guarantee of Personal Freedom is the basis for the approval and affirmation of such Principle, it is however this freedom itself that restricts its content, so that the enforcement of this Principle is necessary only to the extent and within the limits that ensure the preservation of such Freedom.

With respect to the Protection of the Public Interest, this Principle is achieved by assigning the function of criminalization, punishment, and defining criminal procedures to the legislator alone, in accordance with the Principle of the Legislator's Sole Competence in Matters of Rights and Freedoms, given that the values and interests protected by the penal code can only be determined by the representatives of the people, and in this way citizens know in advance the values and interests on which society is based and which are protected by the penal code, which contributes to developing their national spirit, strengthening social ties, maintaining trust between the people and the state, and achieving stability in society, on which legal security is based.

On the other hand, in order to regulate the behavior of individuals, they must be informed beforehand of the rules of conduct required of them to follow their approach, and in keeping with this logic in the criminal field, the legislator must warn first before imposing any punishment, and this can only be arrived at through the Principle of Criminal Legality.

#### **C- Forms of Criminal Legality:**

The Principle of Criminal Legality consists of three forms, according to some jurists, namely the (Legality of Crimes and Punishments, the Legality of Criminal Procedures, and the Legality of the Application or Execution of Criminal Penalties).

I will briefly outline these three forms as per the following:

#### **The First Form: The Legality of Crimes and Punishments:**

The first illustration of the Criminal Legality is

represented in the rule of (**No Crime or Punishment Without a Legal Provision ‘nulla poena sine lege’**), in order to protect the human being from the danger of criminalization and punishment without the legislative tool (The Law). The constitutional legislator of the UAE expressed this principle in the text of Article No. (27) of the Constitution issued in (1971) by stating, quote: "*[c]rimes and punishments shall be defined by the law. A person may not be punished for an act or omission committed before the relevant law is issued.*", unquote.

Article No. (1) of the Federal Law by Decree No. (31) of (2021), Promulgating the Crimes and Penalties Law, as amended by Federal Decree-Law No. (36) of (2022), also expressed this Principle by stipulating that, quote: "*[t]he other crimes and their prescribed penalties shall be defined in accordance with the provisions of this Law and the other penal codes in force*", unquote.

#### **The Second Form: The Legality of Criminal Procedures:**

The Principle of the Legality of Crimes and Punishments alone is not sufficient to protect human freedom, as in the past it was possible for a person to be arrested, imprisoned, or have the necessary measures taken against him/her in preparation for a trial, with the assumption of guilt present in mind beforehand.

Any criminal action taken against a person without considering him/her as innocent until proven guilty will lead to him/her bearing the burden of proving his/her innocence of the crime attributed to him/her, and if he/she is unable to prove this innocence, he/she might be held responsible for a crime that may not have been committed by him/her, and this situation leads to a lack of protection that is intrinsically guaranteed by the rule of (No Crime or Punishment Without a Legal Provision ‘nulla poena sine lege’), as long as it is possible to violate the freedom of the accused by attributing crimes to people, even if it is not proven that they have committed them by assuming a presumption of guilt in advance.

Ergo, it was imperative to complement the first illustration of the Criminal Legality with a sec-



ond illustration that governs the organization of procedures taken against the accused in a way that guarantees respect for personal freedom, and such illustration is called the Legality of Criminal Procedures.

This illustration guarantees respect for the personal freedom of the accused by requiring that the law be the source of procedural regulation, that the accused be treated in accordance with the principle of innocence in every procedure taken against him/her, and that the judicial guarantee is made readily available in the procedures, as the Judiciary is the natural guardian of freedoms.

There is no doubt that the Legality of Criminal Procedures is a natural extension of the Legality of Crimes and Punishments; in fact, it is more serious and more consequential, as it is the external framework through which the substantive rule can only be properly applied.

#### **The Third Form: The Legality of the Application or Execution of Criminal Penalties:**

A guilty verdict must be enforced in accordance with the manner prescribed by law, with the aim of rehabilitating the convicted person and guaranteeing his/her rights, under the control and supervision of the judiciary.

The Legality of Execution is based on two important controls: The First is that the methods of execution must be determined in accordance with the guarantees stipulated in the law, as the law is the expression of the general will of the people, and the Second is that the execution of the punishment must be supervised by a competent judge.

The Legality of the Application or Execution of Criminal Penalties is no less important than the other aspects of Legality, as it is the one that expresses the balance between the rights of the convicted person and the rights of society.

“  
**The Principle of Criminal Legality Consists of Three Forms, According to Some Jurists, Namely the (Legality of Crimes and Punishments, the Legality of Criminal Procedures, and the Legality of the Application or Execution of Criminal Penalties)**