

COURTS ECHO

Semi-Annual - Legal - Judicial

Single Shareholder Company
(One-Person Company)

The Technical Office
In the Supreme Court

Facilitating Judicial Work and
Promoting Justice

Promise

A Source of Legal Obligation

Philosophy of Legislation

In the Field of Artificial
Intelligence (A.I)

Legal Rooting

For the Liability of the Operator for Damage Caused
by the Autonomous (Driverless) Vehicle



Celebrating the **(21st) Anniversary** of the Establishment
of the Executive Council of the Emirate of Dubai
Initiatives and Decisions that Have Established Dubai as a Global Destination
for Finance, Business, and Quality of Life
An Important Step Towards the Development and Elevation of Dubai,
and an Important Historical Milestone in the Emirate's Journey Towards Progress and Development



Pro. Saif Ghanim Alsuwaidi
Director of Dubai Courts

A Reliable Source of Legal Knowledge

At Dubai Courts, we are pleased to present to you the sixth edition of the Sada AL-Mahakim (Courts' Echo) Magazine, which reflects our ongoing commitment to raising legal awareness of the public and highlights various laws and legal issues by providing comprehensive and in-depth analyses that help readers better understand legislation and laws, and enable them to apply them correctly. This edition contains a variety of topics that shed light on human rights and legal issues that are of interest to society, reflect our commitment to continuous learning and scientific research, and enhance our role as judges in achieving justice and protecting rights.

Among the articles in this edition, we have an article that deals with the Provisions of Divorce and Ways to Prove it in the UAE Legislation, in addition to the Legal Nature of the Pre-Contract Negotiations.

This edition also provides us with a comprehensive article on the New Drug Law, where we provide a thorough analysis of the new legislation and its impact on control and treatment policies, which contributes to raising awareness and improving legal procedures related to narcotics.

Among other topics covered in this edition, we have an article that highlights the Philosophy of Legislation in the Field of Artificial Intelligence (A.I), and reviews the ethical and legal challenges that arise as a result of the rapid technological progress in this area.

This edition also deals with a variety of important legal topics, such as the (Right of Easement {Servitude}, Divorce after Consummation of Marriage (*al-khalwah al-sahīhah*) (Lawful Meeting in Seclusion Between Husband and Wife), Happiness and the Law, the Historical Development of the Judiciary in the Emirate of Dubai, Legal Rooting, the Promise as A Source of Legal Obligation, Single Shareholder Company {One-Person Company}, in addition to a Press Investigation about the Technical Office of the Supreme Court.

Finally, we are all hopes that this edition will inspire readers and help them understand and interpret laws and legislation in a better way, and we affirm our commitment to providing a high-quality magazine that meets the needs of readers and promotes legal awareness in society.

We wish you our beloved reader a pleasant and useful reading, and we thank you all for your constant support of the Magazine of Sada AL-Mahakim (Courts' Echo).

May the Peace and Blessings of the Al-Mighty Allah Be Upon You All

To Begin with



Issue 6 - March - 2024

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.

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Mohammed bin Rashid Issues a Law Regarding the Tax on Foreign Banks Operating in the Emirate of Dubai



His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE, may Allah protect him, and in his capacity as the Ruler of the Emirate of Dubai, has issued Law No. (1) of (2024) on the Tax on Foreign Banks Operating in the Emirate of Dubai, the provisions of which apply to all foreign banks operating in the Emirate, including Special Development Zones and Free Zones, except foreign banks licensed to operate in the Dubai's International Financial Centre (DIFC), which are excluded from its provisions for the income they earn from conducting their business inside or through the Center.

The Law stipulates that foreign banks are subject to an annual tax of (20%) on their taxable income, while the applicable corporate tax rate is deducted from this percentage in accordance with Federal Law Decree No. (47) of (2022) on the Taxation of Corporations and Businesses, if the foreign bank pays the corporate tax (CT) under the Corporate Tax Law.

This Law specifies the principles governing the calculation of taxable income, tax filing and payments, procedures for the audit of tax filing, voluntary disclosure, and responsibilities and procedures related to tax auditing.

The Law specified the rights of the subject of the tax audit, which is a foreign bank and its branches licensed by the Central Bank of the United Arab Emirates to operate in the Emirate of Dubai, and the steps for notifying the results of the tax audit. The Law

also authorized the taxable person to object to the Department of Finance (DoF) on the amount of tax or fine imposed on them under its provisions, and according to certain requirements set out in detail by the Law.

In accordance with the Law, the acts constituting an administrative violation of the provisions of this Law and the decisions issued pursuant thereto, and the financial fine prescribed for each of them, shall be determined by a decision issued by the Chairman of the Executive Council in this regard, provided that the amount of the fine imposed for each violation shall not exceed (500) thousand dirhams, and the amount of the financial fine shall be doubled in the event of re-committing the same administrative violation within two years from the date of committing the previous administrative offense, and not more than one million dirhams. The Law also established the term of tax liabilities, and the rules for calculating time periods.

Without prejudice to the nature of the tax imposed by this Law and the roles assigned to the Department of Finance (DoF) and the Financial Audit Authority (FAA) in the Emirate of Dubai in accordance with its provisions, the rules, conditions, procedures, controls, and periods provided for in the Corporate Tax Law and the decisions issued thereunder, related to the tax period, and any other matters not provided for in this Law and the decisions issued thereunder, shall apply.

Appointment and Replacement of Members of the Board of Directors of the Dubai Judicial Institute (DJI)

His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, may Allah protect him, has issued Decree No. (17) of (2024) on the Appointment and Replacement of Members of the Board of Directors of the Dubai Judicial Institute (DJI).

The Decree provided for the appointment of Professor Saif Ghanim Alsuwaidi instead of Mr. Tarish Eid Al Mansouri as a member of the Board of Directors of the Dubai Judicial Institute (DJI), and the appointment of Chancellor Khalifa Rashid bin Dimas Al Suwaidi instead of Dr. Ahmad Eid Al Mansouri.



Mohammed bin Rashid Full Speed Ahead Towards Zeroing Out Bureaucracy and Facilitating People's Lives

The UAE Government announced the launch of the "Business Package" to manage workers' services and attract and employ them in private sector institutions. The initiative will be implemented in the Emirate of Dubai as a first stage, and will be expanded to include all Emirates of the Country.

His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, said, quote: "[a] while ago, we launched a project to zero out government bureaucracy to reduce procedures, re-engineer services, and reduce their duration in the federal government, and today we are launching the first of this government movement through the (Business Package) Project, which works to facilitate, simplify, and shorten the procedures for residency and work in the country", unquote.

His Highness added, quote: "[t]he new project will provide (62) million working days for all workers in the country who renew their residency and contracts, which were wasted visiting government headquarters and following up on transactions, and it will shorten (25) million government procedures and (12) million visits, saving significant government and private costs. Our thanks to all federal and local authorities, which cooperated to complete this project... and the government's journey will continue in eliminating bureaucracy, shortening procedures, and facilitating people's lives", unquote.

The "Business Package" is one of the initiatives that supports the creation of qualitative shifts in the ease of man-

aging companies' businesses, which directly contributes to enhancing the UAE's competitiveness in global indicators related to the ease of establishing and managing businesses for private sector companies of various sizes.

The package will be made readily available as a first stage on the "Invest in Dubai" Platform, to serve more than (275,000) companies in Dubai, and it is also scheduled to be made readily available on a number of other government digital platforms during the coming period through the website "<https://workinuae.ae>", where service users can carry out the digital experience smoothly, easily, and quickly by entering the "Invest in Dubai" Platform, choosing the customer's company, viewing the digital panel for his/her company's human resources management, and specifying the required experience, whether it is renewing an employee's employment, canceling an employee's appointment, or recruiting a new employee.

The procedural steps for bringing in a new employee from outside the country, through the "Business Package", include filling out the unified application, and then issuing a work permit for the employee, before the employee proactively begins completing the residency procedures, which include a medical examination and obtaining the Emirates ID card, as they are considered mandatory steps.

Regarding the renewal service for the employee, the company owner fills out the unified application, after which the employee continues to complete the medical examination procedures, as well as obtaining the Emirates ID card.



Hamdan bin Mohammed Welcomes the Newly Formed Executive Council And Launches the New Logo (New Identity) of the Government of Dubai

Hamdan bin Mohammed welcomes the newly formed Executive Council and launches the new logo (New Identity) of the Government of Dubai.

Pursuant to the directives of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, may Allah protect him, His Highness Sheikh Hamdan bin Mohammed bin Rashid Al Maktoum, Crown Prince of Dubai and Chairman of the Executive Council, presided over the first meeting of the Executive Council of Dubai, following its recent reconstitution. His Highness approved the launch of the New Identity of the Government of Dubai, the allocation of (AED 40) billion within the “Dubai Partnership Portfolio”, the Affordable Housing Policy in Dubai, and the “Sandbox Dubai” Project designed to support promising ventures in its initial phase. His Highness Sheikh Hamdan bin Mohammed bin Rashid Al Maktoum praised the efforts of the former Council members in bolstering Dubai’s position on the global stage and extended a warm welcome to the new members, stressing that the new formation of the Executive Council of the Emirate of Dubai establishes a promising era of opportunities for Dubai, and expands to include vital sectors active in designing the future of the Emirate, stating that, quote: “*[t]he newly formed Executive Council of Dubai will act as the driving force and catalyst to make the greatest positive impact on the present and future of*

Dubai. It leads the government work system. It plays a pivotal role in ensuring sustainable development, enhancing people’s wellbeing, and strengthening Dubai’s global standing”, unquote. His Highness Sheikh Hamdan bin Mohammed bin Rashid Al Maktoum has adopted the New Identity of the Government of Dubai, and His Highness said, quote: “*[t]he Government of Dubai has a distinctive and unique imprint of trust locally and internationally, a Government that is constantly renewed under the guidance of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, may God protect him, and within the framework of his vision for a future in which he wants Dubai to be a leader at various levels, and within all fields, and the Government’s identity was inspired by this ambitious vision, which made Dubai a success story, and made it a model that many governments around the world seek to emulate and benefit from in building and developing their capabilities, and it is an identity that is stemming from the originality of our culture and the nobility of our history and our relentless pursuit towards the first place and beyond*”, unquote.

The General Secretariat of the Executive Council will ensure the activation of the use of the New Identity in all government agencies within a period of (6) months, and the General Secretariat will issue a guide on the mechanisms of using the New Identity.



Maktoum bin Mohammed Briefed on the Achievements and Future Projects of the Securities and Exchange Higher Committee in Dubai

Maktoum bin Mohammed briefed on the achievements and future projects of the Securities and Exchange Higher Committee in Dubai.

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 Dubai Securities and Exchange Higher Committee, chaired a meeting of the Committee, during which the most prominent achievements and projects accomplished during the past stage were reviewed, in addition to the Committee’s most prominent future opportunities and projects.

His Highness underlined Dubai’s relentless pursuit to bring to fruition the grand vision of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, may God protect him, to establish the city as the epicenter of global finance and secure its position among the world’s top four financial hubs, in support of the objectives of the Dubai Economic Agenda.

His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum said that the achievements made by the Securities and Exchange Higher Committee in Dubai come within our comprehensive development vision for capital markets and stock exchanges.

His Highness praised the efforts made by the Committee, calling to come up with innovative ideas to meet the requirements of the current stage and consolidate the leading position occupied by Dubai as one of the most important and active capital markets at the regional and global levels.

During the meeting, His Highness was briefed on the most prominent achievements realized by the Dubai Financial Market (DFM) in (2023), where the market was able to achieve outstanding performance after the index level exceeded the 4000-point milestone for the first time in (8) years, as a result of the strong gains of listed stocks, increased demand from international investors, in addition to new listings of companies and institutions, all of which contributed to increasing the depth of the market, enhancing its investment attractiveness, as well as attracting new segments of investors, which expanded the options and opportunities for individual and institutional investors.

This success was propelled by a significant increase in trading activities, heightened capital inflows, and a notable influx of new investors, in addition to the launch of the initial public offering (IPO) accelerators program, and various innovative market initiatives.



His Excellency Professor Saif Ghanim Alsuwaidi Director of Dubai Courts

His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, has approved a number of appointments in Dubai government departments, and His Highness Sheikh Hamdan bin Mohammed bin Rashid Al Maktoum, Crown Prince of Dubai and Chairman of the Executive Council, announced the appointment of Professor Saif Ghanim Alsuwaidi as Director of Dubai Courts.

In a blog post published via his official account on the X platform, His Highness Sheikh Hamdan bin Mohammed bin Rashid Al Maktoum wished the new leaders success in serving Dubai

and its people, and preserving the achievements recorded during the past period.

His Highness said, quote: *"[t]oday we announce the approval of His Highness Sheikh Mohammed bin Rashid Al Maktoum of a group of appointments in Dubai government departments, wishing the new leaders success in serving Dubai and its people, and maintaining the achievements recorded during the past period, and we will follow up on their work in the next phase to ensure that the level of government services and performance is raised to new horizons that live up to our great ambitions",* unquote.



Dubai Courts Celebrates H. E. Tarish Al Mansouri (Ten Years of Dedication and Achievement)

The Dubai Courts organized a ceremony entitled "A Touch of Loyalty" to celebrate and honor H.E. Tarish Al Mansouri, who served with dedication and loyalty as Director of Dubai Courts for ten years and left an indelible mark on Dubai Courts, and in the presence of H.E. Chancellor Essam Issa Al Humaidan, Attorney General of Dubai, H. E. Chancellor Mohammed Mubarak Al Sabousi, Director of the Judicial Inspection Department, and H.E. Dr. Abdullah Saif Al Sabousi, Assistant Secretary General of the Judicial Council.

His Excellency Professor Saif Ghanim Alsuwaidi, Director of Dubai Courts, praised the remarkable achievements of H.E. Tarish Al Mansouri and his effective role in enhancing the reputation of Dubai Courts and the development of the judicial sector during his administration, stressing the importance of continuing to strengthen the values and principles established by His

Excellency during his service.

The ceremony was attended by members of the Creativity and Leadership Development Center, managers of various departments, in addition to a group of employees who expressed their gratitude and appreciation for the efforts exerted by H.E. Al Mansouri.

The phrase "Touch of Loyalty, which was chosen as the title of the ceremony, was well received by the attendees, emphasizing the importance of dedication and achievement in the field of public service and achieving leadership in government work. This ceremony comes in recognition of the efforts of H.E. Tarish Al Mansouri, and his outstanding contributions to the promotion and achievement of justice in the Emirate of Dubai, as well as reflects appreciation and gratitude for his distinguished service and dedication in performing his national duty.



The Director of Dubai Courts Receives H.E. Satish Kumar Sivan Consul General of the Republic of India in Dubai To Strengthen Bilateral Relations and Enhance Cooperation Between the Two Sides

H.E. Professor Saif Ghanim Alsuwaidi, Director of Dubai Courts, has received His Excellency Satish Kumar Sivan, Consul General of the Republic of India in Dubai, in a move aimed at enhancing cooperation and deepening bilateral relations between the United Arab Emirates and the Republic of India.

During the meeting, which took place at the headquarters of the Dubai Courts, both sides discussed ways to enhance joint cooperation between the two countries in several areas, including legal and judicial issues.

Both sides stressed the importance of strengthening bilater-

al relations and exchanging expertise in the field of judiciary and law to serve the interests of justice and contribute to the development of the judicial system between the two sides.

H.E. Professor Saif Ghanim Alsuwaidi, Director of Dubai Courts, praised the existing relations between the UAE and India, noting that this meeting was a valuable opportunity to exchange views and discuss ways to enhance legal cooperation between the two sides, emphasizing the crucial importance of deepening bilateral relations and enhancing mutual understanding in the fields of law and Justice.



Director of Dubai Courts Meets with New Judges To Promote Justice and Integrity in Judicial Work

H.E. Professor Saif Ghanim Alsuwaidi, Director of Dubai Courts, met with the new judges, in a step aimed at enhancing communication and promoting the judicial spirit, and this step was done in order to exchange ideas towards adhering to the highest standards of integrity and professionalism in the administration of Justice.

In light of this, H.E. iterated the role played by judges in achieving justice, applying the law, adhering to the values of justice and transparency during their judicial career, and their keenness on learning and professional development to ensure the provision of the best judicial services.



Dubai Courts

Develops the Best Innovation in Achieving Digital Leadership

Omar Sultan Al Olama, Minister of State for Artificial Intelligence, Digital Economy, and Remote Work Applications, and Director-General of the Prime Minister's Office, honored the winners of the "UAE Innovates" 2024 Award, at the conclusion of the activities of an extraordinary session for the Emirates Innovation Month "UAE Innovates" 2024, which was organized and supervised by the Mohammed bin Rashid Center for Government Innovation, under the slogan of "Impactful Innovations", and witnessed the organization of hundreds of events in all Emirates of the Country from February the 1st to the 29th. The closing ceremony witnessed the honoring of the 2024 "UAE Innovates" coordinators in the Executive Councils of the Emirates, in the presence of a number of officials in federal and local government agencies. Huda Al Hashimi, Deputy Minister for Cabinet Affairs for Strategic Affairs, stressed that the main objective of the "UAE Innovates" Award is to celebrate government efforts in the field of innovation and the level of progress in applying innovative practices and methodologies, indicating that since its launch in (2021), the Award has been a catalyst

for government entities and employees in the UAE at the federal and local levels to promote innovative practices and to think outside the box in designing unconventional solutions to government work challenges.

The Ilsaah "Disclosure" Platform, developed by Dubai Courts, won in the category of best innovation in achieving digital leadership. The Platform is a system that enables the Execution Court and the Claimant (Execution Applicant) to view the funds and properties of the Enforcee (Defendant in Execution), which are registered with all government, semi-government and private entities, such as vehicles, premium numbers, stocks, bonds, and commercial licenses, to then follow up on the seizure and sale procedures through the system, without the constant need from the client to submit applications. And this win by the Ilsaah Platform was in the presence of H.E. Judge Omar Atiq Al Marri, Deputy Director of Dubai Courts, H.E. Judge Khaled Kinsham, Acting President of the Execution Court, and Ms. Mona Al Mulla, Head of the Systems and Services Development Planning Department.



Dubai Courts Launches an Exceptional Project To Improve Human Resources

The Dubai Courts, represented by the Dubai Government Human Resources Department (DGHRD), announced an exceptional project aimed at developing a system for measuring and improving human resources productivity, focusing on effective cooperation with higher colleges of technology, specifically with Sharjah Men's College (SMC).

The initiative promotes cooperation between educational and government institutions in order to achieve joint progress and exchange expertise.

Abdul Wahed Galadari, Director of Human Resources Department, general supervisor of the project, stressed the commitment of Dubai Courts to enhance cooperation between higher education institutions and government agencies, by highlighting the role of the pioneering project in finding a mechanism to measure productivity in Dubai Courts, to develop tools and methodologies to measure the appropriate productivity and its suitability to working conditions.

Aisha Al Ali, Head of the Organizational Development Department and Head of the Human Resources Productivity Measurement Project Implementation Work Team at Dubai Courts, said that, quote: "[t]he aim of the project implementation is to benefit from the innovative ideas that resulted from the implementation of the 'IBTAKIR Competition with the Human Resources'", unquote. She also pointed out that a comprehensive action plan has been developed to implement the project and determine the implementation time schedule, as the project is expected to be completed by the end of the second quarter of (2024).

Fatima Al Hosani, HR Specialist in the Human Resources Department and Deputy Head of the Human Resources Productivity Measurement Project Implementation Work Team at Dubai Courts, pointed out the importance of exchanging field visits between the two sides to ensure the success of the project implementation.



“Be Legal” Initiative in Dubai Courts Achieves Tangible Success in Promoting Legal Awareness and Providing Knowledge to Society

In (2021), the Dubai Courts inaugurated the “Be Legal” Initiative, a Program designed to enhance the legal acumen of the working class and elevate the level of legal consciousness across all societal strata. The Program underwent further development in (2022), expanding its reach to encompass all primary courts. This expansion was made possible through the collaboration of an elite judicial cadre and in partnership with pertinent stakeholders and entities.

The “Be Legal” Program provides essential legal knowledge to the working class, thereby fortifying their rights and obligations, and the satisfaction rate within the Program soared to (97%) in the year of (2021), which is a testament to the Program’s success and its acceptance within the community.

His Excellency Judge Khalid Al Hosani, President of the Courts of First Instance in Dubai Courts, underscored the pivotal role of the “Be Legal” Program in fostering a legal culture and awareness among diverse societal segments, highlighting that the Program’s success hinges on a strategic partnership with relevant authorities and the contributions of an exceptional judicial cadre.

Al-Hosani elucidated on the key performance indicators of the Program, which underscore its success in achieving its objectives, and in the year of (2022), the Courts orchestrated two legal forums, and this number witnessed an increase in (2023), culminating in a total of five forums.

With regard to legal awareness, the Courts produced in the year of (2021) (224) educational publications, encompassing both videos and articles, and the number decreased to (27) videos in (2022), and then increased again in (2023) to (53) videos, in addition, (6) articles were published in (2022), and (3) articles in (2023).

Also, (10) awareness workshops were organized in (2021), (14) workshops in (2022), and (10) workshops in (2023), with the participation of (10) judges and administrators in (2021), (29) judges in (2022), and (34) judges in (2023), and the number of over-all attendance reached (2507) in (2022), and slightly increased to (2526) in (2023).

Al-Hosani pointed out that the “Be Legal” Program registered an average satisfaction rate among community groups of (97%) in (2021) and (2022), and it increased to (99%) in (2023), and this underscores the Program’s success and impact in bolstering legal awareness and fostering a culture of legal education within society.

Al Hosani concluded his statement by iterating that these figures reflect the commitment of the Dubai Courts in achieving the Program’s objectives and imparting legal knowledge to the community, a Program that stands as a paragon in enhancing legal awareness, and community confidence in the judicial system, and elevating the levels of communication and cooperation between the Courts and strategic partners.



Dubai Courts for All ‘DC4All’ An Integrated Legal Platform Serving a Diverse Community with Distinguished Judicial Services

Dubai Courts has launched the “Dubai Courts for All ‘DC4All’” Platform that provides judicial and legal services to a multicultural populace, which embodies its pioneering vision to achieve a unique judicial experience, to serve a diverse community that includes a myriad of cultures, nationalities, and religions, through the provision of innovative judicial services, reflecting the commitment to building bridges of communication and promoting understanding among different spectrums of society, which puts Dubai at the forefront of leading centers in achieving a comprehensive concept of Justice.

The launch of the “Dubai Courts for All ‘DC4All’” Platform comes within the framework of the vision of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President

and Prime Minister of the UAE and Ruler of Dubai, may God protect him, to achieve justice that is characterized by the highest levels of efficiency, accuracy, and speed, and provide accessible judicial services for all, with a focus on improving the judicial system and adopting the best international practices. These efforts coincide with the tireless follow-up of His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum, First Deputy Ruler of Dubai, Deputy Prime Minister, Minister of Finance and Chairman of the Judicial Council in Dubai, to promote understanding and peaceful coexistence in a diverse and multicultural environment. And this vision reflects a commitment to a legal environment that reflects the diversity of cultural and religious community, and promotes the values of tolerance and understanding.



Legal Rooting

For the Liability of the Operator for Damage Caused by the Autonomous (Driverless) Vehicle

Caused by Others in Accordance with Law No. (9) of (2023) in the Emirate of Dubai



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

An autonomous vehicle is a vehicle that relies on an automated driving system in its operation, that is, relying on a set of hardware and software without any human intervention.

In implementation of the UAE's strategy to shift from traditional mobility to smart mobility, the Law Regulating the Operation of Self-Driving Vehicles No. (9) of (2023) was issued in the Emirate of Dubai (Official Gazette of the Government of Dubai - April the 14th, 2023 - Year 57, Issue No. 613), and came into force ninety days after the date of its publication (Article No. 27).

Objectives of the Law:

The Law is aimed at regulating the operation of autonomous vehicles in accordance with the best world standards, and addressing regulatory and legal challenges caused by the use of Artificial Intelligence (A.I) in the field of transport (Paragraph No. 2,4 of Article No. 4).

The issue of civil liability for damage caused by self-driving vehicles is one of the most important legal challenges arising from the use of these vehicles.

The Law regulating the operation of autonomous vehicles addressed this issue in Article No. (14), which stated that:

A- The operator shall be liable for compensation for damage caused to persons or property by the autonomous vehicle, without prejudice to his right to recourse to the real cause of such damage, in accordance with the general rules of liability established in this regard.

B- The Authority assumes no responsibility for damages caused to third parties as a result of the use of the autonomous vehicle.

Based on this provision, the operator is solely and directly responsible to the victim for the damage caused by the autonomous vehicle.

This provision gave the operator the right to refer to the real causer of such damage in accordance with the general rules of liability. Therefore, it can be said that the damage caused by the self-driving vehicle is of two types: (One type where the operator is the one who caused it, and he bears its responsibility and he does not have the right to recourse against any person regarding what he paid, and another type where the operator is not the one who caused it, and he also bears its responsibility, but he has the right to recourse against the person who caused it regarding what he paid). The second type of such damages raises an important question regarding the legal rooting of the operator's liability for such damages.

And before proceeding to answer this point, it is first necessary to familiarize oneself with what is meant by the Operator and the obligations imposed on him by law.



The Law regulating the operation of self-driving vehicles No. (9) of (2023) was issued in the Emirate of Dubai, with the aim of regulating their operation in accordance with the best international standards.



SELF-DRIVING TRUCK

The Operator is Solely and Directly Responsible in the Face of the Aggrieved Party for the Damage Caused by the Autonomous Vehicle.

Who is the Operator?

Article No. (1) of Law No. (9) of (2023) stipulates that an Operator is any person authorized by the Roads and Transport Authority (RTA) to engage in any activity related to the use of an autonomous vehicle, including the owner of the vehicle.

Based on this definition, the only requirement to achieve the status of an operator is to obtain a permit from the Roads and Transport Authority (RTA) to engage in any activity related to the use of an autonomous vehicle.

Accordingly, we consider that the operator may be a natural or legal person, public or private, merchant or non-merchant, owner or non-owner (for example, a Lessee-Article No. {742} of the Civil Transactions Law, or a Usufructuary-Article No. {1333} of the same law).

Obligations of the Operator:

Of the obligations imposed by law on the operator as per (Article No. 11):

- The obligation to obtain a license for the vehicle before driving it on the road, and the obligation to operate it according to the purpose assigned to it.
 - The obligation to draw up instructions for the use of the autonomous vehicle, and provide the passenger with them in the way the operator deems appropriate.
 - The obligation to maintain the vehicle periodically.
 - The obligation to participate in the regulations specified by the Roads and Transport Authority (RTA), and to ensure the validity of the automated driving system to link the autonomous vehicle and the systems approved by the Authority in this regard.
 - The obligation to notify the competent authorities immediately in the event of any accident related to the vehicle.
 - The obligation to get it out of the way.
- And to ensure that the operator fulfils its obligations referred to above, Article No. (5) stipulates that one of the Road and Transport Authority's competencies includes monitor-

ing and inspecting operators to ensure their compliance with the provisions of this law, receiving complaints filed against operators, investigating them, and taking the necessary measures thereon.

Article No. (19) stipulates that anyone who commits any violation of the provisions of this law shall be punished with a fine not less than (500) dirhams and not more than (20000) dirhams, and the amount of this fine shall be doubled in case of re-committing the same violation within a year from the date of committing the previous violation, but not more than (50000) dirhams, noting that the application of this fine does not prevent the realization of civil or criminal liability of the perpetrator of the violation. And by returning to the above-mentioned question related to the legal rooting of the operator's civil liability for damages caused by third parties, we find that the cases in which the operator is responsible for the damage caused by the autonomous vehicle and has the simultaneous right to third-party recourse are the following:

- 1- Damages for which the manufacturer is responsible, when it is proved that the cause of such damages is a defect in the vehicle.
- 2- Damages for which the agent is responsible, when it is proved that the reason for such damages is the agent's violation of its legally prescribed obligations, such as his failure to update and develop the automated driving system of the autonomous vehicle, in accordance with the updates made on the road and traffic systems and various technical systems of the competent authorities (Paragraph No. 4, 5 of Article No. 12 of Law No. 9 of 2023). And the agent is the natural or legal person to whom, under the commercial agency contract, the exclusive distribution of the autonomous vehicle is confirmed (Article No. 1 of Law No. 9 of 2023).
- 3- Damages for which the passenger is responsible, when it is proved that the reason for these damages is the passenger's violation of his legally prescribed obligations, such as his failure to comply with

The Operator is Any Person Authorized by the Roads and Transport Authority (RTA) to Engage in Any Activity Related to the Use of an Autonomous Vehicle.



One of the Roads and Transport Authority's Competencies is to Supervise and Inspect Operators to Ensure Their Compliance with the Provisions of this Law.

the safety and security requirements when using the vehicle or tampering with the vehicle's systems and programs while using it (Paragraph No. 1, 2, 3 of Article No. 13 of Law No. 9 of 2023). A passenger is anyone who uses an autonomous vehicle to move from one place to another (Article No. 1 of Law No. 9 of 2023).

- 4- Damages for which the Roads and Transport Authority (RTA) is responsible, when it is proved that the reason for these damages is the violation of the Authority of its legally prescribed obligations, such as its failure to prepare the necessary infrastructure for operation or its licensing of vehicles that do not meet safety standards, etc. Therefore, we do not agree with the legislator in the Emirate of Dubai as he stipulated in Paragraph (B) of Article No. (14) when he stated that: "[t]he Authority shall not bear any responsibility for the damage caused to others as a result of the use of the autonomous vehicle," and this provision was also stated in Article No. (11) of the Executive Council Decision No (3) for year (2019) regarding organizing of operational

experiment of auto self-driving vehicle. In our opinion, this provision is contrary to the general rules on tort liability contained in the Law on Civil Transactions. And it should be noted that Article No. (17) of Law No. (9) of (2023) has authorized the Roads Authority to entrust to any entity the responsibility to perform any of the tasks and powers assigned to it under this law, pursuant to a contract to be concluded in this regard, specifying its duration and the rights and obligations of its parties.

Here an important question arises regarding the extent to which the provision contained in Paragraph (B) of Article No. (14) applies to this entity? And if the answer to this question is that this entity does not bear responsibility just like the Roads Authority because it will perform the same tasks, then the same objection that we mentioned about the Authority will be warranted here too.

However, if the answer is that this entity bears responsibility in accordance with the law, then an objection will be raised to the effect that it is inadmissible to differentiate in the judgment between this entity and the Author-

ity because they perform the same functions, and therefore enjoy the same legal status.

It should be noted that the operator may be partially liable for damages and has the right to recourse to third parties, when the damage is caused by the involvement of the third-party action with the action of the operator, just like if there was a driving error coupled with an error in the manufacture of the vehicle or an error from the passenger, for that matter. In such a case, the operator is obliged to pay full compensation to the injured person with the right to recourse against the one who caused the damage with him, insofar as he participated in the occurrence of this damage.

In this respect, Article No. (291) of the UAE Civil Transactions Law stipulates that: *"[i]f a number of persons are responsible for a harmful act, each of them shall be liable in proportion to his share in it..."*.

Who is the person obliged to compensate in the field of civil liability?

Having completed the enumeration of the cases in which the operator bears responsibility for the damage caused by the autonomous

vehicle and how he has the right of recourse to third parties, we say about the legal rooting that the person who is obliged by law to guarantee (compensation) in the field of civil liability are two categories:

- A person category that owes the guarantee (compensation) in person and on their behalf, as it is the person to whom the obligation of the guarantee was established in the beginning, and it is the one from whom the harmful act emanated.
- Another person category that owes the guarantee (compensation) casually, and it is the person to whom the obligation of the guarantee was not established in the beginning but they are obliged to fulfill it as it is the person from whom the harmful act did not emanate.

The operator in respect of compensation for damage caused by the act of a third-party (vicarious liability) is considered as a casual debtor of the guarantee. One of the provisions similar to this provision in the UAE Civil Transactions Law is what is mentioned in Article No. (313) regarding the liability of the supervisor for damages caused by the person under his supervision and the liability of the followed person (superior) for damages caused by his follower (subordinate).

The wisdom of obliging the operator to pay compensation in these cases is in order to provide greater protection to the injured person, as he often knows only the operator, so the latter acts as a guarantor for this third party, that is, he is a guarantor of the injured person to fulfill the obligation through compensation.

Recommendations:

In conclusion, we call on the legislator in the Emirate of Dubai to cancel Paragraph (B) of Article No. (14) and Article No. (11) mentioned above, because based on the general rules, the Roads and Transport Authority's liability for damages can simply be established. We also call on the UAE legislator to amend the Traffic Law in order to expand the concept of the vehicle to include self-driving, amend some texts and add others to be more suitable with self-driving vehicles.

The Operator in Respect of Compensation for Damage Caused by the Act of a Third-Party (Vicarious Liability) is Considered as a Casual Debtor of the Guarantee.

An Agent is the Natural or Legal Person to Whom, Under the Commercial Agency Contract, the Exclusive Distribution of the Autonomous Vehicle is Confirmed.

Single Shareholder Company (One-Person) (Company



H. E. Dr. Hamda Abdullah Al Suwaidi
Judge at the Commercial Court of First Instance - Dubai

The Company Has Been Known Since Ancient Times as a Legal System Through Which Trade is Practiced by a Number of Individuals Who Meet with Each Other to Conduct Business with the Aim of Making a Profit, Under Financial or Administrative Participation According to the Agreement Reached Among Them.

In (2083) B.C, the Code of Hammurabi allocated eight articles to introduce the company and its organization, and since that date, companies have been constantly evolving in form, content, and organization to meet the needs of individuals and society.

In view of the tremendous development taking place in commercial entities, the rapid development in various aspects of economic and social life and the large number of individual small enterprises as an appropriate and quick mechanism to enter the free market economy, the UAE legislation adopted a new form for the Limited Liability Company by allowing its formation by only one person.

And with reference to the text of Article No. (8) of the Decree, Federal Law No. (32) of (2021) on Commercial Companies and its Amendments, the following was stipulated:

1. The company is a contract under which two or more persons are obliged to participate in an economic project aimed at making a profit, by providing a share of money or work, and sharing the profit or loss arising from this project.
2. The economic project includes, in the provision of Clause No. (1) of this Article, any

commercial, financial, industrial, agricultural, real estate, or other aspects of the economic activity.

3. As an exception to Clause No. (1) of this Article, a company may be established or be owned by one person in accordance with the provisions of this Decree-Law.

Article No. (9) of the same Decree also dealt with the forms of commercial companies, which are as follows: (Joint-Liability Company, Limited Partnership Company, Limited Liability Company, Public Joint-Stock Company, Private Joint-Stock Company).

In this regard, we refer to the provisions of Article No. (71) of the above-mentioned Decree on the definition of "Limited Liability Company" as "[a] company that consists of a number of partners that is not less than (2) two and not more than (50) fifty, and each of them shall only be liable only to the extent of his share in the capital".

4. One natural or legal person may establish and own a limited liability company, and the owner of the company's capital shall not be held liable for its obligations except to the extent of the capital received after its establishment, and the provisions of the



The UAE Legislation Adopted a New Form for the Limited Liability Company by Allowing its Formation by Only One Person.

limited liability company contained in this Decree-Law shall apply to him to the extent that they do not conflict with its nature.

By extrapolating the above-mentioned Articles, we note that the UAE legislator has departed from the general principle in the formation of commercial companies and authorized their establishment by one person, whether a natural person or a legal entity with the aim of achieving profit, as a new legal mechanism, through which the legislator provided the investing entrepreneur with a new legal system to invest part of his money in his project, while providing legal guarantees that his personal responsibility does not extend to his financial independence (Disclosure/Liability), as he is only responsible for the funds allocated to the company and declared in the commercial register. On the other hand, the entrepreneur will benefit from his personal experience and skills in running his company and steering away from collective management, the need to obtain the required majority to take legally prescribed decisions, the struggle for dominance over the company among partners, and distance from problems that may adversely affect the company's activity.

In addition to the above, the Single Shareholder Company (One-Person Company) is an economic motive for the UAE legislator, through which it aims to serve the economy, encourage investment, achieve development, reduce unemployment, and increase the national income rate, in consequence of the ease of establishing the company and staying away from the procedures of multiple partners and the extent of their compatibility or not.

We note that with reference to the aforementioned Decree, we find that the legislator did not explicitly decide on the name of the One-Person Company and did not include provisions of its own, which entails that the provisions of the limited liability company should be applied to it, with regard to establishment, management,

and responsibility procedures, except for the part related to the multiplicity of partners. From our perspective, we believe that this is a legislative shortcoming, as despite the positives of the One-Person Company, still, it gives rise to many questions and practical problems regarding the responsibility of the director, the procedures for issuing decisions, and the procedures for disposing of the company and transferring its ownership.

Many traders create a One-Person Company to avoid personal liability and for money smuggling purposes, through the establishment of other sister companies and involving the company in bankruptcy proceedings and the loss of creditors' rights. Furthermore, the One-Person Company is far from the general concept and the basic idea of establishing a company, in which its reality is based on the idea of partnership between two or more people, sharing profits and losses, and making business decisions, which shows that the company has been stripped of its true concept and placed in the hands of one person who bears its management, decisions, profits, and losses. And It seems obvious that in fact it is closely related to the concept of an individual enterprise, with the exception of the separation of the financial independence (Disclosure/Liability) of the founder from the company, since the director in the One-Person Company is not held responsible unless it is proved that he committed fraud or gross negligence, which makes his money immune from execution in the event that the company is seized or a decision is issued to open bankruptcy procedures, or any financial debts are incurred against it, and this would harm the rights of creditors, cause them to lose their money, and enable the company founder to escape and preserve his money.

From this point of view, and in order to establish the foundations of justice and law, we are of the view that it is more practical to settle for the concept of an individual enterprise, because of the shortcomings of the One-Person Company, despite the above-mentioned advantages, as it is often used as a vessel for smuggling money and avoiding responsibility.



Limited Liability Company: It is a Company That Consists of a Number of Partners That is Not Less Than (2) Two and Not More Than (50) Fifty. And Each of Them Shall Only Be Liable Only to the Extent of his Share in the Capital.



Many Traders Create a One-Person Company to Avoid Personal Liability and for Money Smuggling Purposes. Through the Establishment of Other Sister Companies and Involving the Company in Bankruptcy Proceedings.

Divorce Ruling

After Consummation of Marriage (al-khalwah al-ṣaḥīḥah) (Lawful Meeting in Seclusion Between Husband and Wife), And Before the Actual Act of Intercourse (dukhūl) in the Federal Personal Status Law



H.E. Dr.
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Judge at the Court of Appeal - Dubai

Introduction:

Praise be to Allah, who created Eve for Adam so that he may find tranquility in her; and He placed between them affection and mercy, and who sent down the last of His holy books on the last of His messengers (may peace and blessings of Allah be upon him), to illuminate the way for mankind, and guide them to the straight path, and who made the building of the family on a solid foundation that is based on respect, affection, and mercy, hence the legalization of marriage with a contract and a solemn covenant in which the duties and rights of each of the spouses are well-defined, and also the legalization of divorce and its terms and conditions when the marital relationship deviates from its intended goals and objectives for any reason that ends this relationship. And between the marriage contract and divorce there are periods that may be short and also may be long, and one of those periods is the period that the spouses lawfully spend together in seclusion, and during which their marriage is consummated.

The Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and the Actual Act of Intercourse (dukhūl) Between Spouses are among the important rulings and issues related to divorce, and determining the type of divorce, whether it is irrevocable or revocable, has a close link with determining the occurrence or non-occurrence of Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and the Actual Act of Intercourse (dukhūl), as well as their impact on other matters such as Al Ihsan (being married and being chaste), Inheritance, Al-Raj'a (the restoration of the divorcee and her marital status), alimony, and others.

And due to the importance of the Consummation of Marriage (al-khalwah al-ṣaḥīḥah), the UAE legislator has been keen to address and clarify some of its provisions in the Personal Status Law, but despite this, there are some issues that the Law has not explicitly addressed in a manner that clears up any disagreement, such as the divorce after the

Consummation of Marriage (al-khalwah al-ṣaḥīḥah), and before the Actual Act of Intercourse (dukhūl) and despite their importance and their frequent occurrence, not to mention the differences that exist among Jurists apropos their rules, the Law still did not clearly stipulate the type of divorce that occurs whether it is revocable according to the Hanbali Doctrine or irrevocable according to others, especially after it clearly stipulated some of the provisions resulting from the occurrence of lawful seclusion between spouses, such as the obligation to observe the Iddat (the period a woman must observe after the death of her husband or after a divorce, during which she may not marry another) and the right of a women to keep the mahr (obligatory bridal money/ dowry) in full after the occurrence of (al-khalwah al-ṣaḥīḥah) and the Consummation of Marriage⁽¹⁾. And although some of those who say that Al-Iddat must be observed and the mahr (dowry) is entitled in full after the occurrence of (al-khalwah al-ṣaḥīḥah) and the Consummation of Marriage, they considered that an occurring divorce in this case is revocable and not final⁽²⁾, whereas those who said that it was a precaution, like the Malikis, for example, not giving the right to a women to keep the mahr (dowry) in full even after the occurrence of (al-khalwah al-ṣaḥīḥah) and the Consummation of Marriage and the exposing or touching of private parts, and they also did not require the observance of the Iddat waiting period, but rather decided it as a precaution, in this case the divorce was considered as irrevocable⁽³⁾, hence, the presented problem in this issue, which led to the writing of this article to highlight it in an attempt to understand the position of the UAE Personal Status Law on this matter and interpret its texts in accordance with the provisions of Article No. (2) of it, after defining the seclusion and knowing the opinions of Jurists on the issue, followed by the law and finally employing the principle of Tarjeeh (weighing up what is more correct of different views).



The Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and the Actual Act of Intercourse (dukhūl) Between Spouses Are Among the Important Rulings and Issues Related to Divorce.

“The Consummation of Marriage (al-khalwah al-ṣaḥīḥah) in the Jural Concept is Defined as: “The Meeting of Spouses with a Valid Marriage Contract in a Place Such as a House or a Closed-Door Structure Where They Know for Sure That They Are Safe from Being Seen by People”.

First: Definition of Consummation of Marriage (al-khalwah al-ṣaḥīḥah):

Linguistic Meaning: The origin of the word Seclusion (Al Khulwa in Arabic) is derived from the place that is empty that has no one or nothing in it. And “Al Khulwa” basically is a term (noun) that is based on the Arabic verb “Khala” (was empty of) and “Yakhlu” (is empty of), and it comes from leaving alone or being alone. And it also means to be alone with a thing, with it, or to it. And it could also mean being alone with someone⁽⁴⁾.

Terminological Meaning: “[i]t is when a man being alone with a woman in a place where no one can see them”⁽⁵⁾. While the lawful seclusion in the Shariah is defined as: “[t]he meeting of spouses with a valid marriage contract in a place such as a house or a closed-door structure where they know for sure that they are safe from being seen by people”⁽⁶⁾. It is also defined as: “[t]he meeting of spouses based on a valid marriage contract in a place where they can have privacy and know for sure that they will not be interrupted and are certain that no one knows their whereabouts and without there being a barrier preventing actual act of intercourse (dukhūl in Arabic)”⁽⁷⁾. It should be noted that the terminological meaning of Seclusion does not deviate from the linguistic meaning of it in terms of a man being alone with a woman in a place empty of people, however, when jurists defined the Seclusion according to the Sharia, they placed several restrictions to differentiate it from the general and linguistic definition, namely (the existence of a marriage contract, and the absence of inhibitions that render the Consummation of Marriage {al-khalwah al-ṣaḥīḥah} as

unlawful between spouses).

The Conditions of Consummation of Marriage (al-khalwah al-ṣaḥīḥah):

Based on this, it becomes clear that the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) is established only with the availability of several basic conditions, the most important of which are the following:

1. There should be a meeting between the husband and wife after the conclusion of the marriage contract, and if they met before the contract is concluded, the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) would be considered as to have not been established, as they are considered then as foreigners to each other.
2. The meeting should be real and realistic by being physically in one place, and the meaning of Consummation of Marriage (al-khalwah al-ṣaḥīḥah) will not be established if they meet through social media websites.
3. The meeting should be only between them and without the presence of a third person, even if that person is blind and/or deaf, as they would still be considered as a third party.
4. There should be no legal impediment, such as fasting, ihram for Hajj or Umrah (a sacred state which a Muslim must enter in order to perform the major pilgrimage {Hajj} or the minor pilgrimage {Umrah}), menstruation, and the like, or a sensory impediment, such as having a defect in one of the spouses, such as being unable to have sexual intercourse (erectile dysfunction {ED})⁽⁸⁾.

Second: The Difference Between Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and the Actual Act of Intercourse (dukhūl):

Both the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and the Actual Act of Intercourse (dukhūl) have several provisions in common, including confirming the mahr (dowry) due by the contract, and in establishing the lineage, while there are provisions in which the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) differs from the Actual Act of Intercourse (dukhūl), including, for example:

1. The Consummation of Marriage (al-khalwah al-ṣaḥīḥah) does not make the spouses immune to the establishment of the Hadd Al-Rajm (stoning to death punishment), while this immunity is granted in the Actual Act of Intercourse (dukhūl).
2. The jurists differed with regard to the Iddat being required to be observed in the case of Consummation of Marriage (al-khalwah al-ṣaḥīḥah), while they agreed that it is required to be observed in the case of the Actual Act of Intercourse (dukhūl).
3. The spouses are not required to conduct the mandatory act of Al-Ghushl (Ritual Bathing in Islam) in the case of seclusion, whereas it is mandatory that they do so in the case of actual act of intercourse.
4. The Ar-Rabibah “step-daughter” born of wife with whom marriage has been consummated is permanently forbidden to step-father for marriage, while she is not forbidden to him in the case of Consummation of Marriage (al-khalwah al-ṣaḥīḥah)⁽⁹⁾.
5. One does not inherit the other of the spouses if the husband divorces his wife and dies during the Iddat observation period and before the occurrence of any actual act of intercourse.
6. The wife is not treated as a Thayyib (divorced or widowed woman) if the husband divorced her before any actual act of intercourse, and she wanted to get married, but instead she will be treated as a bikr (a virgin woman who never had any sexual intercourse with a man)⁽¹⁰⁾.

Third: The Views of Scholars on Divorce After Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and Before the Actual Act of Intercourse (dukhūl): Fiqh (jurisprudence) opinions agree that if a divorce takes place before the Consummation of Marriage and before the Actual Act of Intercourse, it is considered as an irrevocable divorce, in which it is not permissible for the husband to take his wife back and return to her except with a new contract and a new mahr (dowry)⁽¹¹⁾, but if the divorce took place after the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and before the Actual Act of Intercourse (dukhūl), the Fiqh (jurisprudence) opinions have been divided into two opinions:

The First Opinion: It considers the occurrence of divorce

to be irrevocable, and this is the doctrine of the jumhur al-ulama “majority of jurists” from the Hanafi and Maliki schools and the view according to the Shafi’. This opinion was based on several evidences, including the saying of the Allah, Almighty, in His Holy Book the Qur’an, when He said, quote: “[o] you who have believed, when you marry believing women and then divorce them before you have touched them [i.e., consummated the marriage], then there is not for you any waiting period to count concerning them. So provide for them and give them a gracious release”, unquote⁽¹²⁾, and His saying, quote: “[a]nd if you divorce them before consummating the marriage but after deciding on a dowry, pay half of the dowry”, unquote⁽¹³⁾. And what is meant by the touching in the two verses is the jimā’ (sexual intercourse), and there is no separation here between the existence or non-existence of the seclusion⁽¹⁴⁾.

The Second Opinion: It considers the occurrence of divorce to be revocable, which is the doctrine of the Hanbalis and the Shafi’i in their opinions, and this opinion was based on the fact that the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) takes the place of the Actual Act of Intercourse (dukhūl) in all rulings, evidenced by the saying of the Almighty Allah in His Holy Book the Qur’an when He said, quote: “[h]ow can you take it away after each one has enjoyed the other, and they have taken a firm covenant from you?”, unquote⁽¹⁵⁾, and it was said about Al-Fira’a that he said, quote: “[i]n seclusion and in private they meet, and enjoy each other, and the consummation of marriage is established, whether there was an actual act of intercourse or not”, unquote, and this opinion is valid as it is as if he said that both spouses enjoyed each other in seclusion, and they will be treated as if they had an actual intercourse even if they had not. Al-Kharqi said, quote: “[t]he seclusion has the same weight as the actual intercourse and in all aspects, such as in the case of deserving the mahr (dowry) in full in case the act of intercourse has taken place, and the need to observe the Iddat, and the sister of the divorced woman being forbidden to marry the husband, if the divorce occurs, until the Iddat observance period has elapsed, and she would still be forbidden to marry the husband if he took his wife back during the iddat period”, unquote⁽¹⁶⁾. Imam Ahmad and Al-Athram narrated from Zarahah ibn Aufi that he said, quote: “[w]hen the doors are closed, the curtains are drawn and nudity is seen, she is entitled to mahr, inheritance and must complete the ‘iddat (waiting period).”, unquote⁽¹⁷⁾. Ibn Qudamah (may Allah have mercy on him) said, quote: “[t]he husband who lifts the veil of his wife [following

“Both the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and the Actual Act of Intercourse (dukhūl) Have Several Provisions in Common, Including Confirming the Mahr (Dowry) Due by the Contract, and in Establishing the Lineage.

“If A Divorce Takes Place Before the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and Before the Actual Act of Intercourse (dukhūl), it is Considered as an Irrevocable Divorce, in Which it is not Permissible for the Divorcer Husband to Take his Divorcee Wife Back and Return to her Except with a New Contract and a New Mahr (Dowry).



nikāh], looks at her [privately], the mahr (bridal gift) becomes mandatory, and must complete the *iddat* (waiting period) whether he had intercourse with her or not.”, unquote⁽¹⁸⁾.

Fourth: The Position of the UAE Personal Status Law on the Issue:

The Emirati legislator addressed several matters related to this issue in the Personal Status Law in several separate Articles, however, it did not clearly stipulate the ruling on this issue, as it stipulated the types of divorce, and that the baseline for divorce when it occurs that it is considered as revocable, and the Iddat must be observed, and the mahr (dowry) is deserved in full with the occurrence of seclusion, nonetheless, it did not stipulate the type of divorce after the occurrence of seclusion has been proven, despite the popularity of the issue and the differences of Islamic schools of thought regarding it, as mentioned above, and the following are the Articles in question:

First: The Obligation of the Mahr (Dowry):

Article No. (52) of the Federal Personal Status Law No. (28) of (2005) stipulates that, quote:

1. “[t]he mahr (dowry) may be paid promptly or it may be deferred wholly or partially at the time of concluding the marriage contract.

2. The mahr (dowry) shall be due if the marriage contract is valid and shall be confirmed upon consummation of marriage, valid seclusion, or death. And the deferred part of mahr (dowry) shall become payable upon death

or an irrevocable divorce.

3. A divorcee shall be entitled before the consummation of marriage to half the mahr (dowry) if it is specified, otherwise the judge shall decide for her enjoyment maintenance not exceeding half the appropriate mahr (dowry)”, unquote.

It is stated in the Explanatory Memorandum to this Article that the jurists differed in confirming the mahr (dowry) with the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and without the Actual Act of Intercourse (dukhūl), and that it took the opinion of the majority of jurists, namely the Hanafis, Hanbalis and Shafi’i, that the mahr (dowry) is obligatory upon the occurrence of the Consummation of Marriage (al-khalwah al-ṣaḥīḥah).

Second: Types of Divorce in Law:

Article No. (104) of the Federal Personal Status Law No. (28) of (2005) states that, quote:

“[d]ivorce is of two kinds: Revocable and Irrevocable:

1. The Revocable Divorce shall not terminate the marriage contract except if the waiting period elapses.

2. The Irrevocable Divorce shall terminate the marriage contract when it occurs. And there are two kinds of Irrevocable Divorce:

A. Minor Irrevocable Divorce: The divorcee may be taken in marriage by her divorcer after this divorce only under a new contract and for a new mahr/dowry.

B. Major Irrevocable Divorce: The divorcee may not be taken in marriage by her divorcer after this divorce

unless she observes a waiting period concerning another husband after actual consummation of a valid marriage with her”, unquote.

Article No. (105) stipulates that, quote: “[a]ny divorce shall be revocable except the third repudiation, the divorce pronounced before consummation, and the irrevocable divorces provided for.”, unquote⁽¹⁹⁾.

This Article establishes the general principle in the ruling on divorce, which is that it occurs revocably except in three cases, namely: (third repudiation divorce, divorce pronounced before consummation, and irrevocable divorces provided for), which means that except for these three cases, the divorce is revocable according to the general concept of this Article.

The Supreme Court has ruled that, quote: “[t]he basic principle is that the divorce should take place revocably, except for what is excluded in the cases of (third repudiation divorce, divorce pronounced before consummation, and irrevocable divorces provided for)”, unquote⁽²⁰⁾.

The Explanatory Memorandum has indicated that what is meant by “Divorce Pronounced Before Consummation”, is a divorce in which there is no Iddat and there is no return for the divorcee to her divorcer.

The Explanatory Memorandum established that every divorce is revocable except in cases of exception, and limited the exception in which the divorce is irrevocable in three cases:

A- The Third Repudiation Divorce: Because there will remain no legitimate right for the divorcer husband to return his divorcee wife.

B- Divorce Pronounced Before Consummation: And this is in keeping with what the Al-Mighty Allah said in His Holy Book, the Qur’an, quote: “[o] you who have believed, when you marry believing women and then divorce them before you have touched them [i.e., consummated the marriage], then there is not for you any waiting period to count concerning them. So provide for them and give them a gracious release”, unquote⁽²¹⁾, and the return of the divorcee will be in and during the Iddat, and there would be no Iddat for the divorcee if no actual act of intercourse has taken place, and therefore her divorcer cannot take her back.

C- What this law has stipulated as an irrevocable divorce. This means that the description of divorce is not a right of the divorcer person, and whoever contemplates the Qur’an finds that it cannot but iterates such a notion, since it organized divorce and the issue of return unless there would be something that would prevent it⁽²²⁾.

Third: The Obligation to Observe the Iddat After the Occurrence of the Consummation of Marriage (al-khal-

wah al-ṣaḥīḥah):

Article No. (136) states that, quote “[t]he Iddat is a compulsory waiting period the wife spends without marriage following a separation”, unquote⁽²³⁾, and the separation here includes divorce after the occurrence of the Consummation of Marriage (al-khalwah al-ṣaḥīḥah)⁽²⁴⁾.

Paragraph No. (1) of Article No. (139) stipulates that, quote: “[n]o waiting period for the woman divorced before consummation and valid seclusion”, unquote⁽²⁵⁾. The Explanatory Memorandum stated that the law took into account the opinion of the majority of jurists that the Iddat period must be observed after the Actual Act of Intercourse (dukhūl) or Consummation of Marriage (al-khalwah al-ṣaḥīḥah), and it decided, (the law, that is), that the woman who separated with her husband before the occurrence of the Act of Intercourse (dukhūl), either de facto or de jure, does not need to observe the period of Iddat⁽²⁶⁾.

It is understood from this that the Iddat is obligatory for a woman to observe in only two cases:

1- It must be after the actual act of intercourse.

2- It must be after the Consummation of Marriage (al-khalwah al-ṣaḥīḥah).

And if the divorce takes place in other than these two cases, then a woman does not have to observe the Iddat period, which means that if she is divorced before the seclusion, then there will be no Iddat there to be observed, and the occurring divorce will be an irrevocable one, and all jurists agreed on this principle, and if she is divorced after the seclusion, then there will be Iddat there to be observed, and therefore this is not among the cases that have been excluded, and the divorce shall remain as per its basic principle in terms of it occurring revocably pursuant to Article No. (105) of the same law.

Fourth: Complementing the Provisions of Seclusion from its Legislative Source:

Article No. (2) of the Law states that, quote: “1) [p]rinciples and rules of Islamic jurisprudence (fiqh) shall be referred to for understanding, interpreting, and construing the legal texts herein. 2) The provisions of this law shall apply to all the matters they deal with in terms of purport. Such matters shall be referred to the juristic doctrine they are derived from for interpretation and completion of their rulings. 3) Where this law contains no relevant text, rulings shall be given according to the well-known rulings in the doctrines of Imams Malik, Ahmed, Shafie, and Abu Hanifa, respectively”, unquote.

According to the explanation of this Article in its Explanatory Memorandum, this Article charted the path followed by the judge and the law enforcement officer

“The Emirati Legislator Addressed Several Matters Related to the Consummation of Marriage (al-khalwah al-ṣaḥīḥah) in the Personal Status Law in Several Separate Articles. However, it did not Clearly Stipulate the Ruling on this Issue.

“The Supreme Court Has Ruled That, Quote: “[t]he Basic Principle is That the Divorce Should Take Place Revocably, Except for What is Excluded in the Cases of (Third Repudiation Divorce, Divorce Pronounced Before Consummation, and Irrevocable Divorces Provided for)”, Unquote.

“There Will Be No Iddat for the Divorcee Wife to Observe if Divorce Takes Place Before the Actual Act of Intercourse (dukhūl) and Before the Consummation of Marriage (al-khalwah al-ṣaḥīḥah).

“The Federal Personal Status Law Has Stipulated That the Divorcee Wife Must Perform the Iddat After the Valid Seclusion, Based on the Opinion of the Majority of Jurists.

Adopting the Hanbali Doctrine's Opinion is the Most Correct and Most Just for Both Parties, and the Safest in Light of the Corruption of the Current Times and the Lack of Ethicality in the Society, Except for Those Few Who Are Still Holding Strong to Their Systems of Beliefs and Ethics.

The Hanbali Doctrine Believes That Divorce Made After the Occurrence of a Legitimate and Valid Seclusion is Considered Revocable. Then the Personal Status Law, according to the Above, Stipulates That a Divorce Made in Such a Case (After a Valid Seclusion) is Indeed a Revocable One.

in understanding the texts, interpreting them, and completing the incomplete provisions of the issue at hand⁽²⁷⁾. It is clear from the foregoing that the Federal Personal Status Law has stipulated that the divorced woman must perform the Iddat after the valid seclusion, based on the opinion of the majority of jurists, as well as that the mahr (dowry) is obligatory in full on the divorcer husband in accordance with the opinion of the majority of jurists, as was stated by the Hanafis, Hanbalis and Shafi'is in the established jurisprudence.

According to the Federal Civil Transactions Law as well as the Federal Personal Status Law, it was decided that the priority was given to the Maliki doctrine, followed by the Hanbali doctrine, then the Shafi'i doctrine, then the Hanafi doctrine, when there was no explicit legal text on the matter at hand⁽²⁸⁾.

And since the Maliki doctrine was not among the Fiqh (jurisprudence) doctrines from which the law derived the provisions of the valid seclusion, then it had to be excluded, and move on to the following doctrine according to the order set out in the law, which is the Hanbali doctrine.

And since the Hanbali doctrine is one of the historical sources of some of the rules of the valid seclusion, which required the observance of the Iddat waiting period by the wife who was involved in such a seclusion, and also required the husband to provide the mahr (dowry) in full, then according to the order of the law, the provisions of this issue should be completed from it and not from other sources, especially since the Maliki doctrine made the Iddat on the divorcee wife after the occurrence of a seclusion as a precaution step and not obligatory one⁽²⁹⁾. And since the Hanbali doctrine, as mentioned earlier, believes that divorce made after the occurrence of a legitimate and valid seclusion is considered revocable, then the Personal Status Law, according to the above, stipulates that a divorce made in such a case (after a valid seclusion) is indeed a revocable one.

In addition, what justice and logic require is that when the law obliges the husband to pay the mahr (dowry) in full as soon as a valid seclusion is established, then it is only logical and just that he would reserve the right to request to take his wife back, especially since the Holy Verse has decided for the wife half of the mahr (dowry) when there is no actual act of intercourse, and did not oblige her to observe the Iddat period, neither as an obligation, nor as a precaution, whereas if an actual act of intercourse is established, then the husband is obligated to pay the mahr (dowry) in full and the wife is required to observe the Iddat period in full too, and therefore the right to request to take the divorcee wife back is established to

the divorcer husband by reason of logic and justice and without contradiction with the Holy Verse.

And it is worth mentioning that those who say that a divorce made is considered as an irrevocable divorce, are the same ones who obligated the husband to the full mahr (dowry), and the same ones who differed on the Iddat, whether it is made as a precaution or as an obligation. And they also disagreed on several provisions, such as inheritance or alimony, and whether the divorcer husband ought to provide for his divorcee wife during the observance of the Iddat. And what if pregnancy occurs during this Iddat waiting period, and a ruling is issued describing the divorce as irrevocable. What would then be the situation here? Especially with the agreement of both spouses to deny the occurrence of any actual act of intercourse and the occurrence only of a valid seclusion, and many other issues that would arise from this. And there are many disputes and lawsuits in this matter, and the disputes regarding the issue of seclusion are often raised before the courts, where the woman would claim it and the man would deny it, and some women want to prove the occurrence of a valid seclusion in order to complete their mahr (dowry) and to keep their virginity status intact so that future suitors will not think less of them, whereas the husband seeks to deny its occurrence in order to get rid of the duties that come along with it apropos completing the mahr (dowry). And such problematic issues can all be headed off by simply getting the law to explicitly adopt the view of the Hanbali doctrine on this issue and make the Consummation of Marriage (al-khalwah al-ṣāḥiḥah) takes the place of the Actual Act of Intercourse (dukhūl) in all of its rulings, and then this will make both spouses reluctant to be alone with each other so as not to bear the consequences of such seclusion, and would rather instead wait and abstain until the actual intercourse would take place on their wedding night. Therefore, the Researcher believes that adopting the Hanbali doctrine's opinion on this issue is the most correct and most just of all opinions for both parties, and the safest in light of the corruption of the current times and the lack of ethicality in the society, except for those few who are still holding strong to their systems of beliefs and ethics, and it is an opinion that is consistent with what was decreed by the Rashidun (rightly guided) Caliphs who are followed as role models with respect to their code of ethics and way of life.

Allah knows best and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

* Footnotes

- (1) Article No. (139) of the UAE Personal Status Law No. (28) of (2005).
- (2) Abdullah bin Ahmed bin Qudamah Al-Maqdisi, Al-Mughni, Cairo: Al-Qahirah Library, D Floor, (1968 A.D). Vol. (7), P. (249).
- (3) "[I]t is established in the doctrine of Maliki that the valid seclusion occurring between spouses does not entail the wife's entitlement to the full agreed upon mahr (dowry) except by actual act of intercourse or constructive intercourse, such as Al-Aneen (The Impotent Person) or Al-Majboob (The Person who has no or small private part), and that if the seclusion is without actual act of intercourse, kissing, or an act without insertion into the private part, then she is only entitled to half of the mahr (dowry)," Ruling of the Dubai Supreme Court in Appeal No. (18-2004), Personal Status, Dated (13-6-2004).
- (4) Muhammad Bin Makram bin Ali ibn Manzoor, Lisan Al-Arab (Tongue of the Arabs), Beirut: Sadir Publication House, .3rd Floor, (1414 A.H). Vol. (14), P. (237) et seq.
- (5) Ahmed Mukhtar et al., "Mo'ajum Allugha Al-Arabeyyah Al-Moa'asirah" (Lexicon of the Contemporary Arabic Language), A'alum Al-Kutub (The World of Books), 1st Floor, (2008 A.D), Vol. (1), P. (693).
- (6) Wahba Mustafa Al-Zahili, "Al-Fiqh Al-Islami Wa Addillatuh" (Islamic Jurisprudence and its Evidence), Damascus: Dar Al-Fikr, 4th Floor, D.T, Vol. (9), P. (6835).
- (7) Nasser Ahmad Ibrahim El Nashwa, "Al-Khulwa Wa Al-Athar Al-Mutarattibah Alayha Fi Al-Sharee'ah Al-Islamiyyah" (Seclusion and its Implications in Islamic Law), Alexandria: Al-Jame'ah Al-Jadeedah Press House, D Floor, (2004 A.D), P. (74).
- (8) Al-Zahili, "Al-Fiqh Al-Islami Wa Addillatuh" (Islamic Jurisprudence and its Evidence), Vol. (9), P. (6835), and Hassam Abdul Wahid Kazim, "Al-Dukhoul Al-Hukmi Wa Atharuh Fi Al-Fiqh Al-Islami Wa Qawaneen Al-Ahwal Al-Shakhseyyah" (Constructive Intercourse and its Implications in Islamic Jurisprudence and Personal Status Laws), Law Journal for Legal Studies and Research, Faculty of Law, Dhi Qar University, Iraq, Edition No. (2), (2021 A.D), P. (87).
- (9) For more details about the difference between the Valid Seclusion and Actual Act of Intercourse, see: Mohammed Azmi Al-Bakri, "Mawsooa'ut Al-Ahwal Al-Shakhseyyah" (Encyclopedia of Personal Status", Mahmoud Publishing House, D Floor, (2018 A.D), Vol. (1), P. (337). Al-Zahili, "Al-Fiqh Al-Islami Wa Addillatuh" (Islamic Jurisprudence and its Evidence), Vol. (9), P. (6836).
- (10) "Actual Act of Intercourse and Seclusion with Women". Islam Online Website.
- (11) Islam Online Website, Q&A, entitled: "Is Divorce Before Actual Intercourse and After the Occurring of a Seclusion Revocable or Irrevocable?",

<https://islamqa.info/ar/answers/118557/>

(12) Surah Al-Ahzab, Verse No. (49).

(13) Surah Al-Baqarah, Verse No. (237).

(14) Alaeddin Abu Bakr ibn Masoud Al-Kasani, "Bada'i' As-Sana'i' Fi Tartib Ash-Shara'i'" (Unseen Artistry in the Arrangement of the Religious-Legal Regulations), Beirut: Al-Kutub Al-Ilmeyyah Publication House, 2nd Floor, (1986 A.D), Vol. (2), P. (291).

(15) Surah An-Nisa, Verse No. (21).

(16) Abdullah bin Ahmed bin Qudamah Al-Maqdisi, Al-Mughni, Cairo: Al-Qahirah Library, D Floor, (1968 A.D). Vol. (7), P. (249).

(17) Abu Bakr ibn Abi Shaybah, "Al-Kitab Al-Musannuf Fi Al-Ahadeeth Wa Al-Athar" (The Classified Book in Hadiths and Effects), Investigation: Kamal Yusuf, Riyadh: Al-Roshd Library, 1st Floor, (1409 A.H), "Bab Mun Qal: Itha Aghluq Al-Bab Wa Arkha Al-Sitar Faqud Wajaba Al-Sadaq" (Chapter of the One Who Said: If the Door is Closed and the Curtain is Down, Then Mahr {Dowry} is Obligatory", Hadith No.: (16695), Vol. (3), P. (520).

(18) Ibn Qudamah, Al-Mughni, Vol. (7), P. (249).

(19) Article No. (105) of the UAE Personal Status Law No. (28) of (2005).

(20) The Ruling of the Supreme Court in Dubai on Appeal No. (49-2009), Personal Status.

(21) Surah Al-Ahzab, Verse No. (49).

(22) The Explanatory Memorandum to the Personal Status Law, Article No. (105).

(23) Article No. (136) of the UAE Personal Status Law No. (28) of (2005).

(24) Explanatory Memorandum to the Personal Status Law, Explanation of Article No. (137).

(25) Article No. (139) of the UAE Personal Status Law No. (28) of (2005).

(26) Explanatory Memorandum to the Personal Status Law, Explanation of Article No. (139).

(27) Explanatory Memorandum to the Federal Personal Status Law.

(28) The Text Reads: "[w]here this law contains no relevant text, rulings shall be given according to the well-known rulings in the doctrines of Imams Malik, Ahmed, Shafie, and Abu Hanifa, respectively", Paragraph No. (3) of Article No. (2) of the UAE Personal Status Law No. (28) of (2005).

(29) The Text Reads: "[t]he provisions of this Law shall apply to all matters dealt with in their wording or content, and the interpretation and completion of their provisions shall be based on the jurisprudential doctrine from which they were derived". Paragraph No. (2) of Article No. (2) of the UAE Personal Status Law No. (28) of (2005).

The Technical Office In the Supreme Court

Facilitating Judicial Work and Promoting Justice



H. E. Sa'ad Zewail
Judge at the Supreme Court in Dubai and Head of the Technical Office



H. E. Medhat Mohammed Ibrahim
Judge at the Court of Appeal - Emirate of Dubai



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

- What Are the Competencies of the Technical Office of the Supreme Court?
- How Are the Members of the Technical Office Selected, and Do They Undergo Specialized Courses?
- What Is the Relationship of the Technical Office with the Members of the Judiciary, Including Judges, Public Prosecutors, and Inspectors?
- What Is the Role of the Technical Office in the Preparation of Judicial Studies and the Dissemination of Judicial Principles?
- What Are the Standards According to Which Legal Principles Are Published, Which Are the Responsibility of the Technical Office of the Supreme Court?
- What Is the Role of the Technical Office of the Supreme Court in the Development of Legal and Judicial Scientific Research?
- How Does the Technical Office of the Supreme Court Provide Scientific Research Methods and Tools?
- What Is the Difference Between the Legal Rule and the Judicial Rule?
- When Does a Judicial Rule Turn into a Legal Rule?
- How Do Legal and Judicial Rules Overlap?
- Is It Permissible for the Judiciary to Amend the Legal Rule?

What Are the Competencies of the Technical Office of the Supreme Court?

H.E. Sa'ad Zewail, a Judge at the Supreme Court in Dubai and the Head of the Technical Office, points out that the Technical Office is specialized in deriving legal principles and judicial rules, which the Supreme Court establishes in its rulings, and classifying, indexing, and publishing them, after presenting them to the President of the Supreme Court, in addition to preparing legal and technical research and studies, following up the issuance of federal and local legislation on a monthly basis and providing the judges of the Court with it, preparing bulletins and directives issued by

the President of the Supreme Court on the organization of judicial work in the courts, in addition to any other tasks assigned by the President of the Supreme Court to the Technical Office.

Article No. (190) of the Federal Decree-Law No. (42) of (2022) promulgating the Code of Civil Procedure also stated that the competence of the Technical Office includes the preparation of reports on requests for reversal of the rulings of the Supreme Court referred by the President of the Supreme Court.

H.E. Judge Medhat Mohammad Ibrahim, a Judge at the Supreme Court in the Emirate of Dubai, agrees with Judge

Article No. (21) of the amended Judicial Authority Law in the Emirate of Dubai No. (13) of (2016) stipulates that the Supreme Court shall have a Technical Office working on documenting and publishing the judgments of the Supreme Court. The Technical Office of the Supreme Court was formed by the decision issued by the President of the Supreme Court, and a number of judges, legal and administrative researchers were attached to it.

Through a specialized questionnaire addressed to specialists in the field of law, Sada AL-Mahakim (Courts' Echo) Magazine seeks to familiarize readers more deeply with the work of the Technical Office of the Supreme Court by answering the following questions:





Zewail in defining the competencies of the Technical Office at the Court of Appeal, indicating that they include deriving legal and judicial principles, issuing sets of judgments and legislative bulletins, preparing technical research that addresses problems that may be presented to judges, especially in the Courts of First Instance, in addition to preserving the legacy of the Supreme Court from the judgments it issues and the judicial principles it concludes, supervising the Court schedule, recording cases, appeals, and requests, and what the President of the Court may refer to the Technical Office of issues.

How Are the Members of the Technical Office Selected, and Do They Undergo Specialized Courses?

H.E. Judge Zewail indicates that the selection of the Head and members of the Technical Office is made from highly qualified judges specialized in all legal disciplines, and those who have the skill of scientific research and writing legal memos, and they undergo specialized courses in deriving legal principles and judicial rules established by the Supreme Court in its issued rulings, and they classify and index them, as well as undergo courses in the preparation of legal and technical research and studies.

What Is the Relationship of the Technical Office with the Members of the Judiciary, Including Judges, Pub-

lic Prosecutors, and Inspectors?

H.E. Judge Zewail illustrates that the Technical Office responds to the requests and inquiries of members of the judiciary from judges, public prosecutors, and inspectors, and provides legal and technical support to them, as well as exchanging legal studies and research with the technical offices in the supreme courts in the state in order to develop the UAE judicial thought, and works to provide the judicial precedents and any legal studies or research and is not subject in its work to judicial inspection.

H.E. Judge Ibrahim points out that the Technical Office is keen to provide knowledge support to judges in various cases, in an effort to issue judicial rulings in full legal accordance with the correct law, through legal communication with the judge and by providing him/her with the latest versions of laws and their up-to-date amendments, the necessary information, legal research, and judicial precedents applicable to the dispute, and related to the same subject raised in lawsuits, which helps the judges to make the right decisions in cases presented before them, and contribute to the completion of lawsuits and issuing judgments in a sound and decisive legal manner.

H.E. Judge Ibrahim spoke about the roles played by the Technical Office of the Supreme Court internationally, noting that these roles include:

1-Extracting Legal Developments: The Technical Office re-

views all the judgments of the judicial departments in the Supreme Court, to reveal the new legal rules and principles, and the new judicial applications, in order to ensure the correct understanding of the law.

2-Preparing Legal Researches and Summaries: The member of the Technical Office prepares summaries of the legal rules and principles included in the judgment (s) of the Supreme Court, and explains through them how to apply those rules and the extent of their legal impact, which enables people familiar with the summary to understand the legal meaning of the rule at hand, and follow its impact in judicial application.

3-Publication and Communication: The Technical Office works on publishing new rules and principles and important provisions, which contain updated precepts, by submitting them to the Head of the Technical Office for publication at various levels of courts, so that a member of the Technical Office is assigned to follow the rulings of each judicial department, and present important rulings to the Head of the Technical Office periodically, which contributes to achieving the application of the law in a correct manner in accordance with the newly created legal rules.

4-Internal Communication: The assignment of a member from the Technical Office to each judicial department contributes to facilitating communication and coordination with the members of the other judicial department, in a bid to

follow up on all the rulings issued by the department and contain new principles.

What Is the Role of the Technical Office in the Preparation of Judicial Studies and the Dissemination of Judicial Principles?

H.E. Judge Zewail explains, illustrating that the Technical Office studies legislations, decrees, decisions, and circulars in the light of rulings issued by the Supreme Court, and submits proposals related to their development and updating, and participates in committees and events related to them. The Technical Office also extrapolates the legal principles and judicial rules established by the Supreme Court in these rulings, classifies, indexes, and publishes them, after presenting them to the President of the Supreme Court.

H.E. Judge Ibrahim adds other tasks to the Technical Office, indicating that they include following up the publication of the latest judicial rulings, through publications and legal issuances, and through modern electronic means, and compiling the issuances of previous judicial rulings, and issuing them in volumes every time period that could reach up to ten years, and sometimes to twenty-five years, in an attempt to expand the circle of legal knowledge and establish the concept of justice in society, in addition to the Technical Office providing every helping hand to other judges and all those dealing with and working in the fields

of law and its scholars to spread legal knowledge, and the Technical Office of the Supreme Court aims, behind that intention, to contribute to achieving justice, considering that the judiciary is the epitome of truth realization, and it works to ensure the right of fair litigation for all persons, which consolidates the concept of the principles of justice, equality, and the rule of law, which in turn contributes to achieving sustainable development in the Emirate, through the provision of a fair, impartial, developed, and effective judiciary that leads to the provision of security and safety in the homeland.

What Are the Standards According to Which Legal Principles Are Published, Which Are the Responsibility of the Technical Office of the Supreme Court?

H.E. Judge Zewail explains that the legal principles are published based on specific criteria related to new judgments and rulings that include a new application, or judgments issued in appeals that raise important and real legal problems, in addition to important rulings that were published more than five years ago, and the rulings that the President of the Supreme Court deems worthy of publication. Additionally, the Technical Office narrows down the conflicting judicial principles in the Supreme Court and presents them to the General Authority of the Supreme Court.

What Is the Role of the Technical Office of the Supreme Court in the Development of Legal and Judicial Scientific Research?

Dr. Walaaeldeen Ibrahim, Associate Professor of Commercial Law at Zayed University, speaks about the role of the Technical Office of the Supreme Court in the development of legal and judicial scientific research, pointing out that when a judge is assigned to adjudicate a particular case, he/she does not adjudicate it randomly or temperamentally, but deliberately uses scientific research methods, where he/she analyzes the facts and looks at their legal characterization, in light of the legislative texts in his/her hands, and if he/she does not find them, he/she searches the rest of the legal sources of the Islamic Sharia, judicial precedents, custom, and the writings of Jurists.

Here, Dr. Walaa draws attention to the importance of harnessing efforts and providing the necessary tools that help members of the judiciary to access such information easily and conveniently, especially in light of the interaction of the technological, informational, and digital revolutions, with each other, which necessitated the pursuit and interaction of the legislators, judges, and other workers in the legal and judicial fields with such revolutions to search for everything that is new, and to keep abreast of all the new social phe-

nomena that accompany the developments witnessed by our world in the last two decades.

How Does the Technical Office of the Supreme Court Provide Scientific Research Methods and Tools?

Dr. Walaa, considers that if the judiciary is one of the two wings of justice, jurisprudence, then, is its second wing, which provides legal scientific research, and one of the most important tools used by jurisprudence is the final judicial rulings issued by the Supreme Courts, however, there are several researches based on commenting on the rulings, which greatly benefit the development of the judicial process, and which highlight the important points and new judicial principles that the court may have concluded, in addition to other studies and scientific research which are backed up using the issued rulings and also play their role in benefiting the development of the judicial process too. Ergo, the communication between law schools and courts is of great importance, and here the Technical Office plays its role as a link between the Supreme Court and universities in this regard, so that there will be joint scientific research that brings together university professors and judges, rendering the research process more integrated both in terms of theory and practice.

And from another stand point, the modern strategy in teaching law is based on mixing the theoretical knowledge with the practical and training aspect, and this is through field visits to the courts and getting acquainted with their structure and various functions, the mechanisms of work within them and everything related to the judicial work, as well as there are "Moot Courts", which are today considered one of the main tools in law faculties, and they are a simulation of the real courts in the field of civil and criminal cases.

And through the method of role - playing, students are trained on real and realistic cases, in which the judiciary ended issuing final rulings, and where the roles are distributed to students, and here the importance is iterated through calling on the judicial expertise to train students on judicial sciences and skills, which the judge actually employs during his/her consideration of cases.

And here, the role of the Technical Office becomes all the more important when it comes to coordinating with law schools to nominate one of the judges to supervise the training process, which usually includes: (How to read facts and information, the skill of analyzing facts, evaluating conflicting or contradictory arguments, the art of asking questions in investigations, drafting judgments, and other training issues). From the above-mentioned, it is clear the importance of the pivotal role of the Technical Office of the Supreme Court in the development of legal and judicial scientific research, in

being a key link between jurisprudence and the judiciary, and in the development of the Justice system in general.

What Is the Difference Between the Legal Rule and the Judicial Rule?

Dr. Jassim Al Hosani, a Judge at the Dubai Supreme Court, Editor-In-Chief of the Sada AL-Mahakim (Courts' Echo) Magazine, points out that Article No. (22) of the Judicial Authority Law in the Emirate of Dubai stipulates the competencies of the Technical Office of the Supreme Court, and among those competencies is the inference of legal principles and judicial rules established by the Supreme Court in the rulings that it issues, and it is noted that the law used the term "Principle" and the term "Rule", attributing the former to the Law and the latter to the Judiciary, but in fact, and although some differentiate between the terms of "Principle" and "Rule" despite the fact that this is very difficult (1), still, most scholars of jurisprudence used both terms interchangeably with one another to indicate that both of them have the same meaning and can be used to mean the same thing (2), and this is because it was impossible to agree on the establishment of a parameter or a criterion to distinguish between them. And in this regard, the meaning of the "Legal Rule" and the "Judicial Rule" may be confusing for some, although the two rules differ in terms of definition and source.

Al Hosani, stressed that the "Judicial Rule" emanates from the judiciary, and it is a judicial ruling resulting from applying the law in text or by extrapolation and is followed by other rulings.

As for the "Legal Rule", its source is the law, and it is a text accompanied by a penalty sanctioned by the public authority, to regulate and control behavior in society, and if the "Legal Rule" is an interpretative one, then it can be defined as being a holistic text containing a legislative ruling.

Al-Hosani indicates that 'Ijtihad (independent reasoning) shall not be resorted to wherever a provision is provided/ stipulated', and where the reasoning of the judiciary is enacted in order to establish a judicial rule, when the legal text contains phrases that need to ascertain the cause of the ruling, such as (causing serious damage, excessive use of right, excessive cruelty, and reasonable limit).

When Does a Judicial Rule Turn into a Legal Rule?

With respect to the freedom to establish judicial rules, Al-Hosani shows that a judge does not have absolute freedom to establish judicial rules, except to the extent that is consistent with the legal rule established in the legislation, but in the absence of an explicit legal text and the absence of a referral from the law to other sources, the judge, then, must resort to reasoning to adjudicate the case by establish-

ing a judicial rule derived from a legal ruling commensurate with the philosophy of the Law (3) and its general trends (4), and then the judicial rule in this case may seem to be independent of the legal rule, when in fact it is not since it revolves in its orbit, and what is worth paying attention to, is the fact that the judicial rule may turn into a legal rule when adopted by the legislator and incorporated into an explicit legal text.

How Do Legal and Judicial Rules Overlap?

Al Hosani illustrates that there may be an overlap between the legal rule and the judicial rule, whenever the judge mentions the legal rule in his/her ruling, and this may lead to some people being confused about it from a formal point of view, so much so they would describe the rule here as a judicial rule, and truth be told here is that the judge's use of the legal rule does not change its legal nature and does not turn it into a judicial one; since the ruling in this case did not create the legal rule but rather revealed it, and one example of which is what the Supreme Court in Dubai ruled in Appeal No. (10) of (2011), in session hearing dated (21-9-2011), when it stated that, quote:

"[t]he Supreme Court held that the effect of Article No. (316) of the Code of Civil Transactions is that the custodian of the thing that requires special care (whether such person is the owner or not such as a lessee), is liable for harm caused from said thing. The custodian's liability here is not on the basis of the presumed fault but on the basis of the rule that the burden accompanies the benefit, and in order to establish his responsibility, it is not necessary to prove the infringement or negligence on his part, and the basic principle here is that the intervention of something in causing the damage was positive, however, the custodian of the thing can avoid liability by negating one of the elements of the cause of action by proving: that the thing which caused the harm did not require special care to prevent its causing harm; that the custodian did not have actual control over the thing at the time the harm occurred; that the custodian had taken all the precautions necessary to prevent the thing causing harm; that the harm could not have been prevented because a person is bound to do only that which is within his capability; or under the general rules, that the harm did not result from the thing but was due to an external factor over which the custodian had no control", unquote. We note here that the ruling based the determination of tort liability for the custodian of things on the rule of (The Burden Accompanies the Benefit), which is a legal rule stated in Article No. (67) of the Civil Transactions Code, and therefore its mere mention in the ruling does not make it a judicial one.

Is It Permissible for the Judiciary to Amend the Legal Rule?

Al-Hosani affirms that the judiciary may not amend the legal rule, while it may ignore the judicial rule and adopt a new one. For example, the Supreme Court in Dubai disregarded the rule that says that: "It is not permissible for a child in custody to spend the night except with his/her custodian", and its General Authority decided in Appeal No. (8) of (2021) at a session on (10-11-2021) that a judge may permit the child in custody to spend the night at someone else's house other than that of his/her custodian's house, when it stated in its ruling

that, quote: "[a]rticle No. (1) of Law No. (3) of (2016) on the Child Rights Law stated that the best interest of the child is to put the child's interest above all consideration, and to consider it as a priority in all circumstances, regardless of the interests of other parties". Article No. (2) of the same Law also stipulated that: "[t]he competent authorities and concerned parties shall work to achieve the following in Item No. (4): (Protect the child's best interests)". Article No. (16) of the same Law stated that: "[s]ubject to the laws in force, the child shall be entitled to be introduced to his/her natural family and parents and receive their care and to have personal re-

lations and direct contact with both of them". The text is also contained in the Explanatory Memorandum to the Federal Law No. (28) of (2005) on Personal Status, which provided that: "[i]t is not permissible for a child in custody to spend the night except with his/her custodian, unless the Court decides otherwise, taking into thorough account the interest of the child in custody himself/herself". Taken together, the effect of these texts is that, although the basic principle is that "It is not permissible for a child in custody to spend the night except with his/her custodian", however, in order to achieve the best interests of the child and to take care of his/her right

to get to know his/her parents and his/her natural family and receive their care and to maintain personal relationships and direct contacts with both without fatigue or hardship, the judge may authorize the child in custody to stay in a home other than that of his/her custodian, if his/her interest requires it. In light of the foregoing, the Authority concludes - by the majority stipulated in Paragraph No. (2) of Clause (A) of Article No. (20) of Law No. (13) of (2016) on the Judicial Authority in the Emirate of Dubai - to adopt this principle, and to disregard any previous rulings that contradict it and to decide on the appeal on this basis", unquote.

Legal Rule (Examples and Evidence)

- Article No. (85/2) of the Civil Transactions Law (A person shall be of the age of majority upon reaching the age of twenty-one lunar years).
- Article No. (18/2) of the Commercial Transactions Law No. (50) of (2022) (The minor, whether or not subject to conservatorship or guardianship, who reaches (15) fifteen calendar years of age, may trade on the terms and conditions issued by the resolution of the Cabinet, based on the proposition of the Minister of Economy).
- Article No. (151/2) of the Code of Civil Procedure (The appellant shall not be harmed with his appeal).
- Article No. (89) of the Law of Evidence in Civil and Commercial Transactions No. (35) of (2022) (As for matters where no particular provision or an agreement between the parties is provided herein, and without prejudice to the public order, custom or normal practice among the litigants may be used as evidence).
- Article No. (69) of the UAE Civil Transactions Law (He who accelerates the happening of a thing, before it is due, shall be deprived of it).
- Article No. (70) of the UAE Civil Transactions Law (No person may renege from what it has {conclusively} performed).
- Article No. (258/1) of the UAE Civil Transactions Law (In contracts, purposes and meanings are decisive, not the wording or construction forms).
- Article No. (258/2) of the UAE Civil Transactions Law in the field of expression of will (True meaning is the basis of words. Word shall not bear a metaphor unless it is impossible to construe them according to their true meaning).
- Article No. (260) of the UAE Civil Transactions Law (Giving effect to uttered words is prevalent over neglecting them, but if this is impossible then they should be neglected).
- Article No. (261) (Stating part of what is indivisible is like stating the whole).
- Article No. (42/1) of the UAE Civil Transactions Law in the field of taking into account interests (No prejudice caused and no harm inflicted).
- Article No. (42/2) of the UAE Civil Transactions Law (Prejudice should be removed).
- Article No. (35) of the UAE Civil Transactions Law in the field of application of Al Istishab (An Islamic term used in the jurisprudence to denote the principle of the presumption of continuity) (Certainty is not removed by doubt).
- Article No. (36) of the UAE Civil Transactions Law (Things, in principle, should remain as they were).

Judicial Rule (Examples and Evidence)

- The decision of the General Authority of the Supreme Court in Dubai No. (1) of (2023): Regarding the consideration of applications received in the electronic newspaper without the archived print newspaper, and according to what the Authority has stated which is that: "[t]he Federal Decree-Law No. (--) for the year of - - - promulgating the Code of Civil Procedure, which stipulated in Article No. (44/1) that: (the case shall be submitted to the court at the request of the plaintiff, by registering his statement of claim with the case management office, or by registering it electronically or on paper in accordance with the applicable rules in court)".
- Article No. (48/2) of the same law: (The defendant must file electronically or on paper a memorandum of his defense and copies of his documents signed by him within (--) ten working days from the date on which he was notified of the lawsuit).
- Appeal No. (256) of (2009) Civil Case: (The rule in identifying the unity of the subject and its difference between the two lawsuits is that the judicature in the subsequent lawsuit is nothing more than a repetition of the judicature in the previous lawsuit, or contrary to the previous judgment, whether by affirming a right denied by this judgment, or by denying a right approved by it, so there would be contradiction between the two judgments. And the unity of reason is meant that the fact from which the plaintiff derived the right to request in the previous lawsuit is the same fact from which the right in the subsequent lawsuit is derived).
- Appeal No. (49) of the year (2020), labor, held on (9-6-2020) (It is established that the request in which the court decides is the explicit and firm request, and the reports or defenses raised by the opponents are not considered as requests in the case, and the judge is not permitted to deviate from the scope of the requests submitted in the case, and the scope of the dispute that the court is obligated to decide upon is determined by the plaintiff's requests in the statement of claim, and he may, during the course of the case, amend, increase, or decrease his requests against his opponent, and the point in this matter is the final requests in the case).

Footnotes

(1) This is why some jurists have acknowledged that principles can be recognized and not defined because of the difficulty of defining them. See: Mustafa Al-Daraji, "Al-Mabda'a Al-Qanooni, Wa Al-Dhabit, Wa Al-Qa'idah Al-Qa-Nooneyyah" (The Legal Principle, the Parameter, and The Legal Rule), Journal of Legal Studies, Benghazi University, Faculty of Law, Issue No. (30), P. 147.

(2) Scholars, jurists and fundamentalists, have differed as to whether it is a tenet, a rule, a principle, or all the descriptions are correct, and Al-Qarafi's in his Al-Thakhira Book see it as a rule, see: Shihab Al-Din Ahmad bin Idris Al-Qarafi, Al-Thakhira, Edited by Mohammad Hajji, Dar Al-Gharb Publication House, Beirut, 1st Edition, 1994 A.D, Vol. 1, P. 52, Vol. 8, P. 22. As well Al-Shatibi, see: "Al-Muwafaqat Fi Usul Al-Sharai'a" (The Reconciliation of the Fundamentals of Islamic Law), Dar Ibn Al-Qayyim Publication House, Riyadh, Dar Ibn Affan Publication House, Cairo, 2nd Edition, 1427 A.H – 2006 A.D, Vol.3, P. 564. And elsewhere in the same ibid, it is considered one of the peremptory principles in Shari'a, Vol. 3, P. 263, and it is described as

such by Sheikh Mohammad Abu Zahra, see: Malik - "Hayatuh, Wa A'asruh, A'ara'oh, Wa Fiqhu" (His Life, Era, Opinions, and Jurisprudence), Dar Al-Fikr Al-Arabi Publication House, Cairo, P. 405. And Ibn Hanbal-"Hayatuh, Wa A'asruh, A'ara'oh, Wa Fiqhu" (His Life, Era, Opinions, and Jurisprudence), Dar Al-Fikr Al-Arabi Publication House, Cairo, 314. Mustafa Al-Zarqa describes it as 'The Principle', see: Dr. Mustafa Ahmad Al-Zarqa "Al-Madkhul Al-Fiqhi Al-A'am" (Introduction to General Jurisprudence), Dar Al-Qalam Publication House, Damascus, 1st Edition, 1418 A.H - 1998 A.D, Vol.1, P.107. Many scholars do not aim at a particular thing when settling on a certain description. For more details on this, see: Mohammad Hisham Burhani, "Saddadh-Dharaa Fi Al-Shariah Al-Islameyyah" (Blocking the Means in Islamic Law), Dar Al - Fikr Al-Arabi Publication House - Damascus, 1st Edition 1406 A.H - 1985 A.D, P. 125 et seq. And see: Mustafa Al-Daraji, "Al-Mabda'a Al-Qanooni, Wa Al-Dhabit, Wa Al-Qa'idah Al-Qa-nooneyyah" (The Legal Principle, the Parameter, and The Legal Rule). op. cit., P. 156 et seq.

(3) The aim of the research in the philosophy of law is to root the judicial judgment with sound legal logic.

(4) General Trends of Law are unwritten rules that the judiciary extrapolates from the legal system of the state and by analogy with one or more texts.

Historical Development of the Judiciary

In the Emirate of Dubai, From Norms to Regulations



H.E. Ahmad Ayoub
Judge at the Courts
of First Instance - Dubai

Before the Fifties of the last century, there were no regular courts in the UAE, or a judiciary in the sense currently understood, and most of the time people turned to the ruler to complain against each other.

The only customary court that existed instead of the ruler was the “Diving Court” or the so-called “Diving Story”, where this Court is formed in the event of a dispute between the parties engaged in diving and pearl trading and most of its cases were about advances and loans ⁽¹⁾.

John Lorimer, one of the most prominent historians who documented the history of the Gulf Region at the beginning of the twentieth century, said in his book “The Gulf Guide” that this Court is not permanent, but is formed by the ruler whenever necessary, and who appoints one man or more, often one of the Al Nowakthah (Ship Captains) who are well-known for their good reputation and their knowledge of the conditions of the sea pearl diving areas, and who act as judges in this field, and litigants adhere to what the Court issues of judgements ⁽²⁾.

History of the Judiciary in the United Arab Emirates:

In his Book “The Gulf Guide”, Lorimer points out the complex hierarchical relationship between the financiers of diving ships, who were often Indian merchants, and small native pearl traders and ship captains, some of whom owned their own ships, others worked only as paid captains, and the masses of sailors who were engaged in the diving profession. The UAE Society, like other Gulf societies, was a simple society whose few children lived on diving and fishing, and they did not know the commercial systems and their intricacies, and

they were dealing with others naturally and in good faith, and there were not that many professions or opportunities available way back when.

The diving profession was one of the most prominent professions in which these people toiled away to extract pearls from the sea for the rich to buy in Europe, India, and other countries, so foreign financiers took advantage of this opportunity to saddle those seamen with debts through advances and lending systems, and most of those people found themselves sometimes only working to pay off their debts ⁽³⁾.

“
The Only Customary Court in the UAE Before the Fifties was the Diving Story Court.

Personal and other status issues were mostly solved by the knowledge of scholars of jurisprudence or the mediation of charitable people with conscience.

After the Increase in the Number of Cases Due to the Consequences of the Great Depression, Sheikh Sa'eed Bin Maktoum Al Maktoum, Ruler of Dubai, issued a Decree. Through Which the Department of Justice was Established.

Due to the small size of the Society and the small number of its members, there were not that many cases that deserved the presence of courts and judges to decide on disputes in the UAE Society before the discovery of oil, and personal issues and disagreements among people were happening at a small scale at that time given the simplicity of life and people's knowledge of each other back in the days, and personal and other status issues were mostly solved by the knowledge of scholars of jurisprudence or the mediation of charitable people with conscience, or by the ruler himself, and important issues related to the diving profession were solved by the same methods, or through the Diving Court⁽⁴⁾.

Prior to India's independence in (1947), the Gulf Region was a protectorate of the government of British India, and Indian pearl traders and financiers were considered British subjects, and they took their rights in case of litigation with local parties, either through the Diving Court or through the Bahrain Gulf Residency, which constituted a protective legal cover for British nationals⁽⁵⁾.

Indian financiers were protecting their rights in full anyway, and when the pearl trade collapsed in the late twenties due to the Great Depression and the emergence of industrial pearls, it became difficult for many merchants and citizen sailors to pay off their debts, hence the financiers calling on the British Authority in the Gulf and India to assist them in this regard⁽⁶⁾.

A British report dating back to the (1930s) indicated that Indian financiers escalated their dispute with local borrowers and not only complained to the Political Resident, but the matter developed even further, as Indian merchants were having orders issued by the Bombay High Court to arrest the debtors⁽⁷⁾.

The Inception of the Justice Department:

After the increase in the number of cases due to the consequences of the Great Depression in the (1930s) of the last century, Sheikh Sa'eed Bin Maktoum Al Maktoum, Ruler of Dubai (1912-1958) issued a decree in (1938), through which the matter of settling disputes between people was assigned to his younger



Sheikh Mohammad bin Ahmad Alshanqiti is a well-known and highly influential judge of Dubai in the fifties and sixties of the last century

brother Sheikh Hasher bin Maktoum Al Maktoum, thus forming the first official infancy beginning of what can be called the Department of Justice, where disputes were submitted to Sheikh Hasher to reach settlements and reconciliation between the parties as much as humanly possible and refer what he deemed necessary to the judges, thus exercising the role of the supervisor or director of the judiciary in Dubai., and for this purpose, he used to sit in a shop in Al-Arsa market in the Al Deira district⁽⁸⁾.

During that period, there was a so-called martial law in Dubai, and it is worth mentioning that Dubai has been embracing since the reign of Sheikh Hasher bin Maktoum (1859 – 1886) a number of the best judges, namely Sheikh Judge Hassan Al-Khazraji, who was adjudicating among the opponents at his home in the Al Ras area of Al Deira district, and then after his death, the judiciary was taken over by a judge who arrived to Dubai from the Al Maghreb Al Arabi (The region comprises western and central North Africa, including modern day Algeria, Libya, Mauritania, Morocco, and Tunisia), in the second decade of the last century, and he went by the name of Judge Mohammed bin Abdul Salam Al-Maghrabi, who was followed by Judge Abdul Rahman bin



The two buildings of Traffic and Criminal courts

Hafez, one of the students of Judge Hassan Al-Khazraji, who took over the judiciary, and not so long after that, several Judges took over the judiciary, and they were (Sheikh Ahmed bin Hassan Al-Khazraji, Sheikh Ali Al-Janahi, then Sheikh Al-Sayyid Muhammad Al-Shanqeeti, and Sheikh Mubarak bin Ali Al-Shamsi), to whom the rulings were submitted in their homes for review and approval to ensure their suitability for execution⁽⁹⁾.

The Judicial Council:

After the independence of India, the responsibility of the Gulf Region was transferred from the Government of British India to the British Government in London, and in (1947), judicial procedures began to be applied in the Emirates under the so-called "Judicial Council", and under this procedure, the British government became entitled to issue judicial judgments on all non-citizen residents of the Emirates.

The purpose of the existence of the Judicial Council was to preserve the rights of British companies, especially oil companies that began to operate after the Second World War. And with the increasing prospects of oil discovery, the UAE began to bid farewell to the pearl era and welcome the oil era, where

one of Britain's priorities was to establish judicial institutions that ratify commercial contracts among institutions and preserve their rights⁽¹⁰⁾.

Therefore, Britain established in Dubai in (1953), a judicial court affiliated with the British Political Agent, and the first to take over these functions in Dubai was Judge Mawdsley, who referred his decisions to the Chief British Judge in Bahrain⁽¹¹⁾.

Modern Administrative System:

Sheikh Rashid bin Sa'eed Al Maktoum, Ruler of Dubai at the time -may God rest his soul in peace- had begun to establish a modern administrative system in Dubai, as he was keen on establishing a local judiciary system alongside the British judicial procedures. And since the mid-fifties, Dubai began to establish regular institutions and became interested in developing the small Emirate, which was gradually growing and opening up to the world commercially, although it was still under the British protection.

The beginning of the fifties included all directions, and in addition to education, whose regular public schools were opened in (1956), the establishment of the Municipal Council and the establishment of the Police and the Judiciary all kicked into high gear.

The Kingdom of Bahrain had started at the time to organize its departments well and made great strides in this area, and due to the presence of the headquarter of the British Political Agent in Bahrain, who was the supervisor of all accredited officials and British officers in the region, calling on the assistance of Bahrain seemed easier and more effective.

Pertinent documents indicated that during (1956), Mohammad Abdul Khaliq, the General Clerk of the Courts of Bahrain, appointed by the British government, made two visits to Dubai to study the establishment of a judicial system, and to train clerks to document and classify cases, and in (1956), Sheikh Mohammed bin Hasher Al Maktoum was appointed as the representative of Sheikh Rashid in the Dubai Court (the Head of the Judiciary), succeeding his father Sheikh Hasher⁽¹²⁾, and this marked a new stage with the transfer of the

After the Independence of India, the Responsibility of the Gulf Region was Transferred from the Government of British India to the British Government in London, and Judicial Procedures Began to be Applied in the Emirates Under the So-Called "Judicial Council".

And Since the Mid-Fifties, Dubai Began to Establish Regular Institutions and Became Interested in Developing the Small Emirate, which was Gradually Growing and Opening up to the World Commercially.

The Popularity of Dubai's Trade was due to the Conviction of the Local Merchants of the Existence of Justice When It Came to the Commercial Disputes and Their Adjudication.

judiciary to the Habbai building in the Al Ras area of Al Deira district⁽¹³⁾.

In September of the same year, Sheikh Rashid, with the help of the British Political Agency in Dubai and the British Embassy in Damascus, brought in one of the experts in the field of Justice, Sheikh Abdul Rahman Al Dajani, to assist in the development of the judicial work. And it seemed that the activity of Sheikh Al Dajani, who had a good experience in the judicial work, was evident in the establishment of the judicial work in Dubai, and the marching hand in hand with the British judicial procedures practiced by the British Political Agent concerning transactions and foreign nationals, and the judicial work began to witness more development, especially after people were assured of the fairness of the justice system of the new court, and its modern procedures compared to what things were before. And it is worth mentioning that Dubai was the first Emirate to establish a civil court in (1956)⁽¹⁴⁾.

The British Political Agent at the time in Dubai commented on the success of this experience and said, quote: “[t]he year of (1956) witnessed a significant increase in the volume of judicial work in the British Joint Court, and several laws were drafted by judges on behalf of the rulers whose Emirate lacked a judicial presence that would help in drafting oil concessions and trade agreements, and the trajectory of the judicial work in Dubai took a clear upward line as a result of the recruitment of Sheikh Abdulrahman Al Dajani from Syria, and despite of the need to introduce more administrative reforms, and more organization of the judicial performance, still, the resulting development that occurred was considered excellent, as evidenced by the widespread belief that one of the reasons for the popularity of Dubai's trade was due to the conviction of the local merchants of the existence of justice when it came to the commercial disputes and their adjudication”⁽¹⁵⁾.

But Sheikh Al Dajani did not last long in his position, as the establishment stage must have faced a lot of difficulties, and there is no doubt that the judicial work faced many obstacles in general, because many people



His Highness Sheikh Mohammad bin Hasher Al Maktoum First President of Dubai Courts (1918-2006)

did not accept sentences issued against them, which they considered unfair at a time when people were not used to having a regular judiciary checking everything before issuing sentences, a case in point was the “Diving Courts”, which the region have experienced only them and nothing else, and those courts were dependent on adjudicators whose rulings were not subject to the civil legal texts⁽¹⁶⁾. And it seems that Sheikh Al Dajani faced a lot of harassment that led to his resignation, as British documents indicated, and he was replaced by the Yemeni Judge Mohammad Al-Saqqaf upon the recommendation of the British Political Agent in (1958).

And with the arrival of Al-Saqqaf in (1958) and his establishment of the regular Sharia Court in Naif Castle area, the features of modern Dubai began to become clear, and its departments started to take shape at the hands of its builder of its renaissance at the time, Sheikh Rashid bin Sa'eed, who transformed Dubai into an eye-catching City at that time. Judge Mohammad Ja'afar Al-Saqqaf is considered as one of the founders of the Sharia Courts in Dubai, as he began his career when the court moved to the Nayef Castle Building in (1958). At its beginning, the judicial system was in the shape of a small room at the castle, and the judge adjudicated disputes related to personal status, inheritance, and some criminal cases,



Sheikh Mohammad Ja'afar Al-Saqqaf (Center) is the Successor of Sheikh Mohammad Al Shanqiti After He Retired from his Position and He Was One of the Giants of the Legal System in Dubai During the Early Years of This System.

such as assault and battery, theft, and cases resulting from civil transactions, such as purchase and sale, and estimating damages⁽¹⁷⁾. Judge Al-Saqqaf used to consider disputes between citizens only, while disputes involving a non-citizen party were the competence of the British Political Agency, which considered them through a body headed by the Head of the Judiciary, Sheikh Mohammad bin Hasher Al Maktoum.

The New Judicial System:

Judge Mohammed Al-Saqqaf organized the system through the creation of regulations and records, as he was the one who created the statement of claim, and the file that holds all the information about the plaintiff and the defendant, and the sessions came to be opened by calling the names of the litigants to step forward and appear before the presiding judge, and all of the statements of the plaintiffs, defendants, and witnesses started to be recorded in a special log. Judge Mohammed Al-Saqqaf (may Allah have mercy on him) was a scholar with a long experience in the judiciary, and at the same tandem time an administrative organizer who was able to apply his previous experiences, and was a man of the utmost tolerance, and people loved him so much so they used to visit with him at his residence located in Al-Fa-



A Form of the Documents Bearing the Signature of Sheikhs Mr. Al Shanqiti and Sheikh Ahmad bin Hasan (Source/ Dubai Courts Archive).

hidi neighborhood to consult him on some legal matters. And for the first time, he was officially appointed a clerk for the sessions that he presided over, and the judiciary had a hall at which cases were adjudicated, and a fixed headquarters in Nayef Castle was established on the second floor of it, as the first floor was the police headquarters⁽¹⁹⁾. With the decline of the diving profession at the end of the fifties due to the increase in the trade of industrial pearls and the emergence

|| Judge Mohammad Al-Saqqaf Organized the Judicial System Through the Creation of Regulations and Records.

of new professions and jobs in the region, the number of disputes related to diving and sea work decreased significantly, but still, “Diving Story” Courts continued to adjudicate these issues despite their limits (number wise).

And among the specialized experts who were called as “Diving Story Courts Judges” were (Hamid Al-Basti, Juma’a Abdullah Al-Amhal and Ahmad bin Hareb), and they used to adjudicate these disputes in their homes or in a shop in the market. And when the court moved to the Naif Castle Building in (1958), the last of the “Diving Court” Judges, Ahmed bin Hareb, was assigned a room in which he adjudicated between people in disputes arose from sea-related matters, and he used to elevate his rendered decisions to Judge Al-Saqqaf for approval⁽²⁰⁾. It is worth mentioning that experts’ decisions, such as the “Diving Courts” Judges, formed the basis for binding adjudication in those disputes.

Formation of the Courts:

Judge Mohammad Ja’afar Al-Saqqaf was considered the absolute judge who alone adjudicated citizens’ cases, until the Law on the Formation of Courts was issued in (1970), according to which the Civil Court was established, headed by its judge Uday Al-Bitar, who was seconded from Jordan, and the courts were divided into Sharia and Civil courts, and the courts became composed of two levels of litigation (Trial and Appeal Courts).

Judge Uday Al-Bitar organized the civil judiciary according to its needs at that time⁽²¹⁾, and then Al-Bitar was transferred to the Ruler’s Court to work as a legal adviser to the government of Dubai, where he played an active role in the establishment of the state through his participation in the constituent meetings, and was assigned to write the Constitution of the UAE in (1971)⁽²²⁾. And after Al-Bitar left the Ruler’s Court, he was succeeded by Judge Ghaleb Al-Bustami in (1972), who was also seconded from Jordan, and was appointed President of the civil court, and as for the sharia court Judge Ibrahim Ali Abdul Rahman from Sudan was appointed as its President⁽²³⁾.

Naif Castle:

Naif Castle was the seat of the judiciary un-

til the end of (1979), and in the same year, the Law on the Formation of the Supreme Court of Appeal No. (2) of (1979) was issued, where the Court of Appeal was issued with a new law canceling the previous provisions on the court of appeal stipulated in the Law on the Formation of Courts of (1979). A decree was also issued on (14/4/1979) appointing the president and judges of the Supreme Court of Appeal, where the decree provided for the appointment of Judge Mahmoud Ahmed Al-Hinnawi as President of the Court of Appeal, with an increase in the number of judges. The courts moved at the beginning of (1980) from their old headquarters in Naif Castle to the old municipality building on Al-Maktoum Street.

It should be noted that the establishment of a Supreme Court was envisaged only in (1988), by the Law on the Formation of the Supreme Court No. (1) of (1988). The new law divided the courts into (Courts of First Instance, Appeal Courts, and Supreme Courts), and thus the three main courts were completed under the reign of Sheikh Rashid bin Sa’eed Al Maktoum, may God have mercy on him. The first President of the Supreme Court, Dr. Mustafa Kamel Keira, was appointed, and Sheikh Mohammed bin Hasher remained at the helm of his work as the Head of the Judiciary. It is also noted that the three courts did not have a single common law that combines all of them in formation and jurisdiction until the issuance of the Law on the Formation of Courts in the Emirate of Dubai No. (3) of (1992), which indicated the formation of the three courts and their respective jurisdictions. Then, the Law Establishing the Courts Department No. (3) of (2000) was issued, which announced the establishment of a Department called the “Courts Department” and gave it the authority to organize courts in the Emirate of Dubai from both financial and administrative aspects.

This remained the case until the issuance of Law No. (1) of (2003) on the establishment of the Department of Justice, and with this law, the legislator brought the courts and the public prosecution under one umbrella, and then came Law No. (5) of (2005), which repealed

the (2003) Law to restore the previous status, and the prosecution became independent of the courts as an independent entity. Thus, the Dubai Courts in their history are a series of variables that are only necessary responses to the requirements of the present and manifestations of the future. The Dubai Courts, with their intricacies today, are only the fruit of those blessed efforts initi-

ated by the builder Sheikh Rashid bin Sa’eed Al Maktoum, may God have mercy on him, and Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, may God protect him, and who continued on Sheikh Rashid’s path, and during whose reign the Dubai Courts reached the pinnacle of leadership until they became a role model to the region and the world.

* Footnotes

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- (2) Lorimer, John, (The Gulf Guide), 5th Part, Translation Department of the Office of the Emir of the State of Qatar, 1995 A.D, P.61.
- (3) Heard-Bey, Frauke, ‘Min Al-Imarat Al-Mutasaliha Ila Dawlut Al-Imarat Al-Arabeyyah Al-Muttahidah’ (From Trucial States to United Arab Emirates), Motivate for Publishing, 2020 A.D, P.192.
- (4) Editorial Board of Al Mezan Magazine, (The Judiciary in the UAE, One Hundred Years Ago), Al Mezan Magazine, Ministry of Justice, Issue No. 63, 2004 A.D, P.39.
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Happiness and the Law (1)



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The title of this Article may cause surprise and wonder to some, considering that “Happiness” -in fact- is something that is sought inside a person, which makes studying and searching for it is something that falls within the field of Philosophical Studies, and not Legal ones.

In fact, although there is a consensus that “Happiness” has begun to be discussed and researched as an internal state, and as a philosophical principle that philosophers and sociologists are interested in, the trend is now more and more inclined to codify it and make it a place and field for legal research, and some European universities and law schools have even established research centers to study the topics of “Happiness” and Law ⁽¹⁾.

And it is no secret to anyone that the Al-Mighty Allah, created man to live happily on this earth, and prepared ways for him to enjoy this “Happiness” by making him a master from the first day he was created, and God then commanded all the angels to bow down to him (Adam) despite of the greatness of their creation and the weakness of his creation. The Al-Mighty Allah says in His Holy Book, the Qur’an. quote: “[s]o, when I have fashioned him completely and breathed into him (Adam) the soul which I created for him, then fall (you) down prostrating yourselves unto him”, unquote ⁽²⁾, and He honored him with a dignity that exceeded the dignity that He bestowed on many of His creation, stating this in an explicit text in His Holy Book, The Al-Mighty says, quote: “[i]ndeed, We have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures.”, unquote ⁽³⁾.

Happiness is Essential for Human Life:

If God Al-Mighty’s intention in creating this human being was to let him lead a good life, and if “Happiness” was necessary for this human being to live that good life with all of its components, then that is why all the human and social sciences (Psychology, Philosophy, Sociology, History) have long been interested in researching and querying about the true meaning of this “Happiness” and how it can be achieved, but what is new here in this matter is that the topic of “Happiness” also arouses the interest of researchers in the legal field.

There is no doubt that this topic has not yet reached its full potential in the field of legal studies and western research, and it has not been fully addressed at the level of Arab legal jurisprudence.

In fact, “Happiness” -despite its psychological subjectivity- is something that is difficult to achieve on the ground by oneself in societies that are governed by conflicts of greed, selfishness, and self-interest, and it rather requires the intervention of states represented by their governing authorities to achieve this end, so it was not surprising that both Jefferson and Mason expressed their belief that the best government is the one that produces the greatest “Happiness” and secu-

urity for the largest number of people.⁽⁴⁾

Therefore, in light of the gloomy conditions that the world has experienced in the past years -both in terms of the economic crisis that has befallen the world in recent years, and the emergence and spread of violence in many parts of the world- and the resulting pessimism and sadness among the people, it was not surprising that in (2011) the UN General Assembly -at the request of the Kingdom of Bhutan- decided to call on member states to intervene by developing “New Measures” that take into thorough account the importance of (The Search for “Happiness” and Well-Being), and by directing their policies towards development ⁽⁵⁾.

The World’s First Ministry of Happiness:

In response, many countries have taken the initiative to target “Happiness” in their economic and development programs, and the United Arab Emirates initiated the establishment of the first “Ministry of “Happiness” in the world in (2016), with its Minister being called as the “Minister of State for Happiness”⁽⁶⁾, and with considering that one of the most important goals of this Ministry is to harmonize all the plans, programs, and policies of the state to achieve the “Happiness of Society”. And being inspired by the idea of the United Arab Emirates in this regard, the state of Madhya Pradesh in India announced the establishment of the first Ministry of Happiness in July of the same year of (2016), and the sole purpose of the new Ministry was to track growth in a way that is based on Bhutan’s Concept of Gross National Happiness.

In confirmation of the principle of transferring “Happiness” from a narrow personal circle to the breadth of government intervention to achieve and strive to achieve “Happiness”, the UAE not only established the first Ministry of Happiness in the world, but also took the initiative to incorporate “Happiness” into legal texts and local legislations, such as the local Law of the Emirate of Dubai No. (1) of (2020) on the Smart Dubai Department, which came to put among the goals for which the Department was established the goal of “Ensuring the Achievement of Happiness and Well-Being for Members of Society”, and this actually was preceded by the use of the term “Happiness” within the provisions of Law No. (8) of (2018) on the Management of Human Resources

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The definition of the Concept of “Happiness” seems to be greater than the perception that a place for it in the statutory (Man-Made) Law should be reserved.

of the Government of Dubai, in Article No. (5/4) that stipulated that it falls within the competence of human resources, quote: “[t]he promotion of organizational culture among the Department’s Employees; raising their happiness levels; inspiring positivity; motivating innovation; and fostering teamwork”, unquote.

In the Emirate of Ras Al Khaimah, Law No. (4) of (2016) was issued on the Restructuring and Organization of the Department of Economic Development, and included the provision that stipulated, quote: “[t]o take all measures for employees in the department to ensure the improvement of their work environment and motivate them to work, innovate, and achieve happiness for them”, unquote.

Legality of Happiness:

Western jurisprudence often looks at the idea of the “Legality of Happiness” from a legal stand point, and most of its research and studies are based on this notion.

It is well known that human rights have gone through several stages, where at the beginning they were concerned only with those rights related to the human personality, but they have evolved to include more extensive and more comprehensive rights than those close to or related to the human personality, hence the adoption of the ‘Economic, Social, and Cultural Rights’ that were followed by the “Environmental and Development Rights”⁽⁷⁾.

At first glance, it can be said that the relationship between the “Right” in its legal concept and “Happiness” in its psychological and philosophical concept is inconceivable if we look at the matter with a simple close look, as although the uncertainty in legal concepts is not uncommon,

but the definition of the Concept of “Happiness” seems to be greater than the perception that a place for it in the Statutory (Man-Made) Law should be reserved⁽⁸⁾.

However, can we not look at this relationship from afar, with a view that is based on the search, first of all, for the relationship between the Law and the Right (Every Right)? -a relationship that is considered as a given - and here we wonder: Is it not logical to say that the supposed purpose of every Law and any Right is to achieve human Happiness? In other words: Can we say that Law and Right exist only for human Happiness?

The adoption of numerous legal texts of this principle helps to support this trend, which makes the imaginary distance between Law and “Happiness” fade away little by little. And since the beginning of the (18th) century, the texts on declarations of independence, followed by the constitutions, all gradually began to incorporate into them the Concept of “Happiness”.

And from the American Declaration of Independence in (1776), which made “Happiness” an inalienable right that can never be taken away from a person, the French Declarations of Human Rights of (1789) and (1793), which considered “Happiness” the goal of society, to the constitutions of Japan, the two Koreas, Turkey, Niger, as well as the Kingdom of Bhutan and Egypt, and finally to recent local legislation in the United Arab Emirates issued in (2020). “Happiness” has been drawing its lines and charting its way within legal texts that represent the top of the pyramid in the legislative system of many countries, and today, “Happiness” stands tall in more than twenty constitutions as a Right among other rights, and this number increases significantly if we consider also the constitutions that provided for it outside

the scope of rights, and the number increases more and more if we consider that what is meant by that Right the “Well-Being”.

Happiness Is a Right:

This legislative development represented in the inclusion of “Happiness” in the legal texts, the Judiciary was not immune to it, and although there is no explicit judicial commitment to this right to date, many countries’ judges around the world have become more open to accepting lawsuits that are based on the constitutional reference to “Happiness”, especially in the field of proving other rights, whether they are stipulated in the constitutions or not, and the constitutional judiciary in many countries accepted litigation on the basis of that “Happiness”.

In fact, this development in the position of both the legislator and the judge is based on the concept of adopting a new point of view that is based on understanding “Happiness” away from the abstract philosophical construct, and starting to look at it as a kind of modern rights, for which legislation and the judiciary can draw a real legal framework, although of course the situation varies from country to country.

On that account, it is legitimate for us, as legal jurists, to ask: “Is it time for Happiness to be a fecund field for legal studies and research after its study and field of research was limited to research and studies of psychological and philosophical sciences?”

And: “Is it possible to look at Happiness today not as a feeling or sensation that philosophers and sociologists take interest in, but as a legal matter?” Or: “Will Happiness remain a distant and legally unimaginable idea?”

The fact to the matter is, despite the abundance of texts that have reserved a place for “Happiness” among their words and lines, to this day on which these lines were written, “Happiness” has not received its due right of study and research by legal jurists, especially in our Arab homeland, not to mention that the idea of searching for “Happiness” within the topics of Law still remains as something that is sometimes frowned upon and disregarded.

And this is what has prompted me to faithfully write in this area, armed with the passion of searching for that which is novel and not imitated, beneficial and not harmful, and motivated by what the Al-Mighty Allah said in His Holy Book, the Qur’an, quote: “[w]hile that which is for the good of mankind remains on the earth”, unquote⁽⁹⁾, all while praying concurrently that the Al-Mighty Allah will endow His knowledge and understanding on me and others and that I will achieve that which I set out to achieve for the benefit of every reader without any shortcoming or shortfall, and my northern star in all of this is that the ultimate objective

of any researcher is not writing for the sake of writing or to engage in verbosity or repetition, as if this is the case, such researcher will have simply led themselves astray and will have wasted their time and efforts in futile literature and will have engaged in matters that are not in conformity with the sound mind and the sharp sight.

By God, I ask that we be among the people of service and not among the people of idle talk.

To be continued ...

* Footnotes

(1) For example, the University of Angers (Université Angers) in France.

(2) Surat (Chapter), Al-Hijr (The Stoneland), Ayah (Verse) No. (29).

(3) Surat (Chapter), Al-Isra (The Night Journey), Ayah (Verse) No. (70).

(4) Jefferson read widely in the Scottish School of Philosophy, including the works of Francis Hutcheson, who advocated “The Greatest Happiness for the Greatest Number”, see: A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 26-28, 41, (1974). Mason’s views also appear in the Virginia Declaration of Rights, which states that the best government is the one that produces the greatest degree of happiness and safety. Virginia Declaration of Rights, Para. No. (3), (Virginia 1776), (1).

(5) United Nations General Assembly Resolution No. (309/65) of July the 19th, 2011.

(6) The first Minister to hold the post was Mrs. Ohoud Khalfan Al-Roumi on February the 8th, 2016.

(7) Refer to: Esmahan Kharmoush, “Hoqooq Al-Insan Wa Al-Bee’ah Min Manthoor Qanooni Fi Dhil Thulathayyut Al-Muqarabat Al-Qa’eimah Ala Al-Hoqooq, Al-Ghayer Qa’eimah Ala Al-Hoqooq, Wa Al-Muta’aliquah Bil Fia’at Al-Mustadha’afah” (Human Rights and the Environment from a Legal Perspective Under the Trilogy of Approaches that are (Rights-Based, Non-Rights-Based, and Related to Vulnerable Groups), A’afaq Al-Oloom Magazine, Issue No. (3), 2020 A.D, P. 120 et seq.

(8) For more in-depth look at the Relationship Between Happiness and Law, see:

F. Terré, « Le droit et le bonheur », Rec. D., 2010, p. 26; Droit, bonheur? éd. Parole et silence, coll. collège des Bernardins, 2010 A.D, P. 164.

(9) Surat (Chapter), Ar-Ra’d (The Thunder), Ayah (Verse) No. (17).

Philosophy of Legislation In the Field of Artificial Intelligence (A.I)



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In light of the enormous technological developments that are witnessing new progress and achievement for mankind, new ideas and attempts have emerged to emulate the human mind in the form of an electronic mind, which has the ability to perceive, understand, and make the appropriate decision in certain circumstances, and which is aptly called “Artificial Intelligence” (A.I), in which technological progress is trying to dispense with human services in many businesses, and to replace them with an intelligent electronic gizmo that has the ability to deal, understand, and make a decision under any conditions.

Definitions:

Scientists are trying hard that the performance of Artificial Intelligence Technology in its work is similar to the performance of the human mind, and that the results are close to the results of the human mind. However, scientists are also trying that the results of Artificial Intelligence Technology surpass the results of the human mind in its performance! That being the case, we must not lose sight of an important issue, which is that Artificial Intelligence (A.I) is only an artificial technology for building and developing algorithms that allow the machine to mimic some of the mental properties of humans, that is, to use the information available to and stored in it to deduce general rules and judgments that are clear to it, and then the machine applies them to the information sent to it, to end up with results that are supposed to be correct. Nonetheless, this machine still remains an artificial contraption that with all of its supposed technological ability, not to mention its real risks and problems, still pales in comparison with the miraculous human mind, whose Creator, the Al-Mighty Allah, is attested to with Al-Widaneyyah (Oneness of God) and absolute power by the very magnificent creation of this mind.

The European Commission Regulation on Artificial Intelligence issued in April (2021), defined in its Explanatory Memorandum, the Artificial Intelligence (A.I) ⁽¹⁾ as, quote: “[a] fast evolving family of technologies that can bring a wide array of economic and societal benefits across the entire spectrum of industries and social activities, by improving prediction, optimizing operations and resource allocation, and personalizing service delivery”, unquote.

Article No. (3) of the European Regulation (EU AI Act) issued in April (2021) defined Artificial Intelligence System (AI System), as, quote: “[a] software that is developed with one or more of the techniques and approaches listed in Annex No. (1) and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with” unquote, ⁽²⁾.

The Executive Council Resolution No. (3) of (2019) Regulating Test Runs of Autonomous Vehicles in the Emirate of Dubai defines the “Simulation System” -as the Artificial Intelligence (A.I) that operates the self-driving vehicle- as, quote: “[a] smart electronic system that is designed by the manufacturer of an autonomous vehicle as a means of interaction between the autonomous vehicle and road elements and that achieves various levels of control of the vehicle, up to the level of driving without any human intervention”, unquote.

The Law No. (9) of (2023) on Regulating the Operation of Autonomous Vehicles in the Emirate of Dubai defines “Automated Driving System” -as the Artificial Intelligence (A.I) that operates the self-driving vehicle- as, quote: “[a] system consisting of a set of devices and programs approved by the manufacturer of the autonomous vehicle, achieves communication between the vehicle and road elements, and controls its movement without any human intervention”, unquote.

As a result of the fact that Artificial Intelligence (A.I) is advanced artificial algorithms, it is not therefore without direct and indirect problems and risks, as there may be direct damages to customers or third parties caused by the Artificial Intelligence Technology. And here we are looking for the three types of responsibilities to determine who is responsible for the damages of actions resulting from Artificial Intelligence Technology. And the general provisions in civil, criminal, or contractual liability may not address damages resulting from Artificial Intelligence Technology. And the damage resulting from Artificial Intelligence (A.I) may be indirect when the data and information, fed to the Artificial Intelligence Technology by the Artificial Intelligence Operators, is used.

Despite the risks and damages that may be caused to customers or others by Artificial Intelligence Technology, the need for it has become necessary, and building absolute trust in this modern technology has become a duty for everyone, including actors in the legal field, who must find a legal framework that regulates the Artificial Intelligence Technology, away from

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Despite the Risks and Damages That May Be Caused to Customers or Others by Artificial Intelligence Technology, The Need for It Has Become Necessary. And Building Absolute Trust in This Modern Technology Has Become a Duty for Everyone.

When Enacting Legal Legislation for Artificial Intelligence (A.I) (loi sur l'intelligence artificielle-Artificial Intelligence Act), We Must Take into Thorough Account the Establishment of Controls That Limit the Risks of Artificial Intelligence (A.I). In Addition to Determining Its Responsibility.



the general rules of *Le droit common* (Common Law), which to my mind, addressed a human mind, not an artificial mind that has its own conditions in terms of its formation, knowledge, understanding, and decision-making. Therefore, we are in front of two important axes in Artificial Intelligence Technology that the European Commission spoke about when, on April the 21st, 2021, it published its draft regulation defining the regulating rules related to *Artificielle Intelligence* (Artificial Intelligence, A.I)⁽³⁾, and where the Commission stated that, quote: “[a]rtificial intelligence combines rapidly developing technologies that require reconciling two goals that are difficult to reconcile in advance, (1) creating controls to reduce risks, and (2) encouraging continuous experimentation of Artificial Intelligence (A.I)”, unquote. Consequently, when enacting legal legislation for Artificial Intelligence (A.I) (*loi sur l'intelligence artificielle-Artificial Intelligence Act*), we must take into thorough account the establishment of controls that limit the risks of Artificial Intelligence (A.I), in addition to determining its responsibility, and not at the same tandem time limiting the continuous development and experimentation of Artificial Intelligence (A.I), and in so doing, we will guarantee the legislative success of the Artificial Intelligence Act (AIA).

Objectives of Establishing a Legal Framework for Artificial Intelligence (A.I):

In its proposed regulation, the European Commission stated the legal basis for the development of an Artificial Intelligence Regulation, which is to ensure the proper functioning of the Union's internal markets by establishing regulating rules for Artificial Intelligence Operations -in particular with regard to the development of Artificial Intelligence (A.I)- and the use of products and services that use Artificial Intelligence Technologies or are provided as an independent Artificial Intelligence (A.I), with the establishment of mandatory requirements common to the Union that apply to the design and development of some Artificial Intelligence Systems before they are put on the market, which will be further activated through technical standards. The Regulation also aims at a Legal Regulation of the post-launch of Artificial Intelligence Systems on the market, by controlling the ways in which Artificial Intelligence (A.I) is put on the market through procedures regulating the post-launch of Artificial Intelligence (A.I), as well as the establishment of specific rules on the protection of individuals regarding the processing of personal data, in particular restrictions on the use of Artificial Intelligence Systems for remote

identification of a person (Biological Inference). The Author is of the view that there are several main goals that lie in the need to codify a legislative regulation of Artificial Intelligence (A.I), which are as follows:

- 1) Ensuring the proper implementation of the works carried out by Artificial Intelligence Technology and limiting its risks and damage.
- 2) Determining the responsibilities in relation to actors in the field of Artificial Intelligence (A.I) (Supplier/Service Provider/User/Agent / Authorized Representative/Distributor/Authorized Authority/Conformity Body).
- 3) Determining the responsibilities resulting from the implementation of Artificial Intelligence Works in a way that caused damage to customers or third parties.
- 4) Placing confidence in all actors in the field of Artificial Intelligence (A.I) by developing it and not limiting the experience and continuous development of Artificial Intelligence (A.I).
- 5) Protecting basic human rights, including personal data, especially those obtained from Biological Inference (Voice, Face, or Hand Print).
- 6) Ensuring access to Artificial Intelligence (A.I) to all members of society without discrimination.

The Nature of the Legislation Regulating Artificial Intelligence (A.I):

We must admit that there is indeed a problem in defining Artificial Intelligence (A.I) from a legal stand point, as Artificial Intelligence (A.I) is still vague and developments in the field of (A.I) are a daily occurrence⁽⁴⁾, which affects its substance, which changes all the time, and in addition, there is a very large spectrum of definitions of Artificial Intelligence (A.I), which its content differs slightly when applied in different fields, for instance, in autonomous vehicles its definition differs from a surgeon robot performing a certain operation, or an autonomous aircraft, for that matter.

In light of the directives of the European Commission, there is a need to reconcile the two axes of (Encouraging experimentation in Artificial Intelligence {A.I} and risk reduction, and

the difficulty of legally defining Artificial Intelligence {A.I}) due to the speed of its development, its ambiguity, and the difference of its content in different areas.

For that reason, and from our point of view, the so-called (Soft Law) “*Droit Mou*”, which differs from the (Hard Law) “*Droit Dur*”, should be applied in the field of Artificial Intelligence (A.I), and this translates into relatively light penalties in the field of violations committed by actors in the field of Artificial Intelligence (A.I) (Operator, Manufacturer, Agent, Electronic System Owner, User), as well as it should include flexible systems aimed at holding companies accountable instead of punishing them.

The legislation should also take into account the need to modernize and develop the Artificial Intelligence System and encourage such a thing, as well as determine the obligations of the (Manufacturer, Agent, and Operator), and try to implement joint and several liabilities when determining responsibility among them or when distributing responsibilities or when determining the responsibility of one of them while reserving the right to recourse to the other (The real causer of damage).

We should also turn to the Flexible Law⁽⁵⁾ (*Droit Flexible*) in the provisions of the Artificial Intelligence Law, where one of the most important reasons and necessities for the flexibility of such a law is the tremendous development in new innovative fields that humanity was not aware of, as we do not have enough information and experience to predict the situations that can arise in the innovative field, and the daily, better yet, the momentary development of Artificial Intelligence (A.I) makes it difficult for us to limit the legal cases of this innovative field, so it is necessary to adopt the Flexible Law in the fields of Artificial Intelligence (A.I). Professor⁽⁶⁾ Marie Obidzins mentioned in her doctoral dissertation this reason for the necessity to use legal flexibility, and pointed out that the incompleteness of the rules of law is justified when the circumstances become very different and when the field is innovative, hence the need for us to consider the flexibility of the law.

And according to Professor⁽⁷⁾ Jonas Schuet, he

One of The Goals That Lie in The Need to Codify a Legislative Regulation of Artificial Intelligence (A.I) Is Determining the Responsibilities in Relation to Actors in The Field of Artificial Intelligence (A.I) And Those Resulting from The Implementation of Artificial Intelligence Works.

Regarding The So-Called (Soft Law) “Droit Mou”, Which Differs from The (Hard Law) “Droit Dur”, It Should Be Applied in The Field of Artificial Intelligence (A.I). And This Translates into Relatively Light Penalties.

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The Legal Texts
Apropos the Arti-
ficial Intelligence
(A.I) Should Be
Inclusive Without
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indicated that when we try to develop a legal definition of Artificial Intelligence (A.I) in the field of autonomous vehicles, the definitions/legal texts must meet several requirements, namely (Inclusiveness, Precision, Comprehensiveness, Practicability, and Permanence), and as per the following:

(1) Inclusiveness:

Where the legal texts should be inclusive without over regulating or under regulating the situation they seek to regulate, and a definition is considered as too much when it includes cases that do not need to be regulated according to the regulatory objective, and conversely it is considered as non-inclusive when the cases that should be included in the legislation are not included.

(2) Precision:

Where the legal texts must be precise, and it must be possible to determine whether a particular case falls under a certain definition or not with much ease and without the need for any interpretation or analogy, as all elements of

a definition must be a set of elements that are impossible to achieve in the set of another definition “Dichotomy”, that is, the conditions of the definition are either met or not met.

(3) Comprehensiveness:

Where the legal texts related to Artificial Intelligence (A.I) must be understandable by themselves from their explicit words and phrases, without resorting to understanding the text in its letter or spirit, as those who are addressed by the provisions of the legal text that is related to Artificial Intelligence (A.I) should be able to understand whether the regulations are applicable or not, in order to control or modify their behavior accordingly.

The text should be understood from the existing meaning of its phrases, which corresponds to the normal use of the text language. And we should at least agree in principle, with the high technology of Artificial Intelligence (A.I) in mind, that people who do not have a specialized knowledge of Artificial Intelligence (A.I) should be able to easily understand the text and apply its provisions.

(4) Practicability:

Where the legal texts must be applicable, and the public or those who are addressed by the law from actors in the field of Artificial Intelligence (A.I), government agencies, and private companies must all be able to understand the text and how to apply it, as the texts must be clear to judges and lawyers in equal measure and must not pose any difficulty in application either by being inapplicable or vague in understanding, since this opens the door to dispute about the interpretation of texts and their construal, when, as a rule of thumb, the adaptation of a situation should go hand in hand with the legal provisions and both the judge

and lawyer must adhere to that, as they then will become able to determine whether the incident before them falls under the law in force or not.

(5) Permanence:

Where the legal definitions in the field of Artificial Intelligence (A.I) should be characterized by permanence, and the legislator should not use elements that are likely to change in the near future, in order to avoid the need for legislative update every now and then, and, therefore, flexible provisions that accommodate changes occurring in the field of Artificial Intelligence (A.I) should be used.

* Footnotes

- 1 - Artificial Intelligence (AI) is a fast evolving family of technologies that can bring a wide array of economic and societal benefits across the entire spectrum of industries and social activities. By improving prediction, optimising operations and resource allocation, and personalising service delivery, the use of artificial intelligence can support socially and environmentally beneficial outcomes and provide key competitive advantages to companies and the European economy. Such action is especially needed in high-impact sectors, including climate change, environment and health, the public sector, finance, mobility, home affairs and agriculture.
- 2 - Article 3 Definitions For the purpose of this Regulation, the following definitions apply:1. artificial intelligence system' (AI system) means software that is developed with one or more of the techniques and approaches listed in Annex 1 and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with.
- 3- RÈGLEMENT DU PARLEMENT EUROPÉEN ET DU CONSEIL ÉTABLISSANT DES RÈGLES HARMONISÉES CONCERNANT L'INTELLIGENCE ARTIFICIELLE (LÉGISLATION SUR L'INTELLIGENCE ARTIFICIELLE) ET MODIFIANT CERTAINS ACTES LÉGISLATIFS DE L'UNION {SEC(2021) 167 final} - {SWD(2021) 84 final} - {SWD(2021) 85 final}, Bruxelles, le 21.4.2021 COM(2021) 206 final 20210106/ (COD).
- 4 - Jonas Schuet, A Legal Definition of AI, Goethe University Frankfurt, September 4, 2019, P2.
- 5- Please refer to our Publication المرونة والقانون “Flexibility and Law”, issued by Dar Anhadha Al-Arabia, 2022 Edition.
- 6 - Marie Obidjns, Economie d'un droit flexible, Thèse de doctorat en Sciences économiques, Soutenue en 2006 à Nancy 2 .
- 7 - Jonas Schuet, A Legal Definition of AI, Goethe University Frankfurt, September 4, 2019, P2.



The Right of Easement (Servitude)

In the Saudi Civil Transactions System

Issued by Royal Decree No. (M/191), Dated (1444/11/29 A.H.)



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All Praise is due to Allah, we praise Him, and seek His help and forgiveness. We seek refuge in Allah, Most High, from the evils of our own selves and from our wicked deeds, and may our prayers and peace be upon God's Best Creation.

We congratulate the Kingdom of Saudi Arabia on the issuance of the Saudi Civil Transactions Law issued by Royal Decree No. (M/191), Dated (29/11/1444 A.H.).

What is meant by "Regulations" is what is issued by a royal decree of abstract general legal rules that are consistent with the provisions of Islamic Sharia after approval by the Council of Ministers, and a huge number of Regulations have been issued in the Kingdom, some of which tackled the "Principal Real Rights".

It was also based on the Kuwait Document on Uniform Civil Code (the Law) that was issued by the Gulf Cooperation Council (GCC), which was presented in more than one hundred and twenty (120) Articles of the "Principle Real Rights" (Principle Rights in Rem) that dealt with ownership/property in general, and the reasons for the acquisition of this ownership/property, and the Document also presented the rights branching from ownership/property (Ancillary/Accessory Real Rights), and there are comparative statutory systems that included precise provisions for a number of ownership/property problems, and the reasons for acquiring this ownership/property. Between the plethora of regulations in the "Principle Real Rights" (Principle Rights in Rem) and Islamic Sharia Jurisprudence, on one side, and the Kuwait Document on Uniform Civil Code (the Law), and the Comparative Statutory Laws, and the derivation of the provisions of "Rights in Rem" from the rulings of the national courts in

the Kingdom, on the other side, the Researcher in Law was at a conspicuous loss.

The issued Saudi Civil Transactions Law included (720) Articles that regulated several aspects, including, but not limited to, the definition of (Legal Competency, Natural and Legal Personality, Objects, Funds, Sources of Obligation, Direct and Indirect In-Kind Implementation, Right of Retention of Funds, Insolvency, Transfer of Obligation to the Assignment of Right, Assignment of Debt, and the Cessation of the Obligation).

The Saudi Civil Transactions Law also included the provision on the Statute of Limitations that limits the maximum time frame during which legal proceedings – civil or criminal – can be initiated, as well as the Nominal Contracts of all kinds, and the Principle Real Rights/Rights in Rem, such as the Right of Ownership/Property and the rights derived from it, such as the Right of Usufructuary and the Right of Easement (Servitude).

“Regulations” are What is Issued by a Royal Decree of Abstract General Legal Rules That Are Consistent with the Provisions of Islamic Sharia After Approval by the Council of Ministers

An Easement Right is One of the Principle Real Rights/Rights in Rem Branching Out from the Ownership/Property Right.

The Right of Easement (Servitude) is a Right in Rem That is Established for the Benefit of a Real Property Owned by a Person Over a Real Property Owned by Another Person.

Right of Easement (Servitude)

An Easement Right is one of the Principle Real Rights/Rights in Rem branching out from the Ownership/Property Right.

Definition of the Right of Easement (Servitude)

Easement, as stated in Article No. (699) of the Saudi Civil Transactions Law, is, quote: “[a] right in rem that is established for the benefit of a real property owned by a person over a real property owned by another person.”, unquote.

We conclude from this text that there are three elements for the establishment of an Easement Right, namely, the (Servient Estate/Property {parcel of land that is subject to an easement and benefits another parcel of land}, Dominant Estate/Property {The property that uses an easement over another property}, and the Benefit or Gain that the Servient Estate/Property provides to the Dominant Estate/Property).

The First Element/The Servient Estate/Property: It is the Servient Estate/Property that is the subject of the Easement Right, which makes it burdened with a certain assignment for the benefit of the Dominant Estate/Property.

It is understood from this that the Servient Estate/Property must be owned by another person, other than the owner of the Dominant Estate/Property, as it is not permissible for the Right of Easement to be between two estates/properties owned by one person. And this is confirmed by Article No. (701) of the Saudi Civil Transactions Law where, quote: “[i]f the owner of two separate real properties creates an apparent easement between such properties, the right of easement shall remain effective if one or both of the properties are transferred to other owners and their condition is unchanged, unless agreed otherwise”, unquote.

The Second Element/The Dominant Estate/Property: It is the Dominant Estate/Property that uses an easement over another estate/property, and the scope of the interest or benefit that is determined for the Dominant Estate/Property is determined by the reason for which the Right of Easement was established, and according to Article No. (700) of the Saudi Civil Transactions Law, quote: “[a]n easement shall be acquired by legal disposition or inheritance”, unquote.

The Third and Last Element in the Right of Easement is the Benefit or Gain that the Servient Estate/Property provides to the Dominant Estate/Property according to the type of Easement Right, and this is what we will address in the next section.

Types of the Right of Easement (Servitude)

Pursuant to the provisions of Articles Nos. (702) to (710) of the Saudi Civil Transactions Law, in which some types of Easement Rights are listed, to name a few but not limited to, such as the Right of Way on land owned by another, as was stated in Article No. (702), of the same Law, that, quote: “[i]f a person has a right of way over a land owned by another person, the owner of such land may not prevent him from exercising such right”, unquote, while Article No. (703), of the same Law, clarified the organization of the Right of Way, stipulating that, quote: “[t]he owner of a real property which has no access to a public road or whose access thereto is costly or burdensome may, against a fair compensation, exercise the right of way on an adjacent real property to a reasonable extent. Said right shall be exercised only on the real property the passage through which causes the least harm and on the part where such passage can be achieved”, unquote.

Article No. (704), of the same Law, mentioned a type of Easement Right, which is the Right of Irrigation, and it stated that, quote: “[t]he owner of a high land may irrigate his land from natural drainage to the extent of his needs as accepted by custom. Said owner shall thereafter allow the water to flow to lower land”, unquote.

The Rights of Watercourse and Irrigation are provided for in the provisions of Articles Nos. (705) to (710) -in the aforementioned Law- where Article No. (705) stipulated that, quote: “[i]f a person is authorized to create a channel or watercourse to irrigate his land, no person may use such channel or watercourse except with his consent or in accordance with legal provisions”, unquote.

Article No. (706), of the same Law, also stated that, quote: “[a] partner in a water source or common channel may not create a new channel therefrom except with the permission of the other partners”, unquote.

The texts of Articles Nos. (707) and (708), of the same Law, included provisions related to the Right of Watercourse, where Article No. (707) stipulated that, quote: “[i]f the right to use a watercourse is established to a person, the owners of the lands through which such water flows may not prevent the holder of the right from exercising his right, even if it requires the establishment of facilities thereon, provided that the holder of the right pays advance compensation”, unquote, while Article No. (708) that included reparation for damages caused by the establishment of the Right of Watercourse in the land of others, stated that, quote: “[a] landowner whose land sustains damage due to the watercourse may demand the holder of the right to use the watercourse to repair the watercourse in order to rectify the damage. If the holder of the right fails to do so, the landowner may carry out such repairs at the expense of the holder of the right to the extent that is customarily acceptable”, unquote.

The texts of Articles Nos. (709) and (710), of the same Law, also spoke about the provisions of the Right to Irrigation, where Article No. (709) stipulated that, quote:

1. “[a]n owner of a lower land may not build a barrier to prevent the flow of water that flows naturally from a high land.

2. An owner of a high land may not carry out any act which would aggravate the disadvantageous situation of a lower land”, unquote, and Article No. (710) stated that, quote: “[n]o harmful water drainage may be made on the property of a third party or on a public or private road; and the harm shall be removed even if old”, unquote.

Effects of the Right of Easement (Servitude)

The provisions of Articles Nos. (712) and (715) of the Saudi Civil Transactions Law mentioned the Effects of the Right of Easement, while Article No. (711) stated that, quote: “[t]he right of easement shall be subject to the rules set out in the document establishing such right, and the custom of the place where the real property is located”, unquote. And what is meant by that is that the effects that the Easement Right has on the Owner of the Dominant Estate/Property and the Owner of the Servient Estate/Property are de-

termined by the document of its establishment, that is, by the Contract, or Will, or by the Original Owner's Designation. And the Easement Right is transferred in the same way as the Right of Ownership/Property, including through (Inheritance, Legal Disposition or Pre-emptive Right {Right of First Refusal}), and the explanation of this is that the Easement Right is attached to the Dominant Estate/Property, by (Sale, Bequest, Mortgage, or otherwise), and it also ties to the Servient Estate/Property, and it may result from the Designation of the Original Owner, so that (If the owner of two separate real properties creates an apparent easement between such properties, the right of easement shall remain effective if one or both of the properties are transferred to other owners and their condition is unchanged, unless agreed otherwise).

And if it is assumed that a person owns two separate properties, and makes one of them for the service or benefit of the other and the easement is apparent, then this assumption is not an Easement, but rather the use of the Right of Ownership/Property of this person, but if the two properties become owned by different owners, then the Right of Easement arises whether it is by Right of Way, Right to Water, and Right to Irrigation, and it also arises by Designation of the Original Owner. Below we explain the effects of the Easement Right as stated in the provisions of the Saudi Civil Transactions Law, and the effects of the Easement for the Owner of the Dominant Estate/Property are represented in his obligation to bear the expenses of the works necessary to use the Right of Easement (**First Effect**), unless otherwise agreed. And this is confirmed by Article No. (712/1), which stipulated that, quote: “[t]he cost of the works necessary for exercising the right of easement and the maintenance thereof shall be borne by the owner of the dominant real property, unless agreed otherwise”, unquote.

The same Article also stated in its second paragraph that, quote: “[i]f the owner of the servient real property is required to carry out said works at his expense, he may be relieved from said requirement by surrendering the servient real property wholly or partially to the owner of the dominant real property”, unquote, and it is not surprising that the Owner of the Dominant Estate/

If a Person has a Right of Way Over a Land Owned by Another Person, the Owner of Such Land May Not Prevent him from Exercising Such Right.

If a Person is Authorized to Create a Channel or Watercourse to Irrigate his Land, no Person May Use Such Channel or Watercourse Except with his Consent or in Accordance with Legal Provisions.



In Principle, the Right of Easement (Servitude) Can be Created by Contract, Will, or by the Original Owner's Designation.

The Cost of the Works Necessary for Exercising the Right of Easement (Servitude) Shall Be Borne by the Owner of the Dominant Real Property in his Obligation, Unless Agreed Otherwise.

Property bears the burden of the expenses of the works necessary to use the Right of Easement, as he is the one who benefits from it and therefore bears its responsibilities such as expenses, but if the Dominant Estate/Property and the Servient Estate/Property are the ones that benefit from the Easement Right, then the costs will be incurred by the Owners, and this is what Article No. (712) stipulated in its third paragraph, when it stipulated that, quote: “[i]f the works are beneficial to the owners of the dominant and servient real properties, the costs of such works shall be borne by both parties, each in proportion to their accrued benefits”, unquote.

In this regard, we note two things:

First: What is meant by the expenses that are originally borne by the Owner of the Dominant Estate/Property, the maintenance expenses of the road in the Easement Right of Way, for example, or the maintenance expenses of the water spring in the Right to Water Easement.

Second: The maintenance expenses are based on the above, unless damage occurs that results in

the need for maintenance for the Easement Right, then the expenses fall on the wrongdoer. In all cases, if the person charged with carrying out maintenance work at his expense is the Owner of the Servient Estate/Property, he may get rid of this obligation by giving up all or part of the Servient Estate/Property to the Owner of the Dominant Estate/Property.

The (Second Effect) arising from the establishment of the Right of Easement is the obligations of the Owner of the Servient Estate/Property to refrain from hindering the use of this Right, and this is confirmed by Article No. (713), which stated that, quote: “[t]he owner of the Servient Estate/Property may not carry out any work that may affect the use of the right of easement or change its status, unless the easement becomes increasingly burdensome to the owner of the Servient Estate/Property or prevents him from carrying out useful repairs. In such case, said owner may demand the easement be moved to a location that allows the owner of the Dominant Estate/Property to exercise his right with the same ease exercised at the previous status”, unquote.

From this provision, it is understood that the obligation of the Owner of the Servient Estate/Property is to refrain from any action that would adversely affect the use of the Easement Right, and here the Owner of the Servient Estate/Property is not obliged to commit to an action, but is rather obliged to refrain from a certain action, which is to diminish the use of the Easement Right or make it more burdensome, and if he violates this negative obligation, by performing an act that diminishes the Owner of the Dominant Estate/Property's use of the Right of Easement, he must be obliged to restore the status to what it was, unless that becomes impossible, then he is obliged to compensate whoever has a need to be compensated, and the Owner of the Servient Estate/Property may not change the current location, nor may he change the status originally designated for the use of the Easement Right with another status.

However, the text of the same Article stated that if the use in the original location became more burdensome for the Owner of the Servient Estate/Property, or it prevented him from carrying out useful repairs, the Owner of this Property may request the transfer of the Easement Right to another location of the Property, so that the Owner of the Dominant Estate/Property could easily or conveniently use his right.

For example, if (X) has the Right of Way on the land of his neighbor (Y), then this road originally remains unchanged, and neither (X), the Owner of the Dominant Estate/Property, nor (Y), who is the Owner of the Servient Estate/Property can change, by his own will, the original location to use the Easement Right without the permission of the Owner of the Dominant Estate/Property if this location would increase the burden of the Easement Right, or the Easement would prevent carrying out improvements on the Servient Estate/Property.

Article No. (714) also stated that, quote: “[i]f the dominant real property is partitioned, the right of easement shall remain valid for each part thereof, provided that the servient real property is not prejudiced thereby”, unquote.

And as stated in the text of the aforementioned Article, quote: “[i]f the right of easement only serves some parts of the dominant real property, the owner of the servient real property may

demand that such right be terminated for the remaining parts”, unquote.

Article No. (715) came with the same provisions as the aforementioned Article and it stated that, quote: “[i]f the servient real property is partitioned, the right of easement shall remain valid on each part thereof. However, if the right of easement is not actually being exercised on some of the parts of the servient real property and cannot be exercised on such parts, the owner of each of such parts may demand termination of such right from his part”, unquote.

Termination of the Right of Easement (Servitude)

Article No. (716) of the Saudi Civil Transactions Law provided for cases when the Easement Right ends, and these cases are by way of limitation, and not by way of example, and as follows, quote: “[t]he First Case: If the term of the easement expires or the subject thereof ceases to exist.

The Second Case: Is the ending of the Easement Right by the ending of its subject, if the dominant real property and the servient real property become owned by a single owner.

The Third Case: If the use of the Easement Right becomes impossible due to a change in the condition of the dominant and servient real properties; and the Right of Easement shall be restored upon restoration of the previous conditions.

The Fourth Case: If the holder of the Easement Right relinquishes such right and notifies the owner of the servient real property of such relinquishment”, unquote.

Also the Easement Right expires in **the Fifth Case** of the text of the above-mentioned Article, if, quote: “[t]he purpose for which such right was established to the dominant real property ceases to exist, or if the benefit diminishes in proportion to the burdens imposed on the servient real property”, unquote.

Finally, quote: “[t]he claim of the Right of Easement shall not be heard if such right is not exercised for a period of (10) years”, unquote, according to the text of Article No. (717) of the Saudi Civil Transactions Law.

Completed by the Grace and Blessings of the Al-Mighty Allah.

The Owner of the Servient Estate/Property is to Refrain from Any Action That Would Adversely Affect the Use of the Easement Right or Change its Status.

The Claim of the Right of Easement (Servitude) Shall Not Be Heard if Such Right is Not Exercised for a Period of (10) Years.

Promise As A Source of Legal Obligation



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The Messenger of Allah (May the blessings of the Al-Mighty Allah be upon him) said, quote: *"[t]here are three signs of a hypocrite: when he speaks, he tells lies; when he makes a promise, he breaks it; and when he is entrusted, he betrays his trust"*, unquote. Now, What Do We Mean by a "Promise"? The terminological definition of a "Promise" is (Conveying to others that one is intending on doing something in the future related to others). The Emirati legislator defined the "Promise" in Article No. (280) of the Civil Transactions Law as, quote: *"[s]omething imposed by a person on himself in favor of another relating to the future"*, unquote, and the Maliki School of Thought has traditionally used the "Promise" with a special connotation, which is the (announcement of the desire of the Promisor to create a favor (Benefit or Service) in the future that benefits the Promisee), and this is a verbal legitimate conduct, done by the sole will, and based on a pledge by a person to do a favor, free of charge, to other person (s), in the future and not at once.

In other words, it is a person's self-commitment (Obligation) through his/her own choice, own volition, and own will to commit to undergo a commitment that is related to others, such as (commutative contract, donation, notarization of a debt, or otherwise), while he/she does not have the right to go back on what he/she committed themselves to by their own will without the consent of the party to whom a commitment was made or an obligation was owed.

Scholar Ahmad Ibrahim said that, quote: *"[w]hen the reason for the obligation is found, a legitimate legal link, as a result, is established between the obligor and the obligee, in which the former shall be considered as a debtor, and the latter shall be considered as a creditor of the obligation in question"*, unquote. And this right resulting from the obligation made to the obligee is called a (personal right), i.e. a right of the obligee against the obligor and his/her personal legal capacity. And the relationship between the obligation to this concept and the "Promise" is predicated on the fact that both of them are equal but issued independent of one another, unilaterally, without the need for agreement of another will with the will of the Promisor and the Obliger.

Based on this idea, let us all imagine a scenario in which a person communicated with another by phone, explicitly offering him/her his/her readiness to fulfill and pay a certain amount of money owed by a third party to the first party, and the correspondence between them continued in writing on WhatsApp, with the person in question (the Promisor) confirming and committing to everything that was shared during this telephonical communication, which is his/her readiness to pay the owed financial amount, a readiness of payment that they actually insisted on fulfilling, however, and after such a persistent insistence on this obligation to repay the said amount, he/she (the Obligor) reneged on his/her promise. Now, this raises the inevitable question which is:

Is a Promise a Source of Legal Obligation?

And here, the following question also arises, which is: To What Extent it is Permissible for a Promise to be Considered as a Source of Legal Obligation? Knowing that the Sources of Obligation or personal rights for legal actions and facts are limited to the (Law, Contract, Act Conferring a Benefit, Act Causing Harm (Torts), and Unilateral Act), in accordance with Article No. (124)

of the UAE Civil Transactions Law.

To answer these queries, the Federal Supreme Court ruled in one of its rulings that, quote: *"[a] promise must be fulfilled, and because of what was promised, the promisee got into trouble, since the promisor made a promise that made the promisee part and parcel of it, such as saying for example: (demolish your house and I will lend you the money to rebuild it, or go to perform the Hajj and I will lend you the money needed, or buy a commodity or marry a woman and I will lend you,"*, unquote (Appeal No. {282} of Judicial Year {25} - Shari'a - Dated {4-4-2005}).

The Federal Supreme Court also ruled in another judgment that, quote: *"[a] judicial or non-judicial Acknowledgment (declaration or avowal) is a person's recognition of a right owed to another, with the intention of considering this right as established in his personal legal capacity while exempting the creditor from proving it, provided that the right acknowledged is clear and straight forward, and the acknowledger must be aware of the purpose of his acknowledgement and that he has intended to bind himself by it, and must be also cognizant of the fact that such acknowledgement made will be used as an argument against him, and that his opponent will be exempted from providing any evidence and such acknowledgement shall not be divided, as the court will take it in full or otherwise it will disregard it in full too"*, unquote, (Judicial Appeal No. {79} of 2020 - Civil Department - Dated {17-2-2020}).

Based on the above, the development of society requires maintaining people's trust when dealing with each other, especially since we live in a country that is based on trade, economy, and speed of dealing, which requires protecting their expectations generated by what a person makes of written or oral promises and pledges, as long as the promise made does not contradict the Constitution and the Law, and is not based on cheat or fraud.

Accordingly, in the event that the Promisor fails to fulfill his/her promise, the other party (the Promisee) reserves the right to sue him/her to force him/her to fulfill that which they promised, and to demand the forced execution of the subject of the promise, when it is proved that the Promisor intended on not keeping his/her unilateral promise, in addition, the party benefiting from the promise made has the right to demand the Promisor to compensate the damage suffered by him/her because of his/her breach of promise.

When the Reason for the Obligation is Found, a Legitimate Legal Link, as a Result, is Established Between the Obligor and the Obligee, and in Which the Former Shall Be Considered as a Debtor, and the Latter Shall Be Considered as a Creditor of the Obligation in Question.

The Development of Society Requires Maintaining People's Trust When Dealing with Each Other.



Provisions of Divorce and Ways to Prove it in the UAE Legislation



Judge Mohammad Abdelbaqi
Judge at the Courts of First Instance
- Dubai

The provisions of divorce and ways to prove it differ between spouses, from the Personal Status Law No. (28) of (2005) and the Law No. (41) of (2022) regarding Civil Personal Status, and both laws target families in the UAE, however, the main criterion in the mechanism of application of either law is the religion of the parties to the conflict, where the Civil Personal Status Law stipulates that the provisions of this Law shall apply to non-Muslims residing in the country, unless one of them adheres to their native laws.

In the Islamic Marriage, which is applied in accordance with the Personal Status Law No. (28) of (2005), the husband reserves the unilateral right to effectuate divorce of his wife by his own will, wherever and whenever he wishes to do so, and either before the Judicial Council or outside of it, and the divorce occurs in several ways, including: (That the divorce takes place from the husband or his agent based on an ad hoc power of attorney, or from the wife or her agent based on an ad hoc power of attorney, according to what was agreed upon in the marriage contract), and the divorce is proved in front of the judge by the testimony of two witnesses, or by acknowledgement, and divorce is based on the date of acknowledgment, unless a previous date was proved to the court, and the consequences of divorce by acknowledgment are based on the Sharia rules.

As for the Civil Marriage, which is applied in accordance with the Law No. (41) of (2022) on Civil Personal Status, neither of the spouses has the right to divorce the other except before the Judicial Council, in accordance with the text of Article No. (4), Paragraph No. (3), that stated that, quote: “[t]he right to request divorce: That both the husband and wife may unilaterally demand that divorce be established by the court without prejudice to their rights related to divorce”, unquote.

Article No. (7) of the same Law alluded to divorce by unilateral will, when it stipulated that, quote “[i]n order for the court to pronounce a judgment of divorce, it shall be sufficient for either of the married couple to express his/her wish to get separated and not to continue the conjugal relationship, without having to justify that desire, to specify the aspects of harm, or to lay the blame on the other party”, unquote.

We conclude from this that Islamic Marriage, which complies with the Personal Status Law No. (28) of (2005), ends based on the effectuation of divorce before the Judicial Council, or it ends if the husband divorces his wife outside the Judicial Council, and then attended and acknowledged before the Judicial Council that he did effectuate the divorce, and here there are two hypotheses: (The First of which if he has personal evidence (two competent witnesses) attesting to the previous divorce, so that to attribute the divorce to its date, otherwise the divorce is attributed to the date acknowledged. Also the Personal Status Law No. (28) of (2005) stated that any of the spouses may request consensual or judicial khul (divorce for compensation) or divorce for diseases, namely that one of the spouses finds a chronic alienating or harmful malady in the other spouse such as a wife with whom it is impossible to have conjugal intercourse normally, or divorce for harm and discord, such as swearing, beating, and abandonment of conjugal bed, with which the affectionate continuation of the marital relationship has become impossible between them, and the Law distinguished the wife here in application of the provisions of the Sharia and enabled her to request a divorce for (non-payment of the required dowry, absence, loss, separation for imprisonment, lack of paying maintenance, Al-Ilaa’a (When a husband swears not to have intercourse with his wife within a certain period of time), and Al-Zhihar (When a man says to his wife “You are forbidden to me as my sister or as my mother if you do such-and-such”), and that all of

these requests are subject to the judges’ discretion as to their validity and the claimant’s eligibility or not.

In a Civil Marriage, which complies with Law No. (41) of (2022) on Civil Personal Status, neither of the spouses has the right to effectuate divorce, but either of them can request a divorce, and the court answers that request immediately, regardless of the reasons.

One of the effects of separation between spouses is the woman’s waiting period after separation (Iddat Waiting Period), as it is obligatory for the wife according to the Personal Status Law No. (28) of (2022), to remain unmarried after separation, so the Iddat starts from the date of the separation’s occurrence, and the Iddat begins in the case of a man’s Intercourse with Suspicion with a woman who is forbidden in marriage in Islam while mistakenly thinking that she was his wife on the date of the last intercourse, and the Iddat begins in marriage from the date of the (abandonment, separation of the judge, or the death of the man), and the Iddat in the case of the (ruling of a divorce, separation, annulment, invalidity of the contract, or the ruling on the death of the missing person) from the date on which the ruling becomes final, and if the woman’s husband dies even before the Actual Act of Intercourse (dukhūl), then she has to observe a waiting period of four months and ten days unless she is pregnant, and if she is as such, the pregnant woman’s Iddat term expires with the delivery of her pregnancy or its miscarriage, God forbid, and the woman who had an intercourse and is no longer virgin, in the context of an invalid or suspicious contract, observes her Iddat period just like the divorce Iddat period if her man dies on her, in order to prove clearance of any pregnancy, whereas for the divorced woman before Consummation of Marriage (al-khalwah al-ṣaḥīḥah) and the Actual Act of Intercourse (dukhūl), she does not have to observe any Iddat Waiting Period. The legislation of the Al-Mighty Allah regarding the obligation of the need to observe the Iddat Waiting Period was clear and not disputed by all schools of thought, in keeping with the Al-Mighty Allah’s saying in His Holy Book, the Qur’an, quote: “[d]ivorced women must wait three monthly cycles before they can re-marry”. It is not lawful for them to conceal what Allah has created in their wombs, if they truly believe in Allah and the Last Day. And their husbands reserve the right to take them back within that period if they desire reconciliation. Women have rights similar to those of men equitably, although men have a degree of responsibility above them. And Allah is Almighty, All-Wise”, unquote (Surah {Chapter} Al-Baqarah {The Cow}, Ayah {Verse} 228), and the Law took the view that interpreted the three (Quru’) in this verse as three (menstrual) periods for the women who still have menstruation periods. The Law also took the view that states that the Iddat Waiting Period for the women who do not menstruate is three months.

The Iddat Waiting Period also applies to divorcees from Civil Marriage under Law No. (41) of (2022) regarding Civil Personal Status, because the text of Article No. (15) states, quote: “[t]he laws and legislation in force in the State shall apply to matters not specifically provided for in this Decree-Law”, unquote, and then the provisions of the Iddat shall apply under the Personal Status Law No. (28) of (2005).

The Legal Nature of the Pre-Contract Negotiations



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Jurists differed in determining the legal nature of Pre-Contract Negotiations in two directions: The First of which is of the view that Pre-Contract Negotiations are a declaration of material facts, and the Second of which holds the view that Pre-Contract Negotiations are of a contractual nature due to the existence of an agreement between the parties to negotiate.

Negotiations as Material Facts

Part of the jurisprudence believes that pre-contract negotiations that are not accompanied by any agreement are merely material facts that are not binding on the parties, and do not entail any legal effects, since the basic principle here is that the parties have complete freedom to proceed with the pre-contract negotiations, and they also have the freedom to stop or terminate them without any responsibility falling on anyone, pursuant to the Principle

of Freedom of the Parties to Negotiate, without any conditions or restrictions affecting their desire to conclude the contract, and in accordance with the conditions and controls that were agreed upon by each of the parties wishing to enter into a contract.

Material Facts:

Negotiations, according to this line of jurisprudence, are merely material facts that do not create a contractual link

per se between parties wishing to negotiate in order to reach the conclusion of a contract.

Accordingly, there is no way to enforce the provisions of contractual liability for the damage suffered by one of the parties to the pre-contract negotiation, since the contract was not concluded in the first place, and therefore we must resort to the enforcement of the provisions of Tortious Liability for the reparation of the damage caused, or claimed by one of the parties (the Plaintiff), who has the responsibility of proving the fault of the Defendant, who stopped or terminated the negotiations without any justification, and it falls on the Plaintiff according to this trend of jurisprudence, the duty to prove the existence of damage and the causal relationship between the proven fault and the existing damage.

Tortious Fault:

The Tortious Fault is represented by the existence of a deviation in the usual or familiar behavior of negotiations, such as the existence of fraud, cheating, or intentional presence to harm the other party, such as gaining or wasting time in order to steal information and data of the other party, without a real intention to conclude a contract, and this is what falls under the phrase of the presence of Bad Faith by one of the negotiators to harm the other party, as the source of tortious liability is the existence of bad faith by one of the negotiators, where the bad-faith negotiator resorts to extending the negotiation period, or interrupt it in an unusual way, or withdraw from it without an acceptable or familiar excuse, such as a change in the economic situation or the emergence of competitors in the same field, where the presence of bad faith is represented by the presence of an intention to deliberately harm the other negotiator.

Negotiations as of a Contractual Nature

Another line of law scholars believes that pre-contract negotiations are actions of a contractual nature that are not governed by tortious liability provisions, since there is an agreement between the parties to proceed with the negotiation, and therefore the liability arising from this negotiation is considered a contractual liability.

The explicit agreement to negotiate bestows on it the contractual nature, and the negotiation can be based on a written agreement between the parties, with the aim of regulating the rights and obligations of each party during the negotiation phase or it can be implicit, as the consent of the parties to negotiate represents the strength of the contract with the presence of an offer and acceptance.

The holding of negotiations in accordance with this trend is a legal action taken by the negotiating parties with the aim of concluding the contract of negotiations, which is a contract that is independent from the contract to be concluded in the future governed by different conditions and controls, and accordingly contractual liability ensues.

Pre-contract negotiations create legal actions between the negotiators, and these actions represent many obligations that fall on the parties to the negotiation contract, such as the (obligation to provide information and statements, to maintain its confidentiality with the obligation to adhere to the principle of good faith while putting it into action, cooperation and the obligation to inform which is represented in the disclosure of all information related to the contract to be concluded, and the commitment to seriousness and moderation), and consequently, the resulting responsibility is a contractual responsibility in the event of a breach of one of these obligations arising from actions undertaken by the parties in order to conclude another contract, which is the contract that the parties wish to reach through a negotiated contract.

An Exception to the General Rule:

And there is a line of jurisprudence that is in support of the idea of contractual liability for negotiations, and it is of the view that such a liability is bestowed as an exception to the general rule of establishing tortious liability in the event of a fault that causes damage to others, as it occurs in the event of an agreement or a preliminary contract that was written to regulate the period of negotiations, and the contract of negotiations here is a preliminary contract for the final contract to be concluded, and the breach by one of the parties of one of his obligations stipulated in the content of the contract results in the establishment of a contractual liability on the basis of the contractual fault, and accordingly the injured party has the right to demand compensation for the existing damage, due to the defendant's breach of one of the terms of the negotiation contract.

The legal nature of pre-contract negotiations is one of the material facts that result or are based on legal actions, and therefore the liability for damage caused is based on tortious liability only, unless there is a written agreement in principle between the parties with a view to reaching the conclusion of the final contract, so this contract exists to regulate and indicate the terms and obligations of each party and the limits of their obligations, and in case in the event of damage to one of the parties as a result of breach of any contractual obligation.



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The New Narcotics Law

The UAE and its wise leadership always strive to maintain the security and safety of its society, and this is clearly shown to us in the UAE Anti-Narcotics Law.

The UAE has a strict policy towards the use of narcotic drugs. The Law prohibits the bringing, import, export, manufacture, extraction, separation, production, possession and acquisition, use of narcotic drugs and psychotropic substances indicated in the schedules annexed to the Law, and other related activities and actions.

The UAE is a member of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the agreements concluded in this regard include the application of legitimate international control measures and ensuring that they are not circulated among the general public. These Agreements are committed to:

- * The availability of these materials for medical and scientific purposes only.
- * The prevention of their access through illegal and illegitimate channels.
- * The elimination of the phenomenon of drug trafficking or misuse.

Also, Federal Decree-Law No. (30) of (2021) on Combating Narcotics and Psychotropic Substances came in the interest of the substance abuser in terms of deportation for the foreigner, and it made it optional for the judge in contrast to the old Law, in which deportation was mandatory, and this advantage has given an opportunity for the victims of these poisons to start his/her life anew away from this destructive path, the legislator has taken the foreign family in the country into account, so that there would be a motivation for the substance abuser to stay away from these poisons and not to use them again.

The penalty for the use of narcotic drugs and psychotropic substances is defined by the UAE legislator in Federal Decree-Law No. (30) of (2021) on Combating Narcotic Drugs and Psychotropic Substances, where it emphasized on the fact that the offender must be punished with imprisonment for a period of not less than three months or a fine as detailed in Articles Nos. (41 - 42 - 43). The legislator has increased the penalty if the perpetrator commits any of the mentioned substance abuse crimes for the second time, within a period not exceeding three years from the date of committing the act for the first time, and the legislator has also raised the limit of aggravation if the perpetrator commits the same crime (substance abuse crime) for the third time.

And according to the cases pending before the Dubai Courts, the largest percentage of the age group who have already been sentenced in cases of possession and use of narcotic drugs and psychotropic substances is from the youth category.

As for the punishment for drug trafficking and promotion in the state, the Drug Law, mentioned in Article No. (58), provides for the death penalty or life imprisonment, if the crime is committed with the intention of trafficking or promotion, or the offender belongs to a hostile group or an organized crime gang or works for its benefit.

In conclusion, our goal today at the Dubai Courts is to join hands with the society in the country to combat these poisons, by raising awareness of the society of the harm caused to the user and their great harm to his/her future and family, and working to consolidate family relationships, and the responsibility of parents in instilling moral values inherent in the culture of the UAE.